

ADMINISTRATIVE LAW

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Year	Subject Title	Sem.	Sub Code
2018 -19 Onwards	Core 8 : Administrative Law	III	18MPA31C

UNIT – I: Introduction Meaning,

Nature and scope of Administrative Law – Historical Growth and Development of Administrative Law – Rule of Law – Driot Administratif – Constitutional Law and Administrative Law.

UNIT – II: Government and Administrative Law

Executive and Administrative law- Government Liability – Classification of Administrative Actions – Administrative Discretion - Administrative Law and Privileges.

UNIT – III: Delegated Legislation

Legislature and Administrative Law -Delegated Legislation – Control over Delegated Legislation.

UNIT – IV: Judiciary and Administrative Law

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UNIT – V: Control over Administration

Government Control Over Public Undertakings – Legislative control over Public Undertakings – Statutory Inquiries – Statutory and other Remedies – Judicial Review of Administrative Action – Ombudsman, Lokpal – Lokayukta.

Reference Books

1. Durga Doss Basu, Administrative Law, Prentice Hall of India (p) LtdNew Delhi, 1986.
2. Kesari, U.P.D., Lecturers on Administrative Law,
- 3.C.K. Takwani, Leatures on Administrative Law,EBC Publishers, Noida. 2014

ADMINISTRATIVE LAW

DEGREE: II MA

SEMESTER: III

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UNIT – III

DELEGATED LEGISLATION

LEGISLATURE AND ADMINISTRATIVE LAW:

INTRODUCTION:

Administrative Law is that portion of law which determines the organization, powers and duties of administrative authorities. The most significant and outstanding development of the twentieth century is the rapid growth of administrative law. Though administrative law has been in existence, in one form or the other, before the 20th century, it is in this century that the philosophy as to the role and function of the State has undergone a radical change. The governmental functions have multiplied by leaps and bounds.

Today, the State is not merely a police State, exercising sovereign functions, but as a progressive democratic State, it seeks to ensure social security and social welfare for the common man, regulates the industrial relations, exercises control over the production, manufacture and distribution of essential commodities, starts many enterprises, tries to achieve equality for all and ensures equal pay for equal work.

It improves slums, looks after the health and morals of the people, provides education to children and takes all the steps which social justice demands. In short, the modern State takes care of its citizens from 'cradle to grave'. All these developments have widened the scope and ambit of administrative law.

Delegated Legislation : Meaning:

One of the advances in the realm of administrative process made during these days is that apart from 'pure' administrative function, the executive performs legislative function as well. Due to a number of reasons, there is rapid growth of administrative legislation. According to the traditional theory, the function of the executive is to administer the law enacted by the legislature, and in the ideal State, the legislative power must be exercised exclusively by the legislators who are directly responsible to the electorate. But, in truth, apart from 'pure' administrative functions, the executive performs many legislative and judicial functions also.

It has, therefore, been rightly said that the delegated legislation is so multitudinous that a statute book would not only be incomplete but misleading unless it be read along with delegated legislation which amplifies and supplements the law of the land.

It is very difficult to give any precise definition of the expression 'delegated legislation.' It is equally difficult to state with certainty the scope of such delegated legislation. According to

Salmond, legislation is either supreme or subordinate. Whereas the former proceeds from sovereign or supreme power, the latter flow from any authority other than the sovereign power, and is, therefore, dependent for its existence and continuance on superior or supreme authority. Delegated legislation thus is a legislation made by a body or person other than the Sovereign in Parliament by virtue of powers conferred by such sovereign under the statute.

A simple meaning of the expression ‘delegated legislation’ may be given as: ‘When the function of legislation is entrusted to organs other than the legislature by the legislature itself, the legislation made by such organs is called delegated legislation.’

Reasons for Growth of Delegated Legislation:

Many factors are responsible for the rapid growth of delegated legislation in every modern democratic State. The traditional theory of ‘laissez faire’ has been given up by every State and the old ‘police State’ has now become a ‘welfare State.’ Because of this radical change in the philosophy as to the role to be played by the State, its functions have increased.

Consequently, delegated legislation has become essential and inevitable.

- i. Pressure upon Parliamentary Time : As a result of the expanding horizons of State activity, the bulk of legislation is so great that it is not possible for the legislature to devote sufficient time to discuss all the matters in detail. Therefore, legislature formulates the general policy and empowers the executive to fill in the details by issuing necessary rules, regulations, bye-laws, etc. In the words of Sir Cecil Carr, delegated legislation is “a growing child called upon to relieve the parent of the strain of overwork and capable of attending to minor matters, while the parent manages the main business.”
- ii. Technicality : Sometimes, the subject-matter on which legislation is required is so technical in nature that the legislator, being himself a common man, cannot be expected to appreciate and legislate on the same, and the assistance of experts may be required. Members of Parliament may be the best politicians but they are not experts to deal with highly technical matters which are required to be handled by experts. Here the legislative power may be conferred on expert to deal with the technical problems, e.g. gas, atomic energy ,drugs, electricity, etc.
- iii. Flexibility: At the time of passing any legislative enactment, it is impossible to foresee all the contingencies, and some provision is required to be made for these unforeseen situations demanding exigent action. A legislative amendment is a slow and cumbersome process, but by the device of delegated legislation, the executive can meet the situation expeditiously, e.g. bank-rate, police regulation export and import, foreign exchange, etc. For that purpose, in many statutes, a ‘removal of difficulty’ clause is found empowering the administration overcome difficulties by exercising delegated power.

- iv. Experiment: The practice of delegated legislation enables the executive to experiment. This method permits rapid utilization of experience and implementation of necessary changes in application of the provisions in the light of such experience, e.g. in road traffic matters, an experiment may be conducted and in the light of its application necessary changes could be made. Delegated legislation thus allows employment and application of past experience.
- v. Emergency: In times of emergency, quick action is required to be taken. The legislative process is not quipped to provide for urgent solution to meet the situation. Delegated legislation is the only convenient remedy. Therefore, in times of war and other national emergencies, such as aggression, break down of law and order, strike, 'bandh', etc. the executive is vested with special and extremely wide powers to deal with the situation. There was substantial growth of delegated legislation during the two World Wars. Similarly, in situation of epidemics, floods, inflation, economic depression, etc. immediate remedial actions are necessary which may not be possible by lengthy legislative process and delegated legislation is the only convenient remedy.
- vi. Complexity of Modern Administration: The complexity of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions. By resorting to traditional legislative process, the entire object may be frustrated by vested interests and the goal of control and regulation over private trade and business may not be achieved at all.
- vii. The practice of empowering the executive to make subordinate legislation within the prescribed sphere has evolved out of practical necessity and pragmatic needs of the modern welfare State.

Nature and Scope of Delegated Legislation:

Delegated legislation means legislation by authorities other than the Legislature, the former acting on express delegated authority and power from the latter. Delegation is considered to be a sound basis for administrative efficiency and it does not by itself amount to abdication of power if restored to within proper limits. The delegation should not, in any case, be unguided and uncontrolled. Parliament and State Legislatures cannot abdicate the legislative power in its essential aspects which is to be exercised by them.

It is only a nonessential legislative function that can be delegated and the moot point always lies in the line of demarcation between the essential and nonessential legislative functions. The essential legislative functions consist in making a law. It is to the legislature to formulate the legislative policy and delegate the formulation of details in implementing that policy. Discretion as to the formulation of the legislative policy is prerogative and function the legislature and it cannot be delegated to the executive.

Discretion to make notifications and alterations in an Act while extending it and to effect amendments or repeals in the existing laws is subject to the condition precedent that essential legislative functions cannot be delegated authority cannot be precisely defined and each case has to be considered in its setting. In order to avoid the dangers, the scope of delegation is strictly circumscribed by the Legislature by providing for adequate safeguards, controls and appeals against the executive orders and decisions.

The power delegated to the Executive to modify any provisions of an Act by an order must be within the framework of the Act giving such power. The power to make such a modification no doubt implies certain amount of discretion but it is a power to be exercised in aid of the legislative policy of the Act and cannot travel beyond it; or cannot run counter to it; or can't certainly change the essential features, the identity, and structure or the policy of the Act.

Under the constitution of India, articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The delegation of legislative power was conceived to be inevitable and therefore it was not prohibited in the constitution. Further, Articles 13(3)(a) of the Constitution of India lays down that law includes any ordinances, order bylaw, rule regulation, notification, etc.

Which if found in violation of fundamental rights would be void. Besides, there are number of judicial pronouncements by the courts where they have justified delegated legislation. For e.g. : In re Delhi Laws Act case¹ ; Vasantlal Magan Bhai v. State of Bombay² ; Avtar Singh v. State of Jammu and Kashmir.

While commenting on indispensability of delegated legislation Justice Krishna Iyer has rightly observed in the case of Arvinder Singh v. State of Punjab⁴ , that the complexities of modern administration are so bafflingly intricate and bristle with details, urgencies, difficulties and need for flexibility that our massive legislature may not get off to a start if they must directly and comprehensively handle legislative business in their plenitude, proliferation and particularization Delegation of some part of legislative power becomes a compulsive necessity for viability.

A provision in a statute which gives an express power to the Executive to amend or repeal any existing law is described in England as “Henry viii Clause” because the King came to exercise power to repeal Parliamentary laws. The said clause has fallen into disuse in England, but in India some traces of it are found here and there, for example, Article 372 of the Constitution authorizes the president of India to adopt pro Constitutional laws, and if necessary, to make such adaptations and modifications, (whether by way of repeal or amendment) so as to bring them in accord with the provisions of the Constitution.

The State Reorganization Act, 1956 and some other Acts similar thereto also contain such a provision. So long as the modification of a provision of statute by the Executive is innocuous and immaterial and does not effect any essential change in the matter.

Classification of Administrative Rule-Making Power Or Delegated Legislation:

Administrative rule-making or delegated legislation in India is commonly expressed by the term “statutory rules and orders”. However, this classification is not exhaustive as it appears

in other forms also, i.e. regulation, notification, bye-law, scheme and direction. These terminologies are confusing because different words are used for the same thing and same words are used for different things.

