

DELEGATED LEGISLATION IN INDIA**Introduction:**

In the realm of legal theory, delegated legislation is one of the most debatable issues because of its various implications. Indian democracy is said to rest on the acclaimed four pillars and these are the legislature, the executive, the judiciary, and the press. These pillars are empowered by the constitution not to interfere in the matters of others. As per the Constitution, the legislative has legislative powers and the Executive has the power to execute the laws. Similarly, the Judiciary has the power to resolve dispute and to met out justice. But we have to keep in mind that there are multifarious functions that have to be performed by the Legislature in welfare states and it is not an easy task for the legislature to look after every matter.

In contrast to this increasing legislative activity, the legislatures are not able to find adequate time to legislate on every minute detail. They have limited themselves to policy matters and have left a large volume of area to the Executive to make rules to carry out the purposes of the Legislature. In such types of situation, the system of delegated legislation comes to our mind. Therefore, the need for delegation is necessary and is sought to be justified on the ground of flexibility, adaptability and speed. This delegation is also known as 'secondary legislation' or 'subordinate legislation'. The Act that gives the executive the power to legislate is called the 'Enabling Statute' or 'Parent Act'. The standard of rule of the majority has made authoritative controls inadequate. The term delegated legislation is hard to characterize.

MEANING OF DELEGATED LEGISLATION

'Delegation' has been defined by Black's Law Dictionary as an act of entrusting a person with the power or empowering him to act on behalf of that person who has given him that power or to act as his agent or representative. '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. Delegated legislation, additionally alluded to as an auxiliary legislation, is an enactment made by an individual or body other than Parliament. Parliament, through an Act of Parliament, can allow someone else or some body to make enactment. An Act of Parliament makes the system of a specific or particular law and tends to contain an outline of the purpose for the Act. By delegating the legislation by Parliament to the Executive or any subordinate, it empowers

different people or bodies to integrate more details to an Act of Parliament. Parliament along these lines, through essential enactment (for example an Act of Parliament), licenses others to make laws and guidelines through delegated legislation. The enactment made by authorize person must be made as per the reason set down in the Act of Parliament.

According to Sir John Salmond, “Subordinate legislation is that which proceeds from any authority other than the sovereign power.”

Justice P.B Mukherjee also observed about delegated legislation that it was an expression which covered a multitude of confusion. He viewed it as an excuse for the Legislature, a shield for Executors and a provocation to the Constitutional Jurist.

According to M.P Jain, this term can be used in two senses:

Exercise by subordinate agency or agency that is lower in rank to legislature delegated to it by the Legislature.

The Subsidiary rules made by the Subordinate Authority in the execution of the power bestowed on it by the Legislature.

Delegated legislation is, referred to as Subordinate, Ancillary, Administrative legislation, and Quasi-Legislation.

HISTORY OF DELEGATED LEGISLATION IN INDIA

The historical backdrop of the delegation of power can be followed from the Charter Act of 1833 when the East India Company was recapturing political impact in India. The Charter Act of 1833 vested the administrative powers only in the hands of the Governor-General-in Council, which was an official body. He was enabled to make laws and guidelines for revoking, correcting or modifying any laws or guidelines, which were for all people regardless of their nationality. In 1935 the Government of India Ac, 1935 was passed which contained a serious plan of delegation. The report of the Committee of Ministers’ Powers was submitted and affirmed which completely settled the case for assignment of forces and appointment of enactment that was viewed as inescapable in India.

However, our Constitution depended on the separation of power; a total partition of forces was unrealistic henceforth it kept up the holiness of the tenet in the cutting edge sense. The Indian Constitution does not deny the assignment of forces. Then again there are a few arrangements where the official had been conceded with the administrative forces. For instance, the administrative forces of the President under the Indian Constitution are prominent. The problem

of the delegation of legislation in India originated under the British rule when the controversy on the problem in the West was in full swing. In independent India, the conflict of settling the problem of the delegation of legislative power was prima facie to a conflict between the English and American type of solution.

