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## DELEGATED LEGISLATION: DOES IT SUPPORT DEMOCRACY OR ENDANGER IT?

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### ABSTRACT

This paper entails and reflects upon the delegated legislation aspect under the administrative laws of the country, especially the countries with a written constitution & how the legislation curtails the excessive delegation throughout the legislation. Furthermore, the essential requisites which reflects the boons and banes of delegated legislation overall. Specifically talking about India, the doctrine has established its place since the 20th century i.e an old concept prevailing over to take into consideration for an effective governance even though no direct provision being stated under the Indian constitution. The constitutionality of the quasi administrative body furthermore analysis the conditional based legislation as a part of the authority while maintaining an effective control & sufficient time management into the making by the delegated authority or by the subordinating authority but on the other hand it is not completely valid enough to say that this legislation always gives an upper hand to the law making procedure delegated to it or the legislature as to creating an imbalance as well as obliterating the misuse of the powers delegated to it by the Legislative body or the Parliament. The legislation's agility for the legal framework to swift the adjustments involved into the circumstances makes it essential in itself to further discuss such an issue as to whether it is a legal necessity of such a legislation or is just prevailing for the sake of reducing the burdens of the Parliament.

**Keywords:** Delegated Legislation, Constitutionality, Legal Necessity, Subordinating Authority.

## I. INTRODUCTION

Since ancient times, delegated legislation has been universally acknowledged as a “necessary evil” with its additional expansion. Since the rules and regulations help to outsource all the ancillary powers to lawmaking to the administrative authorities, laws are relevant to the needs of the people. The Rule-Making power of the administration today governs enormous proportions, and the legislation today, direct the legislation of the Parliament, not being complete until and unless it is read with the help of their assistance or aid. It has been stated that it is very “difficult” to define the delegated legislation into the legal field, however there are certain definitions by various professionals & scholars. This paper dives into the landmark judgements like the Delhi Laws Act, 1912<sup>1</sup> ensuing the constitutionality of the administrative rule-making<sup>2</sup> furthermore towards the case of *R v. Burah*<sup>3</sup> by the Privy Council.

The Concept is not explicitly mentioned but the basic need of the rule-making lies within itself to deal with the intricate bristles of the complexities of the Parliament<sup>4</sup>. Furthermore the need for the admin rule-making has been discussed in the latter part along with the detailed discussion of the historical aspect and opinions on this concept by the various entities<sup>5</sup> and scholars. This particular paper inflicts that how different opinions give way to different ideas & perspectives on the statutory provision<sup>6</sup> of the constitution<sup>7</sup> allowing the designated bodies to create detailed regulations.

## II. DELEGATED LEGISLATION: A HISTORICAL ASPECT

The Historical Background traces its root causes since the colonial period<sup>8</sup> for the need of a practical and efficient governance evolving and precluding from the charter acts and Government of India acts, further prevailing after the British rule when the Apex court of India<sup>9</sup> came into existence with enactment of the Re-Delhi laws by the president. It is an old concept prevailing since the 20th century and is not a new

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<sup>1</sup> AIR 1951 SC 332

<sup>2</sup> The rule-making power delegated to the admin bodies

<sup>3</sup> ILR (1879) Cal 172(1872) LR 3 AC 889

<sup>4</sup> IP Massey (ninth edition), Administrative Law, 1 January, 2022

<sup>5</sup> Entities herein meaning the scholars

<sup>6</sup> Delegated Legislation

<sup>7</sup> Constitution of India

<sup>8</sup> British rule encompassing from mid 18th century to 1947.

<sup>9</sup> Supreme Court of India, established on 28 January, 1950

phenomenon ever since the statutes came to be made by the Parliament. Going a little back to the history, there was in fact a Statue of Proclamation, 1539<sup>10</sup> under which Henry VIII was given extensive powers to legislate by proclamations proving the fact that there was and has always been the need for the delegated legislation. This clause granted the executive the power to repeal, amend or alter the provisions effectively changing the law without going through a full legislative process of the Parliament, but, this clause has been in controversy as to raising concerns of BOP<sup>11</sup> along with allowing the executive to make significant changes to the law without going through any parliamentary scrutiny<sup>12</sup> as the Indian perspective of this clause states that how it is so concerning that the excessive & essential legislations affect the SOP<sup>13</sup> along with the BOP creating difficulties to determine the “constitutionality” of such a delegation leading a potential abuse and further executive overstepping, while there are contradictory opinions regarding such a clause as the supporters say that the clause is essential to be adapted to the changing circumstances while the others undermine the principle of parliamentary supremacy. The case of *Jalan Trading Co Ltd. v. Mill Mazdoor Sabha*<sup>14</sup> corroborated that the payment of the bonus 1965 section 37 authorising the government the power to provide by order or removal of doubts or difficulties in giving effect to the provisions of the act amounts to delegating legislative power not amounting to be within the permissible limits creating ambiguity furthermore.

