

# Supreme Court verdict on delegated legislation

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**In news**– In Centre's 2016 decision on demonetisation, while the majority ruling upheld the validity of the delegated legislation, the dissenting verdict noted that excessive delegation of power is arbitrary.

## What is delegated legislation?

- Parliament routinely delegates certain functions to authorities established by law since every aspect cannot be dealt with directly by the law makers themselves. **This delegation of powers is noted in statutes, which are commonly referred to as delegated legislations.**
- The delegated legislation would **specify operational details, giving power to those executing the details. Regulations and by-laws under legislations are classic examples of delegated legislation.**
- **A 1973 Supreme Court ruling explains the concept as:**
  - The practice of **empowering the Executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare State.**
  - At the same time it has to be borne in mind that our Constitution-makers have entrusted the power of legislation to the representatives of the people, so that the said power may be exercised not only in the name of the people but also by the people speaking through their representatives.
  - The role against excessive delegation of legislative authority flows from and is a necessary postulate of the sovereignty of the people.

## The delegation of power in the demonetisation case-

- **Section 26(2) of the Reserve Bank of India Act, 1934 essentially gives powers to the Centre to notify that a particular denomination of currency ceases to be legal tender.**
- The provision reads: “On recommendation of the Central Board the Central Government may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender.”
- Here, **Parliament, which enacted the RBI Act, is essentially delegating the power to alter the nature of legal tender to the central government. The Centre exercised that power by issuing a gazette notification,** which is essentially the legislative basis for the demonetisation exercise.
- The Constitution gives law-making powers to the Parliament. While operational aspects can be delegated to statutory bodies, essential powers cannot be delegated. Also, the delegation must be with sufficient guidelines on how the power can be used.
- The petitioners in the demonetisation case argued that since Section 26(2) contains no policy guidelines on how the Centre can exercise its powers, it is arbitrary and therefore, unconstitutional.
- The majority verdict held that since the delegation of power is to the Centre which is anyway answerable to the Parliament, the delegation power cannot be struck down.
- “In case the Executive does not act reasonably while exercising its power of delegated legislation, it is responsible to Parliament who are elected representatives of the citizens for whom there exists a democratic method of bringing to book the elected representatives who act unreasonably in such matters,” the court said.

- The dissenting opinion, however, disagreed with this view. First, Justice BV Nagarathna held that Centre could not have exercised its delegated powers because Section 26(2) of the RBI only gives powers to the Centre when the recommendation is “initiated” by the RBI Central Board.

### **Problem of excessive delegation power-**

- **A 1959 landmark ruling in Hamdard Dawakhana v Union of India, the Supreme Court had struck down delegation of powers on the grounds that it was vague.**
- A Constitution Bench considered the validity of certain provisions of the Drug and Magic Remedies (Objectionable Advertisements) Act that prohibited advertisements of certain drugs for treatment of certain diseases and dealt with the powers of search, seizure and entry.
- The Court held that the central government’s power of specifying diseases and conditions as given in Section 3(d) is ‘uncanalised’, ‘uncontrolled’, and going beyond the permissible boundaries of valid delegation. Hence, the same was deemed unconstitutional.
- The Court applies the “policy and guideline” test to decide the constitutionality of the delegated legislation.
- The Attorney General for India argued that the RBI Act itself has guidance for exercise of delegated powers. He cited the Preamble and Section 3 of the Act as guidance on the purpose of the law and the Centre’s role in “regulating” monetary policy.
- Section 3 deals with establishment and incorporation of Reserve Bank.