Title- Based Classification:

- i. **Rule:** The term “rule” is defined in the General Clauses Act, 1897 as a rule made in exercise of power conferred by any enactment and shall include a regulation made as a “rule” under any enactment. These rules may be made applicable to a particular individual or to a general public. It may include rules of procedures as under the Atomic Energy Act, 1948, and also the rules of substantive law.
- ii. **Regulations:** This term is not confined to delegated legislation. It means an instrument by which decisions, orders and acts of the government are made known to public. But in the sphere of administrative rule making, the term relates to a situation where power is given to fix the date for the enforcement of an Act, or to grant exemptions from the Act or to fix prices, etc.
- iii. **Order:** This term is used to cover various forms of legislative and quasi-judicial decisions. Orders may be specific or general. The former refers to administrative action while the latter refers to administrative rule-making.
- iv. **Bye-laws:** The term has been confined to rules made by semi-governmental authorities established under the act of legislatures.
- v. **Directions:** The term is used in two senses. The Constitution gives powers to Central Government to issue directions to State Governments for the execution of its laws. In this sense it has no application to delegated legislation. In the second sense, the term “direction” is an expression of administrative rule-making under the authority of law or rules or orders made there under. These may be recommendatory or mandatory. If mandatory, these have the force of law.
- vi. **Scheme:** The term refers to a situation where the law authorizes the administrative agency to lay down a framework within which the detailed administrative action to proceed.

The Committee on Ministers’ Powers⁵ has recommended for simplification of the nomenclature, confining the term “rule” to the statutory instrument regulating procedure, the term “regulation” to describe the substantive administrative rule-making, and the term “order” to instruments exercising executive and quasi-judicial decisions.

Discretion-based classification (conditional legislation)

In the case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfillment of certain conditions and what is delegated to an outside authority, is the power to determine according to its own judgment whether or not those conditions are fulfilled. In case of delegated legislation proper, some portion of the legislative power of the Legislature is delegated to the outside authority in that, the Legislature, though competent to perform both the essential and ancillary legislative functions, performs only the former and parts with the latter, i.e., the ancillary function of laying down details in favor of another for executing the policy of the statute enacted.

The distinction between the two exists in this that whereas conditional legislation contains no element of delegation of legislative power and is, therefore, not open to attack on the ground of excessive delegation, delegated legislation does confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation.

In Sardar Inder Singh v. State of Rajasthan⁶, it was laid down that when an appropriate Legislature enacts a law and authorizes an outside authority to bring it into force in such area or at such time as it may decide, that is conditional and not delegated legislation. Following this decision in State of Tamil Nadu v. K Sabanayagam⁷, the Supreme Court held:

"The distinction between conditional legislation and delegated legislation is this that, in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective (Hampton and Co. v. U.S.) and the latter involves delegation of rule-making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority.

In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally, leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend.

Thus when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and sub-serve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation."

The Supreme Court said that conditional legislation can be broadly classified into three categories:-

In the first category when the Legislature has completed the task of enacting a Statute, the entire superstructure of the legislation is ready but its future applicability to a given area is left to the subjective satisfaction of the delegate who being satisfied about the conditions indicating the ripe time for applying the machinery of the said Act to a given area exercises that power as a delegate of the parent legislative body.

When the Act itself is complete and is enacted to be uniformly applied in future to all those who are to be covered by the sweep of the Act, the Legislature can be said to have complied its task. All that it leaves to the delegate is to apply the same uniformly to a given area indicated by the parent Legislature itself but at an appropriate time. This would be an act of pure and simple conditional legislation depending upon the subjective satisfaction of the delegate as to when the said Act enacted and completed by the parent Legislature is to be made effective.

As the parent Legislature itself has laid down a binding course of conduct to be followed by all and sundry to be covered by the sweep of the legislation and as it has to act as a binding rule of conduct within that sweep and on the basis of which all their future actions are to be controlled and guided, it can easily be visualized that if the parent Legislature while it enacted such law was not required to hear the parties likely to be affected by the operation of the Act, its delegate exercising an extremely limited and almost ministerial function as an agent of the principal Legislature applying the Act to the area at an appropriate time is also not supposed and required to hear all those who are likely to be affected in future by the binding code of conduct uniformly laid down to be followed by all within the sweep of the Act as enacted by the parent Legislature.

However, there may be second category of conditional legislations wherein the delegate has to decide whether and under what circumstances a completed Act of the parent legislation which has already come into force is to be partially withdrawn from operation in a given area or in given cases so as not to be applicable to a given class of persons who are otherwise admittedly governed by the Act.

When such a power by way of conditional legislation is to be exercised by the delegate a question may arise as to how the said power can be exercised. In such an eventuality if the satisfaction regarding the existence of condition precedent to the exercise of such power depends upon pure subjective satisfaction of the delegate and if such an exercise is not required to be based on the *prima facie* proof of factual data for and against such an exercise and if such an exercise is to uniformly apply in future to a given common class of subjects to be governed by such an exercise and when such an exercise is not to be confined to individual cases only, then even in such category of cases while exercising conditional legislative powers the delegate may not be required to have an objective assessment after considering rival versions on the data placed before it for being taken into consideration by it in exercise of such power of conditional legislation.

Where the delegate proceeds to fill up the details of the legislation for the future which is part of the integrated action of policy-making for the future, it is part of the future policy and is legislative. But where he merely determines either subjectively or objectively - depending upon the "conditions" imposed in the Statute permitting exercise of power by the delegate - there is no legislation involved in the real sense and therefore, applicability of principles of fair play, consultation or natural justice to the extent necessary cannot be said to be foreclosed.

The fact that in such cases of 'conditional legislation' these principles are not foreclosed does not necessarily mean that they are always mandated. In a case of purely ministerial function or in a case where no objective conditions are prescribed and the matter is left to the subjective satisfaction of the delegate no such principles of fair play, consultation or natural justice could be attracted. That is because the very nature of the administrative determination does not attract these formalities and not because the determination is legislative in character.

But there may be a third category of cases wherein the exercise of conditional legislation would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive the rival class of persons who otherwise might have already got statutory benefits under the Act and who

are likely to lose the existing benefit because of exercise of such a power by the delegate. In such type of cases the satisfaction of the delegate has necessarily to be based on objective consideration of the relevant data for and against the exercise of such power.

May be such an exercise may not amount to any judicial or quasi-judicial function, still it has to be treated to be one which requires objective consideration of relevant factual data pressed in service by one side and which could be tried to be rebutted by the other side who would be adversely affected if such exercise of power is undertaken by the delegate.

In such a third category of cases of conditional legislation the Legislature fixes up objective conditions for the exercise of power by the delegate to be applied to past or existing facts and for deciding whether the rights or liabilities created by the Act are to be denied or extended to particular areas, persons or groups. This exercise is not left to his subjective satisfaction nor it is a mere ministerial exercise.

Nature-based classification (exceptional delegation):

Classification of administrative rule-making may also be based on the nature and extent of delegation. The Committee on Ministers' powers distinguished two types of parliamentary delegation:

1. Normal Delegation There are two types of normal delegation:
 - (a) Positive delegation.-Where the limits are clearly defined in the Parent Act, it is called positive delegation.
 - (b) Negative delegation.-Where the delegated power does not include power to do certain things, it is known as negative delegation e.g. power to legislate on matters of policy or power to impose tax.

2. Exceptional Delegation.

Exceptional delegation is also known as Henry VIII clause. Instances of exceptional delegation may be as follows:

- a) Power to legislate on matters of principle.
- b) Power to amend Acts of Parliament.
- c) Power giving such a wide discretion that it is almost impossible to know the limits.
- d) Power to make rules which cannot be challenged in a court of law.

Purpose-based classification:

1. Enabling Acts: - Appointed day clause: under this the executive has to appoint a day for the Act to come into operation.
2. Extension and application Acts: The technique of administrative rule-making may sometimes be used for extension and application of an Act in respect of a territory or for duration of time or for any other such object. Power may be delegated to extend the operation of Act to other territories.
3. Dispensing and Suspending Acts: - To make exemption from all or any provision of the Act in a particular case or class of cases or territory, when circumstances warrant it. These are meant to enable the administration to relieve hardship which may be occasioned as a result of uniform enforcement of law.
4. Alteration Acts: - Technically alteration amounts to amendment, yet it is a wide

tern & includes both modification and amendment. Power to modify Acts has mostly been delegated as a sequel to the power to the power of extension and application of laws. The power of modification is limited to consequential changes, but, it overstepped it suffers challenge on the ground that it is not within the legislative intent of modification. In Queen v. Burah The Privy Council held, that the 9th section of the Act conferring power upon the Lieutenant-Governor to determine whether the Act of any part of it should be applied to a certain district, was a form of conditional legislation and did not amount to delegation of legislative powers. It is like "removing difficulty" so that the various states may coexist.

5. Power to make rules: To carry out the purpose of the Act.
6. Classifying and fixing standard Acts: - Power is given to fix standard of purity, quality or fitness for human consumption.
7. Clarify the provision of the statutes Acts: To issue interpretation on various provision of the enabling Act.

Forms of Delegation:

There are various forms of delegated legislation. The reason for this is that there is no uniform pattern of delegation in the delegating legislations. Although there are various forms of delegation, the parameter for determining the question of validity is the same, that is, the legislature must lay down the policy of the Act. It is therefore that the doctrine of excessive delegation has been invoked in a large number of cases to determine the validity of provisions delegating legislative power.

Some of these cases are discussed here to illustrate the working of the principle. The cases have been classified from the point of view of the nature of the power conferred under following broad categories:

- (a) Amplification of policy.
- (b) Modification.
- (c) Removal of difficulties.
- (d) Inclusion and Exclusion.
- (e) Taxation.

These categories are not mutually exclusive as they are governed by the same over all consideration of the principle of "excessive delegation". The truth, however, remains that due to the compulsions of modern administration; the Courts have allowed extensive delegations of legislative power especially in the area of taxation and welfare legislation. This point will be clear from the following discussion of the cases in which the validity of delegated legislation has been challenged on the ground of excessive delegation.

