

UNIT-II

ADMINISTRATIVE LAW

DELEGATED LEGISLATION

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.

Judicial control over delegated legislative is exercise at the following two levels:

1. Challenging the delegation as unconstitutional
2. Improperly exercise of Statutory power.

No delegated legislation can survive clashing with the provisions granting Fundamental Rights. If any Acts violate the fundamental rights then the rules, regulations, and by-laws framed under it cannot survive. In India as well as in America the judicial control over the delegated legislation is based on the doctrine of ultra vires. Also, there are various methods through which judiciary in America exercises control over delegated legislation.

The two main approaches taken by the judiciary in America for justifying the delegation of legislative power to the executive are:

- Filling up the details approach.
- Intelligible principle approach.

In the first approach, the Congress should lay down the standard policy for the guidance of executives and the executives have to fill the further details and carry out the policy of legislation according to the standard laid down by the Congress.

In the second approach, the court will review the delegated legislation if ultra vires the enabling statutes or it is not in accordance with the provisions mentioned in enabling statutes.

Cases that illustrate the Judicial control over the executives

Kruse v. Johnson, The court laid down in the case that by-laws would be unreasonable on the following ground.

- It should not be partial or unequal
- It should not be manifestly unjust
- It should not disclose bad faith
- It should not involve oppressive interference with the right of the people that it could find no justification in the mind of the reasonable person.

Delhi Law Act Case, In this case the power is given to the Central Government through an act to repeal the pre-existing law held to be ultra vires.

Chintaman Rao's Case, Prohibition of making bidis in the agriculture season by the Deputy Commissioner is violative of Article 19(1)(g) of the Indian Constitution.

Chandran v. R. It was held in this case that if the power of by-laws entrusted in the hands of the Legislature, then it must be within the limits of the Legislature and if it exceeds the limit then this by-laws can be struck down.

now this act has added a new prohibited group to the terrorism. Therefore, it is more appropriate for the delegate authorities to make legislation and deal with it.

Enables flexibility: In delegated legislation, Parliament makes law in broader skeletal form and the executive had to fill the minor details. 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 modern public.

Seeing the interest of affected person: To make legislation effective it is important to know the need and interest of that person who is going to be affected by that law or legislation. Only sitting in big houses and making a decision for the affected person is easy but knowing their interests and their needs by living with them in the same condition in which they are living is tough and then making law for them will surely benefit that affected person. Therefore, it is necessary to delegate the rights of legislation by the Parliament to the Executive. The Executive knows the condition of the affected person better than the Legislature.

Experimental basis: It can be used as an experimental basis. It allows in quick lawmaking. If a law made for some circumstances and it does not fulfill the condition for which it has made then it can be changed and a new law can be made at the place of the older one. And if this law gets fitted according to the situation then this law will prevail in that area. In this way, it is an advantage in the view of modern public.