

# **RMM LAW COLLEGE SAHARSA**

## **ADMINISTRATIVE LAW**

### **IIIrd Part**

### **Paper -VII**

#### **TOPIC- Delegated legislation**

Notes by- **INDRA BHUSHAN SINGH**

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In the realm of legal theory, delegated legislation is one of the most debatable issues because of its various implications. Indian democracy is said to rest on the acclaimed four pillars and these are the legislature, the executive, the judiciary, and the press. These pillars are empowered by the constitution not to interfere in the matters of others. As per the Constitution, the legislative has legislative powers and the Executive has the power to execute the laws. Similarly, the Judiciary has the power to resolve dispute and to met out justice. But we have to keep in mind that there are multifarious functions that have to be performed by the Legislature in welfare states and it is not an easy task for the legislature to look after every matter.

In contrast to this increasing legislative activity, the legislatures are not able to find adequate time to legislate on every minute detail. They have limited themselves to policy matters and have left a large volume of area to the Executive to make rules to carry out the purposes of the Legislature. In such types of situation, the system of delegated legislation comes to our mind. Therefore, the need for delegation is necessary and is sought to be justified on the ground of flexibility, adaptability and speed. This delegation is also known as 'secondary legislation' or 'subordinate legislation'. The Act that gives the executive the power to legislate is called the 'Enabling Statute' or 'Parent Act'. The standard of rule of the majority has made authoritative controls inadequate. The term delegated legislation is hard to characterize.

# Meaning of delegated legislation

'**Delegation**' has been defined by *Black's Law Dictionary* as an act of entrusting a person with the power or empowering him to act on behalf of that person who has given him that power or to act as his agent or representative. '**Delegated legislation**' means exercising of legislative power by an agent who is lower in rank to the Legislature, or who is subordinate to the Legislature. Delegated legislation, additionally alluded to as an auxiliary legislation, is an enactment made by an individual or body other than Parliament. Parliament, through an Act of Parliament, can allow someone else or some body to make enactment. An Act of Parliament makes the system of a specific or particular law and tends to contain an outline of the purpose for the Act. By delegating the legislation by Parliament to the Executive or any subordinate, it empowers different people or bodies to integrate more details to an Act of Parliament. Parliament along these lines, through essential enactment (for example an Act of Parliament), licenses others to make laws and guidelines through delegated legislation. The enactment made by authorize person must be made as per the reason set down in the Act of Parliament.

According to Sir John Salmond, "*Subordinate legislation is that which proceeds from any authority other than the sovereign power.*"

Justice *P.B Mukherjee* also observed about delegated legislation that it was an expression which covered a multitude of confusion. He viewed it as an excuse for the Legislature, a shield for Executors and a provocation to the Constitutional Jurist.

According to M.P Jain, this term can be used in two senses:

- *Exercise by subordinate agency or agency that is lower in rank to legislature delegated to it by the Legislature.*
- The Subsidiary rules made by the Subordinate Authority in the execution of the power bestowed on it by the Legislature.

Delegated legislation is, referred to as Subordinate, Ancillary, Administrative legislation, and Quasi-Legislation.

## History of delegated legislation in India

The historical backdrop of the delegation of power can be followed from the [Charter Act of 1833](#) when the East India Company was recapturing political impact in India. The Charter Act of 1833 vested the administrative powers only in the hands of the Governor-General-in Council, which was an official body. He was enabled to make laws and guidelines for revoking, correcting or modifying any laws or guidelines, which were for all people regardless of their nationality. In 1935 the [Government of India Act, 1935](#) was passed which contained a serious plan of delegation. The report of the Committee of Ministers' Powers was submitted and affirmed which completely settled the case for assignment of forces and appointment of enactment that was viewed as inescapable in India.

