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Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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DELEGATED LEGISLATION: AN OVERVIEW

AUTHOR – DHIVYALAKSHMI T, STUDENT AT GOVERNMENT LAW COLLEGE, COIMBATORE

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ABSTRACT

Delegated legislation is a critical component of modern governance, allowing governments to address specific issues and adapt to changing circumstances with efficiency and precision. It involves the delegation of legislative powers to other bodies, such as government agencies or ministers, to create rules, regulations, or bylaws that support the implementation of broader laws.

This article examines the concept of legislative control in the context of delegated legislation. It delves into the importance of striking a delicate balance between granting necessary flexibility to address specific issues and ensuring robust oversight to prevent the potential misuse of delegated powers. The article explores various control mechanisms, including parliamentary approval, review processes, publication requirements, and the option of parliamentary annulment.

Furthermore, the article acknowledges the practical advantages of delegated legislation while highlighting concerns related to accountability and the need for transparency. It emphasizes the significance of public scrutiny and democratic principles in ensuring that delegated laws remain within the intended scope and align with the broader legislative framework.

The conclusion emphasizes the importance of continuous improvement and effective governance in the system of delegated legislation. Policymakers are encouraged to learn from past experiences and adopt evolving best practices to maintain a well-functioning and accountable governance structure.

Ultimately, the article advocates for a prudent approach to legislative control, empowering executive agencies to address complex issues promptly while upholding the principles of transparency, accountability, and the rule of law. By striking this delicate balance, delegated legislation can continue to be a valuable tool for modern governments in effectively tackling intricate challenges in a rapidly changing world.

Keywords: Delegated legislation, Administrative law, Sub – delegation, Judicial control, Legislative control

I. Introduction:

Delegated legislation, also known as subordinate or secondary legislation, is an essential concept in administrative law. It refers to laws made by individuals or bodies who have been granted the authority by the legislature to do so. This authority is delegated to them through enabling or parent legislation. These delegated laws cover various administrative matters, rules, regulations, and procedures necessary for the effective implementation of the broader statutes passed by the primary

legislature. The goal of delegated legislation is to allow for flexibility and efficiency in addressing specific administrative issues while still maintaining a level of control and oversight by the primary legislature. However, it is essential to ensure that this delegation of power is exercised responsibly and within the limits set by the parent legislation, to prevent any abuse of authority or encroachment on democratic principles.

II. Definition of Delegated Legislation:

Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself.

When the function of legislation is entrusted to organs other than the legislature by the legislature itself, the legislation made by such organs is called delegated legislation

The "parent act" refers to the primary or enabling legislation passed by the legislature. It is also known as the "parent statute" or "primary legislation." The parent act outlines the broad framework, objectives, and principles of the law, but it may not cover all the specific details and administrative matters necessary for its implementation.

To address these specifics and provide detailed regulations, procedures, and rules, the parent act delegates authority to certain individuals or bodies, empowering them to create "children legislation." These children legislations are also referred to as "subordinate legislation," "secondary legislation," or "delegated legislation." They derive their legal authority from the parent act and are considered extensions of it.

The parent act sets the boundaries and limitations within which the children legislation can operate. It ensures that the delegated laws remain consistent with the intentions of the primary legislature while allowing for more flexible and efficient management of administrative matters.

The relationship between the parent act and children legislation is crucial in maintaining a balance between legislative control and administrative efficiency. The parent act provides the foundation, and the children legislation fills in the details to achieve effective implementation of the law.

III. Subordinate Legislation and Supreme Legislation – Distinction:

The distinction between subordinate legislation and supreme legislation lies in their hierarchy of authority and the process of creation.

1. Supreme Legislation:

Supreme legislation, also known as primary legislation or superior legislation, refers to laws that are enacted directly by the highest legislative authority in a country. In most democratic countries, supreme legislation is created by the national or federal legislature, such as the parliament or congress. These laws have the highest level of legal authority and cannot be overruled or modified by any other lower form of legislation. Supreme legislation typically covers fundamental principles, rights, and major policy decisions, and it often takes the form of statutes or acts.

2. Subordinate Legislation:

Subordinate legislation, also known as secondary legislation or delegated legislation, is created by individuals or bodies to whom the power to do so has been delegated by the supreme legislation. These individuals or bodies act under the authority of the parent act or enabling legislation. Subordinate legislation is more specific in nature, dealing with the details, rules, regulations, and administrative procedures required for the effective implementation of the supreme legislation. Examples of subordinate legislation include regulations, orders, by-laws, and executive orders.