The historical aspect of the delegated legislation talks about how it has been divided into two phases i.e the pre-independent era & the post independent era. Now this para will reflect into a deep outlook of the historical background & perspective, starting with the pre-independence of British India, the advent of Charter Act, 1833<sup>15</sup> had a major impact into the rule-making power of the admin law. The charter act, 1833 extended charter of the East India Co. The company’s charter which was due to get expired at the end of 1833 but got extended to 20 years further by the thence mentioned charter & after that the company lost its control over Saint Helena and other areas as well. The

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<sup>10</sup> The Proclamation by the Crown Act, 1539

<sup>11</sup> Balance of Power

<sup>12</sup> Control Mechanisms with advent to India

<sup>13</sup> Separation of Powers

<sup>14</sup> AIR 1967 SC 691

<sup>15</sup> A pure admin body

provisions were followed through the recommendations of the Parliamentary enquiries, the Governor General of India<sup>16</sup> received both the civil and military authority and the Government of India for the first time was constituted having entire control over the area of India held by the British with Lord William Bentick being appointed as the first GG. Now any laws or regulations enacted or enforced by the British India could be replaced, amended or changed by the GG sitting on the council and his judgement was rendered to be as “final”, thus this act<sup>17</sup> for the first time allotted the Governor-General’s legislative and executive responsibilities in the council with a powerful central government but this charter gave the GG all the power due to which he became extremely powerful and occasionally acting as an authoritarian<sup>18</sup>

Further the King-in council i.e Court of Privy Council acted as an appellate body since 1726 with the establishment of the Mayor’s Court in India. Now when the Privy Council was the apex body or the highest court of appeal with respect to the constitutional matters, many questions related to the permissible limits<sup>19</sup> within which the law making power could be delegated was in question with the ambiguity of the constitutionality<sup>20</sup> of administrative rule-making in India. The question of constitutionality first came before the court in the famous case of *R v. Burah*<sup>21</sup> when an act was passed in 1869 by the Indian Legislature to remove the Garo Hills from the civil and criminal jurisdiction of Bengal, vesting powers of civil and criminal jurisdiction of Bengal, vesting the powers of civil and criminal administration in an officer appointed by the Lieutenant Governor<sup>22</sup> of Bengal was further authorised under section 9<sup>23</sup> of the Act to extend any provision of this act with incidental changes to Khasi and Jantia Hills. One burah was tried for murder & sentenced to death. The Calcutta High Court declared Section 9 to be unconstitutional delegation on the ground that the Indian Parliament is a delegate of British Parliament, therefore the doctrine of delegatus non potest delegare<sup>24</sup> would be applicable but the Privy Council overturned this decision by stating that the Indian

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<sup>16</sup> Lord William Bentick

<sup>17</sup> Charter Act, 1833

<sup>18</sup> Absolute Powers

<sup>19</sup> Constitutionality of admin rule making power

<sup>20</sup> Ibid, at 7(above)

<sup>21</sup> Id, at 5

<sup>22</sup> Lieutenant Governor of Bengal

<sup>23</sup> Section 9, Bengal Act No 22 of 1869

<sup>24</sup> A delegate cannot delegate further

Legislature was never a delegate<sup>25</sup> of the British Parliament so the aforesaid doctrine stands irrelevant as such a legislation being conditional legislation<sup>26</sup> which was discussed under *King Emperor v. Benoari Lal Sarma*<sup>27</sup> when it upheld the constitutionality of an ordinance passed by the GG for the establishment of the special courts while delegating powers to the provincial government to declare the law applicable.

The Government of India Act, 1935<sup>28</sup> provided the establishment of the Federal Courts in India giving them exclusive original jurisdiction<sup>29</sup> to decide the disputes between the centre & constituent units respectively having jurisdiction to grant special leave petition<sup>30</sup> as well making it the highest court of appeal when the question of delegation came before the Federal Court in the case of *Jatindra Nath Gupta v. Province of Bihar*<sup>31</sup> wherein the validity of section I(3) of the Bihar Maintenance of Public Order Act, 1948 was challenged on the ground that it was authorised with the provincial government to extend the life of the act for one year as it may deem to be fit but the court<sup>32</sup> held that the modification in rendered is unconstitutional in nature because it is an essential legislative act.<sup>33</sup>

