

# **RMM LAW COLLEGE SAHARSA**

## **ADMINISTRATIVE LAW**

**IIIrd Part**

**Paper -VII**

**TOPIC- Delegated legislation**

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**Date:- 28/09/2020**

### **Advantages of delegated legislation**

There are many advantages of delegated legislation as it is essential for a democratic country to flourish or make laws according to its public. These advantages are as follows:

- **Reduce the workload of Parliament:** The Parliament has to pass several legislation within a short span of its life. It has to take such type of intensive work that it can hardly enact the law provisions in detail. If the Parliament devotes its time in laying down minor and subsidiary detail of each and every legislation by making all the rules required for that legislation then it will take too much time and in that time it can only deal with a small amount of Act in detail. It is lengthy, time consuming process and also it is expensive to operate Parliament process. It cannot cope up with the growing needs of legislation. So there arises the need to overcome that load and it can be possible only through delegating ones legislative authority to the subsidiary ones or the executives. Delegated authorities which an expert resides are more appropriate to make laws and to meet the needs of the community. It saves ample amount of time of the Parliament because it gives the members a chance to create or to make rapid changes in small items.

- **Technical Expertise:** Today's world has become very technical and complicated by the introduction of modern means and advancement in technology. So it is necessary for the members of parliament to know each and every field but one cannot be the master of all fields. Therefore, it is difficult for the members of Parliament to have all knowledge needed for making laws in various fields like on controlling technology, ensuring environmental safety, dealing with various industrial problems which need basic knowledge. Also, Parliament is not a forum which can make laws on administrative and technical details but it is more concerned with social issues and the rule of law. Therefore, it is thought that it is better for the parliament to debate on the broad topic or the main topic and leave the rest detail for the fulfilment by the expert of that particular field. Thus, delegates authorities with extra skills, experience, and knowledge are more suitable for making law.
- **Decentralized decision making:** The local councils are more suited to make laws for their constituencies as they better know the condition of their constituencies than any other. These local bodies can make better laws for their area that a Parliament cannot do so because they knew their locals need, what's they want? And it is very essential to know a person for whom we are making laws. The Parliament makes the laws for broad principle while its delegate handles the local principle. This separation of power helps in the smooth running of the legislature.
- **Emergencies:** Delegated Legislation allows for rapid action in case of an emergency but Parliament take too much time in taking any decision. It has to call for a session then the Parliamentarian discusses the emergency topic. And after that, if they all conclude then only that act would have passed. In some cases, the Parliament have not enough time to accurately make a piece of legislation and a quick and safety legislation is required for the safety of a nation. For example, in the UK, the Prevention of Terrorism Act was created as delegated legislation and now this act has added a new prohibited group to the

terrorism. Therefore, it is more appropriate for the delegate authorities to make legislation and deal with it.

- Enables flexibility: In delegated legislation, Parliament makes law in broader skeletal form and the executive had to fill the minor details. So these minor details can be changed immediately without making any amendment in the Parliament. Therefore, it is flexible and the legislation made by this can be best for the needs of modern public.
- Seeing the interest of affected person: To make legislation effective it is important to know the need and interest of that person who is going to be affected by that law or legislation. Only sitting in big houses and making a decision for the affected person is easy but knowing their interests and their needs by living with them in the same condition in which they are living is tough and then making law for them will surely benefit that affected person. Therefore, it is necessary to delegate the rights of legislation by the Parliament to the Executive. The Executive knows the condition of the affected person better than the Legislature.
- Experimental basis: It can be used as an experimental basis. It allows in quick lawmaking. If a law made for some circumstances and it does not fulfill the condition for which it has made then it can be changed and a new law can be made at the place of the older one. And if this law gets fitted according to the situation then this law will prevail in that area. In this way, it is an advantage in the view of modern public.

## **Judicial control over delegated legislation**

The delegated legislation can be challenged in India in the courts of law as being unconstitutional, excessive and arbitrary. It can be controlled by the Judiciary on two grounds i.e., firstly, it should be on the ground of substantial ultra vires and secondly, it should be on the ground of procedural ultra vires. The criteria on which the law made by the executive can be considered as void and null by the court is that it should not be considered inconsistent by the

constitution or *ultra vires* the parent act from which it has got the power of making law. The power of examining the delegated legislation in India has been given to the Supreme Court and the High Court and they play an active role in controlling the delegated legislation.

