

## Delegated Legislation

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### Meaning

Delegated legislation may be defined as legislation or rules of law made by some person or body under authority given to that person or body, by an act of parliament. This type of act is called “the enabling act”. The enabling act lays down the broad principle for the guidance of the body to whom power to make law has been entrusted. Delegated legislation may exist in the form of, bye law, schemes, order, notification, rules, regulation etc. Salmond defines the expression “Delegated legislation” as that which proceeds from any authority other than sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority<sup>2</sup>”

In current scenario, we can see tremendous increase in the functions of state. Except giving protection to citizens it is looking into the matters concerning overall welfare of the subjects. Now state is not an isolated institution but has become the protector of the whole community. State is present to protect every positive and constructive activity to secure the goal of overall development of its subject. To sustain on its move from police state constitutional jurists to welfare state, it has adopted the “tool” of delegated legislation. Usually, what happens is that the legislature enacts a law covering only the general principles and policies relating to the subject matter in question, and confers rule- making power on the Government, or on some other administrative agency. The delegation of legislative power is permissible only when the legislative policy is adequately laid down and the delegate is empowered to carry out the policy within the guidelines laid down by the legislature<sup>3</sup>. Mukherjee J rightly says “Delegated Legislation is an expression which covers a multitude of

confusion. It is an excuse for the legislators, a shield for the administrators and a provocation to the”<sup>4</sup>.

The factors behind the growth of Delegated Legislation are:

- 1 There is a lot of pressure on Parliament. It is not possible for this body, to deal with all kind of needed major and minor legislation. To eradicate this problem, parliament generally confers on executive the rule making powers.
- 2 Sometimes because of the technicalities of the subject matter legislators require experts to deal with them and for this they go for delegation of the power to make laws.
- 3 In delegated legislation there is much scope for experimentation, it offers rapid machinery for amendment and revocation of the legislation.
- 4 Delegated Legislation is fit to deal with unforeseen contingencies which might not come across during passing of enabling act.
- 5 In case of emergency on account of war, floods, insurrection, epidemics, economic depression there is a need of quick decision so the executive must be bestowed with the power to take action instantly.

The technique of delegated legislation is very extensively used in India. Two

### Illustrations will suffice.

1 The imports and export (control) Act, 1947 is a small piece of legislation containing eight sections. Section 3 authorizes the central Government to prohibit or restrict the import or export of goods of any specified description by order.

Under this provision, the central government has built up a vast mechanism of control over

import and export through delegated legislation promulgated under the statute.

2 Under the essential commodities Act, 1955 the central and state governments have promulgated a large number of orders and rules. The Act in itself is a small piece of legislation containing only 16 sections, but under it the Government carries on the whole operation of controlling and regulating production, movement, supply, sale and prices of a number of commodities characterized as “essential commodities”<sup>5</sup>.

### **In Re Delhi law Act<sup>6</sup> case**

The court realized that, keeping the exigencies of the modern Government in view, Parliament as well as the state legislatures in India need to delegate the legislative power if they are to be able to solve the multitudinous problems facing the country, for it is neither practicable nor feasible to expect that each legislative body could turn out a complete and comprehensive legislation on all subjects sought to be legislated upon. The court was also agreed that since various legislature in India derive their powers from the written constitution which creates them, they could not enjoy the same freedom as the British parliament in the matter of delegation of legislative power, and that some restriction should be set on their capacity to delegate. Hence, the majority on the bench opted for the American position that the legislature itself must set the essential policy, or lay down standards or policy in the delegating Act, and the delegate would then legislate to further the legislative policy. This has come to be known as the doctrine of excessive delegation of legislative power.

The Delhi law Act case achieved two ends:

- 1 It legitimized delegation of legislative power by the legislature to administrative organs.
- 2 It imposed an outer limit on delegation by the legislature. No Indian legislature can

delegate unlimited legislative power to the administration. If delegation is too broad, the court can declare the same as excessive and hence invalid.

### **Hamdard Dawakhana wakf v. Union of India<sup>7</sup>**

Section 3 of the Drugs and Magic Remedies Act, 1954 was in question. This provision forbade an advertisement suggesting that a medicine could be used for curing any venereal disease or any other disease specified in the rules. The Supreme Court held that no criteria, standards or principles had been laid down in the Act for specifying “any other disease” in the rules and so the power to make rules to that extent was held to be unguided and uncontrolled and so invalid.

### **Jatinder Nath Gupta v. Province of Bihar<sup>8</sup>**

In this case Section 1 (3) of Bihar maintenance of public order Act 1948 was challenged. This Act passed by legislature and it was valid for one year. In this clause it was mentioned that the provincial government can extend this Act for further one year with some alteration. The constitutionality of this Act was challenged in Federal court and proviso of section 1 (3) was declared unconstitutional because of the excessive delegation. It was the first case in India in which the principle laid down that the legislative power can not be delegated.

### **Jalan Trading co. v. Mill Mazdoor Union<sup>9</sup>**

The supreme court upheld section 36 of the payment of bonus Act, 1965 authorizing the government to exempt any establishment from the operation of the Act having regard to the financial position and other relevant circumstances, as parliament had given adequate guidance and laid down the principles in the light of which the power of exemption is to be exercised.