After the abolition of the JCPC<sup>34</sup> in 1949, the commencement of the Constitution of India in 1950, the Supreme Court has been established and is currently serving as the apex court till date for all purposes in India while hearing appeals from the high courts and subordinate courts which ended the appellate jurisdiction<sup>35</sup> of the JCPC in the end. The decision rendered after the Jatindra Nath's case created doubts about the limits of delegation and therefore to further clarify the President of India sought the opinion of the court under article 143<sup>36</sup> of the constitution<sup>37</sup> on the constitutionality of three acts namely Section 7 of the Delhi Laws Act, 1912, Section 2 of the Ajmer Merwara

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<sup>25</sup> Ibid

<sup>26</sup> Discretion based classification

<sup>27</sup> AIR 1945 PC 48

<sup>28</sup> Federal Court

<sup>29</sup> Dr Deepti Tiwari's Essay on Govt of India Act 1935: Main Features

<sup>30</sup> Article 136 of the Constitution of India

<sup>31</sup> AIR 1949 FC 175

<sup>32</sup> The Federal Court of India

<sup>33</sup> Exceptional Delegation, IP Massey, 9<sup>th</sup> edition

<sup>34</sup> The Privy Council

<sup>35</sup> Article 132 of the Constitution of India

<sup>36</sup> Advisory Jurisdiction

<sup>37</sup> Constitution of India

(extension of laws) Act, 1947 and Section 2 of the Part “C” States (Laws) Act, 1950 which was solved in the landmark judgement of *Delhi Laws Act, 1912*,<sup>38</sup> the “Bible of delegated legislation in India” wherein a seven judge bench argued from two extreme positions.

MC Setalvad argued “ The Power of Legislation carries with it the power to delegate and unless the legislature has completely abdicated or effaced itself, there is no restriction on delegation of legislative powers.<sup>39</sup> Further the SC contended that the Doctrine of SOP is not a part of the Indian Constitution and that it was never considered an agent of nobody and cannot abdicate itself but has a limitation upon delegation of power laying down the policy of law and cannot delegate the power with respect to essential legislative powers<sup>40</sup> enacted in the Indian Constitution. On the basis of the reasoning hence it was declared the above two acts were valid extending their jurisdiction over the areas of India but the third clause was partially valid as to it cannot repeal or modify the legislative policy as it would amount to excessive delegated legislation.

Even though there were seven separate judgements given in this case but the similarities between the judgements were seen with respect to that the legislature alone could not give that quantity and quality of law which is required for the functioning of a modern state, hence the delegation was necessary evil to exist in India, the view of the written constitution the power of delegation cannot be unlimited and lastly that the power to repeal a law or to modify legislative policy cannot be delegated.

It has been inferred that the power of delegation as a constituent element could be seen as a whole under Article 245<sup>41</sup> of the Constitution and other relative articles like 312<sup>42</sup>

After this particular case, the main controversy involving delegation’s essential legislative function were witnessed in common as cannot be delegated and that which is not essential enough to be delegated and what can be exactly delegated creating the

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<sup>38</sup> Id, at 5

<sup>39</sup> Delhi Laws Act, 1912

<sup>40</sup> Id, at 8

<sup>41</sup> Article 245 of the Constitution of India

<sup>42</sup> Article 312 of the Constitution of India

doctrine of permissible limits<sup>43</sup> in India respectively.

### III. NEED OF ADMINISTRATIVE RULE-MAKING

Delegated legislation not being a new phenomenon has existed into the statues made by the parliament<sup>44</sup> as aforesaid mentioned in the paper the Henry VIII<sup>45</sup> clause which provided the essentiality of the delegated legislation. The exigencies of the modern state especially the social & economic reforms have given a rise to delegated legislation on a large scale so much so that fear arises till date among the people that they are being ruled by the bureaucracy as enunciated in the case of *Agricultural Market Committee v. Shalimar Chemical Works*<sup>46</sup> and thus stated by Salmond “that which proceeds from any authority other than the sovereign power and is therefore dependent on its continuance of existence & validity on some other superior authority.” The basis need matrix of admin rule-making is that the complexities of modern administration are so baffling and intricate and bristle in nature with details, urgencies, difficulties and a need for flexibility that our massive legislatures may not get off to a start if they must directly & comprehensively handle legislative business in all the plenitude and proliferation<sup>47</sup>, therefore the delegation becomes a “compulsive necessity” for viability.