Judicial control over delegated legislative is exercise at the following two levels:

1. Challenging the delegation as unconstitutional
2. Improperly exercise of Statutory power.

No delegated legislation can survive clashing with the provisions granting Fundamental Rights. If any Acts violate the fundamental rights then the rules, regulations, and by-laws framed under it cannot survive. In India as well as in America the judicial control over the delegated legislation is based on the doctrine of *ultra vires*. Also, there are various methods through which judiciary in America exercises control over delegated legislation.

The two main approaches taken by the judiciary in America for justifying the delegation of legislative power to the executive are:

1. Filling up the details approach.
2. Intelligible principle approach.

In the first approach, the Congress should lay down the standard policy for the guidance of executives and the executives have to fill the further details and carry out the policy of legislation according to the standard laid down by the Congress.

In the second approach, the court will review the delegated legislation if *ultra vires* the enabling statutes or it is not in accordance with the provisions mentioned in enabling statutes.

### **Cases that illustrate the Judicial control over the executives**

- **Kruse v. Johnson:**[11] *The court laid down in the case that by-laws would be unreasonable on the following ground.*
  - It should not be partial or unequal
  - It should not be manifestly unjust
  - It should not disclose bad faith
  - It should not involve oppressive interference with the right of the people that it could find no justification in the mind of the reasonable person.
- **Delhi Law Act Case:**[12] *In this case the power is given to the Central Government through an act to repeal the pre-existing law held to be ultra vires.*
- **Chintaman Rao's Case:**[13] *Prohibition of making bidis in the agriculture season by the Deputy Commissioner is violative of Article 19(1)(g) of the Indian Constitution.*
- **Chandran v. R:** *It was held in this case that if the power of by-laws entrusted in the hands of the Legislature, then it must be within the limits of the Legislature and if it exceeds the limit then this by-laws can be struck down.*

## **Effectiveness of Parliamentary control over delegated legislation**

It is on the parliament to confer on anyone its power of legislation whom it likes, but at the same time, it has to see that if the power that has been conferred to the person is using that power for the public or not. If that person is misusing that power the Parliament can take that power back. It must ensure that there should be no misuse of that conferred power.

In [Avinder Singh v. State of Punjab](#), Krishna Iyer J. appropriately expressed that parliamentary authority over designated enactment should be a living continuity as a protected need. The authoritative command over the

organization in parliamentary nations like India is more hypothetical than practical. In truth, the control of the Parliament is not that much effective as it needs to be.

Jain and Jain stated about the control of the legislature over the delegated legislation that *"It is the function of the legislature to legislate in a parliamentary democracy. If it seeks to delegate its legislative powers to the government due to a few motives, it is not the right of the legislature, but additionally its duty, as predominant, to look how its agent i.e. the executive carries out or maintain the company entrusted to it."*[14] Since it is the legislature which delegates legislative power to the executive, so it is its primary duty to check whether the entrusted the power is working properly or not and also it has power to supervise and control the actual exercise of this power. In the U.S.A., the government is not responsible to the Legislature and Congressional control of delegated regulation is in most cases indirect. However, the Congress can also direct administrative groups to put up the periodical and unique reports or to give an account of their activities. In the USA, Congress has no effective control over delegated regulation due to the fact the President of the USA is not accountable to the Legislature.

However, in India, there is a Parliamentary form of Government and the Prime Minister is accountable to the Legislature. So in India Parliament can exercise direct control over the Government. In India committees regarding control of delegated rules are formulated through Parliament for both houses every year. The principal characteristic of each committee is to scrutinize the statutory regulations, to make legal guidelines for the public, etc. made with the aid of any administrative frame and reports to the residence whether or not the delegated power has been exercised nicely within the limits provided underneath the Parent Act or the Constitution. However, in America no such type of powers are given to Legislature and also Legislature has no power to exercise direct control over delegated legislation made by the Executive. So it is essential to keep concord between Legislature and Executive in a democratic society and also there needs to be a powerful system of management of the Legislature over the Executive so that government cannot misuse their powers while making delegated rules.

