

Delegated Legislation

February 12, 2021

The issue of delegated legislation has been one of the most debated issues in the domain of legal theory because of its various implications. Scholars have consistently presented differing and even contradicting views about delegation of power to legislate and have thus taken different stands on the issue.

In news: SC judgements on Prevention of Cruelty to Animals Rules 2017

Placing it in syllabus: Law & Policy

Dimensions

- What is Delegated Legislation?
- Constitutional Provisions on Delegated Legislation
- Advantages of Delegated laws
- Challenges associated with them
- Mechanisms to address the challenges

Content:

What is Delegated Legislation:

- '**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.
- This type of legislation is also known as **secondary legislation or subordinate legislation or subsidiary legislation** or **Legislative Instruments** (since 2005).
- It refers to those laws made by persons or bodies to whom parliament has delegated or given law-making authority.
- When acts are made by parliament, each principal act makes provision for subsidiary legislation to be made, and will specify who has the power to do so under that

act.

- Therefore, **Delegated legislation can only exist in relation to an enabling act**
- By delegating the legislation by Parliament to the Executive or any subordinate, it **empowers different people or executive bodies to integrate more details to an Act of Parliament.**
- There are three forms of delegated legislation i.e., **statutory instrument, orders in council and by-laws.**
- Delegated legislation contains the many administrative details necessary to ensure that the provisions of the act will operate successfully.
- It may be administered by Government Departments, Local Councils or Courts
- **Regulations and Statutory Rules** are the most common forms of delegated legislation.
- They are made by the executive or a minister and apply to the general population.
- **By-laws**, and sometimes Ordinances, are made by a local government authority or autonomous bodies and apply to the people who live in that area.

Constitutional Provisions on Delegated Legislation:

- Although the concept of delegated legislation was not mentioned specifically in the Indian Constitution it can be understood by **interpreting Article 312**
- This Article gives the 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.
- There are many cases through which delegated legislation under the constitution of India can be understood.
- In the case of **D. S. Gerewal v. State of Punjab**, the Supreme Court held that Article 312 of the Constitution

of 2 India deals with the powers of delegated legislation.

- **Justice K.N. Wanchoo** observed “There is nothing in the words of Article 312 which takes away the usual power of delegation, which ordinarily resides in the legislature.
- The phrase “ Parliament may by law provide ” in Article 312 should not be interpreted to mean that there is no scope for delegation in law made under Article 312
- The England law enables the British Parliament to delegate any amount of powers without any limitation.
- Indian Constitution does not give unlimited or uncontrolled powers for delegated legislation in India.
- India allows for delegated legislation but in a defined and controlled manner with certain restrictions.

In **Re Delhi Laws Act** case, the Supreme Court of India lays down three important tests that must be fulfilled for a legislative authority to delegate duties. They are as follows:

- Subject matter of delegation must be within the scope of the legislative authority
- The power of delegation mustn't negate other instruments created by the legislature (power isn't ultra vires)
- Doesn't create another legislative body having the same duties and functions to discharge (no abdication of legislative powers)

In the case of **Agriculture Marketing Committee Vs Shalimar Chemical Works Ltd**, the Supreme Court laid down **necessary reasons for the legislature to delegate** its duties to the government. They made three important arguments-

- The future is uncertain. Every intricacy and circumstance cannot be easily set out, hence areas of delegation are very technically complex.
- The Executive can help fill the gaps in policies by experimenting and understanding the purpose of the

legislation before bringing any change

- Gives an edge to the Executive since it paves way for them to also give valuable inputs to the rules and regulations in addition to the legislature.

Advantages of Delegated laws:

There are many advantages of delegated legislation as it is essential for a democratic country to flourish or make laws according to its public. These advantages are as follows:

Reduces the workload of Parliament:

- The Parliament has to pass several legislation within a short span of its life.
- It has to take such type of intensive work that it can hardly enact the law provisions in detail.
- So there arises the need to overcome that load and it can be possible only through delegating legislative authority to the subsidiary or the executives.

Brings in Technical Expertise:

- Today's world has become very technical and complicated by the introduction of modern means and advancement in technology.
- It is difficult for the members of Parliament to have all knowledge needed for making laws in various fields like on controlling technology, ensuring environmental safety, dealing with various industrial problems which need basic knowledge.
- Therefore, it is thought that it is better for the parliament to debate on the broad topic or the main topic and leave the rest detail for the fulfilment by the expert of that particular field.
- Thus, delegates authorities with extra skills, experience, and knowledge are more suitable for making law.