By Reducing the legislative body’s burden, which is already growing, it has become one of the major justifications. With the adoption of the principle, the delegated body gains the authority to modify, change the laws, freeing up the major central legislation to concentrate on the other tasks assigned to them by the constitution.<sup>48</sup> As, the acts of the Parliament aims to address the requirements of the expanding population by doing in-depth study on the class communities, it is crucial enough to get implemented as to the act addressing how the laws might be made more quickly and without requiring the entire legislative process, being perfect for the emergency situations to tackle on time along with the quality and quantity which even the Parliament cannot provide in certain cases while solving the technical as well as complex issues efficiently.

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<sup>43</sup> In reference with, Delhi Laws Act, 1912

<sup>44</sup> Parliament of India

<sup>45</sup> Ibid, at 6

<sup>46</sup> AIR 1997 SC 2502

<sup>47</sup> Ibid, at 5

<sup>48</sup> Constitution of India

#### IV. FACTORS LEADING TO THE GROWTH OF DELEGATED LEGISLATION

As discussed above while emphasising onto the compulsive necessity of the legislation there have been many factors leading to the growth of the admin rule-making power like the modern welfare system and maintain the service state could not be possible without the technique of delegation. Even if the Parliament sits for 365 days in a year and all the 24 hours, it may not be able to give that quantity & quality of the law which is required for the proper functioning of a modern government. Today the legislation has become highly technical in nature because of the complexities of a modern government and therefore it becomes convenient for the legislature to confine itself to the policy statements only as the legislators are sometimes innocent of legal and technical skills and leave the law-making sequence to the admin agencies.

Ordinary legislative process suffers from the limitation from the lack of experimentation<sup>49</sup> as well as when a law is passed by the Parliament it has to be immediately in force until the next session of the Parliament when it can be repealed and in such situations we can see the advent growth of the legislation especially the crisis legislation<sup>50</sup> when its need is for the emergent situations and it becomes a necessity rather than just a need. Even in some situations where the law might not be known to someone at all until it comes into operation like private ownership of the land it becomes necessary to keep it a secret in order to not defeat the “purpose of law” otherwise it could be misused by people themselves while arranging the property rights in such a manner and such a secrecy could be maintained by the admin rule making power only.

Wherein the government’s discretion i.e the expansion of public utility services, admin rule-making is the only valid proposition while the growing emergence idea of direct participation in the structuring of the laws by those who are supposed to be governed by it because the indirect participation through their elected representatives more often proves a myth and therefore, here the need of the subordinate legislation comes into place as a convenient way or measure to provide its participation. It is thus suffice to contend that the technique of admin rule-making is now regarded as to be useful,

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<sup>49</sup> Opportunity to test laws

<sup>50</sup> Ibid, at 5



inevitable as well as indispensable as well but thus it is not that always it is seen as a positive aspect as excessive delegation power erodes the legislations and loosens the democratic order as well.

## V. CONDITIONAL LEGISLATION: A BASIS FOR CLASSIFICATION OF RULE-MAKING POWER

The Discretion-based classification<sup>51</sup> which is based on the discretion vested into the rule-making authority on the basis of the discretion of the admin rule-making power but it is contingent<sup>52</sup> in nature or we can say conditional nature, therefore, forming the “conditional legislation.” The court while emphasising in the case of *Field v. Clark*<sup>53</sup> the US Supreme Court emphasised that the Congress cannot delegate its power to make the laws but it can delegate the power to determinate some factors or state of things upon which the law intends to make its own action dependent. Therefore, the contingent or the conditional legislation maybe defined as a statute that provides control but specifies that they are to go into effect only when a given admin authority finds the existence of conditions defined in the statute itself. The conditional legislation is all about fact-finding the gun & the gunpowder is provided by the legislature and the admin authority itself with a certain amount of discretion<sup>54</sup> always present built up as a “fictional formula” by the US.

It is thus obvious that in conditional legislation, the legislation is complete in itself but its operation is made to depend on the fulfilment of certain conditions and what is delegated to an outside authority is the power to determine and what is delegated to an outside authority is the power to determine according to the judgement whether or not the conditions are fulfilled or not. There has been a vast difference between conditional and a delegated legislation wherein conditional legislation does not contain any element of delegation of legislative power and is therefore not open enough to be attacked onto the grounds of excessive delegation whereas the delegated legislation does not confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation. In *King Emperor v. Benoari Lal Sarma*<sup>55</sup> the Privy

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<sup>51</sup> Conditional Legislation

<sup>52</sup> Supra

<sup>53</sup> US 649, 692(1891)

<sup>54</sup> Supra

<sup>55</sup> Ibid, at 8

Council observed that the GG's ordinance of special courts which had delegated the power to extend the duration of the said ordinance was a piece of conditional legislation as the legislation was complete and what had been delegated was the power to apply the act on the fulfilment of certain conditions. Similarly in the case of *Tulsipur Sugar Co Ltd. v. Notified Area Committee*<sup>56</sup>, the Supreme Court upheld the validity of the said notification on the ground that it was conditional and not subordinate legislation & the limits of Tulsipur town had been extended to the village Shitalpur where the sugar factory of the plaintiff was situated. In a situation wherein a statute providing that a certain provision thereof would come into force on a date to be notified by the govt to decide whether or not to bring that provision into force.

