**Discuss Various Types of “Delegated Lagislation”**

INTRODUCTION: ‘**Delegation**’ has been defined by *Black’s Law Dictionary* as an act of entrusting a person with the power or empowering him to act on behalf of that person who has given him that power or to act as his agent or representative. ‘**Delegated legislation**’ means exercising of legislative power by an agent who is lower in rank to the Legislature, or who is subordinate to the Legislature. Delegated legislation, additionally alluded to as an auxiliary legislation, is an enactment made by an individual or body other than Parliament. Parliament, through an Act of Parliament, can allow someone else or somebody to make enactment. An Act of Parliament makes the system of a specific or particular law and tends to contain an outline of the purpose for the Act. By delegating the legislation by Parliament to the Executive or any subordinate, it empowers different people or bodies to integrate more details to an Act of Parliament. Parliament along these lines, through essential enactment (for example an Act of Parliament), licenses others to make laws and guidelines through delegated legislation. The enactment made by authorize person must be made as per the reason set down in the Act of Parliament.

According to Sir John Salmond, “*Subordinate legislation is that which proceeds from any authority other than the sovereign power.*”

Justice *P.B Mukherjee* also observed about delegated legislation that it was an expression which covered a multitude of confusion. He viewed it as an excuse for the Legislature, a shield for Executors and a provocation to the Constitutional Jurist.

According to M.P Jain, this term can be used in two senses:[1]

* *Exercise by subordinate agency or agency that is lower in rank to legislature delegated to it by the Legislature.*
* The Subsidiary rules made by the Subordinate Authority in the execution of the power bestowed on it by the Legislature.

Delegated legislation is, referred to as Subordinate, Ancillary, Administrative legislation, and Quasi-Legislation.

Delegated legislation under the Constitution of India

Although the concept of delegated legislation was not mentioned specifically in the Indian Constitution it can be understood by interpreting [Article 312](https://indiankanoon.org/doc/647227/) of the given Constitution. This Article gives right to the Rajya Sabha to open a new branch of All India Service with a majority of two-thirds majority vote. This means that some powers of legislation will be delegated to the new recruiter of All India Service. Some Cases

[***D.S. Grewal v.The State of Punjab***](https://indiankanoon.org/doc/615469/)**,** [***Panama Refining Co. v. Rayan***](https://www.casebriefs.com/blog/law/administrative-law/administrative-law-keyed-to-lawson/the-constitution-and-the-administrative-state/panama-refining-co-v-ryan/)**,**

[***Sikkim v. Surendra Sharma***](https://indiankanoon.org/doc/436092/)

**Types of Delegated Legislation**

Delegated legislation means giving power or authority to someone lower than his rank to make laws. So there can be many ways in which this excess of power can be given to subsidiary rank people or an Executive. These types are as follows:

**Orders in Councils:**This type of Delegated legislation can be given by Queens or the Privy Councils. This Delegated legislation allows the Parliament to make laws without going through the Parliamentary proceedings.

**Rules of the Supreme Court and the County Courts:** The Parliament by statutes bestow some persons or authority with the power to make laws for a specific purpose. But it is different in England where a Court has been given wide power to make laws. This task of making law has been entrusted upon the Rules Committee of the Supreme Court and the County Courts.

**Departmental or Executive instructions or regulations:** When the power of legislature directly delegated to the administration such as a Board, Ministers or a Committee, then the exercise of that given power results in delegation through Departmental or Executional Instructions or Regulations..

**Delegated legislation by laws:**It can be given in two ways, firstly, it can be given by laws of autonomous bodies, e.g., Corporation and secondly, it can be given by-laws of a local authority.

***By-laws of autonomous bodies***: These autonomous bodies have got the power to pass by-laws on matters affecting them and other people in that locality or people residing in a particular area. For example, they can make laws as public utility authorities for light, water, etc. Usually, these authorities are given the power to make rules for regulating their working. Such by-laws are subject to judicial review. It can be reviewed to check that it must not be *ultra vires* the Parent Statute. These autonomous bodies have the power to frame rules for themselves. One more example of this autonomous body is an association of Employers.

***By-laws of the local authority:****Parliament has the power to make new local bodies or it can alter the existing body. It empowers such body with powers to make by-laws for themselves for specific purposes. These authority exercises excess power for public health, safety, and for good rule and governance. These by-laws incur a penalty on its breach.*

# Constitutionality of delegated legislation

It basically means the limits that are permissible within a Constitution of a country through which Legislature with all his right can delegate its power of rule making to other agencies of administration. The aim of extending the power of the government is to handle socio-economic problem.

**Position in India:**The position and Constitutionality of delegated legislation in India can be seen in various cases. It is divided into two phases i.e., before independence or we can say it as pre-independence and post-independence.

**Pre Independence:** In [*Queen v. Burah*](https://swarb.co.uk/the-queen-v-burah-pc-5-jun-1978/), only Conditional Legislation has been validated by the Privy Council and therefore delegated legislation is not permitted as per its reasoning. The administration of civil and criminal justice of a territory can be vested in the hands of those officers who were appointed by the Lieutenant-Governor from time to time.

