

Indic Legal Law Journal

Volume No. 1

Issue No. 3

August - September 2022

Pages: 1 - 5

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DELEGATED LEGISLATION

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Delegated Legislation is an expression which is under a lot of controversy. It is often seen as a shield for corrupt administrators and an excuse for legislators for not doing their duty. Constitutional purists see it as a violation of the separation of power principle. While it is sometimes considered as a necessity, it often criticized for giving undue powers to certain organs of the government. In article, I would be talking about what exactly delegated legislation is, its types, what control there is over it and also some grounds for invalidation of a delegated legislation.

Delegated Legislation

The Committee on Minister's Powers defined delegated legislation as the power given to subordinate authorities to exercise some legislative powers which is granted by the Parliament itself.¹ The Parliament can grant the power to any authority to make legislations by way of an Act. The main objective of this power is to ensure that legislations can be made in a quick manner without waiting for an Act to be passed by the Parliament. However, this power would not be absolute. The legislations have to fit the objective and should be clearly thought out and recorded. There is sufficient control that is exercised by the Parliament and the Judiciary. This power of delegated legislations is also given to certain bodies that may be experienced in a field and can make legislations concerning that particular area.²

¹ Ramesh Narain Mathur, *Legislative Control of Delegated Legislation A Survey*, 21(1) THE INDIAN JOURNAL OF POLITICAL SCIENCE 25, 25 (1960).

² P. B. Mukharji, *Delegated Legislation*, 1(4) JOURNAL OF INDIAN LAW INSTITUTE, 465-492 (1959).

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Forms of Delegated Legislations

Primarily, there are three forms of delegated legislations, namely, statutory instruments, orders in council and bylaws. Let us look at what these three terms mean.

1. Statutory Instruments

These are regulations or rules that can be made by ministers of the government. However, these powers would only be limited to a particular area that is under their responsibility. Every year, around 3000 statutory instruments are brought into force. This forms a major chunk of our legislation.

2. Orders in Council

This gives the power to the Privy Council, that is, the Prime Minister and other important members of the government to make laws. This way, they are effectively by passing the parliament. An example of this would be in case of emergencies where the Privy Council can make legislations quickly as going through the parliament is a long drawn process.

3. By Laws

These are essentially legislations created by some local authorities that are approved by the Central Government. They would be responsible for niche area and they can make legislations concerning only that. For example, for social welfare purposes in a particular area, a person from that area who has knowledge about its conditions would be able to frame better laws than a minister in the Parliament. Further, the Parliament also does not have the time to discuss and deliberate on small issues. If a fully prepared and deliberated legislation is placed before them, they need to just approve of it.

Reasons for Growth of Delegated Legislation

The concept of delegated legislation has grown at an incredible speed. It has become extremely common for a variety of reasons.

1. **Parliamentary Time:** This is considered to be the most significant reason for the growth of delegated legislation. The Parliament does not have the time and resources to

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legislate, discuss and debate over all issues in the country. It has to prioritise on the more large-scale, important matters. This has led to legislating powers being handed over to subordinate bodies to come up with effective legislations after deliberating on them properly.

2. Technicality of subject matter: Experts in a particular area or a local from a particular geographic area could come up with more realistic legislations than a member in the Parliament who may not have much knowledge about a subject matter. Allowing a more experienced person or body of persons to come up with legislations would be more beneficial.
3. Unforeseen Contingencies: When the Parliament takes on a big project to legislate on, it is fully possible that they may miss out on some local contingencies and minor details. This work, if left to specific departments, would make the system more efficient.
4. Emergency Powers: Often, there would be emergency situations where legislations have to be passed rapidly. In these scenarios, subordinate bodies doing some of the legislative work would be helpful.
5. Opportunities for Experiment: Parliamentary process is slow and would reduce chances to experiment on different kinds of legislations to see what works. If these powers are delegated, many experiments can be carried out and if a legislation is not suitable, it can be revoked easily.

Control over Delegated Legislation

Delegated Legislation has to be controlled. If not, it would lead to a total breakdown of democracy. They are controlled by both the Parliament as well as the judiciary.

1. Judicial Control

Judicial review of legislation is considered as a very essential feature of the Indian Constitution. In India, it has been agreed that courts do have the power declare some subordinate legislations as invalid in some cases. The constitutional position of the Judiciary is such that its rights to examine legislation, whether emanating directly from Parliament or from subordinate authorities, cannot be barred. But it is submitted that judicial control from its very nature can only be of limited effectiveness. The Courts step in to make sure that there is no abuse of

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powers and to see that the legislation is within the scope it was delegated. If the Court interferes more than this, the very objective of the delegated legislations would be lost.³

2. Parliamentary Control

Delegated legislations do not automatically come into power. The Parliament has sufficient control over it. Once statutory instruments are written down, they are placed before the Parliament. If there is no argument against it in 40 days, it becomes a law. If there is any argument raised, it further debated on by the members of the Parliament and either passed or rejected. This is one way in which delegated legislations come into power. However, sometimes a delegated legislation may be passed immediately but the Parliament may disallow it a later point in time, citing sufficient reasons for the same.

Grounds for Invalidity of Delegated Legislation

A delegated legislation may be rendered invalid by courts or the Parliament based on some grounds namely:

1. If the Act that enables a body to make delegated legislations is *ultra vires* the Constitution. This may mean unconstitutionality of either the entire Act or the enabling provisions under which delegated legislation is provided for.
2. If the delegated legislation violates the provisions of the Constitution or any of the fundamental rights. Any sort of legislation that violates fundamental rights cannot be valid. It is up to the courts to decide on the constitutionality of a given delegated legislation.
3. If the subordinate legislation is *ultra vires* the Delegating Act. The scope of the subordinate legislation should be within what is provided by the enabling statute. If the subordinate legislation is outside the scope of the Delegating Act or is in conflict with the Delegating Act or disregards the procedure prescribed or exercises its power *mala fide* or is unreasonable, it can be rendered invalid.

³ V. N. Shukla, *Judicial Control of Delegated Legislation in India*, 1(3) JOURNAL OF THE INDIAN LAW INSTITUTE, 357-374 (1959).

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Conclusion

There is no doubt that arbitrary exercise or abuse of rule-making powers by the Executive may constitute a threat to liberty of citizens, but it will be futile to oppose delegated legislation because of a possibility of its abuse. It is necessary and inevitable. The Parliament has a duty to pass quality legislations taking in modern public opinion, which would not be possible if the Parliament is not ready to pass on some of its law-making powers to subordinate bodies. For the survival of democracies, it essential to resort to some form of delegated legislation. However, this power should be effectively controlled by the Parliament and the Judiciary to ensure smooth functioning of the system.