The Constitution of India comprises of more than four hundred Articles and it had not been surprised if the Constitution makers include some solution for it. But why these provisions were incorporated in the Constitution? This is because the politicians in the Constituent Assembly tended to multiply legal formulations. These issues were of minor importance on which legal formulation was made in comparison to other greater constitutional issues that were by-passed by the Assembly that were left to future accord or judicial interpretation. In the case of *Queen v. Burah*, nature and extent of Legislature power and the feasibility of its delegation was considered by the Privy Council. The Privy Council, in this case, held that Councils of Governor-General was supreme Legislature and has ample number of powers and who are entitled to transfer certain powers to provincial executors. At the time of passing of New Delhi Act of 1912, the Privy Council accepted the transfer of Legislature power to the Executive.

NEED FOR DELEGATED LEGISLATION:

The process of delegated legislation enables the Government to make a law without having to wait for a new Act of Parliament to be passed. Further, delegated legislation empowers the authority to modify or alter sanctions under a given statute or make technical changes relating to law. Delegated legislation plays a very important role in the process of making of law as there is more delegated legislation each year than there are Acts of Parliament. In addition, delegated legislation has the same legal standing as the Act of Parliament from which it was created.

Delegated Legislation is important because of several reasons. They are-

1. Delegated Legislation reduces the burden of already overburdened Legislature by enabling the executive to make or alter the law under the authority of Legislature. Thus, this helps the Legislature to concentrate on more important matters and frame policies regarding it.
2. It allows the law to be made by those who have the required knowledge and experience. For instance, a local authority can be permitted to enact laws with respect to their locality taking into account the local needs instead of making law across the board which may not suit their particular area.

3. The process of delegated legislation also plays a significant role in an emergency situation since there is no need to wait for particular Act to be passed through Parliament to resolve the particular situation.
4. Finally, delegated legislation often covers those situations which have not been anticipated by the Parliament during the time of enacting legislation, which makes it flexible and very useful to law-making. Delegated legislation is, therefore, able to meet the changing needs of society and also situations which Parliament had not anticipated when they enacted the Act of Parliament.

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 as 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 panel provision. The President issued the prohibition made by the above act through the executive and authorized the Security of Interior to exercise all the powers vested in the President under section 9(c) of the Act. The Security 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.

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 maintain 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 the 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'ble 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 means 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 Executorial 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.

REASONS FOR GROWTH OF DELEGATED LEGISLATION

Many factors are responsible for the rapid growth of delegated legislation in today's time. Because of the radical change in the governance of a country from 'police state' to the 'welfare state' the function and the need of delegated legislation have increased. These factors and reasons for growth of delegated legislation can be seen as follows:

1. **Pressure upon time of Parliament:** The area, scope, or horizon of state activities are expanding day by day and it is difficult for the Parliament to make laws on each and every matter as they are having a lot of work to do and they also have to make legislation on various matters. The Parliament is so much occupied with matters concerning foreign policy and political issues that it has not much time to enact the laws in detail. So it only frames the broad part of the rule and outline of the legislation and gives that legislation to the executive or some of its subordinates to fill the full detail following the necessary rules and regulations. It is like they have given the only skeleton and the subordinate have to fill flesh and blood to the skeleton to make it alive. The committee on Ministers' Power has observed that if the parliament is not willing to delegate law making power to the subordinate then he will unable to pass the quality of rules and regulations that a person needs to live a happy life or legislation which a modern public requires.
2. **Technicality in the matters:** With the progress and advancement in society, things have become more twisted, complicated and technical. So to understand the technicality of each and every topic, legislature needs the expert of that particular topic who is well aware of each and every detail of that matter. Over the years it has been observed that some legislature only knows politics and some might have knowledge about one or two topics. Therefore, after framing policies by the parliament on any topic, that topic is given to the government department or any particular person who knows about the technicalities of that particular topic and given the power to lay down the details.
3. **Flexibility:** Parliamentary amendment is very slow and it requires a process to make any type of law but by the tool of delegated legislation it can be made expeditiously with the help of the executives, e.g., police regulation, bank rate, import and export, foreign exchange, etc. Also, Parliament cannot foresee the contingency while enacting a law so to make it foresee the workload is being given to the executives. So it is necessary to give work to lower body to have that work in a smooth and better manner.
4. **Emergency:** In any type of emergency one should know how to deal with it quickly without any delay. The legislature is not equipped with the skills of providing an urgent solution to meet the situation of emergency. Delegated legislation is the only way to meet that situation. Therefore, in times of emergency and war, an executive is given wide power to deal with that situation. Some examples of delegation in England during the First and Second World War

are the Defence of the Realm Act 1914-15, the Emergency Power Act, 1920, etc. Similarly, in the case of inflation, flood, epidemic, economic depression, etc. immediate remedial actions are necessary.