The Privy Council has stated that it is better to take help from the subordinate agency in framing the rules and regulations that are going to be the part of the law and giving another body the essential legislative features that has only given to the Legislature through the Constitution. He also stated about the essential legislative function that included in determining the legislation policy.

In ***King v. Benori Lal Sharma*,** Condition legislative was again applied by the Privy Council, the same as in the case of *Queen v. Burah.*In this case the validity of the Emergency Ordinance given by Governor-General of India was challenged *inter alia.*It was challenged on the ground that he is taking the power of the Provincial Government. He was setting up special criminal courts for particular kind of offences but for the settling of any court, power has been given only to the Provincial Government. The judicial committee held that this is not delegated legislation. Privy Council also held that it is an example of an uncommon legislative power by which the local application of the provision of State determined by the local administrative body when it is necessary.

**Post Independence:** The Constitution of India does not provide the same position as the prominent British Parliament provide to the delegation of legislative powers and also how far delegation is permissible has got to be confirmed in India as a matter of construction from the express provisions of the Indian Constitution. It cannot be said that an exhaustible right of delegation is inherited in the legislative power itself.

In the case of [Raj Narain Singh v. Chairman, Patna Administration Committee Air](https://indiankanoon.org/doc/1501218/),[9] the Supreme Court of India upheld the delegation of power given to the executive by the legislature.

[Lachmi Narain v. Union of India](https://india.lawi.asia/lachmi-narain-v-union-of-india-and-ors/)[10]

**Judgment:**It was held in this case that the notification issued by the Central Government is beyond its power conferred on it by Section 2 of the Union Territories (Laws) Act,1950 and in consequence of any type of notification issued by the Central Government is invalid and ineffective.

# Judicial control over delegated legislation

The delegated legislation can be challenged in India in the courts of law as being unconstitutional, excessive and arbitrary. It can be controlled by the Judiciary on two grounds i.e., firstly, it should be on the ground of substantial ultra vires and secondly, it should be on the ground of procedural ultra vires. The criteria on which the law made by the executive can be considered as void and null by the court is that it should not be considered inconsistent by the constitution or ultra vires the parent act from which it has got the power of making law. The power of examining the delegated legislation in India has been given to the Supreme Court and the High Court and they play an active role in controlling the delegated legislation.

**Cases that illustrate the Judicial control over the executives**

* ***Kruse v. Johnson****:[11] The court laid down in the case that by-laws would be unreasonable on the following ground.*

# Effectiveness of Parliamentary control over delegated legislation

It is on the parliament to confer on anyone its power of legislation whom it likes, but at the same time, it has to see that if the power that has been conferred to the person is using that power for the public or not. If that person is misusing that power the Parliament can take that power back. It must ensure that there should be no misuse of that conferred power.

In *[Avinder Singh v. State of Punjab](https://indiankanoon.org/doc/8308/" \t "_blank)*, Krishna Iyer J. appropriately expressed that parliamentary authority over designated enactment should be a living continuity as a protected need. The authoritative command over the organization in parliamentary nations like India is more hypothetical than practical. In truth, the control of the Parliament is not that much effective as it needs to be. Case Laws: [**Kruse v. Johnson**](https://alchetron.com/Kruse-v-Johnson)**,** [**Chintaman Rao Case**](http://lawtimesjournal.in/chintaman-rao-and-ors-v-state-of-madhya-pradesh/)

# Criticism on delegated legislation

Following are the criticism of delegated legislation:

1. Delegated legislation results in overlapping of functioning  as the delegated authorities get work to amend the legislation that is the function of the legislators.
2. It has been a matter of question that if the Legislature control has come down after the arrival of the delegated legislation.
3. Unelected people cannot make much delegated legislation as it would be against the spirit of democracy.
4. After getting too much power from the Legislature, the Executive has encroached upon the domain of legislature by making rules and regulations.
5. The enactment subject that was appointed to less Parliamentary scrutiny than essential enactment. Parliament, along these lines, has an absence of authority over appointed enactment, and this can prompt irregularities in laws. Appointed enactment, in this way, can possibly be utilized in manners which Parliament had not foreseen when it was given the power through the Act of Parliament.
6. Delegated legislation makes laws without much discussion. So, it may or may not be better for the public.
7. Designated legislation by and large experiences an absence of exposure. Since the law made by a statutory authority not informed to general society. Then again, the laws of the Parliament are generally broadcasted. The purpose of the absence of exposure is the enormous degree of enactment that is being assigned. There has likewise been concern communicated that an excess of law is made through appointed enactment.
8. It can possibly be misused for political gain. The executive makes law according to what the political parties. Hence, it results in the misuse of the legislation made by the Executive by the ruling party.
9. Executives become too powerful as it already has the power of executing any laws and legislation and now the Legislature is delegating its legislative power to the Executive. So, both the power are in the hands of the executives now he can use this power in whatever way he wants to use it.
10. It is against the theory of the power of separation which has been given by the famous political thinker Montesquieu.

# Conclusion

Delegated or subordinate legislation means rules of law made under the skilled person of the Act of Parliament. In spite of the fact that lawmaking is within the capacity of the lawmaking body, it might, by a resolution, delegate its capacity to different bodies or people. The resolution which delegates such power is known as the Enabling Act. By Enabling Act the council sets out the wide rules and nitty-gritty principles are instituted by the delegated authority.