The key distinction is that supreme legislation is the primary law, created directly by the highest legislative authority, while subordinate legislation is derived from and dependent on the supreme legislation, serving as a mechanism to address specific administrative matters and operationalize the broader policies established in the primary laws.

It's essential to ensure that subordinate legislation does not exceed the scope of authority granted by the supreme legislation and that it remains consistent with the principles and intentions laid down in the primary laws. Judicial review often plays a role in scrutinizing subordinate legislation to ensure its validity and compliance with the constitution and the parent act.

IV. Reasons for the growth of Delegated Legislation:

The growth of delegated legislation can be attributed to several reasons, each reflecting the practical and administrative needs of modern governance. Some of the key reasons for its expansion include:

a) Efficiency and Flexibility: Delegated legislation allows for quicker and more agile responses to specific administrative needs and emerging issues. By granting authority to specialized bodies or agencies, governments can address complex and technical matters efficiently, without the need for lengthy parliamentary processes.

b) Expertise and Specialization: As societies become more complex and interconnected, lawmakers often lack the expertise required to address intricate and technical matters effectively. Delegating legislative power to specialized bodies or experts ensures that regulations and rules are developed by individuals with relevant knowledge and experience.

c) Implementation of Broad Policies: Supreme legislation often establishes broad policy frameworks without delving into the detailed rules necessary for implementation. Delegated legislation fills this gap by providing the specific rules and regulations needed to operationalize and enforce the primary laws.

d) Changing Circumstances and Emergencies: Delegated legislation allows governments to adapt to changing circumstances and address emergencies promptly. In times of crisis, such as public health emergencies or natural disasters, delegated

legislation enables rapid responses to manage the situation effectively.

e) Reducing Parliamentary Burden: As the volume and complexity of legislation increase, delegating certain matters to subordinate bodies reduce the burden on parliamentary time and resources, allowing lawmakers to focus on more critical and strategic issues.

f) Industry and Sector Regulation: In specialized industries and sectors, delegated legislation is used to establish technical standards, safety regulations, and industry-specific rules. This approach ensures that industries can be efficiently governed and regulated without the need for detailed legislative interventions.

g) International Commitments: In the context of international agreements and treaties, delegated legislation can be used to incorporate and implement international obligations into domestic law.

h) Consistency and Uniformity: Delegated legislation can help ensure uniformity and consistency in applying laws across different regions or sectors, thereby promoting fairness and equitable treatment.

V. Classification of Delegated Legislation:

Classification of delegated legislation can indeed be based on various criteria. Here are four common ways to classify delegated legislation:

A. Title-Based Classification:

In title-based classification, delegated legislation is categorized based on the title or name given to the legislative instrument. This approach helps identify the specific area or subject that the legislation addresses. For example, regulations, rules, orders, by-laws, and statutory instruments are all titles used to classify different forms of delegated legislation.

B. Discretion-Based Classification:

This classification is based on the level of discretion granted to the delegated authority when creating the legislation. Delegated legislation can be either discretionary or mandatory. Discretionary delegated legislation

grants flexibility to the authority to decide certain matters, while mandatory delegated legislation requires adherence to predefined rules and conditions.

C. Purpose-Based Classification:

In purpose-based classification, delegated legislation is grouped according to its intended objectives or purposes. For instance, delegated legislation can be classified as administrative, financial, environmental, or social, depending on the primary goal it aims to achieve.

D. Authority-Based Classification:

Authority-based classification categorizes delegated legislation according to the entity or individual that has been granted the power to create it. This could include executive orders issued by the government, regulations made by administrative agencies, or by-laws created by local authorities.

VI. Delegated Legislation in UK, USA and India:

Delegated legislation exists in various forms and is an essential aspect of the legal systems in the United Kingdom, the United States, and India. However, the specific terminology, processes, and legal frameworks for delegated legislation can vary in each country:

a) Delegated Legislation in the United Kingdom (UK):

In the UK, delegated legislation is commonly referred to as "secondary legislation" or "subordinate legislation." It is created by authorities and bodies to whom Parliament has delegated legislative power through an enabling or parent act. The UK Parliament, through primary legislation, grants these authorities the authority to make regulations, orders, and rules in specific areas.