5. **Experiment:** The practice of delegated legislation enables the Executive to experiment. As every work is new for the legislative and he has to experiment that either this law is working in perfect condition or not. This method or approach permits the utilization of experience and implementation of the necessary changes in the application of the provision made by the Parliament. For example, in traffic matters of the road an experiment method can be conducted and in the wake of its application necessary changes can be made in the provisions. The advantages of such a course is that it allows the delegated authority to consult the interest of people at the ground level that what type of law is affecting them and then he makes an experiment by altering the provisions.
6. **Complexity of modern administration:** Modern administration used to take added responsibilities when it came to upraise the condition of the citizens such as looking after their employment, health, education, regulating trade, etc. Therefore, the complexity in modern administration and expansion of states' function to the social sphere and economic have allowed the formation of a new form of legislation and to give wide powers to various authorities on various occasions. It is important that an administration should give an excess of power to activate socio-economic policies. In a country like Bangladesh where control over private trade, business or property may be required to be imposed, it is necessary that the administration should hand over the excess amount of power to implement such policy.

Therefore, we can say that there is a rapid growth of this delegated legislation and also it is necessary for a country to run smoothly.

CONSTITUTIONALITY OF DELEGATED LEGISLATION

It basically means the limits that are permissible within a Constitution of a country through which Legislature with all his right can delegate its power of rule making to other agencies of administration. The aim of extending the power of the government is to handle socio-economic problem.

Position in USA: Delegated legislation is not allowed theoretically in the constitution of the USA because of the two reasons. These are, "Separation of Power" and "Delegatus non potest

delegare". There is no reference of text has been given in the Constitution of the USA which shows that it delegates its power from Legislature to the Executive. Congress was itself a delegatee then how can it delegate its powers. The political theory that was propagated by philosophers like John Locke and Montesquieu were imbued on the framers of the American Constitution. John Locke has said that a legislative cannot delegate his powers of lawmaking to any person or cannot place it anywhere. He further stated that there should be separate Legislature and Executive because if the power of law making and execution of that laws go in one hand it can be misused and these people use that power to exempt them from that law and use it for their private advantage. So the doctrine of 'delegatus non potest delegare' has been given by John Locke it means the same as what we have explained above.

Another philosopher, Montesquieu has given the concept of 'Separation of Powers'. According to Montesquieu, one person cannot exercise all the three powers of the government i.e., the Judiciary, the Legislature, and the Executive. The Legislature should make laws and should not enforce or administer it. Similarly Executive should not interfere in the work of Judiciary and Legislature and Judiciary should be free from Executive and Legislature. All should do their work separately. In America, the power to make legislation has been given to the Congress, executive powers given to the President of the USA, and the judiciary power of the United States is vested in the hands of Supreme Court and also it might be given to lower court from time to time on the ordain of the Congress.

Due to the adoption of separation of power by the United States, the legislative power can be vested only in the hand of Congress and no organs of the government. Further, it has argued that the power to the Congress itself has been delegated by the American Constitution so it cannot further delegate its power. In case of *Field v. Clarke*,^[7] it has been observed by the Supreme Court of America that the power entrusted to one department should only be exercised by that department without interfering in the power or area of another person. But in some other cases of Supreme Court of America, it was observed that in non-legislative power such as rule-making power or quasi-legislative powers can be delegated by Legislature to the Executive. In *Wagman v. Southard*,^[8] Chief Justice Marshall observed that the line has been not drawn between those subjects which were important and, therefore, regulated by the Legislature itself and those subjects of lower interest which were given to the Executive for filling the details in the structure of that legislation.

