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**EXPLORING DELEGATED LEGISLATION IN INDIA: HISTORICAL
PERSPECTIVES, JUDICIAL CONTROL, AND FUTURE
CHALLENGES**

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ABSTRACT

When legislators delegate the creation of laws to the executive branch, this is known as delegated legislation or subordinate legislation. (bureaucrats). Delegated legislation refers to the use of legislative power by a representative who is subordinate to or subject to the Legislature. The Indian Parliament assigned various responsibilities to governmental entities since its members were unable to address every problem right away. Delegated legislation is one of the most contentious topics in legal theory due to its numerous repercussions. Indian vote-based system is said to lay on the acclaimed four support points and these are the assembly, the chief, the legal executive, and the press. The constitution gives these pillars the authority to refrain from influencing the affairs of others. The Executive has the authority to carry out the laws, as stipulated by the Constitution. The Legislative has legislative powers. In a similar vein, the Judiciary has the authority to carry out justice and settle disputes, This paper primarily focuses on history of delegated legislation, position in India, landmark case laws related to delegated legislation, need, reasons for the growth of delegated legislation, judicial control over delegate legislation.

(Key words: Delegation, judicial control, legislation)

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Introduction

Delegated legislation is one of the most contentious topics in legal theory due to its numerous repercussions. Indian vote-based system is said to lay on the acclaimed four support points and these are the assembly, the chief, the legal executive, and the press². The constitution gives these pillars the authority to refrain from influencing the affairs of others³. The Executive has the authority to carry out the laws, as stipulated by the Constitution⁴. The Legislative has legislative powers. In a similar vein, the Judiciary has the authority to carry out justice and settle disputes. However, it is important to keep in mind that the Legislature in welfare states must perform a variety of tasks, and it is difficult for them to keep track of everything⁵. The legislatures, in contrast to this growing amount of legislative activity, do not have enough time to legislate on every minute detail⁶. They have limited themselves to policy issues and have given the Executive a lot of room to make rules to carry out the Legislature's goals. The delegated legislation system comes to mind in situations like these. Therefore, delegation is required and sought to be justified on the grounds of adaptability, speed, and flexibility⁷. Secondary legislation and subordinate legislation are other names for this delegation. The "Enabling Statute" or "Parent Act" is the legislation that grants the executive branch legislative authority. The majority rule has rendered authoritative controls ineffective. Delegated legislation is difficult to define⁸.

Meaning of Delegated Legislation

Black's Law Dictionary defines "delegation" as "the act of entrusting a person with the power or empowering that person to act on behalf of that person who has given him that power or to act as his agent or representative." ⁹The term "delegated legislation" refers to the exercise of

² Shannon. R.W, *Delegated Legislation*, 6 Can. B. Rev. 245 (1928)

³ Dalvi, Akansha Prashant, *Delegated Legislation in India*, Issue 6 Int'l J.L. Mgmt. & Human. 1925 (2022)

⁴ Devin J. Daniel, *Delegated Legislation*, 32 Police J. 15 (1959)

⁵ Samal, Pratyush Ranjan; Mohanty, Pratikhya, *An Introduction to Delegated Legislation*, 3 Indian J.L. & Legal Rsch. 1 (2021-2022)

⁶ Fitzgerald, Richard C, *Safeguard in Delegated Legislation*, 27 Can. B. Rev. 550 (1949)

⁷ Singh, Malavika, Mohanty, Brijesha, *Delegated Legislation in India*, 3 Indian J.L. & Legal Rsch. 1 (2021)

⁸ Lanham, D.J, *Delegated Legislation and Publication*, 37 Mod. L. Rev. 510 (1974)

⁹ REPLEVIN, BLACK LAW DICTIONARY, 10TH EDN., 2014

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legislative authority by an agent who is either subordinate to the Legislature or of a lower rank than the Legislature. An enactment that is not passed by Parliament is referred to as delegated legislation—also known as auxiliary legislation¹⁰. An Act of Parliament can grant someone else or somebody the authority to enact legislation¹¹. A Demonstration of Parliament makes the arrangement of a particular or specific regulation and will in general contain a framework of the reason for the Demonstration.¹² Different people or organizations are given the authority to incorporate additional details into an Act of Parliament by delegating it to the Executive or any subordinate. In this way, Parliament grants others permission to create laws and guidelines through delegated legislation through essential enactment, such as an Act of Parliament¹³. The reasons outlined in the Act of Parliament must be followed when an authorized person makes an enactment¹⁴.