Thus conditional legislation is identified to be as a statute enacted by the legislature and future applicability is given to the area left to the subjective satisfaction of the delegate as to the conditions indicating the proper time for that purpose as well as the act enforced and the power to withdraw such an act from the same operation itself in the given area left to the subjective satisfaction or objective satisfaction of the delegate to be exercised to the requisite condition of the precedent as well as the power of persons seeking benefit of the exercise of the power to deprive off the rival class of persons for statutory benefits exercising the principles of natural justice as stated in the case of *State of TN v. Sahanavaem*<sup>57</sup> Thus the concept of delegated legislation does not attract the principles of natural justice but the conditional legislation does that when a person is being deprived of their natural basic or statutory rights. Thus conditional legislation is a phenomenon existing as a part of delegated legislation or as a form of rule-making power but such a legislation differs a lot from the conditional legislation itself, making a different concept in dealing with the administrative rule-making power in India.

## VI. SAFEGUARD AGAINST ABUSE: A CASE ANALYSIS

So, the delegation of the legislative powers to the subordinate authorities has been a great emphasis as to how the efficient working system of the laws are done by such an authority as stated above. Mainly the legislation focuses on the welfare of the people & how it can regulate rules and instructions to safeguard the rights of its citizens living in

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<sup>56</sup> AIR 1980 2 SCC 295

<sup>57</sup> AIR 1988 1 SCC 634

a particular country apart from lessening the burden of the Parliament or a law making body but subjected to certain restrictions, it has been therefore, observed that how this admin rule-making system has helped in a positive manner being a boon<sup>58</sup> into the procedure of law making throughout being flexible enough. Under a lot of instances it has been observed that it has provided its necessary implication as to save people from the encroachment but when the exercise of the powers extend to the being “absolute” or the authoritative in nature, then it becomes a threat to democracy<sup>59</sup> and in itself such a rule- making power of the admin bodies encroach<sup>60</sup> the rights of its citizens if remained unchecked undermining the sovereignty ,leading to the potential abuse of power granted to them , as stated under the case of *Raj Narain Singh v. Chairman, Patna Administration Committee*<sup>61</sup> the court contended that such a notification effected a radical change in policy, exceeding the authority conferred by section 3(1)(f) of the Patna Admin Act<sup>62</sup> while quashing at preliminary stage, wherein the accused had an alias, then fact of his description by diff names into the police papers were ought to have been permitted to be certified by affording opportunity to present its case and such prejudgement by the High Court without giving any reasonable opportunity to substantiate his allegations is therefore, not justified.

In the case of *Hamdard Dawakhana v. UOI*<sup>63</sup> the SC struck down the delegation of power to specify diseases and conditions under the Drug & Magic Remedies Act, 1954 deeming it to be vague and exceeding the permissible boundaries of valid delegation. It was thus stated:

*“When there is an excessive delegation of an essential legislative power and offending provision of or of some part of it is not severable from the Act the whole legislation shall be struck down to be as invalid. The words impugned are vague. Parliament has established no criteria, no standards and has prescribed any principle on which a particular disease or condition is to be specified in the schedule. It is not stated what facts & circumstances are to be taken into consideration to include a particular condition or disease. The power of specifying the diseases are given under section 3(d)*

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<sup>58</sup> Advantages

<sup>59</sup> Wherein the representatives are chosen by the citizens of the country

<sup>60</sup> Abridge

<sup>61</sup> AIR 1991 SC 1308

<sup>62</sup> The Patna Administration Act, 1915 (Bihar and Orissa Act I of 1915)

<sup>63</sup> AIR 1960 SCC 554

*of the act<sup>64</sup> must therefore be held to be going beyond the permissible boundaries of a valid delegation, as a consequence the schedule in the rules must be struck down”*

In *Narendra Kumar v. UOI*<sup>65</sup> the court held that the law cannot be presumed to authorize anything unconstitutional wherein the court emphasized that the delegated legislation must conform with the constitution. It was further stated that:

*“The Non-Ferrous Metal Control Order, 1958 made under the act provided that permits will be issued with respect to the said commodities in accordance with the principles which the Central Govt will make from time to time. It was held these principles should be duly notified & laid down otherwise any order taken under them would be ultra vires”*

