

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

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Paper -VII

TOPIC- Delegated legislation

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Reasons for growth of Delegated Legislation

Many factors are responsible for the rapid growth of delegated legislation in today's time. Because of the radical change in the governance of a country from 'police state' to the 'welfare state' the function and the need of delegated legislation have increased. These factors and reasons for growth of delegated legislation can be seen as follows:

- **Pressure upon time of Parliament:** The area, scope, or horizon of state activities are expanding day by day and it is difficult for the Parliament to make laws on each and every matter as they are having a lot of work to do and they also have to make legislation on various matters. The Parliament is so much occupied with matters concerning foreign policy and political issues that it has not much time to enact the laws in detail. So it only frames the broad part of the rule and outline of the legislation and gives that legislation to the executive or some of its subordinates to fill the full detail following the necessary rules and regulations. It is like they have given the only skeleton and the subordinate have to fill flesh and blood to the skeleton to make it alive. *The committee on Ministers' Power* has observed that if the parliament is not willing to delegate law making power to the subordinate then he will unable to pass the quality of rules and

regulations that a person needs to live a happy life or legislation which a modern public requires.[6]

- **Technicality in the matters:** With the progress and advancement in society, things have become more twisted, complicated and technical. So to understand the technicality of each and every topic, legislature needs the expert of that particular topic who is well aware of each and every detail of that matter. Over the years it has been observed that some legislature only know politics and some might have knowledge about one or two topics. Therefore, after framing policies by the parliament on any topic, that topic is given to the government department or any particular person who knows about the technicalities of that particular topic and given the power to lay down the details.
- **Flexibility:** Parliamentary amendment is very slow and it requires a process to make any type of law but by the tool of delegated legislation it can be made expeditiously with the help of the executives, e.g., police regulation, bank rate, import and export, foreign exchange, etc. Also, Parliament cannot foresee the contingency while enacting a law so to make it foresee the workload is being given to the executives. So it is necessary to give work to lower body to have that work in a smooth and better manner.
- **Emergency:** In any type of emergency one should know how to deal with it quickly without any delay. The legislature is not equipped with the skills of providing an urgent solution to meet the situation of emergency. Delegated legislation is the only way to meet that situation. Therefore, in times of emergency and war, an executive is given wide power to deal with that situation. Some examples of delegation in England during the First and Second World War are the [Defence of the Realm Act 1914-15](#), the [Emergency Power Act, 1920](#), etc. Similarly, in the case of inflation, flood, epidemic, economic depression, etc immediate remedial actions are necessary.

- **Experiment:** The practise of delegated legislation enables the Executive to experiment. As every work is new for the legislative and he has to experiment that either this law is working in perfect condition or not. This method or approach permits the utilization of experience and implementation of the necessary changes in the application of the provision made by the Parliament. For example, in traffic matters of the road an experiment method can be conducted and in the wake of its application necessary changes can be made in the provisions. The advantages of such a course is that it allows the delegated authority to consult the interest of people at the ground level that what type of law is affecting them and then he makes an experiment by altering the provisions.
- **Complexity of modern administration:** Modern administration used to take added responsibilities when it came to upraise the condition of the citizens such as looking after their employment, health, education, regulating trade, etc. Therefore, the complexity in modern administration and expansion of states' function to the social sphere and economic have allowed the formation of a new form of legislation and to give wide powers to various authorities on various occasions. It is important that an administration should give an excess of power to activate socio-economic policies. In a country like Bangladesh where control over private trade, business or property may be required to be imposed, it is necessary that the administration should hand over the excess amount of power to implement such policy.

Therefore, we can say that there is a rapid growth of this delegated legislation and also it is necessary for a country to run smoothly.

Constitutionality of delegated legislation

It basically means the limits that are permissible within a Constitution of a country through which Legislature with all his right can delegate its power of rule making to other agencies of administration. The aim of extending the power of the government is to handle socio-economic problem.

- **Position in USA:** Delegated legislation is not allowed theoretically in the constitution of the USA because of the two reasons. These are, "*Separation of Power*" and "*Delegatus non potest delegare*". There is no reference of text has been given in the Constitution of the USA which shows that it delegates its power from Legislature to the Executive. Congress was itself a delegatee then how can it delegate its powers. The political theory that was propagated by philosophers like John Locke and Montesquieu were imbued on the framers of the American Constitution. John Locke has said that a legislative cannot delegate his powers of lawmaking to any person or cannot place it anywhere. He further stated that there should be separate Legislature and Executive because if the power of law making and execution of that laws go in one hand it can be misused and these people use that power to exempt them from that law and use it for their private advantage. So the doctrine of '*delegatus non potest delegare*' has been given by John Locke it means the same as what we have explained above.