Amplification of Policy:

It is trite to say that to some extent, delegated legislation involves abandonment of its function by the legislature and enhancement of powers of administration. Many a time, the legislature passes Acts in "skeleton" form containing only the barest of general principles and leaves to the executive the task of not only filling in "details" but even that of amplifying policies.

The legislature often uses broad-worded provisions, giving wide powers to the delegate to make such rules as appear to it to be "necessary" or "expedient" for carrying out the purposes of the Act without laying down any standards to guide the discretion of the delegate and the delegate is in substance given blank cheque to do whatever it likes in the delegated area of authority. In reality, under the skeleton type of legislation, the flesh and blood-not to mention the soul-of the scheme of legislative regulation are left entirely to administrative discretion.

The vires-the limits-of the authority delegated have become so broad as to cover almost all administrative rulemaking within the particular area of legislation. A good example of amplification of policy is Section 3 of the Essential Supplies (Temporary Powers) Act, 1946.

Section 3 of the Act reads as follows:

The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing the equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

The validity of Section 3 was challenged on the ground of excessive delegation. Under this provision the executive was authorized to promulgate delegated legislation not only to fill in details in the statute but even to decide question of policy. However, in Hari Shanker Bagla v. State of Madhya Pradesh¹⁰, the Supreme Court upheld the delegation on the ground that the legislature has laid down the essential principles or policy of the law, namely, -"maintenance or increase of supply of essential commodities and securing equitable distribution and availability at fair prices."

Delivering the judgment, Mahajan, C.J., observed: "The preamble and the body of sections sufficiently formulate the legislative policy and the ambit and the character of the Act is such that the details of that policy can only be worked out by delegating them to a certain authority within the framework of that policy."

In Bagla case¹² the validity of Section 6 of the Essential Supplies (Temporary Powers) Act was also challenged on the ground of excessive delegation of power to the Executive. Section 6 declares that an order made under section 3 shall have effect notwithstanding anything contained in, any Act or instrument other than this Act. It was contended before the Court that the power would have the effect to repeal by implication any existing law and, therefore such a wide power could not be delegated on the authority of the Reference case. Rejecting the contention the Court held that Section 6 does not either expressly or impliedly repeal any of the provisions of the preexisting law.

The purpose is simply to bypass them where they are inconsistent with the provision of the Essential Supplies (Temporary Powers) Act and orders made under it. The Court pointed out that even if it be conceded, for the sake of argument, that an existing law stood repealed by the extents of its repugnancy with the order made under Section 3, by implication, then the repeal "is not by an act of the delegate" but it is by the "legislative act of the Parliament itself", because it is Parliament which has declared in Section 6 that an order made under section 3 "shall have effect notwithstanding any inconsistency in this order with any enactment other than this Act." In this way, judicial sanction was given to a very broad delegation of power.

Sometimes, a provision is made in the statute conferring power on the executive to modify the existing statute itself. This is really a drastic power as it amounts to amendment of the Act which is legislative Act. In this way it makes the executive supreme even over the legislature. But sometimes such power is necessary for flexibility of approach to meet the changing circumstances. In Indian legislative practice the power to modify statutes has mostly been delegated as sequel to the power of extension and application of laws.

Thus, under the powers conferred by the Delhi Laws Act, 1912 the Central Government extended the application of the Bombay Agricultural Debtors' Relief Act, 1947 to Delhi. The Bombay Act was limited in application to the agriculturists whose annual income was less than Rs. 500 but that limitation was removed by the Government. Power of modification has also been given to administrative authorities in cases which may be characterized as "legislation by reference".

This is a device by which the power to modify is delegated to make the adopted statute fit into the adoptive statute. For example, section 21 of Excess Profits Act, 1940 provides that the provisions of the section of Income Tax Act, 1922 mentioned therein shall apply with such modifications as may be made by rules. Varieties of Modification. - In Hari Shanker Bagla v. State of Madhya Pradesh¹⁴ the provision was considered and held valid, which laid down that the delegated legislation made under the enactment would be operative although inconsistent with some other enactment.

In Banarsi Das v. State of Madhya Pradesh, ¹⁵the provision which empowered the delegate to bring in certain sale transactions under the purview of Sales-Tax Act was upheld against the challenge of excessive delegation. In Delhi Laws Act case¹⁶ it was held that power may be conferred on the executive to extend an enactment already in force in one area to other areas with modification as the executive considers fit. But the power to modify the underlying policy of Act is an essential legislative function and therefore delegation of power to modify an Act without any limitation is not valid.

In Lachmi Narain v. Union of India¹⁷ the Court has observed that the power to make "restrictions and modifications" in the enactment sought to be extended is not a separate and independent power but is an integral constituent of the power of extension. This power exhausts itself once the enactment is extended, then the power of modification cannot be exercised again.

The nature and extent of modification has been clarified by the Supreme Court in N.C.J. Mills Co. v. Asstt. Collector, Central Excises.¹⁸ In this case the Court said that the power to modify does not import the power to make essential changes and that "it is confined to alterations of a minor character and no change in principle is involved." In this way, if the changes are not essential in character, the delegation is permissible.

In Sri Ram v. State of Bombay¹⁹, power was given to the government to vary the ceiling area if it was satisfied that it was expedient to do so in public interest. The Court upheld such a broad statement of policy as 'public interest' sufficient to uphold the virus of delegation.

(a) Removal of difficulties-(Henry VIII clause)

Sometimes, power is conferred on the government to modify the existing statute for the purpose of removing difficulties so that it may be brought into full operation. When the legislature passes an Act, it cannot foresee all the difficulties which may arise in

implementing it. Legislature, therefore, introduces in the statute a "removal of difficulty" clause envisaging that government may remove any difficulty that may arise in putting the law into operation.

Generally two types of "removal of difficulties" clauses are found in the Indian statutes. One, a narrow one which empowers the executive to exercise the power to remove difficulties consistent with the provisions of the enabling Act. In such a case, the Government cannot change any provisions of the statute itself; e.g., Section 128 of the States Re-organisation Act, 1956 lays down as under: If any difficulty arises in giving effect to the provisions of this Act, the President may by order do anything not inconsistent with such provisions which appear to him to be necessary or expedient for the purpose of removing difficulty.

If the statute provides so, it is not objectionable. According to Committee on Minister's Powers²⁰ the sole purpose of Parliament in enacting such a provision is "to enable minor adjustments of its own handiworks to be made for the purpose of fitting its principles into the fabric of existing legislation, general or local" Sir Cecil Carr's²¹ view is that the device is draftsman's insurance policy in case he has overlooked something. In exercise of such powers the government cannot modify the Parent Act nor can make any modification which is not consistent with the Parent Act.²²

The other type of "removal of difficulties" clause is very broad and empowers the executive in the guise of removal of difficulties to modify even Parent Act or any other Act. A classic illustration of such clause is found in the Constitution, itself which under Article 392 (1) authorised the President to direct by order that the Constitution would, during such period, as might be specified have effect subject to such adaptations, whether by way of modification, addition or omission, as he might deem to be necessary or expedient.

This is nicknamed as Henry VIII Clause incorporated in the Constitution of India. Similarly, Article 372 of the Constitution conferred power of making adaptations and modifications in the existing law to bring it in accord with the Indian Constitution. However, it may be noted that such a provision is usually for a limited period

(b) Inclusion and Exclusion:

As a matter of common practice, legislature passes law to confer power on the government to bring individuals, bodies or commodities within, or to exempt them from, the purview of a statute. In this way, the range of operation of a statute can be expanded or reduced through the device of delegated legislation.

(i) Range of Inclusion

Sometimes, the legislature after passing the statute makes it applicable, in the first instance to some areas and class of persons, but empowers the government to extend the provisions thereof to different territories, persons, bodies or commodities. The Minimum Wages Act, 1948 has been passed, as mentioned in the preamble, "to provide for fixing minimum wages in certain employment".

The Act applies to the employments listed in the schedule, but the government is empowered to add any other employment thereto and thus to extend the operation of the Act to that employment. The legislature has not laid down any norms on which the government may exercise its power to add any employment to the schedule.

Even then, in *Edward Mills Co. v. State of Ajmer*²³, the Supreme Court held that the provision was valid as the policy was apparent on the face of the Act which was to fix Minimum Wages in order to avoid exploitation of labour in those industries wages were very low because of unorganized labour or other causes. In a number of cases,²⁴ the power to add to the schedule has been upheld.

The Punjab General Sales Tax Act, 1948 levied a Purchase Tax on goods except the items mentioned in the schedule annexed. This meant that if the government added an item to the schedule it became tax exempt. In *Babu Ram v. State of Punjab*²⁵ the Supreme Court upheld the provision against challenge on the basis of excessive delegation.

A statute may empower the executive to expand the range of its operation through methods other than amending schedule. For instance, the Essential Commodities Act, 1955 covers certain specified commodities mentioned in the Act and further gives power to the Central Government to declare any other commodity as 'essential commodity' and thus making the Act applicable to it as well. In *Mohamed Ali v. Union of India*²⁶ the Supreme Court upheld a provision of Employees' Provident Funds Act, 1952 empowering the Central Government to bring within the purview of the Act such establishments as it might specify.

But where the Court does not find any policy for guidance in the statute the provision is held invalid. Thus, in *Hamdard Dawakhana v. Union of India*²⁷, section 3 of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 was challenged. This provision prohibited an advertisement suggesting that a medicine could be used for curing any venereal disease or any other disease specified in the rules. The Court held that no standards or principles had been laid down in this Act for specifying Many other disease" in the rules and hence the power delegated to make rules was invalid.

(ii) Range of exclusion.

There are certain statutes which give power to the government to exempt from their operation any persons, institutions or commodities. Such a provision is invariably upheld.

For instance, in *Jalan Trading Co. v. Mill Mazdoor Union*²⁸, the Supreme Court held the provision valid, which authorised the Central Government to exempt any establishment from the range of the operation of the Act having regard to the financial position and relevant factors. In *Registrar Co-operative Societies v. K Kunjabmu*²⁹ the Court upheld the validity of section 60 of the Madras Co-operative Societies Act, 1932 which was a 'near Henry VIII clause.'³⁰ Section 60 provides as follows:

The State Government may by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be prescribed in the order. Such a broad clause was held valid as the Court found the policy of the Act stated in the preamble, viz., to facilitate the formation and working of co-operative societies.