In another case of *Dwarka Prasad v. State of UP*<sup>66</sup> the SC struck down a rule under Article 19(1)(g)<sup>67</sup> because it granted excessive & arbitrary power to executive to grant exemptions, thus unreasonably restricting the right to carry any occupation, trade or business and thus the court held a rule under the U.P Coal Control Order as ultra vires<sup>68</sup> to the article 19(1)(g) because it placed unreasonable restrictions by giving arbitrary powers to the executive in granting the exemptions. Thus such cases reflect that how the system of “checks & balances” constituted into the federal system of our constitution is maintained against such abuse of the delegated legislation by the authorities by the mechanisms through the judicial review<sup>69</sup> and parliamentary scrutiny and adherence towards the procedural controls while setting up the limits towards the parents statute<sup>70</sup> as well as the constitution by declaring them in some cases as ultra vires. It was thus stated by Justice Cardozo that the Legislature cannot delegate the “uncanalised & uncontrolled power” , the power delegated must not be unconfined & vagrant in nature but must be canalized within banks that keep it from overflowing.

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<sup>64</sup> Drugs & Medical Act, 1954

<sup>65</sup> AIR 1960 SC 430

<sup>66</sup> AIR 1993 SC 753

<sup>67</sup> of the Constitution of India stating freedom of speech

<sup>68</sup> Beyond permissible limits of legislation

<sup>69</sup> Articles 13, 226, 32

<sup>70</sup> Primary Acts of Legislation

## VII. DELEGATED LEGISLATION IN INDIA: A NATIONAL PERSPECTIVE

The Indian perspective differs a lot than the other nations with respect to the rule making aspect of the Parliament. In India, the concept is not directly mentioned under any provision but still exists into the constitution of India in various articles. Article 245<sup>71</sup> grants the power to the Parliament and the State Legislatures to make laws for the whole or any part of India. Article 312<sup>72</sup> which empowers the Rajya Sabha to create new branches of All India Service indicating the delegation of the legislative power and therefore it does not curtail the inherent power of delegation vested in the legislature as stated into the words of Justice KN Wanchoo observed “there is nothing in the words of article 312 which takes away the usual power of delegation which ordinarily resides in the legislature. As stated in the bible case law on delegated legislation in India<sup>73</sup>, that the power of the delegation is ancillary in nature and that it has a limitation upon the delegation of the power is that the legislature cannot part with its essential legislative power that has been expressly vested in by the constitution. Essential legislative power means laying down the policy of the law & enacting the policy into rule of conduct, so the delegation was held to be valid except with repealing & modification of the legislative power. Furthermore, there are various kinds of legislations and statutory terms & orders recognised in India. The rule making power, regulations, orders, bye-laws, directions and schemes are the title based classifications in the Parliament along with sub delegation or authority based classifications. In *AK Roy v. State of Punjab*<sup>74</sup> in which the power to initiate prosecution for offences under section 20(i) of the Prevention of Food Adulteration act, 1954 had been given to the state government & thus enunciated that the sub-delegation was ultra vires to the parent act.

The advent of exceptional delegation which is a nature based classification has been witnessed therefore being ultra vires to the constitution. Such delegation has been referred with respect to Henry VIII clause to indicate extensive autocracy<sup>75</sup> & under Article 372(2) of the Constitution<sup>76</sup> advent of Henry’s clause has been inculcated as the President has the power being delegated to adapt, amend or repeal any law in force to

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<sup>71</sup> Ibid, at 9

<sup>72</sup> Ibid, at 9

<sup>73</sup> With reference to Re Delhi Laws Act, 1912

<sup>74</sup> AIR 1986 SCC 326

<sup>75</sup> Absolute Powers

<sup>76</sup> Constitution of India

bring it in line with such provisions of the Consti, and the exercise of such power has been made immune from the scrutiny of the courts. It has been analysed that the constitutionality of the delegated legislation has been recognised in India since the historical aspect as aforementioned by the apex courts setting up the permissible limits in India & excessive delegation being unconstitutional in nature. Furthermore, the constitutionality has been recognised under certain cases with respect to the Indian prospectus of the Subordinate Legislation or rule making powers like the famous case of *Gwalior Rayon Silk Mfg Co. Ltd. v. CST*<sup>77</sup> propounding a new test to determine the constitutionality of the delegated legislation in India, however the majority led by Khanna J did not agree with the abdication test and it was challenged under Section 8(2)(b) of the Central Sales Tax Act, 1956 concerning the delegation power to fix sales tax rates which the SC held but the legislative policy was clearly upheld that if the local taxes rate was less than 10 % the Central Sales Tax rate should be 10% and if higher then that would be the same case for the Central Tax as well and such delegation was a clear legislative policy guiding the delegation.

