

## **UNIT-II**

## **ADMINISTRATIVE LAW**

### **DELEGATED LEGISLATION**

#### **LEGISLATIVE CONTROL ON DELEGATED LEGISLATION**

One of the most significant developments of the present century is the growth in the legislative powers of the executive. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law. We know that there is no such general power granted to the executive to make law; it only supplements the law under the authority of legislature. Such type of power is known as delegated legislation.

The underlying object of parliamentary control is to keep watch over the rule-making: - authorities and also to provide an opportunity to criticize them if there is abuse of power on their part. Parliament has control in that the enabling or parent Act passed by Parliament sets out the framework or parameters within which delegated legislation is made. In India, the question of control on rule-making power engaged the attention of the Parliament.

Every delegate is subject to the authority and control of the principal and the exercise of delegated power can always be directed, corrected or cancelled by the principal. Hence parliamentary control over delegated legislation should be a living continuity as a constitutional remedy. The fact is that due to the broad delegation of legislative powers and the generalised

standard of control also being broad, judicial control has shrunk, raising the desirability and the necessity of parliamentary control.

With regard to the control of the legislature over delegated legislation, M.P. Jain states: -

In a parliamentary democracy it is the function of the legislature to legislate. If it seeks to delegate its legislative power to the executive because of some reasons, it is not only the right of the Legislature, but also its obligation, as principal, to see how its agent i.e. the Executive carries out the agency entrusted to it. Since it is the legislature which grants legislative power to the administration, it is primarily its responsibility to ensure the proper exercise of delegated legislative power, to supervise and control the actual exercise of this power, and ensure the danger of its objectionable, abusive and unwarranted use by the administration.

In U.S.A., the control of the Congress over delegated legislation is highly limited because neither is the technique of “laying” extensively used nor is there any Congressional Committee to scrutinise it. This is due to the constitutional structurization in that country in which it is considered only the duty of courts to review the legality of administrative rule-making.

In England, due to the concept of Parliamentary sovereignty, the control exercised by Parliament over administrative rule-making is very broad and effective. Parliamentary control mechanism operates through “laying” techniques because under the provisions of the Statutory Instruments Act, 1946, all administrative rule-making is subject to the control of Parliament through the Select Committee on Statutory Instruments. Parliamentary control in England is most effective because it is done in a non-political atmosphere and the three-line whip does not come into operation.

In India parliamentary control of administrative rule-making is implicit as a normal constitutional function because the executive is responsible to the Parliament. There are three types of control exercised:

## **Direct General Control**

Direct but general control over delegated legislation is exercised:

(a) Through the debate on the act which contains delegation. Members may discuss anything about delegation including necessity, extent, type of delegation and the authority to which power is delegated.

(b) Through questions and notices. Any member can ask questions on any aspect of delegation of legislative powers and if dissatisfied can give notice for discussion under Rule 59 of the Procedure and Conduct of Business in Lok Sabha Rules.

(c) Through moving resolutions and notices in the house. Any member may move a resolution on motion, if the matter regarding delegation of power is urgent and immediate, and reply of the government is unsatisfactory.

## **Direct special control**

This control mechanism is exercised through the technique of “laying” on the table of the House rules and regulations framed by the administrative authority. The notable use of this technique was made in the Reorganization Acts of 1939 to 1969, which authorised the President to reorganise the executive government by administrative rule-making. In England the technique of laying is very extensively used because all the administrative rule-making is subject to the supervision of Parliament under the Statutory Instruments Act, 1946 which prescribes timetable. The most common form of provision provides that the delegated legislation comes into immediate effect but is subject to annulment by an adverse resolution of either house.

By Section 4 of the Statutory Instruments Act, 1946, where subordinate legislation is required to be laid before Parliament after being made, a copy shall be laid before each House before the legislation comes into operation. However, if it is essential that it should come into operation before the copies are laid, it may so operate but notification shall be sent to the Lord Chancellor and the Speaker of the House of Commons explaining why the copies were not laid beforehand. Under Section 6 of the Statutory Instruments Act, 1946, the draft of any statutory instrument should be laid before the parliament.

## **Laying on Table**

In almost all the Commonwealth countries, the procedure of „Laying on the Table“ of the Legislature is followed. It serves two purposes: firstly, it helps in informing the legislature as to what all rules have been made by the executive authorities in exercise of delegated legislation, secondly, it provides a forum to the legislators to question or challenge the rules made or proposed to be made.

### **LEGAL CONSEQUENCES OF NON-COMPLIANCE WITH THE LAYING PROVISIONS**

In England the provisions of Section 4(2) of the Statutory Instruments Act, 1946 makes the laying provision mandatory for the validation of statutory instruments. In India, however, the

consequences of non-compliance with the laying provisions depend on whether the provisions in the enabling Act are mandatory or directory.

