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**DELEGATED LEGISLATION AND ITS IMPACT ON FUTURE
PROSPECTS**- Arpita Tripathy & Satabdi Gupta¹**ABSTRACT**

This Article based on the study of Delegated Legislation and its growth in India. Initially the Article addressed the meaning and definition of Delegated Legislation in a broader prospective. It states that delegated legislation consist of two basic concept, first when the executive body exercises its legislative power of making law as conferred to them by the legislature itself and secondly, when the actual exercise of law making power itself is in the form of rules, regulation etc. Then it states the origin of Delegated Legislation and how it came into existence in India and how it works in India before Independence. Delegated Legislation came into power following the Charter Act of 1833, when the East India Company reoccupied the political impact in India. Further, it states the constitutionality of delegated legislation with reference to Article 312 of the Indian Constitution with interpretation of several case laws. Lastly, the goals and development of delegated legislation with reference to Covid-19 is discussed along with the importance of delegated legislation in future prospects.

KEYWORDS- Administrative, Delegation, Law-Making, Legislature, Rules.

INTRODUCTION

With the growth of the administrative rule making process in the 20th century, enormous proportion and significance have been given to the delegated legislation in India. In present, not only the legislative body makes the laws, for governing people, but such laws also come from the chambers of administrators. There has been a massive growth of administrative authorities and regulatory forces, which has expand the law making, power of the administrative authorities a compulsive necessity. Therefore, the legislative body had limit their power to laying down certain policies and guidelines of the law, and outsource all the additional law-

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making power to the administrative authorities to make relevant laws as per the requirement of common people.

Due to the increased activity of the legislature, the legislative body is unable to find sufficient time to legislate on every minute detail. So they tried to limit themselves to make new policies and pass certain guidelines, and authorised the executive body to make laws as and when required according to the need of the people. This led to the growth of delegated legislature and it is much more flexible, adoptable and speedy in nature. This type of delegation is also known as secondary legislation or the subordinate legislation. The act under which the executive bodies are vested with such rule making powers is known as Enabling Statute or Parent Statute. In this modern era people are much more familiar to their rights and duties, it is the duty of the state to take care of the citizens from any shot of violation against their rights, and these developments have much more expanded the scope and ambit of administrative authorities to make laws.

MEANING AND DEFINITION OF DELEGATED LEGISLATION

It is very difficult to point out any specific definition of delegated legislation, as it is very wider in concept. However, in simple way we can define delegated legislation as all the rules or laws, which were made outside the legislature and is substantially expressed as rules, regulation, bye-laws, orders, schemes, directions, notifications, etc. In other words, when any rules or instrument of legislative nature are performed by any other executive body while exercising its delegated power as conferred by the legislature itself, then it can be called as delegated legislation. The legislation can be called as a delegated legislation in two senses- first when it exercises its law making power as conferred to them by the legislature itself and second, when the actual exercise of law-making power itself is in the form of rules, regulation, bye-laws or notifications etc.

‘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.² Therefore, delegated legislation means an act of performing legislative power by a body that is lower in rank than the legislative body or is subordinate to the legislative body. Sir John Salmond defined delegated legislature as that body

² Delegated Legislation in India, Available at- <https://blog.ipleaders.in/delegated-legislation-in-india/>

“which proceeds from any authority other than the sovereign power”.³ He also stated that these bodies are depended on the supreme authority for continuing its existence.

The government authorities itself made delegated Legislation for delegating the authorities. Moreover, delegated legislation is a broader concept, which covers, varies aspects of legislation. The Delegated Legislation is not only embracing in different ways but also categorized in different rules and regulations. In the Indian Constitution no specific type of delegated legislation is mentioned anywhere but they are categorized in different ways based on different principles.

ORIGIN OF DELEGATED LEGALATION

Delegated legislation and its power followed from the Charter Act of 1833, when in India the East India Company recaptured the political impact. This Act provide administrative power to the administrative bodies along with the Governor General in Council, who were vested with the power to make laws and certain guidelines for making any kind of modifications and revoking any laws or guidelines which were made for the peoples regardless of their nationality. The Government of India Act, which was passed in 1935, enables significant plan for delegation. The report, which was submitted by the Committee of Ministers, stated that powers were guaranteed and submitted, completely settle the case for assignment of forces and appointment of enactment that was showed as inevitable in India.