## Case laws

- [Kruse v. Johnson](#)

**Facts:** In this case, under the authority of the Local Government Act 1888, the Kent County Council made a by-laws. This law states that nobody could play music or sing a song within 50 yards of dwelling house in public place or highway after being requested to stop by a constable. The claimant was singing a hymn within 50 yards of the dwelling house and had refused to stop after the constable had told him to do so. He was given a penalty. He sought for judicial review to declare that the by-law was void.

**Judgment:** Lord Russell CJ, giving the courts leading judgment, held the by-law became valid on the ground that it becomes no longer unreasonable, due to the fact that it does not have a discriminatory impact on the population.

- [Chintaman Rao Case](#)

**Facts:** Section 3 and 4 of the Central Province and Berar Regulation of Manufacture of Beedis Act, 1948 grants power to the Deputy Commissioner to fix the period of agriculture season with respect to a certain village where the Act applies. The Deputy Commissioner has the power to prohibit the manufacturing of bidis and no person is authorized to manufacture bidis.

On 13th June 1950, an order was issued via the Deputy Commissioner of Sagar prohibiting the people in certain villages to manufacture bidis. When the case is dealt by the Hon'ble Supreme Court, the period cited within the order expired and another order covering the agricultural period from 8th October 1950 to 18th November 1950 was issued and the same order was questioned in the present case. Does the question arise whether the impugned Act is falling within the saving clause or excess of its provisions?

**Judgment:** It has been held in this case that prohibition of making bidis in the agriculture season by the Deputy Commissioner is violative of Article 19 1(g) of the Indian Constitution.

## Criticism on delegated legislation

Following are the criticism of delegated legislation:

1. Delegated legislation results in overlapping of functioning as the delegated authorities get work to amend the legislation that is the function of the legislators.
2. It has been a matter of question that if the Legislature control has come down after the arrival of the delegated legislation.
3. Unelected people cannot make much delegated legislation as it would be against the spirit of democracy.
4. After getting too much power from the Legislature, the Executive has encroached upon the domain of legislature by making rules and regulations.
5. The enactment subject that was appointed to less Parliamentary scrutiny than essential enactment. Parliament, along these lines, has an absence of authority over appointed enactment, and this can prompt irregularities in laws. Appointed enactment, in this way, can possibly be utilized in manners which Parliament had not foreseen when it was given the power through the Act of Parliament.
6. Delegated legislation makes laws without much discussion. So, it may or may not be better for the public.
7. Designated legislation by and large experiences an absence of exposure. Since the law made by a statutory authority not informed to general society. Then again, the laws of the Parliament are generally broadcasted. The purpose of the absence of exposure is the enormous degree of enactment that is being assigned. There has likewise been concern communicated that an excess of law is made through appointed enactment.
8. It can possibly be misused for political gain. The executive makes law according to what the political parties. Hence, it results in the misuse of the legislation made by the Executive by the ruling party.
9. Executives become too powerful as it already has the power of executing any laws and legislation and now the Legislature is delegating its legislative power to the Executive. So, both the power

are in the hands of the executives now he can use this power in whatever way he wants to use it.

10. It is against the theory of the power of separation which has been given by the famous political thinker Montesquieu.

Delegated or subordinate legislation means rules of law made under the skilled person of the Act of Parliament. In spite of the fact that lawmaking is within the capacity of the lawmaking body, it might, by a resolution, delegate its capacity to different bodies or people. The resolution which delegates such power is known as the Enabling Act. By Enabling Act the council sets out the wide rules and nitty-gritty principles are instituted by the delegated authority.

If in India the control of Parliament over the delegated legislation has to be made a living continuity, then it is important that the job of the advisory groups of the Parliament must be fortified and a different law like the Statutory Instruments Act, accommodating uniform standards of laying and production, must be passed. The board of trustees might be enhanced by a specific authority body to make the watchfulness of assigned enactment progressively successful. Other than the different measures mentioned above, it should be taken to reinforce the control of Parliament over designated enactment. The tenets and standards created by the Legal Executive should be connected by the necessities of the advanced age. In spite of the fact that there are no express arrangements in the Constitution of India to allow the appointment of authoritative power, the legal pattern saw in regard of assigned enactment is as per the aim of establishing fathers our Constitution whose principal concern was the flexibility of the Constitution with changing needs of the time. If you want to make certain that the power of delegated law in the arms of the government is not misuse, it is vital to adopt powerful modes of control as applicable in the USA which India has now not integrated yet.