So to conclude about the delegated legislation in America it can be said that it has not been accepted in principle but in practice, the Legislature has entrusted the power of law-making to the Executive.

Position in England: The doctrine of parliamentary sovereignty is the core element of the UK Constitution. In England the Parliament is supreme and there is no limitation by the Constitution on the Parliament. Also, Parliament in England has wide powers of delegating its legislative power to the Executive or other subordinate bodies. Committee on Ministers' Powers also refers to as Donoughmore Committee released a report in which a famous lawyer of England, Sir Cecil Carr has quoted about three parts of legislation. These are as follows:

The first and the very smallest part is made by the Crown under her prerogative powers.

The second and the weightiest part is made by the King in the Parliament and it consists of Acts of Parliament.

The third and the bulkiest part is made by such body whom the King entrust the power of legislation in the Parliament.

Sir Cecil Carr has also observed that the truth is that if the parliament is not willing to delegate the law-making power, the Parliament is unable to provide quality and kind of legislation the modern public wants.

Position in India: The position and Constitutionality of delegated legislation in India can be seen in various cases. It is divided into two phases i.e., before independence or we can say it as pre-independence and post-independence.

Pre Independence: In *Queen v. Burah*, only Conditional Legislation has been validated by the Privy Council and therefore delegated legislation is not permitted as per its reasoning. The administration of civil and criminal justice of a territory can be vested in the hands of those officers who were appointed by the Lieutenant-Governor from time to time.

The Privy Council has stated that it is better to take help from the subordinate agency in framing the rules and regulations that are going to be the part of the law and giving another body the essential legislative features that has only given to the Legislature through the Constitution. He also stated about the essential legislative function that included in determining the legislation policy.

In *King v. Benori Lal Sharma*, Condition legislative was again applied by the Privy Council, the same as in the case of *Queen v. Burah*. In this case the validity of the Emergency Ordinance

given by Governor-General of India was challenged inter alia. It was challenged on the ground that he is taking the power of the Provincial Government. He was setting up special criminal courts for particular kind of offences but for the settling of any court, power has been given only to the Provincial Government. The judicial committee held that this is not delegated legislation. Privy Council also held that it is an example of an uncommon legislative power by which the local application of the provision of State determined by the local administrative body when it is necessary.

Post-Independence: The Constitution of India does not provide the same position as the prominent British Parliament provide to the delegation of legislative powers and also how far delegation is permissible has got to be confirmed in India as a matter of construction from the express provisions of the Indian Constitution. It cannot be said that an exhaustible right of delegation is inherited in the legislative power itself.

In the case of **Raj Narain Singh v. Chairman**, Patna Administration Committee Air, the Supreme Court of India upheld the delegation of power given to the executive by the legislature.

In **Lachmi Narain v. Union of India**, The Central Government exercising the power that it has got from Section 2 of the Part State (Laws) Act, 1950, which extended the Bengal Finances (Sales Tax) Act, 1941 to the Part State of Delhi with certain modification in Section 6 through a notification. By various notifications, the granted sales tax on various commodities was exempted but subsequently, the exemption was withdrawn by another notification. Dealers who are indulging in those commodities, challenges the validity of that withdrawal. It was held in this case that the notification issued by the Central Government is beyond its power conferred on it by Section 2 of the Union Territories (Laws) Act, 1950 and in consequence of any type of notification issued by the Central Government is invalid and ineffective.

ADVANTAGES OF DELEGATED LEGISLATION

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:

Reduce 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. If the Parliament devotes its time in laying down minor and subsidiary detail of each and every legislation by making all the rules required for that legislation then it will take

too much time and in that time it can only deal with a small amount of Act in detail. It is lengthy, time consuming process and also it is expensive to operate Parliament process. It cannot cope up with the growing needs of legislation. So there arises the need to overcome that load and it can be possible only through delegating ones legislative authority to the subsidiary ones or the executives. Delegated authorities which an expert resides are more appropriate to make laws and to meet the needs of the community. It saves ample amount of time of the Parliament because it gives the members a chance to create or to make rapid changes in small items.