However, our Constitution depended on the separation of power; a total partition of forces was unrealistic henceforth it kept up the holiness of the tenet in the cutting edge sense. The Indian Constitution does not deny the assignment of forces. Then again there are a few arrangements where the official had been conceded with the administrative forces. For instance, the administrative forces of the President under the Indian Constitution are prominent. The problem of the delegation of legislation in India originated under the British rule when the controversy on the problem in the West was in full swing. In independent India, the conflict of settling the problem of the delegation of legislative power was *prima facie* to a conflict between the English and American type of solution.

The Constitution of India comprises of more than four hundred Articles and it had not been surprised if the Constitution makers include some solution for it. But why these provisions were incorporated in the Constitution? This is because the politicians in the Constituent Assembly tended to multiply legal formulations. These issues were of minor importance on which legal formulation was made in comparison to other greater constitutional issues that

were by-passed by the Assembly that were left to future accord or judicial interpretation. In the case of [Queen v. Burah](#), nature and extent of Legislature power and the feasibility of its delegation was considered by the Privy Council. The Privy Council, in this case, held that Councils of Governor-General was supreme Legislature and has ample number of powers and who are entitled to transfer certain powers to provincial executors. At the time of passing of [New Delhi Act of 1912](#), the Privy Council accepted the transfer of Legislature power to the Executive.

## Delegated legislation under the Constitution of India

Although the concept of delegated legislation was not mentioned specifically in the Indian Constitution it can be understood by interpreting [Article 312](#) of the given Constitution. This Article gives right to the Rajya Sabha to open a new branch of All India Service with a majority of two-thirds majority vote. This means that some powers of legislation will be delegated to the new recruiter of All India Service. There are many cases through which delegated legislation under the constitution of India can be understood. These are:

### [D.S. Grewal v. The State of Punjab](#)

**Facts:** This case questions the constitutionality of All India Service Act, 1951. The appellant was appointed to All India Service and posted to the State of Punjab. He held the charge of Superintendent of Police in various districts but was reverted or return to the post of Assistant Superintendent of Police in August 1957 and was posted to Dharamsala in March in the year 1958. In the same month, he was informed that an action has been taken against him under Rule 5 of the All India Services (Discipline and Appeal) Rules, 1955. An enquiry committee was set up against him under the leadership of Shri K. L. Bhudiraja. He then immediately made an application under [Article 226](#) of the Indian Constitution before the Punjab High Court challenging the constitutionality of the Act and legality of the enquiry against him. Six contentions were made by the appellant lawyer.

**Judgment:** K.N. Wanchu, Justice of the Supreme Court at that time, dealing with the power of delegated legislation under Article 312 of the Indian Constitution. As the case has been very serious the appellant can be removed or compulsorily dismissed from the post by the Central Government and therefore Central Government has instituted enquiry against him. There is nothing mentioned in Article 312 of the Indian Constitution that takes away the power of delegation.

- The delegation power of India and America is that the Congress doesn't have much power of delegation but it is different from the English in which the parliament is supreme has an excess of delegating power.

### [Panama Refining Co. v. Rayan](#)

**Facts:** [Section 9\(c\) of the National Industrial Recovery Act, 1933](#) authorizes the President of the United States with some powers under which he can make any order and violation of that order may lead to penal provision. The President issued the prohibition made by the above act through the executive and authorized the Secretary of Interior to exercise all the powers vested in the President under section 9(c) of the Act. The Secretary of Interior issued a regulation to accomplish the President's order(s). The Section mentioned above was challenged on the ground that it was an unconstitutional delegation of legislative power by the Congress.

**Judgment:** It was held by the Supreme Court of the United States that delegation of legislative power given by President is void. The court held that Congress can delegate power to the Executive only on two conditions. Firstly, the Statute laid down these policies. Secondly, one has to establish the standards and give the administration the power of making the subordinate rule within the given limit.

