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A STUDY ON CONTROL OVER DELEGATED LEGISLATION IN INDIA

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Abstract

The Constitution of the country allows to make laws for the welfare of the country. Our Constitution has three branches of Organs, Legislation, Executive and Judiciary. Each organ has its own function in which the organs are independent in their nature. Legislation plays the role of law making for the welfare of the people. Executive functions are with respect to implementing the laws that are made by the legislation. And Judiciary performs the functions of interpreting the laws and protecting rights of the citizens. There are various laws available in the country and due to dynamic change in society, there is a need for more new laws. It is not possible for legislation to perform the function of making laws. Hence in those circumstances the powers of the legislation are delegated to the executives to make laws but within the scope of its nature. Within the scope refers to that the executive only has the power to make the laws extent up to the powers delegated to them. This is known as the Doctrine of Ultra vires which states anything that has been done beyond their powers is void.

A.K. Kraipak Vs Union Of India¹¹⁵, it is a case which laid down the ground of Judicial Review of Administrative actions particularly dealing with the doctrine of Ultra vires. This case law deals with the exceeding action of authority in selecting the candidates for Indian Forest Service. The court held that the administrative action must be within the legal authority and based principles of natural Justice. In delegated legislation concept there are several controls over delegated legislation. This paper is about clarifying the concept of delegated legislation and talking about the judicial control over delegated legislation.



¹¹⁵ AIR 1970 SC 150



Introduction:

The delegated legislation is a body which has the power to make rules and regulations other than the legislature with the authority granted to them under the enabling act. It is also known as subordinate or secondary legislation. It is one of the essential components for the better functioning of the legal systems. It plays a crucial role especially during when the legislature lacks in process due to time, flexibility to detail the complexity of the policy implementation. Delegated legislation plays vital role while matters including statutory instruments, by-laws, and orders, it is required over subject matters with regards to specialized areas of public health, environment regulation, and financial matters. As society changes according to evolution based on various factors relating to socio-economic factors, there is need to fulfill those conditions by introducing required legal framework to tackle the new challenges that arose before the society. In such situations delegated legislation makes it easier to make updates and modify the existing laws. However discussing the advantages of the delegated legislations, there is a need to talk about the over delegation, and excess use of the executive power need to control, and it can be controlled by the judicial control through the check and balance system. The control system of judiciary evolved to ensure that the framework of laws is duly followed during the delegated legislation process. Even though the delegation has given power to make laws, it can not delegate the essential policy of the legislature, by the Supreme Court. It allows the court to struck down any delegated legislation made over the parent act or exceeding the scope of constitutional principles.

Judicial control of the delegated legislation is maintained by the Doctrine of Judicial review. It is the most important part of the administrative law, in which delegated legislation is complied with the parent statutes and constitutional limits by the scrutiny of the court. The courts have several grounds for validating the process of delegated legislation. In Hamdard

Dawakhana Vs Union of India¹¹⁶. The supreme court held that on the grounds that a piece of delegated legislation has been invalidated because it is beyond the permissible limit of the parent statute and infringed the fundamental rights

Need for delegated legislation:

1. Time efficiency and legislative overload:

The legislative body across India are dealing with various complex and diverse problems. Hence it takes time to pass a detailed order after the debate for every law they enact. Thus, delegated legislation paves way for the legislature to make policy decisions focusing on the major issue. Thereupon the policy making are delegated to the specialized bodies or agencies concerning the different procedural, technical aspects of the law.

In IN RE DELHI LAWS ACT (1951)¹¹⁷. This case addressed the constitutional validity of delegated legislation. The court emphasized the need of delegated legislation for effective governance, when there is an inability of the legislature to forecast in detail about the circumstance about to cause. The court held that delegated legislation was needed to dealt with the ancillary matters, while the legislature can retain the essential legislative function. In this case the court upheld the validity of the delegated legislation. Providing that the powers with the scope of constitutional limits.

2. For Expertise and Technical Knowledge:

Many modern laws, especially covering the areas of environment, tax, health and industrial regulation, particularly include technical knowledge which the legislators may not possess. At times there is a requirement for agencies or professional bodies which have the experts regarding those fields can be effective in creations of the rules and regulations needed for the applicability of the specific needs.