(c) Taxation

Taxing power is an inherent power of any State. In a democratic system, taxation is

exclusively the function of legislature. The fundamental canon of democracy is "no taxation without representation." Taxation is, therefore, a strong weapon in the hand of legislatures to control the executive. However, delegation has permeated even the tax area.

When legislature passes the statute to levy a tax, it leaves some elements of taxing power to the executive. The doctrine of excessive delegation is applied by the Court to determine the validity of the delegation of taxing power. The permissible limits of a valid delegation of taxing power can be comprehended by analyzing the individual cases decided by the Supreme Court. Power may be delegated to government to exempt an item from the purview of tax. In Orient Weaving Mills v. Union of India, a provision authorizing the Central Government to exempt any excisable goods from duty was held valid against the plea of excessive delegation.

Power may be given to the Central Government to bring additional transactions within the purview of a tax. In Banarsi Das v. State of Madhya Pradesh³², delegation of power to the government to bring any goods within the purview of Sales-tax Law was upheld.

Delegated Legislation in Britain

(i) Absolute Delegation:

In Britain, there prevails the principle of sovereignty of Parliament. This doctrine implies that Parliament is supreme and has unlimited power to make any law. Consequently Courts cannot question parliamentary law on any ground. In R. v. Halliday³³, it has been rightly observed, "The British Constitution has entrusted to the two Houses of Parliament, subject to the assent of the king, an absolute power untrammelled by any instrument obedience to which may be compelled by some judicial body."

Parliament may accordingly delegate to any extent its powers of lawmaking to an outside authority. The limits of delegated legislation In the British Constitution, if there are to be any, therefore remain a question of policy and not a justifiable issue to be decided by the courts of law. The doctrine of excessive delegation has no application in Britain.

(ii) Remedy in the hands of Parliament:

An important point to note is that in Britain the remedy lies in the hands of Parliament itself. Parliament can control the delegation of power by it if it so pleases. There is no external agency to compel Parliament to do so. It is not necessary for Parliament to lay down in a delegating statute any standard, policy or norm for guiding the delegate in exercising the power entrusted to him. The delegate may be left free to draft delegated legislation in any way he likes.

He can evolve his own policy or standard in exercising delegated power. However, sovereignty of Parliament does not mean that there are no principles to which the practice of delegation must conform. It has been suggested by the Committee on Minister's Powers: "The precise limits of law-making power which Parliament intends to confer on a Minister should always be expressly defined in clear language by the statute which confers it: When discretion is conferred its limits should be defined with equal clearness." The committee, it should be noted, expressed a principle basically similar to standard requirement.

Delegated Legislation in U.S.A.

(i) Delegation in Theory:

In American Constitution we find a different principle in operation. The position is different in the sense that under the Constitution of U.S.A., delegated legislation is not recognized in theory because of two doctrines:

- (a) The doctrine of separation of powers: The U.S. Constitution is based on the doctrine of separation of powers. By Article 1, legislative power is expressly conferred on the Congress, and the courts have power to interpret the Constitution and declare any statute unconstitutional if it does not conform to their views of the Constitution. In the leading case of *Field v. Clark*³⁴ the American Supreme Court observed: "The Congress cannot delegate legislative power to the President is a principle universally recognized and vital to the integrity and maintenance of the system of government ordained by the Constitution."
- (b) *Delegatus non potest delegare* : A delegate cannot further delegate Besides the doctrine of separation of powers, the U.S. Supreme Court has also invoked the doctrine of *delegatus non potest delegare* against delegation by the Congress. The doctrine means that a delegate cannot further delegate its powers. As the Congress gets power from the people, and is a delegate of the people in that sense, it cannot further delegate its legislative power to the executive or to any other agency, Legislatures stand in this relation to the people whom they represent. Hence, it is a cardinal principle of representative government, that legislature cannot delegate the power to make laws to any other body or authority.³⁶ *Delegatus non protest delegare* is a fundamental principle of delegation jurisprudence. Clarifying the scope and limit of this principle, the Court held that the Central Government can delegate any of its statutory power to the State Government, if permitted by law. However, two factors would determine its validity: (i) whether sub-delegation is authorized by statute either expressly or impliedly, (ii) whether, excise of sub-delegation is within the scope and limit of delegation, meaning thereby that even if statutory power to delegate functions is expressed in wide general terms it will not necessarily extend to everything. The Court explained that implied sub-delegation is commonly not the characteristic found in peace time legislation.³⁷ Applying the principle, the Court held that if a guideline for determining *inter se* seniority was to be laid down, the State alone could do so in terms of Article 162 of the Constitution.

(ii) Delegation in Practice

In theory, it was not possible for the Congress to delegate its legislative power to the executive. However, strict adherence to the non-delegation doctrine was not practicable. Due to increase in governmental functions, it was impossible for the Congress to enact all the statutes with all particular details. The Supreme Court recognized this reality and tried to create "a balance between the two conflicting forces: doctrine of separation of powers barring delegation and the inevitability of delegation due to the exigencies of the modern

government. The most that can be asked under the separation of powers doctrine is that the Congress lay down the general policy and standards that animate the law, leaving the agency to refine those standards, 'fill in the blanks', or apply the standards to particular cases.⁴⁰ Thus, pragmatic considerations have prevailed over theoretical objections. With the change in time, the courts have relaxed the rigors of the doctrine of separation of powers and permitted broad delegation of powers provided that the Congress itself should lay down policies or standards for the guidance of delegate. The Congress should not give a blank cheque to the Executive to make any rules it likes. If this is done, it would amount to an abdication of functions by the Congress. The point to be noted is that if Congress transfers to others "the essential legislative functions with which it is vested" the statute doing so will be held unconstitutional.

The test in the words of Justice Cardozo is : "to uphold the delegation there is need to discover in terms of the Act a standard reasonably clear whereby the discretion must be governed." If the statute contains no standard to limit delegation of power, it amounts to giving a blank cheque to make law in the delegated area of authority and, thus, the agency rather than the Congress becomes primary legislator.

The working of this rule is illustrated with reference to a few cases. In *Panama Refining Co. v. Ryan*,⁴² popularly known as the Hot Oil case, Congress authorized the President to ban oil in inter-state-commerce when it was produced in excess of quota fixed by each state. The policy of the Act was "to encourage national industrial recovery" and "to foster fair competition".

The majority of the court held that "the Congress has declared no policy, has established no standard, has laid down no rule". Accordingly the delegation in favor of the President was impermissible and the Act was unconstitutional.

Delegated Legislation in India

(i) Pre-Constitution Period.

As regards pre-Constitution period relating to delegated legislation in India, *Queen v. Burah*⁴³ is considered to be the leading authority propounding the doctrine of conditional legislation. In 1869, the Indian legislature passed an Act purporting to remove the district of Garo Hills from the jurisdiction of the civil and criminal courts and the law applied therein, and to vest the administration of civil and criminal justice within the same district in such officers as the Lieutenant-Governor of Bengal might appoint for the purpose.

By section 9, the Lieutenant Governor was empowered from time to time, by notification in the Calcutta Gazette, to extend, mutatis mutandis, all or any of the provisions contained in the Act to the Jaintia, Naga and Khasia Hills and to fix the date of application thereof as well. By a notification dated October 14, 1871, the Lieutenant Governor extended all the provisions of notification which was challenged by Burah who was convicted of murder and sentenced to death.

The High Court of Calcutta by a majority upheld the contention of the appellant and held that section 9 of the Act was ultra vires the powers of the Indian Legislature. In the opinion of the Court, the Indian Legislature was a delegate of the Imperial Parliament and as such further delegation was not permissible.

Thereupon the Government appealed to the Privy Council. The Act was held valid by the Privy Council. It was held that the Indian Legislature was not an agency or delegate of Imperial Parliament and it had plenary powers of legislation as those of Imperial Parliament. It agreed that the Governor-General in Council could not, by legislation create a new legislative power in India not created or authorized by the Council's Act of Imperial Parliament.

However, in fact it was not done. It was a case of only conditional legislation, as the Governor was not empowered to pass new laws but merely to extend the provisions of the Act already passed by the competent legislature upon fulfillment of certain conditions.

The decision of the Privy Council is open to two different interpretations. One interpretation is that since the Indian legislature is not a delegate of British Parliament, there is no limit on the delegation of legislative power. But the other interpretation is that since Privy Council has validated only conditional legislation, therefore, delegation of legislative power is not permissible.

The question of constitutional validity of delegation of powers came for consideration before the Federal Court in *Jatindra Nath Gupta v. Province of Bihar*⁴⁵. In this case the validity of section 1 (3) of Bihar Maintenance of Public Order Act, 1948 was challenged on the ground that it empowered the Provincial Government to extend the life of the Act for one year with such modification as it may deem fit.

The Federal Court held that the power of extension with modification is not a valid delegation of legislative power because it is an essential legislative function which cannot be delegated. In this way for the first time it was ruled that in India Legislative powers cannot be delegated.

(ii) Post-Constitution Period

- (a) Constitutionality of Delegated Legislation. - As the decision in *Jatindra Nath* case had created confusion, the question of permissible limits of delegation of legislative power became important. Therefore, in order to get the position of law clarified, the President of India sought the opinion of Supreme Court under Article 143 of the Constitution. The question of law which was referred to the Supreme Court was of great Constitutional importance and was first of its kind. The provision of three Acts, viz.,
- (i) Section 7 of the Delhi Laws Act, 1912;
 - (ii) Section 2 of the Ajmer-Mewar (Extension of Laws) Act, 1947; and
 - (iii) Section 2 of the Part C States (Laws) Act, 1950, was in issue in *Delhi Laws Act Case, Re.*⁴⁷

There were a few Part C States. Delhi was one of them. Part C States were under the direct administration of the Central Government as they had no legislature of their own. Parliament had to legislate for these States. It was, therefore, that Parliament passed a law, the Part C States (Laws) Act, 1950.