In **Narendra Kumar v. Union of India**, the Supreme Court held that the provisions of Section 3(5) of the Essential Commodities Act, 1955, which provided that the rules framed under the Act must be laid before both Houses of Parliament, are mandatory, and therefore Clause 4 of the Non-Ferrous Control Order, 1958 has no effect unless laid before Parliament.

However, in **Jan Mohammad v. State of Gujarat**, the court deviated from its previous stand. Section 26(5) of the Bombay Agricultural Produce Markets Act, 1939 contained a laying provision but the rules framed under the Act could not be laid before the Provincial legislature in its first session as there was then no functioning legislature because of World War II emergency. The rules were placed during the second session. Court held that the rules remained valid because the legislature did not provide that the non-laying at its first session would make the rules invalid.

Even if the requirement of laying is only directory and not mandatory, the rules framed by the administrative authority without conforming to the requirement of laying would not be permissible if the mode of rule-making has been violated.

## **Indirect control**

Indirect control is exercised by Parliament through its Committees. With a view to strengthen Parliamentary control over delegated legislation, Scrutiny Committees were established. In UK and India, there are Standing Committees of Parliament to scrutinize delegated legislation. In the USA, on the other hand, there is no equivalent to such committees, the responsibility being diffused. The responsibility is shared but a host of committees – standing committees in each House of Congress, committees on government operation in each house, and some other joint bodies like the committee on atomic energy. In England, the Select Committee on Statutory Instruments was established by the House of Commons in 1944. In 1950, the Law Minister made a suggestion for the establishment of a Committee of the House on the pattern of the Select Committee on Statutory Instruments, 1944, to examine delegated legislation and bring to the notice of the House whether administrative rule-making has exceeded the intention of the Parliament or has departed from it or has affected any fundamental principle.

Such a committee known as the Committee on Subordinate Legislation of Lok Sabha was appointed on December 1, 1953. **The main functions of the Committee are to examine:**

- (i) Whether the rules are in accordance with the general object of the Act,
- (ii) Whether the rules contain any matter which could more properly be dealt with in the Act,
- (iii) Whether it is retrospective,
- (iv) Whether it directly or indirectly bars the jurisdiction of the court, and questions alike. The Committee has between 1953 and 1961, scrutinized about 5300 orders and rules has submitted 19 reports. There is also a similar Committee of the Rajya Sabha which was constituted in 1964. It discharges functions similar to the Lok Sabha Committee.

#### Recommendations by the committee on subordinated legislation

The Committee on Subordinate Legislation has made the following recommendation in order to streamline the process of delegated legislation in India.

- (i) Power of judicial review should not be taken away or curtailed by rules.
- (ii) A financial levy or tax should not be imposed by rules
- (iii) Language of the rules should be simple and clear and not complicated or ambiguous.
- (iv) Legislative policy must be formulated by the legislature and laid down in the statute and power to supply details may be left to the executive, and can be worked out through the rules made by the administration.
- (v) Sub-delegation in very wide language is improper and some safeguards must be provided before a delegate is allowed to sub-delegate his authority to another functionary.
- (vi) Discriminatory rules should not be framed by the administration.
- (vii) Rules should not travel beyond the rule-making power conferred by the parent Act.
- (viii) There should not be inordinate delay in making of rules by the administration.
- (ix) The final authority of interpretation of rules should not be with the administration.
- (x) Sufficient publicity must be given to the statutory rules and orders.

The working of the Committee is on the whole satisfactory and it has proved to be a fairly effective body in properly examining and effectively improving upon delegated legislation in India. Sir Cecil Carr aptly remarks: "It is evidently a vigorous and independent body."

#### **EFFECTIVENESS OF PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION**

In India the legislative control over administration in parliamentary countries like India is more theoretical than practical. In reality, the control is not that effective as it ought to be. The following factors are responsible for the ineffectiveness of parliamentary control over delegated legislation in India:

- (i) The Parliament has neither time nor expertise to control the administration which has grown in volume as well as complexity.
- (ii) The legislative leadership lies with the executive and it plays a significant role in formulating policies.
- (iii) The very size of the Parliament is too large and unmanageable to be effective.
- (iv) The majority support enjoyed by the executive in the Parliament reduces the possibility of effective criticism.
- (v) The growth of delegated legislation reduced the role of Parliament in making detailed laws and increased the powers of bureaucracy.
- (vi) Parliament's control is sporadic, general and mostly political in nature.
- (vii) Lack of strong and steady opposition in the Parliament has also contributed to the ineffectiveness of legislative control over administration in India.
- (viii) There is no automatic machinery for the effective scrutiny on behalf of the Parliament as a whole; and the quantity and complexity are such that it is no longer possible to rely on such scrutiny.