History of Delegated Legislation

The East India Company began regaining political dominance in India with the Charter Act of 1833, which is considered the beginning of the historical background of power delegation. The Governor-General-in-Council, an official body, was given complete authority over all administrative responsibilities by the Charter Act of 1833¹⁵. He had the ability to lay out regulations and guidelines for canceling, revising, or changing any regulations or guidelines that applied to everybody, paying little mind to country. In 1935, the public authority of India Act, 1935, which incorporated a huge designation plan, was passed. India no longer required force assignment or appointment of enactment after the Committee of Ministers' Powers report was presented and approved¹⁶. The inclusion of a solution by the Indian Constitution's over 400 articles is not surprising. But why were these provisions included in the constitution? This is because politicians tend to use a lot of different ways to write laws in the

¹⁰Mureinik, Etienne, *Fundamental Rights and Delegated Legislation*, 1 S. Afr. J. on Hum. Rts. 111 (1985)

¹¹ Ojo, A.O, *Constitutionality of Delegated Legislation*, 4 Nigerian L.J. 99 (1970)

¹²Amanat Raza, *Delegated Legislation in India*, ipleaders (April 2,2023,10 p.m.)

¹³Samal, Pratyush Ranjan; Mohanty, Pratikhya, *An Introduction to Delegated Legislation* , 3 Indian J.L. & Legal Rsch. 1 (2021-2022)

¹⁴Griffith, J.A.G, *Delegated Legislation - Some Recent Developments*, 12 Mod. L. Rev. 297 (1949)

¹⁵Mohanty, Ankit; Sharma, Vedant; Chopra, Ankit, *Effectiveness of Parliamentary Control over Delegated Legislation*, 3 Issue 5 Int'l J.L. Mgmt. & Human. 1181 (2020)

¹⁶Sarpal, Pankaj,*Laying as a Safeguard to Delegated Legislation*, 4 Issue 4 Indian J.L. & Legal Rsch. 1 (2022)

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Constituent Assembly¹⁷. These issues were moderately minor in contrast with other critical protected issues that the Gathering decided to disregard and pass on to the future understanding or legal translation.¹⁸

Delegated Legislation under the Constitution of India

Even though the Indian Constitution does not specifically mention the idea of delegated legislation, it can be understood by interpreting Article 312¹⁹ of the given Constitution. The Rajya Sabha is authorized by this article to establish a new All India Service office with a two-thirds vote²⁰. This indicates that the All-India Service's new recruiter will be given some legislative authority. Under India's constitution, delegated legislation can be understood in numerous contexts²¹.

D.S. Grewal v/s the state of Punjab²²

Facts: The All-India Service Act of 1951 is challenged in this case. The appellant was sent to the state of Punjab as part of the All-India Service. In various districts, he held the position of Superintendent of Police, but in August 1957, he was transferred back to the position of Assistant Superintendent of Police and moved to Dharamsala in March 1958. He was informed that he was the subject of an action under Rule 5 of the 1955 All India Services (Discipline and Appeal) Rules. Under the direction of Shri K. L. Bhudiraja, he was the target of an investigation committee. He then applied to the Punjab High Court under Article 226 of the Indian Constitution to challenge the constitutionality of the Act and the legality of the investigation against him. The attorney for the appellant made six claims.