¹¹⁶ 1965 AIR 1167 SCR(2) 192

¹¹⁷ AIR 1951 SC 332



In *Vasantlal Mangankbhai Sanjanwala Vs Sanjanwala Vs State of Bombay (1961)*¹¹⁸ case the court clarified the necessity of the delegated legislation in technical fields. It observed that the delegating authority must be given to the technical expertise due to the technical matters with regards to certain matters such as land reforms. The court upheld the delegating powers in creation of rules for land reforms is constitutional.

3. Flexibility And Adaptability:

Delegated legislation is more reliable as compared to legislation. In legislation it takes time for enactments of new law and cumbersome process, while on the other hand it is easy for the delegated legislation to make rules that need be updated and bring change to existing laws it is because of the adaptability and flexibility of the delegated legislation. It is very efficient in dealing particularly relating health, financial matters and technological matters which often change its nature and demand new changes.

In *Hambard Dawakhanna VS Union of India (1960)*¹¹⁹ .The Delegated legislation is given authority to the government to categories the medicine and remedies which should be prohibited from advertising those medicines which is allegedly advertised. The issue raised was whether delegated legislation has the power of the executive to prohibit the advertisement of drugs. The supreme court in this case upheld the need of delegated legislation. The court observed that the laws pertaining to public health and medicine have complex and technical issues and it requires flexibility in such matters which is provided by delegated legislation. The court held that the Parliament cannot foresee the potential development in the field of medicine and health. Hence there is a need to delegate some powers to need to be delegated to the executive that flexibility and adaptability to

meet the requirements of the ever changing environment.

4. Response to Emergencies:

Issues rising before society needs immediate action, it is impractical for the legislation to make laws during the time of emergencies such as natural calamities or national security threats, since there are procedures to be followed to pass the law. But delegated legislation allows for the executive to take immediate action pertaining to the subject matter by issuing orders, regulations or rules during the time of crisis. Delegated legislation is an important component particularly during emergency circumstances which require quick response.

In *Rajnarain Singh Vs Chairman, Patna Administration Committee (1954)*¹²⁰, This case deals with the necessity of delegated legislation during emergencies. In this case, the Patna Administrative Committee as given authority make rules in respect of issues dealing with public health and sanitation.

5. Dealing with Local Conditions:

Delegated legislation is also known as subordinated legislation which means that it has its authority to execute the power to address the issues of local or municipal conditions. While the National legislation is about to dealing the matters of the whole country its principles are based for the wider boundaries. Hence some powers are delegated to various local authorities such as local government, state government and municipalities for meeting the problems arise in different regions.

In *Municipal Corporation of Delhi vs Birla cotton Spinning and Weaving Mills (1968)*¹²¹, This case law dealt with whether the local bodies can be given authority for regulating the matters like sanitation, licensing and public welfare. The Supreme Court upheld that the Delegating powers by the Municipal

¹¹⁸ AIR 1961 SC 4.

¹¹⁹ AIR 1960 SC 554.

¹²⁰ AIR 1954 SC 569.

¹²¹ AIR 1968 SC 1232



Corporation of Delhi is constitutional and also recognized that handling of localized issues are effectively handled by the local governments than the national legislature.

6. Experimentation and Pilot projects:

Delegated legislation paves the way for experimenting with new policies or regulation without changing the entire legislation. In delegated legislation the executives are allowed to make temporary rules and regulations to check the effectiveness of the policies by implementing them for a particular period of time.

In *Air India Vs Nergesh Meerza (1981)*, the Supreme Court held that delegated legislation is allowed to make policies regarding the employment conditions and benefits of adapting the policies for evolving industries requires.

Judicial Control over Delegated Legislation:

A. Substantive Ultra Vires:

Substantive Ultra vires refers to when the delegated legislation exercises its powers beyond the scope of authority granted to it by the parent act or when it is inconsistent with constitution. If the authorities make rules beyond the authority granted, it can be declared as invalid by the courts.