### [Sikkim v. Surendra Sharma](#)

**Facts:** After Sikkim became the State of the Union Of India, the Directorate of Survey and Settlement of Government of Sikkim created and advertised for

certain temporary posts. Like other people, the respondent has also applied for the post. They got selected and were appointed in different capacities. After the survey work got completed some of the employees got terminated from the job. In 1982, some of the employees, who were 'not locals', filed a writ petition in the High Court of Sikkim challenging the decision of the Government asking why it has fired the employees from the service on the ground that they were not locals.

**Judgment:** The judge held that the termination of the employees solely on the ground that he is not local is impermissible under Article 14 and 16 of the Indian Constitution. It was held that all rules and legislations created under the power which is granted under sub-clause (k) of the Article 371F constituted subordinate legislation. This article was added to the Constitution through the 36th Constitutional Amendment.

## **Types of Delegated Legislation**

Delegated legislation means giving power or authority to someone lower than his rank to make laws. So there can be many ways in which this excess of power can be given to subsidiary rank people or an Executive. These types are as follows:

- **Orders in Councils:** This type of Delegated legislation can be given by Queens or the Privy Councils. This Delegated legislation allows the Parliament to make laws without going through the Parliamentary proceedings. Today, its main use is that it gives legal effect to European directives. When the order issued under the privilege of the Queen or the Crown such order is subject to review by the courts. But order issued by the Parliament may or may not be subject to review by the courts as it is made within the prescribed limits Act of Parliament. In both the case the question can arise that if this legislation is the same as the Executive legislative. The answer to this question is yes, it is equivalent to executive legislative. There is no major difference between these orders and Executive legislative almost they both are same. The meeting of Privy council in such case

could simply means a meeting of some Privy Councillors which includes three or four ministers, President, Councils and Clerk of Privy Councils. This shows that this order is issued by the Executive who exercises powers of the Council.

- Rules of the Supreme Court and the County Courts: The Parliament by statutes bestow some persons or authority with the power to make laws for a specific purpose. But it is different in England where a Court has been given wide power to make laws. This task of making law has been entrusted upon the Rules Committee of the Supreme Court and the County Courts. Entrusting Judicial branch to control its Procedural law to a great extent has an advantage as it is given to that authority who knows better about it than any person. Procedure and cost that are drawn by Rules Committee of County Courts deals by the County Courts itself. Such rules are not subject to the control of Parliament. When these rules used to come into force? It comes into force when the Lord Chancellors with the consent of the Rules Committee of the Supreme Court confirms it.
  - Departmental or Executive instructions or regulations: When the power of legislature directly delegated to the administration such as a Board, Ministers or a Committee, then the exercise of that given power results in delegation through Departmental or Executorial Instructions or Regulations. Sometimes very wide powers are given to the administration or the delegated person. But this wide delegation of legislation is not accepted by the judiciary as it is difficult for them to control administrative action. There is extensive use of this delegated legislation in today's world. Nowadays only the broad line of making legislation is in the hands of Parliament and the rest power is given to the Administrator.
1. **Delegated legislation by laws:** It can be given in two ways, firstly, it can be given by laws of autonomous bodies, e.g., Corporation and secondly, it can be given by-laws of a local authority.

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- **By-laws of autonomous bodies:** These autonomous bodies have got the power to pass by-laws on matters affecting them and other people in that locality or people residing in a particular area. For example, they can make laws as public utility authorities for light, water, etc. Usually, these authorities are given the power to make rules for regulating their working. Such by-laws are subject to judicial review. It can be reviewed to check that it must not be *ultra vires* the Parent Statute. These autonomous bodies have the power to frame rules for themselves. One more example of this autonomous body is an association of Employers. The rules of these association are termed as voluntary but this is not so in reality. It is fictitious as in its effect these rules are binding upon members like other rules such as rules of a professional association, industrial organisation, etc.
- **By-laws of the local authority:** *Parliament has the power to make new local bodies or it can alter the existing body. It empowers such body with powers to make by-laws for themselves for specific purposes. These authority exercises excess power for public health, safety, and for good rule and governance. These by-laws incur a penalty on its breach.*