Nevertheless, our Indian Constitution was depended on the separation of power, but they also have not denied the assignment of forces. In certain circumstances, we found that executive officials were acknowledged with administrative forces. For example, the administrative powers of the President are pre-eminent. Problems related to delegated legislation raised in India during the rule of the British. Our Indian Constitution comprised of three ninety-five Articles and it would have been not surprised if the makers of the constitution includes some solution for it. Moreover, these provisions were incorporated because of the fact that the legal formulations in the constituent assembly prefer to enlarge legal articulations. However, this type of issues was of less importance depending on which legal articulations were formed in comparison to other broader constitutional issues that the assembly by-passes that were left to future accord or judicial interpretation.

³ Delegated Legislation in India, Available at- <https://blog.ipleaders.in/delegated-legislation-in-india/>

CONSTITUTIONALITY OF DELEGATED LEGISLATION

Delegated legislation is welcomed with open hands in most of the countries. The constitution of India is silent concerning the limit of delegated legislation. Legislature, executive, judiciary and the press are considered to be the 4 pillars of democracy. The 4 pillars are given the power not to interfere in the matter of each other. But in the increase of legislative activity and not adequate time to legislate on every small detail, the best solution is delegated legislation. Need for delegated legislation is to meet the needs on the grounds of flexibility, versatility and speed. The parliament by delegating the legislation to the executive empowers many other bodies to integrate into details to an act of parliament. The parliament by this important enactment, laws makes laws and rules through delegated legislation. The Indian Constitution is dependent upon separation of power but does not deny any charge of forces. During the pre- independence phrase, in the landmark case of *Queen v. Burah*⁴, the Privy Council observed the nature and extent of Legislative power and feasibility of delegated legislation was not permitted. The council states that it is always better to seek help from the subordinate agency in framing any sort of rules or regulations and giving another body the essential legislative features, which are granted to the legislature by the constitution. Also in the case of *Jatindra Nath Gupta v. Province of Bihar*⁵, it was declared that there would be no delegated legislation in India. In the landmark case of the *Re Delhi Laws Act* case, it was held that excessive delegated legislation is unconstitutional, but within specified limits, delegated legislation was constitutional. Some of the grounds to determine constitutionality of delegated legislation were laid down in the case of *Indian Oil Corporation v. Municipal Corporation*⁶. Firstly, court stated that delegation should be compatible with parent act. Secondly, delegated legislation of non-essentials does not take place. Lastly, unreasonableness should be one of the main elements to govern the rationality of delegated legislation. In the Constitution of India, delegated legislation is not expressly mentioned. Article 312 can be interpreted which gives the right to Rajya Sabha to unfold a new branch of All India Service with a majority of 2/3rd vote which means some amount of powers can be delegated to the fresh employed of All India Service.

⁴ *Queen v. Burah*, 1878 ILR 3 Cal 64 (India). Available at- <https://www.legitquest.com/case/her-majesty-the-queen-v-burah/11E0AE>

⁵ *Jatindra Nath Gupta v. Province of Bihar*, AIR 1949 FC 175 (India). Available at- <https://www.legalserviceindia.com/legal/article-5638-constitutionality-of-delegated-indian-legislation.html>

⁶ *Indian Oil Corporation v. Municipal Corporation*, AIR 1993 SC 844 (India). Available at- https://blog.ipleaders.in/delegated-legislation-in-india/#Delegated_legislation_under_the_Constitution_of_India

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GOALS AND DEVELOPMENT OF DELEGATED LEGISLATION IN FUTURE PROSPECTS

In the present time, the concept of delegated legislation has already taken a new form and its growth and needs in our country India is unbreakable and unstoppable. It is seen that delegated legislation is considered a boon in any kind of emergency situation and in a short period of time yields positive results. There are some of the key factors, which helped to give positive results and increased in the broadening of the concept. Firstly, there is an expansion of all activities of State and pressure on the legislature keeps on increasing to form new acts and so it becomes difficult on viewing every matter single hand and so delegated legislation entrust power and authority to person to hold a lower rank than the legislature to delegate powers. Secondly, a lot of problems are faced by the legislature and so the legislature dispenses the power to other lower authorities distinguishing the nature of work. Thirdly, during emergency period where a quick action or remedy is always needed the process of legislature is pretty time consuming so the only solution is delegated legislation, which provides speedy action to the problem within a fixed tenure. The Indian Constitution authorizes the legislature to distribute powers to other jurisdiction. It is not possible for the Legislature to perform all the functions at the same time. Thus, the Indian Constitution has emphasized on delegated legislation through Article 312. In the case of *D.S. Gerewal v State of Punjab*⁷, the Hon'ble Supreme Court held article 312 that it deals with powers of delegation and Justice K.N. Wanchoo stated, "there is nothing stated in Article 312 which takes away power of delegation which normally resides in the jurisdiction". The Supreme Court in the case of *Sukhdev Singh v Bhagat Ram*⁸, laid down the importance of delegated legislation in the Indian Constitution. It held that delegation is a fruitful remedy during emergency scenario and is always applied for getting quick action.