Another philosopher, Montesquieu has given the concept of '*Separation of Powers*'. According to Montesquieu, one person cannot exercise all the three powers of the government i.e., the Judiciary, the Legislature, and the Executive. The Legislature should make laws and should not enforce or administer it. Similarly Executive should not interfere in the work of Judiciary and Legislature and Judiciary should be free from Executive and Legislature. All should do their work separately. In America, the power to make legislation has been given to the Congress, executive powers given to the President of the USA, and the judiciary power of the United States is vested in the hands of Supreme Court and also it might be given to lower court from time to time on the ordain of the Congress.

Due to the adoption of separation of power by the United States, the legislative power can be vested only in the hand of Congress and no organs of the government. Further, it has argued that the power to the Congress itself has been delegated by the American Constitution so it cannot further delegate its power. In case of [Field v. Clarke](#),^[7] it has been observed by the Supreme Court of America that the power entrusted to one department should only be

exercised by that department without interfering in the power or area of another person. But in some other cases of Supreme Court of America, it was observed that in non-legislative power such as rule-making power or quasi-legislative powers can be delegated by Legislature to the Executive. In [Wagman v. Southard](#),^[8] Chief Justice Marshall observed that the line has been not drawn between those subjects which were important and, therefore, regulated by the Legislature itself and those subjects of lower interest which were given to the Executive for filling the details in the structure of that legislation.

So to conclude about the delegated legislation in America it can be said that it has not been accepted in principle but in practice, the Legislature has entrusted the power of law-making to the Executive.

- Position in England: The doctrine of parliamentary sovereignty is the core element of the UK Constitution. In England the Parliament is supreme and there is no limitation by the Constitution on the Parliament. Also, Parliament in England has wide powers of delegating its legislative power to the Executive or other subordinate bodies. Committee on Ministers' Powers also refers to as Donoughmore Committee released a report in which a famous lawyer of England, Sir Cecil Carr has quoted about three parts of legislation. These are as follows:
 - The first and the very smallest part is made by the Crown under her prerogative powers.
 - The second and the weightiest part is made by the King in the Parliament and it consists of Acts of Parliament.
 - The third and the bulkiest part is made by such body whom the King entrust the power of legislation in the Parliament.

Sir Cecil Carr has also observed that the truth is that if the parliament is not willing to delegate the law-making power, the Parliament is unable to provide quality and kind of legislation the modern public wants.

- **Position in India:** The position and Constitutionality of delegated legislation in India can be seen in various cases. It is divided into two phases i.e., before independence or we can say it as pre-independence and post-independence.
- Pre Independence: In *Queen v. Burah*, only Conditional Legislation has been validated by the Privy Council and therefore delegated legislation is not permitted as per its reasoning. The administration of civil and criminal justice of a territory can be vested in the hands of those officers who were appointed by the Lieutenant-Governor from time to time.

The Privy Council has stated that it is better to take help from the subordinate agency in framing the rules and regulations that are going to be the part of the law and giving another body the essential legislative features that has only given to the Legislature through the Constitution. He also stated about the essential legislative function that included in determining the legislation policy.

In *King v. Benori Lal Sharma*, Condition legislative was again applied by the Privy Council, the same as in the case of *Queen v. Burah*. In this case the validity of the Emergency Ordinance given by Governor-General of India was challenged *inter alia*. It was challenged on the ground that he is taking the power of the Provincial Government. He was setting up special criminal courts for particular kind of offences but for the settling of any court, power has been given only to the Provincial Government. The judicial committee held that this is not delegated legislation. Privy Council also held that it is an example of an uncommon legislative power by which the local application of the provision of State determined by the local administrative body when it is necessary.

- Post Independence: The Constitution of India does not provide the same position as the prominent British Parliament provide to the delegation of legislative powers and also how far delegation is permissible has got to be confirmed in India as a matter of construction from the express provisions of the Indian Constitution. It cannot be said that an exhaustible right of delegation is inherited in the legislative power itself.

In the case of [Raj Narain Singh v. Chairman, Patna Administration Committee](#) [Air](#),[9] the Supreme Court of India upheld the delegation of power given to the executive by the legislature.

[Lachmi Narain v. Union of India](#)

Facts: The Central Government exercising the power that it has got from [Section 2 of the Part State \(Laws\) Act, 1950](#), which extended the Bengal Finances (Sales Tax) Act, 1941 to the Part State of Delhi with certain modification in [Section 6](#) through a notification. By various notifications, the granted sales tax on various commodities was exempted but subsequently, the exemption was withdrawn by another notification. Dealers who are indulging in those commodities, challenges the validity of that withdrawal.

Judgment: It was held in this case that the notification issued by the Central Government is beyond its power conferred on it by Section 2 of the Union Territories (Laws) Act,1950 and in consequence of any type of notification issued by the Central Government is invalid and ineffective.