Judgement: K.N. Wanchu, then-Judiciary of the Supreme Court, discussed the authority of delegated legislation in accordance with Article 312 of the Indian Constitution. The appellant is subject to removal or compulsory dismissal from his position by the Central Government due to the severity of the case, and as a result, the Central Government has launched an

¹⁷Ahirwar, Priyesh, *Delegated Legislation and Its Growth in India*, 4 Issue 2 Indian J.L. & Legal Rsch. 1 (2022)

¹⁸ClearIAS, <https://www.clearias.com/delegated-legislation/> (last visited April 3, 2023)

¹⁹The Constitution of India, 2019, art.312, Acts of Parliament, 2019

²⁰Meena, Drishti, *An Analysis of the Constitutionality of Delegated Legislation*, 4 Issue 4 Indian J.L. & Legal Rsch. 1 (2022)

²¹Sahu, Smriti Sneha, *Judicial Control over Delegated Legislation and Judicial Accountability in India*, 24 *Supremo Amicus*, 127 (2021)

²²D.S. Grewal v/s The state of Punjab 1959 AIR 512, 1959 SCR Supl. (1) 792

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investigation into him. The Indian Constitution's Article 312 does not explicitly deny delegation its authority.

India and the United States differ in that the Congress does not have a lot of delegation power, while the English, where the parliament is in charge, has a lot of delegation power.

Need for Delegated Legislation

The legislature has a predetermined amount of time to pass all laws. It needs more chance to establish the regulations cautiously.

- A lack of expertise: The legislature has little experience with technical complexities. In the wake of developing a construction, the errand is doled out to the public authority organization with the important information.²³
- Situations of Crises: In the event of an emergency, whether domestic or international, the legislature lacks the expertise to provide a quick solution²⁴.
- Complex situations include: Laws must pay more attention to holistic issues like employment, health, education, trade regulation, etc. because modern administration is complex.²⁵

Reasons For Growth of Delegated Legislation

India is a large country, and the parliament is busy with a number of public affairs-related tasks. Because parliament cannot devote its entire time to improving administration, delegation of legislative authority has proven to be crucial and essential²⁶. As a result, the law establishes broad policy and gives the executive authority to add specifics²⁷.

²³Swarnim, Pankhuri, Judicial, *Legislative and Other Controls over Delegated Legislation in India*, 3 Issue 3 Int'l J.L. Mgmt. & Human. 1362 (2020)

²⁴Kumar, S. Ashok, *Administrative Supremacy on Delegated Legislation in India - A Critical Analysis*, 2 Indian J.L. & Legal Rsch. 1 (2021)

²⁵Supra, Note 3

²⁶Saharan, Shantanu; Jangir, Pankaj, *Concept of Delegated Legislation and Its Legal Application in a State*, 3 Issue 4 Int'l J.L. Mgmt. & Human. 994 (2020)

²⁷Andrews, John B., *Delegated Labor Legislation Unharmful by Recent Court Decisions*, 25 Am. Lab. Legis. Rev. 90 (1935)

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Technically, all Members of Parliament are, and to be honest, some are even illiterate and have not completed high school²⁸. These politicians don't know much about rocketry, atomic energy, technology, drugs, education, and other technical subjects. It takes a great deal of knowledge and experience to master this subject²⁹. Thusly official power perhaps presented on master to manage specialized issues.

Flexibility The legislative procedures and amendments take a long time and are extremely slow. In many instances, a quick decision is required, such as: – foreign exchange, terrorist activities, and regulation. Commodity and import arrangements, share market and so forth. Executives are able to respond quickly and effectively to such circumstances³⁰.

Experiment The supreme law is extremely stringent. Delegated legislation, on the other hand, is extremely adaptable. Certain circumstances necessitate the introduction of experimental legislation first; once the experimental legislation is successful, standardized legislation can follow. For instance: issues with the exercise industry, traffic, the stock market, etc³¹.

One advantage of delegated legislation is its speed. because passing it does not necessitate lengthy procedures, voting, or time³².