*Chintaman Rao Vs State of Madhya Pradesh (1950)*¹²², In this case an order was passed regarding the manufacturing of bidis during agricultural season was prohibited. The court struck down the regulation by saying that it is unreasonable restrictions which is against the right to carry on business, and it exceeds the powers of the parent act. The court held that the order by the commission regarding the manufacturing of bidi is illegal.

B. Procedural Ultra vires:

In delegated legislation the authorities are required to follow the necessary rules and regulations as in the parent act. When the authorities are not following the rules at time the delegated legislation may be challenged.

Hence the court may declare such delegated legislation to be invalid.

*Agricultural Market Committee Vs Shalimar Chemical Works Ltd (1997)*¹²³, In this case, Agricultural market committee was setup and had power to levy charges on agricultural products as market fee. It was notified as 2% of the total rate for the agricultural products. The court cannot impose charges on coconut oil since it is not mentioned as an agricultural product in the publication, hence the court held that the order of the commission is invalid.

C. Violation of fundamental Rights:

A delegated legislation can be held as void when the delegated legislation violates the fundamental rights of the citizen as mentioned under the constitution. Infringing the fundamental rights of the citizen such as freedom of expression, speech etc.

In *A.K. Roy vs Union of India (1982)*¹²⁴, Part of National Security Act, 1980 was struck down due to it have allowed for preventive detention without trial. The court held that the powers of the delegated legislation do not infringe the fundamental rights of the citizen and should be within manner of maintaining constitutionality.

Criticism On Judicial Control Over Delegated Legislation:

1. Judicial Encroachment:

The main criticism of judicial control is that through judicial review it may overreach the functions of executive and legislative organs. Giving the power to strike down the delegated legislation can be viewed as encroachment of democracy and undermine the separation of powers.

2. Incompetency of techniques in Complex areas:

Due to lack of expert knowledge and technical incompetency, it is difficult to check the validity of the delegated legislation. In

¹²² AIR 1951 SC 118.

¹²³ AIR 1982 SC 2502.

¹²⁴ AIR 1982 SC 710.



Judiciary often the judges are general practitioners while dealing with delegated legislative matters they require specialized knowledge in matters pertaining to public health, environmental regulation or financial markets.

3. Delays and Inefficiency:

Judicial review is a slow process in which judicial procedures need to be followed which leads to delay in important implementations. This process may create chaos when there is need for quick actions especially during the time of crisis or emergencies.

4. Limited Parliamentary Accountability:

The principle of Parliamentary accountability may be undermined by Judicial control. The judicial intervention may reduce the potential accountability of the representatives elected.

5. Judicial Formalism:

The formalistic approach of the courts is a major drawback in reviewing the delegated legislation. Formalistic approach refers to the analysis on form or style rather than focusing on the context or implications of work. In context of review, it focuses on technical procedure rather than focusing on broader issues.

6. Retrospective Effect:

Delegated legislation that has been struck down by the judicial decisions may have retrospective effects. It creates uncertainty and injustice for those who relied upon the invalidated law.

Reforms required for Judicial Control over Delegated Legislation:

1. Improved scrutiny and review mechanisms:

The establishment of specialized tribunals and judicial panels may help in resolving the issues relating to taxation, environmental law, public health. Specialized

tribunals and panels are effective in reviewing the delegated legislation.

2.Role of Parliamentary Committee:

The role of the parliamentary committee in scrutinizing the delegated legislation needs to be strengthened. This involves the committee demanding explanation from the departments regarding rejection and amending the statutes before they are enacted as laws.

3.Precise Legislative Delegation:

The legislators must provide a clear and precise outline about the powers granted to the executives to make rules and regulations. This outline should contain the scope of the executive in limiting arbitrary discretion.

4. Enhancing the Procedural Safeguards:

There should be a stronger implementation in the procedural safeguards while the creation of delegated legislation. Following procedures such as consultation from the public and impact assessments.

5. Faster Judicial Process:

The judicial review process is to be made simpler or more efficient in such a way that it allows for resolving the challenges in delegated legislation. Simpler processes help in quick redressal for urgent cases.

6. Transparency Rule making:

The rule making process of the delegated legislation should be made transparent to ensure the statutory instruments and regulations are easy to access, explained clearly and made in an open manner for public scrutiny.

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