Technical Expertise: Today's world has become very technical and complicated by the introduction of modern means and advancement in technology. So it is necessary for the members of parliament to know each and every field but one cannot be the master of all fields. Therefore, 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. Also, Parliament is not a forum which can make laws on administrative and technical details but it is more concerned with social issues and the rule of law. Therefore, it is thought that it is better for the parliament to debate on the broad topic or the main topic and leaves the rest detail for the fulfilment by the expert of that particular field. Thus, delegate's 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 knew their locals need, what's they want? And it is very essential to know a person for whom we are making laws. The Parliament makes the laws for broad principle while its delegate handles the local principle. This separation of power helps in the smooth running of the legislature.

Emergencies: Delegated Legislation allows for rapid action in case of an emergency but Parliament takes too much time in taking any decision. It has to call for a session then the Parliamentarian discusses the emergency topic. And after that, if they all conclude then only that act would have passed. In some cases, the Parliament has not enough time to accurately make a piece of legislation and a quick and safety legislation is required for the safety of a nation. For example, in the UK, the Prevention of Terrorism Act was created as delegated legislation and

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.

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.

CRITICISM ON DELEGATED LEGISLATION

Following are the criticism of delegated legislation:

1. Delegated legislation results in overlapping of functioning as the delegated authorities get work to amend the legislation that is the function of the legislators.
2. It has been a matter of question that if the Legislature control has come down after the arrival of the delegated legislation.
3. Unelected people cannot make much delegated legislation as it would be against the spirit of democracy.
4. After getting too much power from the Legislature, the Executive has encroached upon the domain of legislature by making rules and regulations.
5. The enactment subject that was appointed to less Parliamentary scrutiny than essential enactment. Parliament, along these lines, has an absence of authority over appointed enactment, and this can prompt irregularities in laws. Appointed enactment, in this way, can possibly be utilized in manners which Parliament had not foreseen when it was given the power through the Act of Parliament.
6. Delegated legislation makes laws without much discussion. So, it may or may not be better for the public.
7. Designated legislation by and large experiences an absence of exposure. Since the law made by a statutory authority not informed to general society. Then again, the laws of the Parliament are generally broadcasted. The purpose of the absence of exposure is the enormous degree of enactment that is being assigned. There has likewise been concern communicated that an excess of law is made through appointed enactment.
8. It can possibly be misused for political gain. The executive makes law according to what the political parties. Hence, it results in the misuse of the legislation made by the Executive by the ruling party.
9. Executives become too powerful as it already has the power of executing any laws and legislation and now the Legislature is delegating its legislative power to the Executive. So, both the power are in the hands of the executives now he can use this power in whatever way he wants to use it.
10. It is against the theory of the power of separation which has been given by the famous political thinker Montesquieu.

CONCLUSION

Delegated or subordinate legislation means rules of law made under the skilled person of the Act of Parliament. In spite of the fact that lawmaking is within the capacity of the lawmaking body, it might, by a resolution, delegate its capacity to different bodies or people. The resolution which delegates such power is known as the Enabling Act. By Enabling Act the council sets out the wide rules and nitty-gritty principles are instituted by the delegated authority.

If in India the control of Parliament over the delegated legislation has to be made a living continuity, then it is important that the job of the advisory groups of the Parliament must be fortified and a different law like the Statutory Instruments Act, accommodating uniform standards of laying and production, must be passed. The board of trustees might be enhanced by a specific authority body to make the watchfulness of assigned enactment progressively successful. Other than the different measures mentioned above, it should be taken to reinforce the control of Parliament over designated enactment. The tenets and standards created by the Legal Executive should be connected by the necessities of the advanced age. In spite of the fact that there are no express arrangements in the Constitution of India to allow the appointment of authoritative power, the legal pattern saw in regard of assigned enactment is as per the aim of establishing fathers our Constitution whose principal concern was the flexibility of the Constitution with changing needs of the time. If you want to make certain that the power of delegated law in the arms of the government is not misuse, it is vital to adopt powerful modes of control as applicable in the USA which India has now not integrated yet.