Emergency The nation must take immediate measures to prevent disturbance during an emergency or war. Therefore, the executive has the authority to require them in such circumstances.³³

Judicial Control over Delegated Legislation

In India, the delegated legislation can be challenged in court as being arbitrary, excessive, and unconstitutional. It can be controlled by the judiciary on two grounds: first, it must be based on procedural ultra vires and second, it must be based on substantial ultra vires. The court must find that the executive's law is not inconsistent with the constitution or violates the

²⁸Gomes de Oliveira, Clarice; Mello do Amaral, Jose Levi Junior, *The Myth of Separation of Powers and the Real Need for Delegated Legislation*, 113 *Revista Brasileira Estudos Politicos* 149 (2016)

²⁹Pecaric, Mirko, *Delegated Legislation - A Mixture of General Principles of Law and an Individual Mind*, 5 *Vienna J. on Int'l Const. L.* 400 (2011)

³⁰*id*

³¹Moon, Ashmira, *Analysis of in re Delhi Laws Act Case: Concept of Delegated Legislation and Its Impact on Administrative Law in India*, 1 *Jus Corpus L.J.* 101 (2020-2021)

³²*id*

³³Dhawani Sharma, *Reason for the growth of Delegated Legislation in India*, *Law Column* (April 4, 2023 11 a.m.)

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parent act from which it derives its authority to make laws before it can be declared null and void. In India, the Supreme Court and the High Court have been given the authority to examine delegated legislation, and they actively control delegated legislation.³⁴

Cases that illustrate the Judicial control over the executives

*Kruse v. Johnson*³⁵

- In the case, the court ruled that bylaws would be unreasonable for the following reasons.
- It ought not be incomplete or inconsistent
- It ought not be obviously vile
- It shouldn't unveil dishonesty
- It shouldn't include severe impedance with the right individuals that it could track down no support in the psyche of the sensible individual.

*Delhi Law Act Case*³⁶

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.

Demonetization and the Problem of Delegation Power

In accordance with Section 26(2) of the Reserve Bank of India Act, 1934, the Union government has the authority to issue a notification that a particular currency denomination is no longer considered legal tender³⁷. Demonetization and the issue of delegation power. On the recommendation of the Central Board of the RBI, the central government of India announces in the Gazette of India that any series of bank notes, regardless of their denomination, will cease to be legal tender on a specific date. Parliament enacted the RBI Act to empower the central government to alter the characteristics of legal money. The legal foundation of the demonetization exercise was largely empty.³⁸

³⁴Supra Note,2

³⁵*Kruse vs Johnson*[1898] 2 QB 91

³⁶*In Re: The Delhi Laws Act, 1912*1951 2 SCR 747

³⁷Moon, Ashmira, *Analysis of in re Delhi Laws Act Case: Concept of Delegated Legislation and Its Impact on Administrative Law in India*, 1 Jus Corpus L.J. 101 (2020-2021)

³⁸Supra Note, 3

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Criticism on Delegated Legislation

As the delegated authorities are given the responsibility of amending the legislation, which is the function of legislators, delegated legislation results in overlapping of functions. It has been questioned whether the Legislature has lost control since the delegated legislation was passed. Delegated legislation cannot be authored by unelected individuals because doing so would be against democratic principles³⁹. The Executive has encroached upon the legislative domain by enacting rules and regulations after acquiring an excessive amount of power from the Legislature. The authorization subject that was designated to less Parliamentary investigation than fundamental sanctioning. Similar to this, Parliament lacks authority over appointed enactment, which can result in irregularities in laws. In this way, appointed legislation may be used in ways that Parliament could not have anticipated when it was given power through the Act of Parliament. Legislation is passed by delegation without much discussion. Therefore, it may or may not benefit the general public.⁴⁰

The majority of designated legislation receives little attention. Since a statutory authority did not inform the general public of the law. On the other hand, the laws of the Parliament are for the most part communicated. The reason for the shortfall of openness is the gigantic level of order that is being doled out. Additionally, there has been concern expressed that appointed enactment creates too much law⁴¹. It might be used improperly to gain political advantage. The leader makes regulation as indicated by what the ideological groups. Subsequently, it brings about the abuse of the regulation made by the Leader by the decision party. Chiefs become excessively strong as it as of now has the force of executing any regulations and regulation and presently the Lawmaking body is appointing its authoritative capacity to the Leader. Therefore, now that the executives hold both powers, he can make use of them however he sees fit.

