



Delegated Legislation



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Objectives

The objective of the session are to:

- **understand the concept & definition of delegated legislation**
- **examine need and importance of administrative law-making**
- **study the constitutional limits on delegation of legislative power**
- **list control mechanisms operating at the point of exercise of delegated legislative power**





Delegated legislation 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

(Salmond, Jurisprudence, 12th Edn., page 116)

Reasons for Growth

- **Pressure on Parliamentary Time**
- **Technicality of subject matter**
- **Need for meeting unforeseen contingencies**
- **Need of experiments**

Kinds of Delegated Legislation

- **Discretion –based classification**
- **Conditional Legislation**
Emperor vs Benori Lal AIR 1945 PC 48
- **Subordinate Legislation**

Purpose based Classification

- **Enabling Act**
- **Extension and Application Act**
- **Dispensing and Suspending Act**
- **Alteration Act**
- **Taxing Act**
- **Penalty for Violation Act**

Authority Based Classification

- **Sub-delegation**
- **If authorized under the Parent Act**
- **power to be exercised only by particular officer or officers to whom delegated**



Constitutionality of Administrative Rule Making



Position in India

- **Position in U.K.**
- **Position in USA**

Cases

- **Panama Refining Co Vs. Ryan (1935) U.S.S.C.**
- **Schechter Vs. U.S. (1935) U.S. S.C.**
- **Yakus Vs. U.S. (1944) U.S. S.C.**

- **Queen Vs. Burah (1878) S.I.A. 178- Conditional legislation –upheld**
- **Emperor Vs. Benori Lal AIR 1945 P.C. 48**
- **Jatindra Nath Vs. Province of Bihar (AIR 1949 F.C. 175)**

Constitutionality of Subordinate Legislation

- **Re Delhi Laws Act, AIR 1951 S.C. 332**
- **Gwalior Rayon Co. Asst. Commr. Of Sales Tax (AIR 1974 S.C. 1660)**
- **N.K. Papiah Vs. Excise Commissioner (AIR 1975 S.C. 1007)**
- **K.S.E. Board Vs. Indian Aluminum (AIR 1976 S.C. 1031)**

Re Delhi Laws Act, AIR 1951 S.C. 332

- **Legislature must first discharge its essential legislative function-laying down the policy of the law and enacting that into binding rule of conduct**
- **Can delegate ancillary or subordinate legislative functions which are generally termed as power to fill in details**
- **Factors to decide "excessive delegation"**
 - **Subject-matter of the law,**
 - **Provisions of the statute including Preamble**
 - **Scheme of the law, and**
 - **Factual and circumstantial background**



"It cannot be said that an unlimited right of delegation is inherent in the legislative power itself. The legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation which, by its very nature, is ancillary' to the statute which delegated the power to make it."

***Mukherjee J. in the Delhi Laws Act case (1951)
SCR 747.***

- **Registrar Co-operative Societies Vs. K.Kunjabmu (AIR 1980 S.C. 350)**

Observation

“.... the legislature cannot delegate its essential legislative function. Legislate it must by laying down policy and principle and delegate it may to fill in detail and carry out policy” (*Ibid*, 352).

Avinder Singh Vs. State of Punjab

AIR 1979 SC 321

- The legislature cannot efface itself;
- It cannot delegate essential legislative function.



Ramesh Birch Vs. Union of India




AIR 1990 SC 560

- **Section 87 of the Punjab Reorganization Act, 1966 – validation of notification issued by central Government – extending the provision of East Punjab Urban Rent Restriction (Amendment) Act 1985 to the Union Territory at Chandigarh**








St. Johns Teachers Training Institute Vs Regional Director NCTE (2003) 3 SCC 321

- **The power to make subordinate legislation is derived from enabling Act.**
- **The delegate on whom such power is conferred has to act within the limits of authority.**
- **Rules cannot be made to supplant the provisions of the Act.**
- **It is required to be made to supplement the Act.**
- **The technique of delegated legislation permits utilisation of administrative experience.**
- **It also provides opportunity of consultation with interest group(s) whose interests are likely to be affected.**





The question whether any particular legislation suffers from excessive delegation has to be decided having regard to the subject matter, the scheme, the provision of the statute including its preamble and the facts and circumstances in the background of which statute is enacted.