Examples of delegated legislation in the UK include statutory instruments (SIs), ministerial orders, and regulations made by government departments and agencies. The legislative process for delegated legislation typically involves parliamentary scrutiny, which varies

depending on the level of importance and the subject matter of the instrument.

b) Delegated Legislation in the United States (USA):

In the United States, delegated legislation is commonly known as "administrative law" or "regulatory law." The U.S. Congress delegates legislative power to federal administrative agencies, allowing them to create regulations and rules to implement and enforce laws passed by Congress. These agencies have rule-making authority in areas within their jurisdiction.

Administrative agencies in the USA have broad powers to issue rules, adjudicate disputes, and enforce regulations. The process of creating regulations involves public notice and comment periods to ensure transparency and public input. Administrative decisions can also be subject to judicial review.

c) Delegated Legislation in India:

In India, delegated legislation is known as "subordinate legislation" or "secondary legislation." The Indian Parliament, under Article 312 of the Constitution, delegates legislative power to the President of India to make regulations for the peace, progress, and good governance of certain Union territories. Additionally, state legislatures can delegate legislative power to the state governments.

The President and state governments can issue executive orders and notifications to implement laws and provide detailed rules and regulations. These regulations are often made by ministries, departments, and administrative bodies. Judicial review is available to challenge the validity of subordinate legislation in India.

Each of these countries has its own legal framework for delegated legislation, reflecting the unique aspects of their legal systems, governance structures, and historical developments. Delegated legislation plays a crucial role in complementing primary legislation and ensuring effective

implementation and administration of laws in these nations.

VII. Functions which may Delegate:

Various functions and powers can be delegated by a legislative body to other entities or individuals. The extent of delegation and the specific functions allowed to be delegated depend on the laws and regulations governing the delegation process. Some common functions that may be delegated include:

a) Rule-Making and Regulation: Delegated bodies may be authorized to create rules, regulations, and guidelines to implement and enforce laws passed by the primary legislature.

b) Licensing and Permitting: The authority to grant licenses and permits to individuals, businesses, or organizations may be delegated to specific administrative agencies.

c) Adjudication and Dispute Resolution: Administrative bodies may be delegated the power to adjudicate disputes and make decisions within their areas of jurisdiction.

d) Setting Technical Standards: Delegated entities can be tasked with establishing technical standards and specifications for various products and industries.

e) Taxation and Revenue Collection: Certain taxation powers may be delegated to tax authorities responsible for collecting taxes and administering tax-related matters.

f) Emergency Powers: In times of crisis or emergencies, delegated entities may be granted special powers to address the situation effectively.

g) Environmental Protection and Regulation: Authorities can be empowered to create and enforce environmental regulations to protect natural resources and promote sustainable practices.

h) Consumer Protection: Delegated bodies may oversee consumer protection matters, ensuring fair trade practices and product safety.

i) Employment and Labor Regulations: Administrative agencies can be given the

authority to create and enforce labor laws and workplace regulations.

j) Public Health and Safety: Entities may be delegated the responsibility of implementing public health measures and ensuring safety standards are met.

VIII. Conditional legislation and delegated legislation – Distinction:

Conditional delegation and delegated legislation are two distinct concepts in administrative law.

1. Conditional Delegation:

Conditional delegation refers to the practice of granting legislative authority to an administrative body or authority with specific conditions or limitations attached. These conditions may specify the scope of authority, the purpose for which the authority is granted, or the procedures to be followed. The legislative body retains control over the delegated powers and can revoke or modify them if the conditions are not met.

One of the landmark cases illustrating conditional delegation is *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935). In this case, the U.S. Supreme Court struck down a provision of the National Industrial Recovery Act that attempted to delegate legislative power to the President to prohibit the interstate shipment of petroleum produced in violation of the Act. The Court held that the delegation was impermissible because it lacked sufficient standards or guidelines to limit the President's discretion, making it an unconstitutional delegation of legislative authority.

2. Delegated Legislation:

Delegated legislation, also known as subordinate legislation or secondary legislation, refers to laws or regulations created by individuals or bodies to whom the legislative authority has been delegated by the primary legislature. These regulations, rules, and orders complement and help implement the broader statutes passed by the primary legislature.

A prominent case related to delegated legislation is the Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 KB 223, commonly known as the Wednesbury case. In this case, the court established the principle of Wednesbury unreasonableness, which states that delegated legislation is lawful as long as it falls within the scope of the powers granted by the parent legislation and does not demonstrate unreasonableness or irrationality. This case set the standard for reviewing the legality and reasonableness of delegated legislation.