The Central Government was authorized by section 2 of the Part C States (Laws) Act, 1950 to extend to any Part C State with such modifications and restriction as it thinks fit, any enactment in force in a Part A State, and while doing so, it could repeal or amend any

corresponding law (other than a central law) which might be in force in the Part C States. Really, it was a very sweeping kind of delegation. The Supreme Court was called upon to determine the constitutionality of this provision.

All the seven judges who participated in the reference gave seven separate judgments "exhibiting a cleavage of judicial opinions on the question of limits to which the legislature in India should be permitted to delegate legislative power".⁴⁸ By a majority, the specific provision in question was held valid subject to two limitations:

(1) The executive cannot be authorized to repeal a law in force and thus, the provision which authorized the Central Government to repeal a law already in force in the Part C States was bad; and (2) By exercising the power of modification, the legislative policy should not be changed, and thus, before applying any law to the Part C State the Central Government cannot change the legislative policy.

(b) Principles laid down in the Reference Case.

In Re Delhi Laws Act may be said to be "Siddhanatawali" i.e. principles as regards constitutionality of delegated legislation. The importance of the case cannot be underestimated inasmuch as on the one hand, it permitted delegation of legislative power by the legislature to the executive, while on the other hand; it demarcated the extent of such permissible delegation of power by the legislature.

In this case it was propounded:

(a) Parliament cannot abdicate or efface itself by creating a parallel legislative body.

(b) Power of delegation is ancillary to the power of legislation.

(c) The limitation upon delegation of legislative power is that the legislature cannot part with its essential legislative power that has been expressly vested in it by the Constitution. Essential legislative power means laying down policy of law and enacting that policy into a binding rule of conduct.

(d) Power to repeal is legislative and it cannot be delegated. The theme of Re Delhi Laws Act case is that essential legislative function cannot be delegated whereas non-essential can be delegated.

Conclusion

Delegated or subordinate legislation means rules of law made under the authority of an Act of Parliament. Although law making is the function of legislature, it may, by a statute, delegate its power to other bodies or persons. The statute which delegates such power is known as Enabling Act. By Enabling Act the legislature, lays down the broad guidelines and detailed rules are enacted by the delegated authority.

Delegated legislation is permitted by the Indian Constitution. It exists in form of bye rules, regulations, orders, bye laws etc. There are many factors responsible for its increase: Parliament and State Legislature are too busy to deal with the increasing mass of legislations, which are necessary to regulate daily affairs.

Modern legislation requires technicality and expertise knowledge of problems of various fields, our legislators, who are politicians are not expected to have such knowledge. Subordinate legislations are more flexible, quickly and easily amendable and revocable than ordinary legislation, in case of failure or defect in its application. When contingencies arise which were not forceable at the time of making it, subordinate legislation can pass an act quickly to handle them. Quick, effective and confidential decisions are not possible in body of legislatives.

So, executives are delegated with power to make rules to deal with such situations. These are the main factors, besides many others, for the fast increase in delegated legislation today. Justice P B Mukerjee has stated “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 constitutional jurists.

It is praised as a necessity and felt as inevitable in our world where social economic technological psychological and administrative speed outstrips the spacious and placid traditional legislative ideals and processes. It is criticized as an abdication of power by legislators and an escape from the duty imposed on them by voters of democracy. In England the king lost the legislative power at Runnymede and parliament lost legislative at stampede that followed since to provide the government for the country through administration and bureaucracy”.

Control over Delegated Legislation:

Effectiveness of Parliamentary Control over Delegated Legislation

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Administrative law is the bye-product of the increasing socio-economic functions of the State and the increased powers of the government. Administrative law as a separate branch of legal discipline, especially in India, came to be recognized by the middle of the 20th century.

Today the administration is ubiquitous and impinges freely and deeply on every aspect of an individual's life. Therefore, administrative law has become a major area for study and research. Administrative Law has been characterized as the most outstanding legal development of the 20th century. Administrative Law is that branch of the law, which is concerned, with the composition of powers, duties, rights and liabilities of the various organs of the government.

Administrative law has become very necessary in the developed society, as the relationship of the administrative authorities and the people have become very complex. In order to regulate these complex relations, some law has become the need of the hour; which may bring about regularity, certainty and may pose a check on the misuse of powers vested in the administration.

Administrative law can be traced to the well-organized administration under the Mauryas and Guptas, followed by the administrative system of Mughals; to the administration under the East India Company, the precursor of the modern administrative system . But in the modern

society, the functions of the state are manifold. In fact, the modern state is regarded as the custodian of social welfare and consequently, there is not a single field of activity which is free from direct or indirect interference by the state.

Along with duties and powers the state has to shoulder new responsibilities. The growth in the range of responsibilities of the state thus ushered in an administrative age and an era of Administrative law. Every delegate is subject to the authority and control of the principal and the exercise of delegated power can always be directed, corrected or cancelled by the principal.

Hence parliamentary control over delegated legislation should be a living continuity as a constitutional remedy . The fact is that due to the broad delegation of legislative powers and the generalised standard of control also being broad, judicial control has shrunk, raising the desirability and the necessity of parliamentary control. The Parliamentary control over delegated legislation in USA and India is not as effective as in UK. In UK the laying off procedure is followed effectively because there all administrative rule-making is subjected to the control of Parliament through the Select Committee on Statutory instruments.

In India the control is not very much effective. There are no statutory provisions regarding ‘laying’ of delegated legislation. Though the working of the Scrutiny committees is not very effective, yet they have proved to be an effective body in examining and improving upon the legislative control over delegated legislation. The practice of delegated legislation enables the executive to experiment. This method permits rapid utilization of experience and implementation of necessary changes in application of the provisions in the light of such experience.

Experiments can be made and experience can be profitability utilized. A law passed by Parliament has to be in force till the next session of the Parliament when it can be repealed. In situations, which require frequent adjustments, experimentation is the only answer. The underlying object of parliamentary control is to keep watch over the rule-making authorities and also to provide an opportunity to criticize them if there is abuse of power on their part. Parliament has control in that the enabling or parent Act passed by Parliament sets out the framework or parameters within which delegated legislation is made.

In India, the question of control on rule-making power engaged the attention of the Parliament. The legislative control over administration in parliamentary countries like India is more theoretical than practical. In reality, the control is not that effective as it ought to be.

One of the most significant developments of the present century is the growth in the legislative powers of the executives. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law. We know that there is no such general power granted to the executive to make law. The work of executive is limited to supplement the law under the authority of legislature.

This type of activity has been described as delegated legislation or subordinate legislation. Delegated legislation refers to all law-making, which takes place outside the legislature and is generally expressed as rules, regulations, bye-laws, order, schemes, etc. In other words when an instrument of a legislative nature is made by an authority in exercise of power delegated or conferred by the legislature, it is known as delegated legislation.

In modern times the sheer bulk of legislation required to effect the business of government is so great that if the legislative function were performed by Parliament alone, then the law-making machine would become choked and grind to a standstill.

Delegated Legislation

Meaning:

Delegation of powers means the powers passed on by the higher authority to the lower authority to make laws. Delegated legislation means the powers given by the legislature to the executive or administration to enact certain laws. The simple meaning of the expression “delegated legislation” may be:

When the function of the legislation is entrusted to organs other than the legislature by the legislature itself, the legislation made by such organs is known as delegated legislation.

According to M.P. Jain, “the term ‘delegated legislation’ is used in two senses: (a) exercise by a subordinate agency of the legislative power delegated to it by the legislature, or (b) the subsidiary rules themselves which are made by the subordinate authority in pursuance of the power conferred on it by the legislature.”

The concept can be further substantiated with the help of an example. The Parliament of UK itself made the Road Traffic Act, 1930, and so the legislation is original (rather than delegated). Section 30 of that Act provides that, “the Minister [of Transport and Civil Aviation] may make regulations as to the use of motor vehicles, their construction and equipment.” Accordingly the Minister made the Motor Vehicles (Construction and Use) Regulations, 1955. The regulations were made by someone other than Parliament and are, therefore, delegated (rather than original) legislation.

Delegated legislation, also referred to as secondary legislation, is legislation made by a person or body other than Parliament. Parliament, through an Act of Parliament, can permit another person or body to make legislation. An Act of Parliament creates the framework of a particular law and tends only to contain an outline of the purpose of the Act. By Parliament giving authority for legislation to be delegated it enables other persons or bodies to provide more detail to an Act of Parliament.

Parliament thereby, through primary legislation (i.e. an Act of Parliament), permit others to make law and rules through delegated legislation. The legislation created by delegated legislation must be made in accordance with the purpose laid down in the Act.

Factors responsible for the growth of Delegated Legislation:

Delegated legislation is not a new phenomenon. Ever since the statutes came to be made by the Parliament, delegated legislation also came to be made by an authority to which the power was delegated by Parliament. There has been always a need for delegated legislation.

The factors leading to the growth of delegated legislation may be summarized as below:

Parliamentary pressure

The bulk of the business of the Parliament has increased and it has no time for the consideration of complicated and technical matters. The Parliament cannot provide the society with the requisite quality and quantity of legislation because of lack of time. Most of the time of the Parliament is devoted to political matters, matters of policy and particularly foreign affairs.

To meet emergency

Certain emergency situations may arise which necessitate special measures. In such cases speedy and appropriate action is required. The Parliament cannot act quickly because of its political nature and because of the time required by the Parliament to enact the law. In such cases quick action needs to be taken. In times of war and other national emergencies, the executive is vested with special and extremely wide powers to deal with the situation. There was substantial growth of delegated legislation during the two world wars.

Technicality of subject-matter

Certain matters covered by delegated legislation are of a technical nature which requires handling by experts. In such cases it is inevitable that powers to deal with such matters is given to the appropriate administrative agencies to be exercised according to the requirements of the subject matter. Parliament cannot provide for such matters as the members are at best politicians and not experts in various spheres of life. Therefore, it is convenient for the legislature to confine itself to policy statements only, as the legislators are generally ignorant of legal and technical skills.

Expediency and flexibility

The practice of delegated legislation introduces flexibility in the law. At the time of passing any legislative enactment, it is impossible to foresee all the contingencies. Legislative amendment is a slow and cumbersome process, but with the aid of delegated legislation, the executive can meet the situation expeditiously .