In **Avinder Singh v. State of Punjab**, 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.

Jain and Jain stated about the control of the legislature over the delegated legislation that "It is the function of the legislature to legislate in a parliamentary democracy. If it seeks to delegate its legislative powers to the government due to a few motives, it is not the right of the legislature, but additionally its duty, as predominant, to look how its agent i.e. the executive carries out or maintains the company entrusted to it." Since it is the legislature which delegates legislative power to the executive, so it is its primary duty to check whether the entrusted power is working properly or not and also it has power to supervise and control the actual exercise of this power. In the U.S.A., the government is not responsible to the Legislature and Congressional control of delegated regulation is in most cases indirect. However, the Congress can also direct administrative groups to put up the periodical and unique reports or to give an account of their

activities. In the USA, Congress has no effective control over delegated regulation due to the fact the President of the USA is not accountable to the Legislature.

However, in India, there is a Parliamentary form of Government and the Prime Minister is accountable to the Legislature. So in India Parliament can exercise direct control over the Government. In India committees regarding control of delegated rules are formulated through Parliament for both houses every year. The principal characteristic of each committee is to scrutinize the statutory regulations, to make legal guidelines for the public, etc. made with the aid of any administrative frame and reports to the residence whether or not the delegated power has been exercised nicely within the limits provided underneath the Parent Act or the Constitution. However, in America no such type of powers are given to Legislature and also Legislature has no power to exercise direct control over delegated legislation made by the Executive. So it is essential to keep concord between Legislature and Executive in a democratic society and also there needs to be a powerful system of management of the Legislature over the Executive so that government cannot misuse their powers while making delegated rules.

*Kruse v. Johnson*, In this case, under the authority of the Local Government Act 1888, the Kent County Council made a by-laws. This law states that nobody could play music or sing a song within 50 yards of dwelling house in public place or highway after being requested to stop by a constable. The claimant was singing a hymn within 50 yards of the dwelling house and had refused to stop after the constable had told him to do so. He was given a penalty. He sought for judicial review to declare that the by-law was void.

Judgment: Lord Russell CJ, giving the courts leading judgment, held the by-law became valid on the ground that it becomes no longer unreasonable, due to the fact that it does not have a discriminatory impact on the population.

*Chintaman Rao Case*, Section 3 and 4 of the Central Province and Berar Regulation of Manufacture of Beedis Act, 1948 grants power to the Deputy Commissioner to fix the period of agriculture season with respect to a certain village where the Act applies. The Deputy Commissioner has the power to prohibit the manufacturing of bidis and no person is authorized to manufacture bidis.

On 13th June 1950, an order was issued via the Deputy Commissioner of Sagar prohibiting the people in certain villages to manufacture bidis. When the case is dealt by the Hon<sup>ble</sup> Supreme Court, the period cited within the order expired and another order covering the agricultural

period from 8th October 1950 to 18th November 1950 was issued and the same order was questioned in the present case. Does the question arise whether the impugned Act is falling within the saving clause or excess of its provisions?

Judgment: It has been held in this case that prohibition of making bidis in the agriculture season by the Deputy Commissioner is violative of Article 19 1(g) of the Indian Constitution.

## **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. Today, its main use is that it gives legal effect to European directives. When the order issued under the privilege of the Queen or the Crown such order is subject to review by the courts. But order issued by the Parliament may or may not be subject to review by the courts as it is made within the prescribed limits Act of Parliament. In both the case the question can arise that if this legislation is the same as the Executive legislative. The answer to this question is yes, it is equivalent to executive legislative. There is no major difference between these orders and Executive legislative almost they both are same. The meeting of Privy Council in such case could simply mean a meeting of some Privy Councillors which includes three or four ministers, President, Councils and Clerk of Privy Councils. This shows that this order is issued by the Executive who exercises powers of the Council.

**Rules of the Supreme Court and the County Courts:** The Parliament by statutes bestows 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. Entrusting Judicial branch to control its Procedural law to a great extent has an advantage as it is given to that authority who knows better about it than any person. Procedure and cost that are drawn by Rules Committee of County Courts deals by the County Courts itself. Such rules are not subject to the control of Parliament. When these rules used to come into force? It comes into force when the Lord Chancellors with the consent of the Rules Committee of the Supreme Court confirms it.

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 Executive Instructions or Regulations. Sometimes very wide powers are given to the administration or the delegated person. But this wide delegation of legislation is not accepted by the judiciary as it is difficult for them to control



administrative action. There is extensive use of this delegated legislation in today's world. Nowadays only the broad line of making legislation is in the hands of Parliament and the rest power is given to the Administrator.

## **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. The rules of these association are termed as voluntary but this is not so in reality. It is fictitious as in its effect these rules are binding upon members like other rules such as rules of a professional association, industrial organisation, etc.
- **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.