

## LEGISLATIVE CONTROL OVER DELEGATED LEGISLATION

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**BEST CITATION** – K SANKARA SUBRAMANIAN, LEGISLATIVE CONTROL OVER DELEGATED LEGISLATION, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (3) OF 2024, PG. 701-705, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

The principle of delegated legislation and its control are discussed in this article. In the modern Valsad state the government activity has enrich every field of human endeavour. Many law having an actor to regulate this ever widening activity. The delegated legislation the control of the principal and shall not diffy the enabling statue or parent act.The function of the delicated power can be amended or cancelled by principle if there is any abuse of power or misuse of power. Delegate or subordinate legislation refers the rule of law enacted by the authority of the act of parliament. The law making organ of the state has the power to make laws. This authority can be delegated to other entity or individual through a resolution. The delegated legislation must be legitimate and accountable, which calls for a strong control system.

### INTRODUCTION:

Legislative control over the dedicated legislation is an important safeguard to ensure the executive branch do not abuse or miss you power and do not become too powerful. It also help to ensure that the law making is the primary role of an legislature. Important function of legislature are to; Ensure proper exercise of power, prevents abuse of power, maintains democratic principles. Dedicated legislation is when the legislature gives the executive branch the power to make law to implement the requirements of primary legislation. Delegated legislation is necessary because it is not practical for the legislature to do or perform all the function as many activity are there in a welfare state. Delegated legislation has been defined by Salmond as “that which proceeds from any authority other than the sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority”<sup>1</sup> Explaining the meaning of the expressions “delegated legislation” and “delegating legislative power”.

### DIRECT PARLIAMENTARY CONTROL

#### General Control;

Parliamentary control in a direct manner can be carried out via oral debates, questions, notices or even resolutions which are brought forward by the Members of Parliament (MPs for short). These measures are competent enough to oversee the situation on the need for, scope and type of delegation, so the executive is still answerable to the parliament.

#### Special control;

One of the most significant direct parliamentary controls is the laying procedure, which forces the executive to have delegated legislation laid before Parliament. There are three principal varieties of this procedure:

**Simple Laying.** In this case, the rules and regulations take immediate effect at the moment they are laid before the House, and serve only to inform Parliament of their existence.

**Laying Subject to Negative Resolution:** In this case, rules have immediate operative effect once laid but are liable to be annulled by a resolution of the House within a specified period

usually 40 days. This procedure acts as a deterrent and sometimes forces the Minister to modify the rules to address the concerns raised by MPs.

**Subject to Positive Resolution:** The provisions in this line have no operation and compulsive character unless agreed with a resolution of each House of Parliament. Such a process entails debate in each instance, which therefore defeats one of the aims of delegation-saving parliamentary time.

It is used generally where the delegated legislation has the profound influence on public spending or supersedes the local Acts or approximates true legislation. Whether the provisions of enabling Act are mandatory or directory would determine the legal implications of failure to comply with laying provisions. In a trail blazing case, *Atlas Cycle Industries Ltd. v. State of Haryana* (more detailed discussion below), the Supreme Court held that each case would depend upon its own facts and circumstances and the wordings of the statute in which the rules under which they are being made are.

### INDIRECT PARLIAMENYARY CONTROL

**Indirect control through specialized committees:** This can be seen through the Committee on Subordinate Legislation of the Lok Sabha. The committees ensure whether the conferred powers are being used within the limits of the delegation and check matters like observance with the objectives of the parent Act, imposition of taxes, and attempt to encroach upon the jurisdiction of courts. The government usually attaches considerable weightage to the reports and recommendations made by these committees.

### PUBLICATION

Proper publicity to the delegated legislation goes a long way as a precautionary measure against the misuse of delegated powers. In the absence of any general statutory provision in India for regulating the publication of delegated legislation, the Supreme Court has taken the

view, in cases like *Harla v. State of Rajasthan* that such publication is an essential requirement for the validity of delegated legislation, irrespective of the fact that the law is silent on the point.

The mode of publication, whether official gazettes or otherwise, is generally directory and not mandatory where reasonable facilities are provided for access to the rules with due diligence. However, the court placed onus on informing the people of rules through local language dailies so that people may achieve the rational purpose of rules in governance.

### CONSULTATION

The process of consultation democratizes the rule-making process by giving "affected interests" an opportunity to have their say and hence making a difference in decisions taken at the administrative level. There is no general requirement for consultation in India, though some parent statutes require "previous publication" of draft rules, soliciting objections and suggestions from the public before finalization. The Supreme Court held that provisions requiring consultation with affected parties or statutory bodies mandatorily give importance to public participation in the interest of public welfare as well as effective implementation of laws.

### CHALLENGES AND REFORMS

Despite the existence of mechanisms of parliamentary control, delegated legislation is a cause for concern with respect to challenges on legislative authority and weaker scrutiny mechanisms. Some of the key concerns are as follows:

1. Broad delegation of legislative powers, often under generalized standards of control, which reduces the effectiveness of parliamentary oversight.
2. The inadequate capacity of Parliament to scrutinize the substantial volume of delegated legislation, thereby making resort to negative resolution procedures less than effective and inferior to proper scrutiny.

3. Control mechanisms are not uniform throughout the statutes; therefore, their application tends to be uneven and sometimes creates loopholes.

4. There is generally lack of detail in the memoranda accompanying the proposals for delegation by bills, which fails to provide full information regarding the extent and nature of the intended delegation.

**To overcome such lacunas several reforms have been suggested, these include:**

1. Uniform and mandatory laying procedure shall apply to all delegated legislation. This should be subject to an affirmative resolution by Parliament.