Similarly, in the case of *Avinder Singh v. State of Punjab*<sup>78</sup> the SC has taken a very liberal view on the question laying down the legislative policy in the act by the legislature wherein, the court observed that the word “for the purpose of the act” under Section 90(1) of the Municipal Corporations Act, 1976 are pregnant with the meaning setting up the proper ceiling on the total quantum that maybe collected bringing the focus of the municipal bodies throughout. The rule-making in India typically focuses on the control mechanisms of the rule-making from preventing it to exercise the excessive delegation as thenceforth, mentioned with respect to the parliamentary control like through questions & notices any member may ask questions discussing about the delegation of the power and if dissatisfied could issue the notice for the same by moving them into the houses of the parliament.<sup>79</sup>

By the Delegated Legislation Provisions (Amendment) Act, 1983 the Parliament has amended 50 Indian statues and inserted provisions where there were no such provisions and in other instances provided for the annulment or modifications within a specified

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<sup>77</sup> AIR 1974 SC 1660

<sup>78</sup> AIR 1979 SC 321

<sup>79</sup> Upper & Lower Houses of the Indian Parliament

period therefore, the indirect control exercised by the Parliament through the committee examine the delegated legislation's notice of the House whether admin rule making has exceeded. Thus the procedural control like drafting as well as consultation along with the scrutinization of the ultra vires power extension shows how the rule-making power is under the control ensuring safeguards of rights of the citizens living in India.

## VIII. INTERNATIONAL PERSPECTIVE: A CROSS COUNTRY ANALYSIS

### A. ANALYSIS WITH RESPECT TO THE US

In comparison with the situation of the US there is a more liberal approach but as both the US and India have limited form of delegation, India places a much stricter mechanism than the US analysing the scrutiny of the laws. The US confers its 'sweeping clause' to execute the laws that activate necessary federal powers. **Article 1 of the US Constitution**, i.e. the sweeping clause allows Congress to execute laws which deems it to be necessary for activating its federal powers<sup>80</sup>. This **Sweeping Clause** runs as- "The Congress shall have Power... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof" As stated in the case of *Wayman v Southhard*<sup>81</sup>, Supreme Court distinguished between "important subjects" and mere details. The case dealt with the clause in Process Act that authorized federal courts to establish rules of practice. The court held that such a law was "**to fill in the details**" of such laws, while maintaining the power with the Congress. The line between the important subjects and other general provision has still not been clearly demarcated. Justice John Marshall stated a very important principle in this case that went on to mold the relationship between the Courts and Congress. "The line has not been exactly drawn which separates those important subjects, which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, and power given to those who are to act under such general provisions to fill up the details."

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<sup>80</sup> Powers concentrated into Centre & state

<sup>81</sup> US SC 23 US 10 Wheat AIR 1825

In the US, the rule against delegation of legislative power is basically based on the doctrine of SOP<sup>82</sup> and its references as to be based on the doctrine of “delegatus non potest delegare” which does not exist with respect to India, and even such doctrine of SOP has been raised to the constitutional status as well into the US constitution as compared to India, the SOP which exists through implications.

### ***B. ANALYSIS WITH RESPECT TO ENGLAN***

In England the Parliament is supreme and therefore, unhampered by any constitutional limitations, Parliament has been able to confer the wide legislative powers onto the executive. The Committee on Ministers' Powers also refers to the fact that the Donoughmore Committee issued a report in which Sir Cecil Carr, a prominent lawyer from England, quoted around three parts of the law. The report was published in 1932. It dealt, inter alia, with delegated legislation.

In the case of *Commissioners of Custom and Excise v. Cure and Deely Ltd*<sup>83</sup>, In this case, Where the commissioners' power to make delegated legislation was challenged under the 1940 Finance Act. Under this Act, the commissioners assessed the amount of tax due in the event that a tax return was submitted late, but the High Court invalidated this and claimed that the commissioners had granted themselves power far beyond what Parliament had allowed them to collect only the amount of tax due. This is another case which clearly shows that many authorities would misuse the powers ultra vires if delegated legislation is not effectively controlled. Regulation by the courts has proven highly effective in this case.

The doctrine of parliamentary sovereignty was upheld by Lord Reid in *Madzimbamuto v. Lardner*<sup>84</sup> “It is often said that doing such things would be unconstitutional for the Parliament of the United Kingdom, meaning that the moral, political and other arguments against doing them are so strong that most people would consider it extremely unacceptable if the Parliament did these things. But that does not mean it is beyond Parliament's power to do something like this. Although Parliament intended to

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<sup>82</sup> Ibid, at 6

<sup>83</sup> AIR 1961 3 WLR. 798

<sup>84</sup> AIR 1969 1 AC 645



do any of these, the courts would not invalidate Parliament's Act.