To experiment

The practice of delegated legislation enables the executive to experiment. This method permits rapid utilization of experience and implementation of necessary changes in application of the provisions in the light of such experience. Experiments can be made and experience can be profitably utilized. A law passed by Parliament has to be in force till the next session of the Parliament when it can be repealed. In situations, which require frequent adjustments, experimentation is the only answer.

To meet unforeseen contingencies

Parliament while deciding upon a certain course of action cannot foresee the difficulties, which may be encountered in its execution. Accordingly various statutes contain a 'removal of difficulty clause' empowering the administration to remove such difficulties by exercising

the powers of making rules and regulations. These clauses are always so worded that very wide powers are given to the administration.

Merits of Delegated Legislation

- (i) Saves parliamentary time.
- (ii) Government Ministers often consult interested bodies and parties before drafting statutory instruments.
- (iii) Delegated legislation is more flexible than an Act of Parliament. It can be passed quickly and easily amended or revoked, so that the law is up to date. Therefore, it allows rapid change.
- (iv) Delegated legislation helps in removing the difficulty clause and meet unforeseen emergencies expeditiously.
- (v) Also helps in meeting situations of emergency and thus helps in reducing parliamentary pressure.

Demerits of Delegated Legislation

- (i) Delegated legislation is not well publicized in contrast to debates on Bills in Parliament.
- (ii) Parliament has insufficient time to scrutinize the laws. Parliament is not reviewing legislation properly.
- (iii) Sub-delegation of powers a further problem, which causes complexity and confusion. It is impossible for anyone to keep abreast of all delegated legislation.
- (iv) The large volume of delegated legislation produced every year (some 3,000 statutes annually) means that it is very difficult for Members of Parliament, let alone the general public, to keep up to date with the present law. This is exacerbated by the fact that delegated legislation is made in private, unlike Acts of Parliament which are made following public debates in Parliament.

One of the most significant developments of the present century is the growth in the legislative powers of the executive. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law. We know that there is no such general power granted to the executive to make law; it only supplements the law under the authority of legislature. Such type of power is known as delegated legislation.

The underlying object of parliamentary control is to keep watch over the rule-making:

Authorities and also to provide an opportunity to criticize them if there is abuse of power on their part. Parliament has control in that the enabling or parent Act passed by Parliament sets out the framework or parameters within which delegated legislation is made. In India, the question of control on rule-making power engaged the attention of the Parliament.

Every delegate is subject to the authority and control of the principal and the exercise of delegated power can always be directed, corrected or cancelled by the principal. Hence parliamentary control over delegated legislation should be a living continuity as a constitutional remedy. The fact is that due to the broad delegation of legislative powers and the generalized standard of control also being broad, judicial control has shrunk, raising the desirability and the necessity of parliamentary control.

With regard to the control of the legislature over delegated legislation, M.P. Jain states:

In a parliamentary democracy it is the function of the legislature to legislate. If it seeks to delegate its legislative power to the executive because of some reasons, it is not only the right of the Legislature, but also its obligation, as principal, to see how its agent i.e. the Executive carries out the agency entrusted to it.

Since it is the legislature which grants legislative power to the administration, it is primarily its responsibility to ensure the proper exercise of delegated legislative power, to supervise and control the actual exercise of this power, and ensure the danger of its objectionable, abusive and unwarranted use by the administration.

In U.S.A., the control of the Congress over delegated legislation is highly limited because neither is the technique of “laying” extensively used nor is there any Congressional Committee to scrutinise it. This is due to the constitutional structurization in that country in which it is considered only the duty of courts to review the legality of administrative rule-making.

In England, due to the concept of Parliamentary sovereignty, the control exercised by Parliament over administrative rule-making is very broad and effective. Parliamentary control mechanism operates through “laying” techniques because under the provisions of the Statutory Instruments Act, 1946, all administrative rule-making is subject to the control of Parliament through the Select Committee on Statutory Instruments . Parliamentary control in England is most effective because it is done in a non-political atmosphere and the three-line whip does not come into operation.

In India parliamentary control of administrative rule-making is implicit as a normal constitutional function because the executive is responsible to the Parliament. There are three types of control exercised:

Direct General Control

Direct but general control over delegated legislation is exercised:

(a) Through the debate on the act which contains delegation. Members may discuss anything about delegation including necessity, extent, type of delegation and the authority to whom power is delegated.

(b) Through questions and notices. Any member can ask questions on any aspect of delegation of legislative powers and if dissatisfied can give notice for discussion under Rule 59 of the Procedure and Conduct of Business in Lok Sabha Rules.

(c) Through moving resolutions and notices in the house. Any member may move a

resolution on motion, if the matter regarding delegation of power is urgent and immediate, and reply of the government is unsatisfactory.'

Direct special control

This control mechanism is exercised through the technique of "laying" on the table of the House rules and regulations framed by the administrative authority. The notable use of this technique was made in the Reorganization Acts of 1939 to 1969, which authorized the President to reorganize the executive government by administrative rule-making.

In England the technique of laying is very extensively used because all the administrative rule-making is subject to the supervision of Parliament under the Statutory Instruments Act, 1946 which prescribes timetable. The most common form of provision provides that the delegated legislation comes into immediate effect but is subject to annulment by an adverse resolution of either house.

By Section 4 of the Statutory Instruments Act, 1946, where subordinate legislation is required to be laid before Parliament after being made, a copy shall be laid before each House before the legislation comes into operation . However, if it is essential that it should come into operation before the copies are laid, it may so operate but notification shall be sent to the Lord Chancellor and the Speaker of the House of Commons explaining why the copies were not laid beforehand. Under Section 6 of the Statutory Instruments Act, 1946, the draft of any statutory instrument should be laid before the parliament.

Laying on Table

In almost all the Commonwealth countries, the procedure of 'Laying on the Table' of the Legislature is followed. It serves two purposes: firstly, it helps in informing the legislature as to what all rules have been made by the executive authorities in exercise of delegated legislation, secondly, it provides a forum to the legislators to question or challenge the rules made or proposed to be made.

Types of 'Laying'

The Select Committee on delegated Legislation summarized the laying procedure under following heads :

Laying without further provision for control.

In this type of laying the rules and regulations come into effect as soon as they are laid. It is simply to inform the House about the rules and regulations.

Laying with immediate effect but subject to annulment:

Here the rules and regulations come into operation as soon as they are laid before the Parliament. However, they cease to operate when disapproved by the Parliament.

Laying subject to negative resolution

In this process the rules come into effect as soon as they are laid before the Parliament, but shall cease to have effect if annulled by a resolution of the House.

Laying subject to affirmative resolution

This technique takes two forms: firstly, that the rules shall have no effect or force unless approved by a resolution of each House of Parliament, secondly, that the rules shall cease to have effect unless approved by an affirmative resolution.

Laying in draft subject to negative resolution

Such a provision provides that when any Act contains provision for this type of laying the draft rules shall be placed on the table of the House and shall come into force after forty days from the date of laying unless disapproved before that period.

Laying in draft subject to affirmative resolution

In this type of laying the instruments or draft rules shall have no effect unless approved by the House.

In India, there is no statutory provision requiring ‘laying of’ of all delegated legislation . In the absence of any general law in India regulating laying procedure, the Scrutiny Committee made the following suggestions:

- (i) All Acts of Parliament should uniformly require that rules be laid on the table of the House ‘as soon as possible’.
- (ii) The laying period should uniformly be thirty days from the date of final publication of rules; and
- (iii) The rule will be subject to such modifications as the House may like to make.

Legal consequences of non-compliance with the laying provisions

In England the provisions of Section 4(2) of the Statutory Instruments Act, 1946 makes the laying provision mandatory for the validation of statutory instruments . In India, however, the consequences of non-compliance with the laying provisions depend on whether the provisions in the enabling Act are mandatory or directory.

In **Narendra Kumar v. Union of India**, the Supreme Court held that the provisions of Section 3(5) of the Essential Commodities Act, 1955, which provided that the rules framed under the Act must be laid before both Houses of Parliament, are mandatory, and therefore Clause 4 of the Non-Ferrous Control Order, 1958 has no effect unless laid before Parliament.

However, in **Jan Mohammad v. State of Gujarat**, the court deviated from its previous stand. Section 26(5) of the Bombay Agricultural Produce Markets Act, 1939 contained a laying provision but the rules framed under the Act could not be laid before the Provincial legislature in its first session as there was then no functioning legislature because of World War II emergency. The rules were placed during the second session. Court held that the rules remained valid because the legislature did not provide that the non-laying at its first session would make the rules invalid.

Even if the requirement of laying is only directory and not mandatory, the rules framed by the administrative authority without conforming to the requirement of laying would not be permissible if the mode of rule-making has been violated.

Indirect control

Indirect control is exercised by Parliament through its Committees. With a view to strengthen Parliamentary control over delegated legislation, Scrutiny Committees were established . In

UK and India, there are Standing Committees of Parliament to scrutinise delegated legislation. In the USA, on the other hand, there is no equivalent to such committees, the responsibility being diffused. The responsibility is shared but a host of committees – standing committees in each House of Congress, committees on government operation in each house, and some other joint bodies like the committee on atomic energy.

In England, the Select Committee on Statutory Instruments was established by the House of Commons in 1944 . In 1950, the Law Minister made a suggestion for the establishment of a Committee of the House on the pattern of the Select Committee on Statutory Instruments, 1944, to examine delegated legislation and bring to the notice of the House whether administrative rule-making has exceeded the intention of the Parliament or has departed from it or has affected any fundamental principle.

Such a committee known as the Committee on Subordinate Legislation of Lok Sabha was appointed on December 1, 1953 . The main functions of the Committee are to examine:

- i) whether the rules are in accordance with the general object of the Act,
- ii) whether the rules contain any matter which could more properly be dealt with in the Act,
- iii) whether it is retrospective,
- iv) whether it directly or indirectly bars the jurisdiction of the court, and questions alike. The Committee has between 1953 and 1961, scrutinized about 5300 orders and rules has submitted 19 reports .
There is also a similar Committee of the Rajya Sabha which was constituted in 1964. It discharges functions similar to the Lok Sabha Committee.

