

Delegated Legislation

It may be reiterated that legislation by executive is a kind of subordinate legislation. Undoubtedly, the main function of executive is to enforce law, but for the regulation of its departments, the power of rule-making is delegated to them. Strictly speaking, delegated legislation is a legislation made by any authority other than the legislature. It denotes the rules, orders, notifications, bye-laws or directions made by the executive authorities under the law passed by the Parliament.

The term 'delegated legislation' is generally used in two senses. In one sense, it means the exercise of power of rule-making by the Executive under the authority delegated to it by the Legislature. In the other sense, it means the output of the exercise of that power. In other words, when the function of legislation is entrusted to organs other than the legislature itself, the legislation made by such organs is called delegated legislation, which may be in the form of rules, regulations, bye-laws, orders, schemes, directions, circulars or notifications, etc.

It is significant to note that there has been enormous increase of delegated legislation in India in recent time. The situation today has reached a point where delegated legislation out-numbers the legislative enactments.

Delegated Legislation Differentiated from Executive Legislation

It must, however, be stated that delegated legislation is not to be confused with the executive legislation. The former stands for the laws made by the authorities other than the legislative bodies on whom the Legislature delegates its legislative power. The latter stands for the laws made by the President and the Governor respectively under Articles 123 and 213 of the Constitution of India. These laws are in the form of Ordinances which have the force of law. Such Ordinances are issued by the respective executive heads on the ground of urgency when Legislature is not in session and they cease to have effect if not ratified within six weeks after the assembly of the Legislature. The source of delegated legislation is always the Act of the Parliament whereas the source of the executive legislation is a constitutional provision.

Growth of Delegated Legislation.—Professor Griffith writes that the growth of delegated legislation in the 19th and 20th centuries was inevitably due to fundamental changes in the theory and practice of the Government. For the performance of their executive and administrative functions, the government required legislative powers in their own fields. The main factors which contributed to the growth of delegated legislation may briefly be stated as follows :—

1. The newly evolved concept of welfare State has caused tremendous increase in the work of the government which necessitated a huge bulk of

legislation. The Parliament hardly has time to deal with this wide range of legislation efficiently and, therefore, it concentrates only on defining the essential legislative principles and leaves the details to be worked out by the executive.

2. The Parliament found it difficult to lay down details especially in certain fields of technical nature and therefore, entrusted this task to the departments and ministers concerned. Members of legislature may be seasoned politicians but they lack expertise and adequate knowledge to deal with highly technical matters such as nuclear energy, electricity, gas, atomic energy, etc. which can be efficiently handled only by the experts in the respective field.

3. Besides the pressure of work on the Parliament and lack of adequate technical knowledge about certain subjects, delegated legislation is also deemed necessary to meet unforeseen contingencies. It provides for a power of constant adaptation to unknown future conditions without the necessity of amending the legislation.

4. Delegated legislation is further deemed necessary to meet the cases of emergency arising out of war, insurrection, floods, economic depression, epidemics etc. The Executive must therefore, be armed with rule-making power so that it may initiate appropriate remedial action immediately without waiting for law to be passed by the legislature which is a lengthy process.

5. In certain specific areas such as rationing schemes, imposition of import or export duties, exchange regulations, etc. expediency demands that law should not become public till it finally comes into operation. Some kind of confidentiality becomes necessary in the public interest and therefore, the legislature prefers to delegate power of legislation on such matters to the concerned executive authorities.

6. The complexities of modern public administration and expanding dimensions of the socio-economic functions of the state have necessitated delegation of legislative powers so as to enable the executive to devise new forms of laws for the effective realization of the goal of socio-economic justice and implementation of the welfare schemes of the state.

Control of Delegated Legislation.—In order to ensure that delegated legislation is not misused, it has been subjected to three-fold controls, namely, (1) Procedural control, (2) Parliamentary control, and (3) Judicial control.