Under the constitution of India, article 245 and 246 provide that the legislative power shall be discharged by the parliament and state

legislatures. There is nothing in the constitution whereby it can be inferred that the legislature can not delegate its legislative power to anybody else. In the constitution itself we find several provisions where the executive heads, i.e., the president and the governors of different states have been empowered to make laws under certain conditions, for instance, when the parliament or state legislatures are not in sessions. During the president's rule in any state the executive has been authorized to make laws for the state.

It is clear from these provisions that it was not intention of constitution makers that the legislative functions should be carried out by the legislatures only. The delegation of legislative power was conceived to be inevitable and therefore it was not prohibited in the constitution. Secondly, article 13(3) (a) of the constitution of India lays down that "law" includes any ordinances, order, bye-law, rule, regulation, notification etc. Which if found in violation of fundamental right, mentioned in chapter 3, would be void. It is well settled that the rules, regulations, bye laws, etc, are not made by the legislature but by the agencies other than the legislature, namely, the executive and local bodies, under the delegated authority. It thus makes clear that our constitution indirectly envisages that delegation of legislative functions to the executive to a limited extent<sup>10</sup>.

-Functions which may not be delegated (Impermissible delegation)

**(a) Essential legislative function :-** even though there is no specific bar in the Indian constitution against the delegation of legislative power by the legislature to the executive, it is now well-settled that essential legislative functions can not be delegated by the legislature to the executive. In other words, legislative power must be laid down by the legislature itself and by entrusting this power to the executive; the legislature can not create a parallel legislature.

**(b) Repeal of law :-** Power to repeal a law is essentially a legislative function, and therefore, delegation of power to the executive to repeal a law is excessive delegation and is ultra vires.

**(c) Modification :-** Power to modify the Act in its important aspects is an essential legislative function and, therefore, delegation of power to modify an Act without any limitation is not permissible. However, if the changes are not essential in character, the delegation is permissible.

**(d) Exemption :-** The aforesaid principle applies in case of exemption also, and the legislature can not delegate the power of exemption to the executive without laying down the norms and policy for the guidance of the latter.

**(e) Removal of difficulties :-** Under the guise of enabling the executive to remove difficulties, the legislature can not enact a Henry 8 clause and thereby delegate essential legislative functions to the executive, which could not otherwise have been delegated<sup>11</sup>.

**(f) Retrospective operation :-** The legislature has plenary power of law making and in India, parliament can pass any law prospectively or retrospectively subject to the provisions of the constitution. But this principle can not be applied in case of delegated legislation. Giving an Act retrospective effect is essentially a legislative function and it can not be delegated.

**(g) Future Acts :-** The legislature can empower the executive to adopt and apply the laws existing in other states, but it can not delegate the power by which the executive can adopt the laws which may be passed in future, as this is essentially a legislative function.

**(h) Ouster of jurisdiction of court :-** The legislature can not empower the executive by which the jurisdiction of courts may be ousted. This is a pure legislative function.

**(i) Offences and penalty :-** The making of

a particular act into an offence and prescribing punishment for it is an essential legislative function and can not be delegated by legislature to the executive. However, if the legislature lays down the standards or principles to be followed by the executive in defining an offence and provides the limits of penalties, such delegation is permissible.

**(j) Imposition of tax :** - The power to impose a tax is essentially a legislative function. Under Article 265 of the constitution no tax can be levied or collected save by authority of law, and here “law” means law enacted by the competent legislative and not made by the executive. Therefore, the legislature can not delegate the essential legislative function of imposition of tax to an executive authority.

### Conclusion

As we discussed above we can say that the legislature can delegate their powers to the executive without violating any provisions of constitutions. There is a limit beyond which delegation of legislative power is not permitted. The limit is that essential legislative powers can not be delegated. If the legislature wants to delegate its power in respect of implementation of the law enacted by it, it must provide sufficient guidelines, conditions on fulfillment of which the Act would be enforced by the delegate. Delegation involves the granting of discretionary power to another, but ultimate power always remains with the legislature. What is prohibited is abdication, i.e. conferment of arbitrary power by the legislature upon a subordinate body without reserving for itself control over the body. Once essential legislative powers are exercised by the legislature, all ancillary and incidental functions can be delegated to the executive.

### (Endnotes)

- 1 \*Lecturer in Law, Sardar Patel Law College Sriganganagar, Rajasthan
- 2 Salmond, jurisprudence, 12<sup>th</sup> edition, P 116

- 3 Tata Iron and steel co. ltd v. workmen, AIR 1972 sc, para 11
- 4 Quoted by chakravarti, Administrative law (1970)
- 5 Indian law institute, Administrative process under the Essential commodities Act, 1955
- 6 AIR 1951 sc 332
- 7 AIR 1960 sc 554
- 8 AIR 1949 Fc 175
- 9 AIR 1967 sc 691
- 10 U.P.D kesari Edition 2016
- 11 Henery 8 clause (removal of difficulties)