Recommendations by the committee on subordinated legislation:

The Committee on Subordinate Legislation has made the following recommendation in order to streamline the process of delegated legislation in India.

- (i) Power of judicial review should not be taken away or curtailed by rules.
- (ii) A financial levy or tax should not be imposed by rules.
- (iii) Language of the rules should be simple and clear and not complicated or ambiguous.
- (iv) Legislative policy must be formulated by the legislature and laid down in the statute and power to supply details may be left to the executive, and can be worked out through the rules made by the administration.
- (v) Sub-delegation in very wide language is improper and some safeguards must be provided before a delegate is allowed to sub-delegate his authority to another functionary.
- (vi) Discriminatory rules should not be framed by the administration.
- (vii) Rules should not travel beyond the rule-making power conferred by the parent Act.
- (viii) There should not be inordinate delay in making of rules by the administration.

(ix) The final authority of interpretation of rules should not be with the administration.

(x) Sufficient publicity must be given to the statutory rules and orders.

The working of the Committee is on the whole satisfactory and it has proved to be a fairly effective body in properly examining and effectively improving upon delegated legislation in India. Sir Cecil Carr aptly remarks: "It is evidently a vigorous and independent body."

Therefore, legislature exercises its control over the delegated legislation or the rule-making power by these two methods: namely, 'laying' procedure and via Scrutiny committees. However, to what extent these two methods are effective in posing a check and control over delegated legislation, is the question which needs to be taken into consideration. The effectiveness of parliamentary control over delegated legislation has been discussed in the next chapter.

Effectiveness of Parliamentary Control over Delegated Legislation **Is Parliamentary control really effective?**

In India

The legislative control over administration in parliamentary countries like India is more theoretical than practical. In reality, the control is not that effective as it ought to be. The following factors are responsible for the ineffectiveness of parliamentary control over delegated legislation in India :

- (i) The Parliament has neither time nor expertise to control the administration which has grown in volume as well as complexity.
- (ii) The legislative leadership lies with the executive and it plays a significant role in formulating policies.
- (iii) The very size of the Parliament is too large and unmanageable to be effective.
- (iv) The majority support enjoyed by the executive in the Parliament reduces the possibility of effective criticism.
- (v) The growth of delegated legislation reduced the role of Parliament in making detailed laws and increased the powers of bureaucracy.
- (vi) Parliament's control is sporadic, general and mostly political in nature.
- (vii) Lack of strong and steady opposition in the Parliament have also contributed to the ineffectiveness of legislative control over administration in India.
- (viii) There is no automatic machinery for the effective scrutiny on behalf of the Parliament as a whole; and the quantity and complexity are such that it is no longer possible to rely on such scrutiny.

In England

In England the technique of laying is very extensively used because the administrative delegation is subject to the supervision of the parliament under the Statutory Instruments Act, 1946, which prescribes a timetable. The most common form of provision provides that the delegated legislation comes into immediate effect but is subject to annulment by an adverse resolution of either House.

In U.S.A

In U.S.A., the control of the Congress over delegated legislation is highly limited because neither is the technique of “laying” extensively used nor is there any Congressional Committee to scrutinise it.

Recommendations

- (i) The precise limits of the law-making power which Parliament intends to confer on a Minister should always be expressly defined in clear language by the statute which confers it, when discretion is conferred, its limits should be defined with equal clearness.
- (ii) The use of the so-called “Henry VIII Clause” conferring power on a Minister to modify the provisions of Acts of Parliament should be abandoned in all but the most exceptional cases, and should not be permitted by Parliament.
- (iii) The “Henry VIII Clause” should never be used except for the sole purpose of bringing an Act into operation; and should be subject to a time limit of one year from the passing of the Act.
- (iv) The use of clauses designed to exclude the jurisdiction of the Courts to enquire into the legality of a regulation or order should be abandoned in all but the most exceptional cases.
- (v) Enabling Act should contain express provisions that the rules made there-under would be subject to such modifications as the House may like to make.

Conclusion

If in India parliamentary control over delegated legislation is to be made a living continuity, it is necessary that the role of the committees of the Parliament must be strengthened and a separate law like the Statutory Instruments Act, providing for uniform rules of laying and publication, must be passed. The committee may be supplemented by a specialized official body to make the vigilance of delegated legislation more effective. Besides this other measures should be taken to strengthen the control of Parliament over delegated legislation.

The Parliamentary control over delegated legislation in USA and India is not as effective as in UK. In UK the laying off procedure is followed effectively because there all administrative rule-making is subjected to the control of Parliament through the Select Committee on Statutory instruments. In India the control is not very much effective. There are no statutory provisions regarding ‘laying’ of delegated legislation.

Though the working of the Scrutiny committees is not very effective, yet they have proved to be an effective body in examining and improving upon the legislative control over delegated legislation.

JUDICIAL CONTROL OF DELEGATED LEGISLATION

Under Indian Law

The delegated legislation does not go beyond the reach of the judicial review of the Supreme Court and of the High Courts. Judiciary exercises effective control over delegated legislation in India. The validity of delegated legislation can be examined by the courts on several grounds. These grounds are far wider than the grounds available in England. All laws made in this country shall have to conform to the provisions of the Constitution including Chapter III thereof.

Whenever a law made by the Executive is found to be inconsistent with the Constitution or ultra vires the parent Act, from which the law-making power has been derived, it is declared null and void by the Court. The power of examining the validity of delegated legislation in India has been vested in the Supreme Court and the High Courts.

In India the invalidity of delegated legislation may arise from any of the following reasons:

- (1) The enabling Act or delegating statute being unconstitutional.
- (2) The subordinate legislation violating the Constitution.
- (3) The subordinate legislation being ultra vires the delegating Act.

In the control-mechanism, judicial control has emerged as the most outstanding controlling measure. Judicial control over delegated legislation is exercised by applying two tests:

- Substantive ultra vires; and
- Procedural ultra vires.

Ultra vires means beyond powers, when a subordinate legislation goes beyond the scope of authority conferred on the delegate to enact, it is known as substantive ultra vires. It is a fundamental principle of law that a public authority cannot act outside the powers and if the authority acts, 'such act becomes ultra vires and, accordingly void'.

1. It has been rightly described as 'the central principle' and 'foundation of large part of administrative law'.
2. An act which is done in excess of power is ultra vires.

The Enabling Act being Unconstitutional:

Where the enabling Act or some of its provisions, under which delegated legislation is provided, are in contravention of the Constitution, the court would declare the Act or its provisions, as the case may be, ultra vires. The unconstitutionality of an Act may arise under the following three conditions: (a) A law will be ultra vires if it violates a constitutional provision.

Where the law is unconstitutional on any of the grounds it is devoid of any effect and is unenforceable. It is now settled that there is a limit beyond which delegation may not go. The limit is that essential legislative power, which consists in the determination or choice of the legislative policy and formally enacting that policy into a binding rule of conduct, cannot be delegated. The Legislature, thus, cannot delegate its functions of laying down legislative policy to an outside authority.

A law may, therefore, be challenged on the ground that in making delegation of power it has transgressed the permissible limits. Thus in re Delhi Laws Act case,³ the majority of the Judges held the exercise of delegated law-making power invalid because the enabling Act exceeded the constitutional limits in permitting the Executive to repeal a law existing in the area.

Sometimes certain provisions in an Act may be unconstitutional because of excessive delegation, i.e., delegation without prescribing any standards, limits or boundary. For instance, In Hamdard Dawakhana v. Union of India,⁴ Section 3(d) of the Drugs and Magic Remedies (Objectionable Advertisement) Act was declared ultra vires. The ‘whole Act was not struck down, because the other provisions were found to be good law.

The Court held that the words used in Section 3(d) do not lay down any certain criteria or proper standard and surrender unguided and uncanalised power to the Executive. There must be definite boundaries within which the powers of administrative authority are exercisable. Delegation should not be so indefinite as to amount to any abdication of the legislative function.

Secondly, the other type of limitation on the Legislature is known as express limitation. According to this, no Legislature has the power to transgress the scheme of distribution of powers embodied in the Constitution. The Legislative powers are divided between the Parliament and the State Legislature. The ambit of their power has been clearly spelt out in the Constitution.

The Parliament of India can make laws for the whole of India or any part thereof in respect of matters contained in the Union List and in the Concurrent List. The residuary powers belong to the Union. An Act of Parliament which encroaches upon a subject in the State List is invalid. Article 245 of the Constitution empowers a State Legislature to make laws ^ith respect to State list. Thus any provision of delegated legislation contained in an Act which is in violation of the constitutional scheme of distribution of legislative powers would be ultra vires.

The third condition leading to unconstitutionality of an Act is, where the Legislature has the power, subjected to certain restrictions which are not observed by it. In Chintaman Rao v. State of M.P.,⁵ the C.P. Regulation of Manufacturer of Biris Act, 1948, in order to ensure adequate agricultural labour in biri-making areas empowered a Deputy Commissioner to fix the apicultural seasons and to prohibit manufacture of biri in the notified villages during the season.

By a notification, the Deputy Commissioner forbade all persons from manufacturing the biri. The Supreme Court held that the Act in permitting the imposition of a total prohibition upon those carrying on business of manufacture of biris during the agricultural seasons interfered with private business and violated Article 19(l)(g) of the Constitution, hence the notification under the Act was void.

Delegated Legislation Violating the Constitution

The second mode for judicial review comes into play where the delegated legislation violates the provisions of the Constitution or any of the fundamental rights given thereunder. In all the countries having written Constitution⁶ this mode of control is taken very seriously; whereas in the United Kingdom there is no fundamental law or a written Constitution to which act of Legislature should conform.

Consequently a legislative grant made by the British Parliament cannot be read with any limitations save those contained in the grant itself. If the Parliament authorizes the executive it could, through delegated legislation, amend and even repeal an Act of Parliament itself.