THE FUTURE IMPACT OF DELEGATED LEGISLATION WITH REFERENCE TO COVID-19

The COVID-19 Novel Corona-virus, a pandemic that has struck the whole globe has made a health disaster of all time and is supposed to be one of the great challenges since World War-2.

⁷ *D.S. Gerewal v. State of Punjab*, AIR 1959 SC 512 (India). Available at- <https://www.legalserviceindia.com/legal/article-4066-importance-of-delegated-legislation-in-the-light-of-covid-19.html>

⁸ *Sukhdev Singh v. Bhagat Ram*, AIR 1975 SC 1331 (India). Available at- <https://www.legalserviceindia.com/legal/article-4066-importance-of-delegated-legislation-in-the-light-of-covid-19.html>

It was said to originate from China and spread to every part of the globe. The first case was reported in India in December 2019 and our country went into national lockdown in the month March 2020. India is known for its rich culture and heritage and a major portion of the country, which is involved in tourism, become unemployed. In addition, the part of population, which was working in urban areas as daily wage workers were made jobless, and the virus affected a large part of population due to which unemployment in India rose from 6.7% on March to a much high rate of 26% on April. This pandemic has proved to be great challenge for the government and our Indian government reacted very quickly and laid down several guidelines and restrictions to stop the spread of the deadly virus.

There were certain reasons for which the government has to delegate powers in the hands of expert. Firstly, when there is such an outbreak of a virus which is said to spread in a fast rate, it gives rise to emergency situation and quick remedial action is needed to fight the virus by every authority of the country. Secondly, after an outbreak of the virus the country is already under emergency situation and there is a pressure on parliamentary time and not enough time is given to the working government to think and so decisions are made in hurry to avoid the spread of the virus and protect the citizens of the country. Lastly, the members of parliament have not much expertise to handle such situations, as they are critical in nature and need experts to control, advice, and take valid decisions. Concluding, the tough emergency situation of COVID- 19 for which India was not prepared and India has no specific laws and so the only solution was to make quick and efficient decisions which can be done only by experts and so delegated legislation was one of the suitable ways to deal the pandemic.

In India, there are 2 laws. First Disaster Management Act of 2005 and second the Epidemic Diseases Act of 1897, which were followed to control the COVID-19 outbreak in the country. The Disaster Management Act of 2005 was laid down with the objective to handle with all disasters at both central and state level government. The relevant provisions, which were followed by the central authority to make rules and have the power to make policies regarding the prevention of spreading of COVID- 19 by ensuring social distancing. The central authority has the power under section 6(2)(a) of the act. Under section 10(2)(1) of the act the central authority or government has the power to give order and directions to the concerned authorities or other departments of the Indian Government and the state governments. After proper consultation with the state authorities and to stop the spread of the virus at the initial stage a national lockdown of 21 days was implemented and then other orders were planned further for

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re-opening with proper precautions. Here there was a delegation of power by the Union Home Secretary to the Union Health Secretary so that there will be a proper monitoring and dealing with the concerned issue. The Epidemic Diseases Act of 1897 is 124 years old act and lags many new rules of the present time. This act deals with the power given to the State to conduct proper search operations and punish the citizens who violates the provisions of law. The restrictions on travelling and closing all air and land transports were taken into consideration from the section 2A of the act. In addition, the section gives power to the state governments to make their own rules and regulations to control the spreading of the COVID-19 disease and so all the states at a later stage made their own laws, rules and regulations regarding to all quarantine and other measures. Thus, both the above stated acts delegates substantial discretionary power to the government.

CONCLUSION

Delegated legislation by the word means giving power and authority to an individual or body who holds a subordinate rank to the legislature. It is considered one of the better process through which the parliament can delegate its power to the concerned authority who have knowledge, expertise in the given situation and can act upon it. Delegated legislation saves time of the legislature, does not create pressure, and accepts the changing needs of the society. In the country like India, where multiple tasks are performed at the same time it becomes difficult for the Parliament to act and handle all at the same time. Therefore, the Indian Constitution gives power to the Parliament to delegate power to other jurisdiction and that has been enshrined under Article 312 of the Constitution. Lastly, delegated legislation has become an important aspect and a smart choice to reduce burden of work and not causing delay of work and help in emergency situation as seen in the present condition of COVID-19.