



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 4 AND ISSUE 3 OF 2024

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 3 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-3-of-2024/>)

Publisher

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DEBATE OF JUDICIAL REVIEW ON DELEGATED LEGISLATION IN INDIA: A CRITICAL ANALYSIS

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BEST CITATION – NAVEEN KUMAR M, A STUDY ON MIGRANTS AND THEIR HUMAN RIGHTS, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (3) OF 2024, PG. 372-374, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

The increasing engagement of the judiciary within the realms of constitutional democracy in India has triggered debates on the issue of judicial review over subordinate legislation. Subordinate or secondary legislation refers to various secondary statutes legislated by the executive on behalf of the primary laws enacted by the legislature. It is important in the practice of administration to tackle certain details on matters like public health, the environment and labor law. Still, excessive delegation especially to the executive branch raises some red flags which the courts seek to settle through the ultra vires doctrine, which ensures that the delegated legislation conforms to the provisions of the enabling statute that is the primary law.

Issues of excessive delegation, tension in the non-delegation doctrine and practical necessity, and other nations ongoing problem of adequate control while avoiding judicial overreach are still prevalent to date. Courts have set some landmark decisions that have greatly limited the scope of delegating power, examples include the Re Delhi Laws Act case in 1951 and Hamdard Dawakhana v Union of India 1960.

In the end, Indian judicial review does not subserve the principles of good governance, executive action and respect for the Constitution and other laws in the country. Delegated legislatures are necessary in ensuring that the lawmakers' intent is followed without violation of the fundamental rights that are more often than not taken by the state in the name of efficiency. There rests the challenge that the courts must balance so that they do not enter into the sphere of making policy for the executive.

Introduction

The expanding role of the judiciary in the constitutional democracy in India has brought about the debate on judicial review of the delegated legislation. As per, the delegated legislation means laws and other rules created by the organs of government with the authorizing powers given by statutes or primary laws most times by either parliament or state legislative assembly. This course of action, though inevitable in the management of present particular types of governments, creates apprehensions of over delegation, lack of responsibility, and excess use of authority by the executive branch.

The Need for Delegated Legislation

Delegated legislation, is known as secondary or subordinate legislation, comes from a necessity in managing the difficulties of governance. In Today's world, Modern laws rarely require technical aspect expertise and implementation, It is common sense to state that most laws today cannot only be enacted, but they also need a technical application – work that day-to-day legislators are not trained to execute. In the case of public health, taxation, protection of the environment, labor laws, there is such a need for implementing much narrower guidelines based on the common legal framework.

Judicial Review of Delegated Legislation

In the context of India, judicial review forms an important aspect for upholding the rule of law. It is the duty of the judicial system, and especially the Supreme Court and High Courts, to determine whether any law or executive action is in accordance with the Constitution, including any subordinate legislation. The courts in India, provided by the Constitution, comprise of Article 13, 32, 226, 136 in particular, to determine any odious legislative act which is against the spirit of fundamental rights or exceeds the legislative jurisdiction.

When it comes to Delegated legislation, the courts ensure that no delegated legislation is passed which is beyond the framework of the statute that has the Gulf of Mexico composition. The courts routinely practice the “doctrine of ultra vires,” which means the annulment of any subordinate legislation if it is contrary to the intention of the enabling statute. Lastiuspositivelegislation. This doctrine helps to maintain the separation of powers by limiting the authorities of the executive branch in administrative bodies.

Key Issues in Judicial Review of Delegated Legislation

1. Excessive Delegation:

A key problem with delegated legislation is the tendency of the legislature to overload the executive with power. Courts have long established that it is not possible for the Parliament to abandon its primary law making powers and leave them to the executive. In certain cases of significance, for example in the *Re Delhi Laws Act, 1951* and *A.K Roy v. Union of India (1982)*, it was ruled by the Supreme Court that there is a limit within which delegation can only be made. Nevertheless, the notion of “over” delegation tends to remain a relative one and this often invites judicial whims on where the boundaries of limits to delegation lies .

2. Non-Delegation Doctrine vs. Practical Necessity:

The doctrine of non-delegation is not always in alignment with the practice of governance. While courts have to adhere to the doctrine which limits the division of legislative powers, it is equally accepted that this would lead to inefficiency of modern governments who must delegate some powers. Delegation is often accepted into administrative law but it is usually within certain bounds and there is always room for some judicial intervention.

3. Judicial Overreach vs. Judicial Vigilance:

This again is another example of judicial overreach—that the courts are interfering in an excessive manner in matters of delegated legislation. Others contend that the judiciary must become vigilant in behalf of fundamental rights and in preventing executive overreach. Courts, therefore, often walk a fine line between respecting the autonomy of the executive to implement policy and fulfilling their duties as the guardian of the Constitution.

Significant Judicial Precedents

Indian courts are actively involved in adjudicating on the constitutionality of delegated legislation. Some landmark cases include:

1. **In Re Delhi Laws Act Case (1951):** This case was used to establish a precedent in outlining the limits of permissible delegation. In their verdict, the Supreme Court concluded that while Parliament cannot delegate the functions of fundamental legislation, it could confer the power on the executive to make rules and regulations based on the implementation of laws.

2. **Hamdard Dawakhana v. Union of India (1960):** 1. A Supreme Court judgment that ruled a clause in the Drugs and Magic Remedies Act as unconstitutional since it granted arbitrary powers to the executive regarding the banning of ads without clear guidelines. Thus, the Court declared the arbitrary exercise of power as unconstitutional.

Conclusion

Indian judicial review of delegated legislation reflects more general tensions between the pursuit of efficiency in governance and the need for constitutional guarantees of fairness. For delegated legislation offers the only practical route to efficient administration, yet that route must operate within a framework that should as far as possible be clear.

Therefore, Indian judiciary needs to perform a significant review function of such legislation to maintain the strength of legislative intent and executive action. The Indian courts, through doctrines of ultra vires and principles of reasonableness, make sure delegated legislation acts in lieu of its actual purpose and does not violate the constitutional rights of individuals. The bigger challenge, however, lies ahead in the manner in which courts avoid judicial overreaching and balance judicial intervention with deference to the policymaking discretion of the executive.

REFERENCE

Books:

1. Massey, I. P. (2012), Administrative Law (8th ed.), Eastern Book Company.
2. Jain, M. P. (2018), Indian Constitutional Law (8th ed.), LexisNexis

Cases:

1. In re Delhi Laws Act, 1912, 1951 AIR 332, 1951 SCR 747.
2. Hamdard Dawakhana v. Union of India, 1960 AIR 554, 1960 SCR (2) 671.
3. A.K. Roy v. Union of India, 1982 SCR (2) 272, 1982 AIR 710.