2. Permuting the role and resources of specialized parliamentary committees so that they can better effectively scrutinize matters before them.

3. Comprehensive memoranda shall accompany bills submitted which involve proposals for delegation. Such memoranda should contain detailed information regarding the scope, necessity, and effects expected from the proposed delegation.

4. Publication and other consultation requirements should be strengthened so as to increase transparency and public involvement in the rule-making process. Scrutiny mechanisms are required, possibly through post-legislative review or sunset clauses to ensure that delegated legislation is up-to-date and appropriate.

#### CASE LAWS

1. Atlas Cycle Industries Ltd. v State of Haryana (AIR 1979 SC 1149)

Whether laying of rules before Parliament is mandatory or directory? The Supreme Court held that it depends on the particular wording and context of the particular statute under which the rules are framed. "The questions whether the direction to lay the rules before Parliament is mandatory or merely directory and whether laying is a condition precedent to

their operation or may be neglected without prejudice to the effect of the rules are answered by saying that 'each case must depend on its own circumstances or the wording of the statute under which the rules are made'".

The 'laying clauses' assume different terms depending on the degree of control which the Legislature may like to exercise, the policy and object underlying the provisions relating to laying the delegated legislation made by the subordinate law-making authorities or orders passed by subordinate executive instrumentalities being to keep supervision and control over the aforesaid authorities and instrumentalities.

2. Jan Mohmd. v State of Gujarat (AIR 1966 SC 385)

This was a case under the Bombay Agricultural Produce Markets Act, which provided that rules must be laid before the legislature. The rules were not placed in the first session but placed in the second session. The Court held that the rules were valid since the legislature did not state that non-laying in the first session would invalidate the rules.

"The Court held that rules remained valid because the legislature did not provide that the non-laying at its first session (there was no functioning legislature because of World War II) would make the rules invalid."

3. Govind Lal v Agr. P.M. Committee (AIR 1976 SC 263)

In this case, the question before the court was whether the notification made under the Gujarat Agricultural Produce Markets Act, 1964, had to be published in the local vernacular language, Gujarati, in a local newspaper. The Court of Law held it to be compulsory. "The notification issued under Sec. 6(5) of the Act, besides Official Gazette, must also be published in Gujarati in a newspaper having circulation in the particular area. This is mandatorily required to be done.

4. Sonik Industries, Rajkot v Municipal Corporation, Rajkot (AIR 1986 SC 1518)

The case dealt with the issue relating to the gazettelement of rules to impose a rate on buildings and lands. Held: The Court has held that the manner of its publication is directory, and it is enough that it is reasonably practicable for those who may be affected thereby to obtain knowledge of the rules.

"The mandatory requirement of Sec. 77 was that the rules should be published and it seems to us that the notice satisfies that requirement. The mode of publishing the rules is a matter for directory or substantial compliance. It is sufficient if it is reasonably possible for persons affected by the rules to obtain, with fair diligence, knowledge of those rules through the mode specified in the notice."

#### 5. Harla v State of Rajasthan (AIR 1951 SC 467)

The Supreme Court held that without publication no law can come into force. The case was regarding the Jaipur Opium Act which never had been published at any point of time and the Court declared that punishing a person for a law which he has no knowledge of, is opposed to the principles of natural justice.

#### 6. Rajnarain case AIR 1954 SC 569

Subject matter of the provision was a provision authorizing affected persons to file objections against any taxation measure imposed by a municipality. On this, the court observed: "This provision is undoubtedly one of the matters which come strictly within the purview of the power, legislative in character as it is. It does not come within the ambit of executive power." "A provision authorising affected persons to file objections against any taxation measure imposed by municipality, was regarded as a matter of policy and so lying within the power of legislature and not of the executive to tamper with."

#### 7. Raza Buland Sugar Co. case (AIR 1965 SC 895)

This was a case where the provision involved was of a statute mandating a municipality to publish draft rules that impose tax and consult the inhabitants of that area. To this, the Court held that it was mandatory.

#### 8. Banwarilal Agarwalla v State of Bihar (AIR 1961 SC 849)

The case held that whenever there is a procedure to consult interested persons, such consultation is imperative. The interest of public welfare and effectuating the purposes of the Act involves consultation according to the Court.

### CONCLUSION

Delegated legislation is critical to ensure democratic accountability and the rule of law. The executive can make detailed rules under the framework of primary laws given the role of delegated legislation, but this could be considered as an expression of potential overreach and a lack of adjustment in checking such overreach. Therefore, the affirmative resolution and negative resolution are essential for effective control mechanisms. Affirmative resolutions must have the assent of the assembly to have the force of the law. Regulation debate then is co-operation in scrutiny and amendment within a legislative framework. Negative resolutions of regulation enable regulations to become statutory unless they are repelled. This can expedite the process; however, it may lead to questionable oversight. This requires an assemblage between efficiency and exhaustive examination. Judicial review further makes legislative control strong because courts have the right to examine the lawfulness and constitutionality of statutes provided under laws such that such legislation will ultimately be reflective of the original law. This also checks the legislature and the executive. Transparency is also very crucial; an open process enables public scrutiny and participation, which instills confidence among citizens in governmental institutions. Routine citizen involvement in the process ensures that regulations reflect public values and needs. In such a context, there is a great need for effective legislative control over delegated legislation since it provides the reason for the existence of democratic principles. Legislatures can use mechanisms like oversight to ensure that citizen rights are



INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 3 OF 2024

APIS – 3920 – 0001 (*and*) ISSN – 2583-2344

Published by  
Institute of Legal Education

<https://iledu.in>

protected and that regulations are drawn toward public interest, therefore protecting the integrity of the legislative process.