Conditional delegation involves granting legislative authority with specific conditions attached, whereas delegated legislation refers to laws or regulations created by entities to whom legislative power has been delegated. The distinction between the two concepts is essential in understanding the boundaries and limitations of administrative authorities in the exercise of their powers.

IX. Sub – Delegation:

In India, sub-delegation refers to the process where a person or authority who has been delegated with certain powers by a higher authority further delegates those powers to another subordinate person or authority. This concept is based on administrative law principles and is subject to certain limitations to ensure proper governance.

The doctrine of sub-delegation in administrative law essentially states that the power to delegate is not absolute and that the person or authority receiving delegated powers cannot further delegate those powers unless explicitly authorized to do so by the delegating authority or if it is implied by the legislation (*delegatus non protest delegare*). The delegated authority must exercise the powers themselves, and they cannot pass it on to someone else unless authorized.

A notable case related to sub-delegation in India is the "Jilubhai Nanbhai Khachar vs. State of Gujarat" (1995) case, where the Supreme

Court held that a sub-delegation made by a delegated authority would be valid only if the parent Act permits such sub-delegation.

X. Control over delegated legislation:

a. Judicial control:

Judicial control over delegated legislation involves the courts' role in ensuring that the rules and regulations created by delegated authorities, such as government agencies or local bodies, adhere to the limits and requirements set by the parent legislation. This control is exercised through two main principles:

1. Substantive Ultra Vires:

This principle refers to the situation when the content or substance of the delegated legislation goes beyond the powers conferred by the parent Act. If the delegated authority creates a rule or regulation that is beyond the scope of the authority granted to them in the parent Act, it is considered "substantive ultra vires" or beyond their legal authority. In such cases, the courts can declare the particular provision or regulation invalid and unenforceable.

2. Procedural Ultra Vires:

This principle deals with the process followed by the delegated authority in making the legislation. If the delegated authority fails to follow the procedural requirements specified in the parent Act or any other applicable law while creating the delegated legislation, it can be challenged as "procedural ultra vires." The courts have the power to invalidate such regulations if they find that the procedural aspects were not duly followed.

Judicial control over delegated legislation is crucial to ensure that delegated authorities do not exceed their prescribed powers and to safeguard the principles of separation of powers and the rule of law. By exercising this control, the courts act as a check on the potential abuse of delegated legislative powers and help maintain the integrity and legality of the overall legislative framework.

b. Legislative control :

Legislative control under delegated legislation refers to the oversight and

supervision exercised by the legislature over the process of creating and implementing laws through delegated powers. Delegated legislation is when the legislature grants certain authorities or powers to other bodies, such as government agencies or ministers, to create rules, regulations, or bylaws to address specific issues within the framework of existing legislation.

To ensure proper accountability and prevent misuse of delegated powers, the legislature may impose certain controls, such as:

1. **Subsidiary legislation subject to approval:** Delegated legislation may need approval from the legislature before it becomes effective.

2. **Review mechanisms:** The legislature may establish committees or processes to review and scrutinize delegated laws for consistency and compliance with the parent legislation.

3. **Publication requirements:** Delegated laws might need to be published to ensure transparency and public awareness.

4. **Parliamentary annulment:** In some cases, the legislature can annul delegated legislation if it is deemed inappropriate or exceeds the scope of the original law.

These controls aim to strike a balance between granting necessary flexibility to address specific issues and ensuring that delegated powers are exercised within the limits set by the legislature.

XI. Conclusion:

In conclusion, delegated legislation plays a vital role in modern governance by allowing governments to efficiently address specific issues and adapt to changing circumstances without burdening the legislature with every detail. It provides flexibility and expertise in crafting rules and regulations that support the implementation of broader laws.

However, while delegated legislation offers practical advantages, it also raises concerns about accountability and the potential for

misuse of power. To mitigate these risks, strong legislative control mechanisms are crucial. Transparency, parliamentary oversight, and public scrutiny are essential in ensuring that delegated laws remain within the intended scope and align with democratic principles.

For a well-functioning system, striking the right balance between empowering executive agencies and maintaining effective legislative control is paramount. Policymakers must consistently review and improve the framework for delegated legislation, taking into account lessons from the past and evolving best practices.

Ultimately, with prudent legislative control and a commitment to democratic principles, delegated legislation can be a valuable tool for governments to address complex issues promptly and effectively while upholding the principles of transparency, accountability, and the rule of law.

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