Position In India

³⁹Oliver, Lord, *A Judicial View of Modern Legislation*, 14 Statute L. Rev. 1 (1993)

⁴⁰*id*

⁴¹Rabie, Andre, Erasmus, Gerhard, *When Delegated Powers Become Plenary Powers*, 5 S. Afr. J. on Hum. Rts. 440 (1989)

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In *King v. Benoari Lal Sharma*⁴², the privy council applied conditional legislation once more. In this case, the validity of an emergency ordinance issued by the Governor-General of India was challenged, among other things, because it called for the establishment of special criminal courts for particular kinds of crimes⁴³. However, the Provincial Governments were given the authority to establish the courts at any time and place they deemed appropriate. That's what the Legal Council held "this isn't appointed regulation by any stretch of the imagination. It's just one illustration of the common legislative power that allows a local administrative body to determine the local application of a statute based on its necessity"⁴⁴. "Local application of the provision of a state is determined by the judgment of a local administrative body as to its necessity," the privy council stated. In addition, the Federal Court ruled in the case of **Jatindra Nath v. State of Bihar AIR 1949 FC 175** that because legislative power cannot be delegated, power of extension with modification is unconstitutional. The Bihar maintenance of public order Act of 1948, Section 1 (3), was challenged because it gave the provincial government authority to extend modifications. be that as it may, this case Yet brought up questions on the restrictions of designation.⁴⁵

Conclusion

Given the rise in the number of legislations and technicalities involved, we can conclude that delegated legislation is important. However, at the same time that there is a growing trend toward delegated legislation, there is also an increased need to exert control over it due to an increased risk of power abuse. The legal control separated from the regulative and procedural control is the way how the designation of force can be controlled. As a result, the constitutionality of the parent act and the delegated legislation can be questioned as well as the substantive ultra vires of the delegated legislation. The latter can also be questioned on the grounds that it is arbitrary and unreasonable.⁴⁶

⁴²*King v. Benori Lal* 1945 0 AIR(PC) 48; 1944 72

⁴³Appleby, Gabrielle, Howe, Joanna, *Scrutinising Parliament's Scrutiny of Delegated Legislative Power*, 15 Oxford U. Commw. L.J. 3 (2015)

⁴⁴Appleby, Gabrielle, Howe, Joanna, *Scrutinising Parliament's Scrutiny of Delegated Legislative Power*, 15 Oxford U. Commw. L.J. 3 (2015)

⁴⁵Amrit Kumar, *Delegated Legislation in India, development and control by Judiciary and Parliament*, Legal Service India (April 4, 2023)

⁴⁶Harsha Jeswani, <https://blog.ipleaders.in/analysis-concept-delegated-legislation/>, ipleaders (last visited April 5, 2023 10 p.m.)

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In order for parliamentary control over delegated legislation in India to become a living continuity, it is necessary to strengthen the role of Parliamentary committees and pass a separate law like the Statutory Instruments Act with uniform rules for laying and publishing. In order to improve the efficiency with which delegated legislation is monitored, the committee could be augmented by a specialized official body. In addition, additional measures should be taken to increase Parliament's control over delegated legislation.

The Parliamentary command over designated regulation in USA and India isn't generally so powerful as in UK. The Select Committee on Statutory Instruments of Parliament controls all administrative rule-making in the United Kingdom, ensuring that the laying off procedure is effectively followed. The control is not very effective in India. The "laying" of delegated legislation is not covered by any laws. Even though scrutiny committees don't work very well, they have proven to be a good way to look at and improve legislative control over delegated legislation.

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