

UNIT-II

ADMINISTRATIVE LAW

DELEGATED 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 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. There are many cases through which delegated legislation under the constitution of India can be understood. These are:

Pre Independence: Queen v. Burah wherein the Privy Council had validated only Conditional Legislation and therefore as per its reasoning delegated legislation is not permitted. The administration of civil and criminal justice within the said territory was vested in such officers as the Lieutenant-Governor may from time to time appoint. Sections 8 and 9 of the said Act provided as follows: -
"Section 8. The said Lieutenant-Governor may from time to time, by notification in the Calcutta Gazette, extend to the said territory any law, or any portion of any law, now in force in the other territories subject to his Government, or which may hereafter be enacted by the Council of the Governor-General, or of the said Lieutenant-Governor, for making laws and regulations, and may on making such extension direct by whom any powers or duties incident to the provisions so extended shall be exercised or performed, and make any order which he shall deem requisite for carrying such provisions into operation."

"Section 9- The said Lieutenant-Governor may from time to time, by notification in the Calcutta Gazette, extend mutatis mutandis all or any of the provisions contained in the other sections of this Act to the Jaintia Hills, the Naga Hills, and to such portion of the Khasi Hills as for the time being forms part of British India. It was held that Indian legislators have plenary powers and it exercised the power in its own right and not as an agent or a delegate of the British parliament.

The Privy Council laid down that “seeking of assistance of a subordinate agency in the framing of rules and regulations which are to become a part of the law and conferring on another body the essential legislative functions which under the constitution should be exercised by the legislature itself. It also stated that the essential legislative function consists in the determination or choosing of the legislative policy and formally enacting that policy into binding rule of conduct.

Also in **King v. Benoari Lal Sharma** Conditional legislation was again applied by the privy council wherein the validity of an emergency ordinance by the Governor-General of India was challenged inter alia on the ground that it provided for setting up of special criminal courts for particular kinds of offences, but the actual setting up of the courts was left to the Provincial Governments which were authorised to set them up at such time and place as they considered proper. The Judicial Committee held that "this is not delegated legislation at all. It is merely an example of the not uncommon legislative power by which the local application of the provisions of a statute is determined by the judgment of a local administrative body as to its necessity." The Privy Council held that “Local application of the provision of a state is determined by the judgment of a local administrative body as to its necessity.” Also the Federal Court in *Jatindra Nath v State of Bihar* AIR 1949 FC 175 held that power of extension with modification is unconstitutional as legislative power cannot be delegated. Wherein the S. 1 (3) of Bihar maintenance of public order Act, 1948 was challenged – as it gave power of extension of modification to provincial Govt. but this case But created doubts on the limits of delegation.

In case of **Raj Narain Singh v. Chairman Patna Administration committee** in which S.3(1)(f) wherein the Bihar & Orissa Act, empowered the local administration to extend to Patna the provisions of any sections of the act (Bengal Municipality Act, 1884) subject to such modification, as it might think fit. The government picked up section 104 and after modifications applied it to the town of Patna. One of the essential features of the Act was the provision that no municipality competent to tax could be thrust upon a locality without giving its inhabitants a chance of being heard and of being given an opportunity to object. The sections which provided for an opportunity to object were excluded from the notification. It was held as amounting to tamper with the policy of the Act.

In **Lachmi Narain v. UOI**, the validity of Section 2 of Union Territories (Laws) Act, 1950 and Section 6 of Bengal Finance (Sales Tax) Act, 1941 was to be determined. The issue was that

whether notification issued by Central Government in purported exercise of its powers under Section 2 ultra vires of Central Government.

D.S. Grewal v. The State of Punjab, This case questions the constitutionality of All India Service Act, 1951. The appellant was appointed to All India Service and posted to the State of Punjab. He held the charge of Superintendent of Police in various districts but was reverted or returns to the post of Assistant Superintendent of Police in August 1957 and was posted to Dharamsala in March in the year 1958. In the same month, he was informed that an action has been taken against him under Rule 5 of the All India Services (Discipline and Appeal) Rules, 1955. An enquiry committee was set up against him under the leadership of Shri K. L. Bhudiraja. He then immediately made an application under Article 226 of the Indian Constitution before the Punjab High Court challenging the constitutionality of the Act and legality of the enquiry against him. Six contentions were made by the appellant lawyer. Justice K.N. Wanchu, Justice of the Supreme Court at that time, dealing with the power of delegated legislation under Article 312 of the Indian Constitution. As the case has been very serious the appellant can be removed or compulsorily dismissed from the post by the Central Government and therefore Central Government has instituted enquiry against him. There is nothing mentioned in Article 312 of the Indian Constitution that takes away the power of delegation.

The delegation power of India and America is that the Congress doesn't have much power of delegation but it is different from the English in which the parliament is supreme has an excess of delegating power.

Panama Refining Co. v. Rayan, Facts: Section 9(c) of the National Industrial Recovery Act, 1933 authorizes the President of the United States with some powers under which he can make any order and violation of that order may lead to penal provision. The President issued the prohibition made by the above act through the executive and authorized the Secretary of Interior to exercise all the powers vested in the President under section 9(c) of the Act. The Secretary of Interior issued a regulation to accomplish the President's order(s). The Section mentioned above was challenged on the ground that it was an unconstitutional delegation of legislative power by the Congress.

Judgment: It was held by the Supreme Court of the United States that delegation of legislative power given by President is void. The court held that Congress can delegate power to the Executive only on two conditions. Firstly, the Statute laid down these policies. Secondly, one has to establish the standards and give the administration the power of making the subordinate rule within the given limit.

Sikkim v. Surendra Sharma, After Sikkim became the State of the Union Of India, the Directorate of Survey and Settlement of Government of Sikkim created and advertised for certain temporary posts. Like other people, the respondent has also applied for the post. They got selected and were appointed in different capacities. After the survey work got completed some of the employees got terminated from the job. In 1982, some of the employees, who were „not locals“, filed a writ petition in the High

Court of Sikkim challenging the decision of the Government asking why it has fired the employees from the service on the ground that they were not locals.

Judgment: The judge held that the termination of the employees solely on the ground that he is not local is impermissible under Article 14 and 16 of the Indian Constitution. It was held that all rules and legislations created under the power which is granted under sub-clause (k) of the Article 371F constituted subordinate legislation. This article was added to the Constitution through the 36th Constitutional Amendment.