Decentralized decision making:

- The local councils are more suited to make laws for their constituencies as they better know the condition of their constituencies than any other.
- These local bodies can make better laws for their area that a Parliament cannot do so because they know their locals need and what they want.
- The Parliament makes the laws for broad principle while its delegate handles the local principle.

Rapid Action during Emergencies:

- Quick action is needed in times of emergencies like war, internal disturbances, floods, epidemics, strikes, lock-outs, bandhs, etc.
- The lengthy legislation process of Parliament is just not suited for such situations.
- If the executive is armed with special powers, the situation can be kept under control very quickly.

Enables flexibility:

- When the legislature passes a statute, it is almost impossible to foresee all the contingencies which may arise in the future in the practical application of such a law.
- Of course, it is possible to amend the statute as and when the need arises. However, this is a slow and cumbersome process.
- In such a situation, delegated legislation allows the executive to overcome practical difficulties by exercising the power conferred on it by the parent act.
- So these minor details can be changed immediately without making any amendment in the Parliament.
- Therefore, it is flexible and the legislation made by this can be best for the needs of the modern public.

Scope for Experimentation:

- There is a lot of scope for experimentation in the administrative process.
- The administrative authorities can frame a new rule, try it out for some time, and if found unsuitable or unsatisfactory or unworkable, may modify or even repeal it without much formality.

Challenges associated with Delegated Legislation:

No parliamentary deliberation:

- Parliament does not get a chance to debate rules, regulations, etc. made by the executive.
- These are made in the ante-chamber of the bureaucrat and the benefits of parliamentary deliberations are lost.
- Delegated legislation results in overlapping of functioning as the delegated authorities get work to amend the legislation that is the function of the legislators.
- Unelected people cannot make much delegated legislation as it would be against the spirit of democracy.

No prior publicity:

- Drafts of Parliamentary Bills are often published for public comment and criticism.
- However prior publicity is not always possible in case of rules and regulations and the benefits of public discussion and criticism is lost.

Not enough publicity:

- Everyone is supposed to know the law because statutes are, generally speaking, easily accessible.
- This is not so in the case of delegated legislation, where the mass of rules, regulations, bye-laws, orders, etc. often lie buried in the files of bureaucrats.
- Antecedent publicity, that is, publicity before enactment is often missing in delegated legislation.

Lesser research:

- Since statutes are normally given greater publicity than rules and regulations, the former can reach out to a greater number of citizens.

Possibility of overreach and or overlapping:

- As delegated legislation can often be confusing, complex and difficult to understand.
- Moreover, it can be different (and at times, contradictory) in different states, thus leading to confusion and lack of uniformity.

Possibility of poor drafting:

- Delegated legislation may not be well considered or drafted by legislative experts and may thus suffer from infirmities due to poor drafting.

Scope for Political Misuse

- It can possibly be misused for political gain.
- The executive makes law according to what the political parties' wish.
- Hence, it results in the misuse of the legislation made by the Executive by the ruling party.

Mechanisms to address the challenges:

- With the rise in delegated legislation, the need to control it also arises because the increase in the delegation of power also increases the chance of the abuse of power.
- Judicial control apart from legislative and procedural control is the way how the delegation of power can be controlled.

Parliamentary Control

- Measures should be taken to strengthen the control of

Parliament over delegated legislation.

- It is necessary that the role of the committees of the Parliament must be strengthened.
- 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 specialised official body to make the vigilance of delegated legislation more effective.

Procedural and Executive Control

- There is no particular procedure for Delegated Legislation until the legislature makes it mandatory for the executive to follow certain rules or procedure.
- Pre publication and consultation with an expert authority, Publication of delegated legislation, must be made compulsory before delegated law is enacted.

Judicial Control

- The delegated legislation can be questioned in courts on the grounds of substantive ultra vires and on the ground of the constitutionality of the parent act and the delegated legislation.
- The delegated legislation can also be challenged on the ground of its being unreasonable and arbitrary.
- Law defined under **Article 13** of Constitution of India clearly indicates that the State should not make any law which abridges the right given in Part iii of the Constitution.

Mould your thought: What is Delegated Legislation? Discuss its advantages and criticisms. What can be done to improve the delegated laws in India?

Approach to the answer:

- Introduction

- Define Delegated Legislation and mention its status in India
- Mention the advantages and challenges of Delegated Laws in India
- Write about the ways to improve the situation
- Conclusion