1. Procedural Control.—It is not always possible for the Parliament to exercise effective control over delegated legislation. Certain procedural safeguards are therefore, necessary to keep a constant watch over the exercise of power by the executive or administrative authorities. The methods of procedural control may include :—

- (a) Prior consultation of interests which are likely to be affected by the proposed delegated legislation;
- (b) Prior publicity of proposed rules and regulations; and

common and interested parties are given opportunity to express their views on the proposed legislation. In India, however, there is no express provision of law for prior consultation but "prior publication" is essential¹⁴ under Section 2 of the General Clauses Act, 1897. Likewise, Section 2 of the Statutory Instruments Act, 1946 makes it mandatory that a statute must be published soon as it is laid before the House of Parliament. Though there is no such provision in India but the courts have recognised the importance of this provision in several cases.¹⁵

Publication of delegated legislation has been taken by the Courts as a corollary of natural justice. The Supreme Court in *Raza Buland Sugar Co. v. Raviipur Municipality*¹⁶ held that the statutory provision requiring publication of rules before imposition of tax was mandatory but the manner in which the rules were required to be published was directory, and as there was sufficient compliance with the requirement of publication, the rules were held to be valid.

2. Parliamentary Control.—Another method of controlling delegated legislation is to lay it before the Parliament so that members get an opportunity to discuss and at times amend it. In United States, the executive is not responsible to the legislature and therefore, congressional control on delegated legislation is mostly indirect through requiring the administrative agencies to submit periodical and special reports *etc.*¹⁷ India also follows more or less the same method.¹⁸ This control is exercised through the committee of subordinate legislation of both the Houses of Parliament which maintains vigilance on Government's rule-making power and scrutinises the rules framed by the executive.¹⁹

The principle underlying Parliamentary control is to keep watch over the rule-making authorities and provide an opportunity to criticise them if there is an abuse of such power on their part. The control so exercised may be in the form of—(i) proceedings in Parliament, or (2) requiring the offending provision of the delegating statute to be laid on the table of the legislature, or (3) exercise of control by Parliament through Scrutiny Committees.²⁰

3. Judicial Control.—Judiciary also exercises effective control on delegated legislation. Whenever a law made by the executive is found to be

inconsistent with the Constitution or (ii) *ultra vires* the parent Act from which the law-making power has been derived, it is declared null and void by the court. The power of examining the validity of delegated legislation is vested in the Supreme Court and the High Courts.

In *Re Delhi Laws Act* case,²¹ the Supreme Court by majority held that the exercise of delegated law-making power was invalid because the enabling Act exceeded the constitutional limits in permitting the executive to repeal a law existing in the area. In this case the Supreme Court laid down the grounds on which the judicial control is exercised. The Court ruled that in India the Legislature cannot delegate its essential functions or power to the executive. The essential function of the Legislature is determination of the legislative policy and enacting that policy into a binding rule of conduct. Therefore, the function of *laying down the policy and enacting that policy* cannot be delegated. However, once the policy having been laid down by the Legislature and a standard is set by the statute, the executive may be given the power to make subordinate rules within that limit and such delegation will not be unconstitutional. Thus once the principles affording guidance to the subordinate law-making body are laid down by the law, the details may be left to be filled up by the executive or by other authorities with quasi-legislative power.²²

Again, in *Chintaman Rao v. State of Madhya Pradesh*,²³ the Central Provinces Regulation of Manufacture of Bidis Act, 1948, permitting imposition of a total prohibition upon those carrying on business of manufacture of Bidis during agricultural season was held to be violative of Article 19 (1) (g) of the Constitution because it interfered with the private business, hence notification under the Act was void.

In yet another land-mark decision, namely, *Air India v. Nargesh Meerza*,²⁴ the Supreme Court struck down the delegated legislation on the ground of non-conformity with the provisions of Article 14 of the Constitution. The regulation provided that the services of the Air-hostess would be terminated if she marries within first four years of her service or on the first pregnancy. The Supreme Court found the first condition reasonable but so far condition of first pregnancy was concerned, it was clearly most unreasonable and arbitrary as it amounted to compelling the Air-hostesses not to bear any children and this was "an open insult to Indian womanhood". The Supreme Court held that the regulation was not only, "manifestly unreasonable and arbitrary" but it was most unfair and exhibited 'naked despotism' and was therefore, held violative of Article 14 of the Constitution.

In *Dr. Bhanu Prasad v. Punjab University*,²⁵ the Supreme Court held