## IX. CONCLUSION

Numerous misunderstandings have been centred around “delegated legislation.” Administrators occasionally use it as a “shield & a provocation” for constitutional purists, and legislators occasionally use it as an “excuse” when the social, technological & economic as well as the administrative factors surpass the dispersed traditional legislative goals and procedures, subordinate legislation has always taken its inculcated space which has become essential and inevitable component for the changing times. On the ground, this procedure was attacked as a means of shifting the responsibility away from the legislature, which the people had trusted enough with the responsibility. As previously stated that delegated legislation has been and has become an essential instrument for modern administration, but it must carefully be controlled to maintain the accountability and prevent potential abuses. This voluntary “ceding” of the power or the authority has been classified as a “modern democracy problem”. Robust control mechanisms are essential to ensure that delegated legislation is in line with the intent of the legislature, respects fundamental rights, and upholds the rule of law. Thus the legislation ensures a boon to the society as a whole but with the help of limited mechanism while maintain the existence of the checks & balances, SOP or Rule of Law, the power of the delegated authority could be saved immediately from causing a major threat to democracy simultaneously. Thus if there are positives, there are negatives as well going hand in hand but, such power shall not be completely removed from the statue but should not even exceed so much so that it loosens the checks & balances system, creating a despotic rule<sup>85</sup> & causing the essence of the Parliament in danger even though, it is not able to provide with the proper functioning of the quality law, but we should keep in mind that it's the “law making body” solely.

### ***A CONTEMPORARY ANALYSIS OF LEGISLATION BEING EXCESSIVE IN NATURE***

In the contemporary<sup>86</sup> world there has been a lot of legislations & cases enacted exceeding their delegatory powers over the nation's citizens. The recent controversy

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<sup>85</sup> Tyranny or Absolute Powers of the state.

<sup>86</sup> Ongoing Scenario.

going on the Waqf Amendment Act, 2025 a BJP leader Krishnadas in 2024 called for the amendment of the act arguing that it gave “excessive powers” to the waqf board members alleging that it was the Congress that brought in the amendments which had empowered the waqf board with excessive delegation of powers, even recently last week the Congress MP Dr. Abhishek Manu Singhvi contended that the Immigration & Foreigners bill, 2025 has granted excessive delegation of powers with immense breadth of discretion to the officials. He notes that the bill has provided for expansion of grounds for detention without requiring legislation of the parliament.<sup>87</sup>

In another case wherein a comedian & political satirist Kunal Kamra challenged the rules in the Bombay High Court claiming the fact-check unit in conflict with section 79 of the IT Act, 2000<sup>88</sup> infringing on the freedom of speech & expression<sup>89</sup> and creating an undue burden onto the digital intermediaries. Kamra’s petition argued that broad and imprecise terms would lead to self-censorship by social media users resulting into the excessive regulation & suppression of the free speech rather than combating the misinformation. Another act which is the DPDP act, 2023<sup>90</sup> which regulates that how business & organisations can process digital personal data in India, has often faced challenges regarding its delegation of powers being excessive in nature particularly in data localization and exemptions which often has raised questions for the accountability of the act.<sup>91</sup> The formation of the committees under such act has not been clearly mandated as well.

Thus, if we analyse the above contemporary scenarios, we are able to infer that how the excessive delegation can impact the society as a whole and if the rules & regulations are drafted in a speedily manner, the considerable amount of despotism is witnessed. It actually depends upon the “intent” of the particular authority drafting and framing the rules in such a manner that it is benevolent<sup>92</sup> in nature which makes such legislation a blessing in nature or otherwise forms a tyranny. As the delegation of the legislature is in a limited form and regulated by the judiciary it forms the best test ground to

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<sup>87</sup> Extracted from The Hindu.

<sup>88</sup> Information Technology Act of 2000.

<sup>89</sup> Article 19(a) of the Indian Constitution.

<sup>90</sup> The Digital Personal Data Protection (DPDP) Act, 2023.

<sup>91</sup> DPDP Act, 2023.

<sup>92</sup> Carefully drafting the laws and not despotic in nature,

experiment for the laws and ultimately is the beauty of our Indian quasi-federal<sup>93</sup> system that it allows somewhat of flexibility to adapt any form of administrative modifications maintaining the basic structure of the Indian Constitution.

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<sup>93</sup> Federal and Unitary characteristics.