In the countries where the powers of the Legislature are limited and defined by a written Constitution, the position of subordinate legislation is different from what is found in United Kingdom. The tests which have been applied to subordinate legislation by the courts in Australia, Canada, South Africa, U.S.A. and India, each of which has a written Constitution, are mainly two—first, whether or not the enabling Act or the enabling provision thereunder is valid. Second, whether or not subordinate legislation violates any provision of the Constitution.

The Supreme Court of India declared in *Narendra Kumar v. Union of India*⁷ every Act which confers power to make subordinate law does so with an implied condition that such legislation shall be in accordance with the provisions of the Constitution. The well known case of *M/s. Dwarka Pd. v. State of U.P.*,⁸ is an instance of subordinate legislation being in conflict with Constitution and hence was ultra vires.

In this case clause 3(1) of U.P. Coal Control Order, 1953 was held ultra vires because it gave unrestricted power to the State Controller to make exceptions and even if he acted arbitrarily there was no check over him and no redress was available against it. The Court held that it is violative of Article 19(1) (g) and could not be justified as a reasonable restriction under clause (6) of the same Article.

In *Lakshman v. State of M.P.*,⁹ the Supreme Court struck down a notification issued under the M.P. Grazing Rules made under the Forest Act, 1927. The rules prescribed excessive and prohibitive rates of charges and a very limited period for grazing of 'foreign cattle'. Foreign cattle meant cattle of persons not resident of M.P. Normally such cattle pass through several States. The Notification was held to be bad as being violative of Articles 14, 19(l)(e), 19(l)(g) and Article 301 of the Constitution.

There is an important pronouncement of the court in which on ground of non-conformity with the Constitutional provisions in Article 14 the delegated legislation has been struck down. In *Nargesh Meerza* case,¹⁰ the regulation provided for the termination of services of an air-hostess if she dairies within first four years of her service or on the first pregnancy.

The Court found the first condition all right, i.e., no marriage within first four years of her service but so far the second condition of pregnancy is concerned, it was held to be "most unreasonable and arbitrary provisions of service regulation made by Air India which has shaken the conscience of the court."

An air hostess can marry after four years of service and, if she then becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing the service. The Court observed that the regulation amounts to compelling the air-hostesses not to have any children and thus it interferes with and diverts the ordinary course of human nature.

The court condemned the regulation in the following words— “It seems to us that the termination of the services of air-hostess under such circumstances is not only a callous and cruel but an open insult to Indian womanhood—the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilized society.

Apart from being grossly unethical it smacks of a deep-rooted sense, utter selfishness at the cost of all human values.” The regulation was thus held to be not only “manifestly unreasonable and arbitrary” but also that it “contains the quality of unfairness and exhibits naked despotism” and thus, held to be violative of Article 14 of the Constitution.

The rules making reservation in promotions were quashed by the Supreme Court in J.B. Chopra v. Union of India,¹¹ on the ground of arbitrariness. In this case, the Central Hindi Directorate (Class III and Class IV) Posts Recruitment Rules, 1961 were amended for reserving 100 per cent vacancies to the post of superintendent to be filled by head clerks only and Senior Stenographers were debarred from being considered for promotion to that post.

The amendment of the rules was held to be wholly arbitrary, irrational and mala fide and offending Articles 14 and 16. In Deepak Sibal v. Punjab University¹² the Court was asked to declare the Punjab University Rules for admission to the evening classes of three years LL.B. Degree Course as unconstitutional on the ground of violation of Article 14 of the Constitution. The impugned Rules restricted the admission to the employees of government, semi government and similar institutions excluding the employees of private sectors and meritorious candidates.

The Court held the Rules discriminatory. The Court ruled that the Government or Semi-government employees as mentioned in the impugned Rules do not stand on a different footing from the employees of private concerns, in so far as the question of admission to evening classes is concerned. The Supreme Court struck down a rule of the Gujarat Judicial Service which provided that a civil judge who had crossed 45 years of age would not be considered for the post of Assistant Judge. It was held to be void for being discriminatory.

1. The Subordinate Legislation being Ultra Vires the Delegating Act

In all circumstances the power of delegated legislations should be exercised within the scope of the rulemaking power provided in the statute. The Supreme Court recently in Kerala State Electricity Board v. Indian Aluminium Co.,¹⁴ laid down that notwithstanding the subordinate legislation being laid on the Table of the House of Parliament or the State Legislature and being subject to such modification, annulment or amendment as they may make, the subordinate legislation cannot be said to be valid unless it is within the scope of the rule-making power provided in the statute.

Various circumstances in which a subordinate legislation can be declared ultra vires under this head are:

When the Subordinate Legislation is in Excess of the Power of Delegated Authority When the subordinate authority exercises the power of rule-making beyond the principles and objects laid down in the Act and the rules are made without any reference to the provisions of the Act, under which such power is given, it is declared ultra vires the Act. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy how the provisions of a statute can best be implemented and what measures substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act.¹⁵ In *Baleshwar Pd. Srivastava v. Smt. Sita Devi*,¹⁶ the petitioner challenged the validity of Rule 16(1) framed under Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, on the ground that it is ultra vires the section itself. Section 21 of the Act provided that where the landlord satisfies the requirement of the section including his bona fide need, he would become entitled to an order of eviction without anything more. But Rule 16(1) provided for the consideration of tenant's hardship and needs in comparison to that of the landlord.

The court held that rule clearly ultra vires the Act. The rules framed by the State-Government in exercise of its delegated function cannot travel beyond the rule-making power and if these rules are beyond the permissible limits they would not be valid in spite of the fact that they had been laid before the Houses of the Legislature.

In *Dwarkanath v. Municipal Corp.*,¹⁷ Section 23(1) of the Prevention of Food Adulteration Act, 1954, authorized the Central Government to make rules for restricting the packing and labelling of any article of food, with a view to preventing the public from being deceived or misled as to quantity or quality of the article. Rule 32 framed there under by the Government provided that there would be specified on every label name and business address of the manufacturer, as also batch number or code number in Hindi or English.

The appellant, the manufacturers of Mohan Ghee sold in tins labelled Mohan Ghee Laboratories, Delhi¹⁸ challenged Rule 32 as beyond the power of the Government conferred under Section 23(1) of the Act, 1954. They contended that the requirement of address under Rule 32 was in excess of the power conferred, which was restricted to "quantity and quality" only. Accepting the contention of the appellants, the Supreme Court held Rule 32 ultra vires the as it was beyond the power conferred on the Government

2. In Conflict with the Delegating Statute.

Subordinate legislation must not be in conflict with or repugnant to the delegating Act. In *Ram Prasad v. State*,¹⁹ Section 49 of U.P. Panchayat Raj Act, 1947, laid down that every case cognizable by Panchayati Adalat must be tried by a Bench constituted in a manner provided in the Act. Rule 87 made under the Act laid down that three members of the Panchayati Adalat shall constitute quorum of the meeting of any Bench. This number was less than that prescribed in the Act. The Court held that the rule is invalid on the ground of its being inconsistent with the main provisions of delegating Act.

3. Disregard of the prescribed procedure.

A rule may become ultra vires for not being made in the manner prescribed by the enabling Act. In Radhakrishna v. State of M.P., 19 the rules were directed to be made by the State Government with the occurrence of the Central Government but the rules were made without such concurrence of the Central Government. The rules were held to be invalid. In Raja Buland Sugar Co. v. Rampur Municipality, 20 the appellant company owned two sugar factories and a number of buildings in respect of which the respondent Municipal Board of Rampur levied a water tax.

The company contended that the levy was illegal as the Board had not framed the proposals and rules in accordance with the mandatory procedural provisions laid down in U.P. Municipalities Act, 1916. It was alleged that the proposal and the draft rules were not published in the prescribed manner in a local Hindi paper as required statutorily and instead they were published in a local Urdu daily.

It was argued that the publication in local paper in Urdu was not in accordance with the mandatory provision that publication 'shall be in a local paper published in Hindi' and therefore the tax was not levied according to law, no matter other conditions were complied with. The Court held that the appellant's arguments could not be accepted and ruled that what was mandatory was publication of the rule, etc. The provision that the publication would be in a paper published in Hindi was only directory.

4. Mala fide:

Delegated legislation may be declared ultra vires if the rule-making authority exercises its power mala fide or acts with an ulterior motive. There is, however, no Indian case where a statutory rule has been held invalid on the ground of mala fide exercise of the rulemaking power. But if it is established that the rule-making authority has acted with ulterior motive, the court would reject the rule.

5. Unreasonableness

In English law there are cases in which bye-laws made by the local authorities like the municipalities, county councils have been invalidated on the ground of unreasonableness. But the rules framed by the government departments have not been held challengeable on the ground of unreasonableness. It is considered as an exception because ministers are responsible to the Parliament; In Australia, the courts do not recognise unreasonableness as a ground for challenging the validity of statutory regulation.

In the United States of America, unreasonableness of a statutory regulation would render it invalid as it will be hit by the due process of law clause of the 5th and 14th Amendment of the Constitution. No distinction is made in this respect between the executive legislation and the bye-laws. In India the courts do not examine the reasonableness of a statutory rule. In Mulchand v. Mukand, 25 the court was asked to hold Rule 36 made under the Bombay Co-operative Societies Act invalid on the ground that it was unreasonable.

The court rejected the plea observing that a bye-law may be challenged on the ground of its unreasonableness; a statutory rule cannot be so challenged. To the same effect are the observations of the Madras High Court in Subbarao v. I.T. Commissioner, 26 "it is well established that rules authorised to be made by an enactment are as effectual as if there were

parts of the Act itself, the question of their reasonableness, fairness or propriety not being a matter for the courts to investigate."

Conclusion:

Generally speaking, any ground on which judicial review may be justified can logically be classified as a branch of ultra vires doctrine; here we have dealt with straight forward cases where ultra vires was the solitary or principal justification for judicial review. On the whole, judicial review of delegated legislation is more of symbolic value rather than of much practical value as a control mechanism over delegated legislation. To make judicial control more efficacious it is necessary that delegating legislation does not confer power in two broad and generalized languages. In such a case the Court may find extremely difficult to hold a rule as falling outside the scope of power delegated. This is what is envisaged by the doctrine of excessive delegation.