In considering the vires of subordinate legislation one should start with the presumption that it is *intra-vires* and if it is open to two constructions, one of which will make it valid and other invalid, the courts must adopt that construction which makes it valid



Retrospective operation

- Only if authorised either expressly or by necessary implication by statute
- Section 36-A of the Administrative Tribunals Act, 1985 expressly authorises the rule-making authority to frame rules with retrospective operation
- Must also be sufficient reasonable and rational justification for applying the rules retrospectively



Norms for Deciding Constitutionality

- **Power of delegation is a constituent element of the power as a whole under Article 245 of the Constitution and has become compulsive necessity due to the complexities of modern legislation.**
- **Essential legislative functions cannot be delegated legislature.**
- **Essential legislative functions mean laying the policy of and enacting that policy into a binding rule of conduct.**

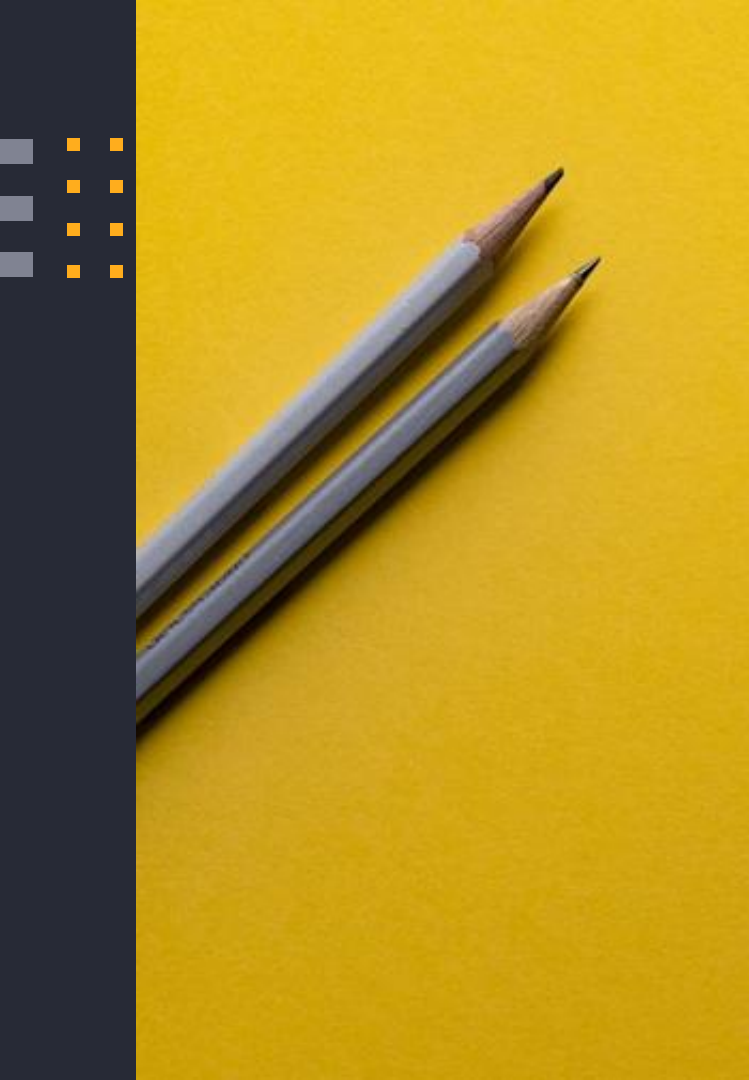
- **The policy of law may be express or implied and can be from the history, preamble, title, scheme of the Act or reason clause, etc**
- **It can delegate non-essentials functions, however numerous and significant they may be.**
- **Courts have travelled to the extreme in holding very broad statements as sufficient policy of the Act to determine the question of constitutionality**
- ■ ■ ■ **Sub-delegation of legislative powers in order to be valid must be expressly authorised by the parent Act**

Concluding Remarks

It is true that limitation by the doctrine of “essential legislative functions”, “excessive delegation”, non-delegability” have been evolved by the courts. In practice difficulties arise in applying these doctrines in concrete situations. Generally speaking, the judicial tendency is to uphold the power of delegation. It may finally be said that the judicial language of limitation on delegation of legislative power is artificial.

Quiz

- **What is delegated or subordinate legislation ?**
- **What is need for administrative rule making?**
- **how much power the legislature is permitted to delegate?**
- **What control mechanisms have been put in place to minimize the hazards of the technique of delegated legislation?**



Thanks!

Any questions?

