

DELEGATED LEGISLATION*

Prof. Vishweshwaraiah**

1. Introduction

'Delegated Legislation' means the exercise of legislative power by an agency which is subordinate to the legislature.

Delegated legislation is, at times, referred to as "Ancillary", "Subordinate", Administrative Legislation or as Quasi-Legislation".

Delegated legislation is a technique to relieve pressure on legislature's time so that it can concentrate on principles and formulation of policies.

A statute may be inexact, incomplete, unintelligible and may even be misleading unless it is read with the delegated legislation made there – under.

In no democratic society committed to the establishment of a welfare state, the legislature monopolises the legislative power. It shares the same with the Executive and other administrative organs of the state.

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** B.Sc., LL.M., S.J.D. (Northwestern U.S.A.) Formerly, Professor, Chairman and Dean, Faculty of Law, Karnatak University, Dharwad, Karnataka.

In India, Rules, Regulations, Orders, Notified Orders, Notifications, Bye-laws all these denote Delegated Legislation. Also, the same statute may employ or use different expressions to denote the exercise of the subordinate law-making power by an administrative body or agency. E.g. 'Orders', 'Notified Orders', 'Notification' under the Essential Commodities Act, 1958. As Prof. Sathe has observed, rightly, "We do not have terminological consistency in the family of delegated legislation" Administrative Law, 1998, (Sixth Edn.), P. 23.

Succinctly stated, the terms, rules, regulations, etc., are used interchangeably in our country.

2. Factors Responsible for the Growth of Delegated Legislation.

a) Lack of time for the legislature to shape legislative details which are technical in nature where administrative expertise is required.

E.g. Environmental Standards, Intellectual Property Law, Legislative Measures to control, eradicate AIDS, Measles.

b) The subject-matter of legislation being, technical, complex and unsuitable for debate in the legislature.

c) Democratisation of rule-making process by providing for "consultation with affected interests".

d) The advantages of Flexibility, Elasticity Expedition and scope for Experimentation when the delegated legislation technique is employed. Further, socio-economic schemes being experimental in the initial stages

and the practical difficulties at the stage of implementation cannot be foreseen.

- e) Delegated legislation technique has the attribute of adaptation to unknown, future conditions without formal legislative amendments.

3. Restrictions on Delegation of Legislative Power

In theory, the legislature is expected to formulate the legislative policy and formulate the same into a binding rule of conduct. This is known as Essential Legislative Function which the Legislature is supposed to discharge or perform and which is non-delegable. When there is non-performance of the Essential Legislative Function, the challenge in review proceedings revolves around the Abdication by Legislature of its Essential Legislative Function. Thus, in Avinder Singh v. Punjab, AIR 1979 SC 321, the Supreme Court has ruled : “Legislature cannot efface itself. It cannot delegate the plenary or the essential legislative functions; even if there be delegation, parliamentary control over delegated legislation should be a living continuity as a constitutional necessity”. Further, the Court added : “The legislature is the master of policy and if the delegate is free to switch policy it may be usurpation of legislative power itself”. Ibid, at 149.

In practice, however, the Courts have, generally, approved of wide delegation of legislative powers to administrative authorities. But, it would be imprudent to contend that the challenge on the ground of “abdication of

essential legislative function” has been totally rejected and would not be entertained by the courts.

Excessive Delegation may be assailed on the ground that excessive legislative power delegated is capable of being used in a discriminatory fashion and thus offending the Equality Clause in Art. 14. For Illustration, see material provided under “Emerging Trends”.

4. Nature of Powers Conferred

- a) Power of Supplying Details : Skeletal Legislation. E.g. All India Services Act, 1951. see Garewal v. Punjab, AIR 1959 SC 512
- b) Power of Inclusion and Exclusion E.g. Minimum wages Act, 1948; Essential Commodities Act, 1958.
- c) Power of Modification of Statute. This power, it has to be noted, is limited to bringing about consequential changes and cannot be exercised to subvert the policy laid down by the legislature. No radical changes in the enacted law is permitted.

Case : Rajnarain Singh v. Chairman, Patna Administration Committee, AIR 1954 SC 569.
- d) Power to impose tax

5. Judicial Control of Delegated Legislation

- Challenge on two grounds : a) Substantive Ultravires
b) Procedural Ultravires

Substantive Ultravires : Where the delegating statute itself is unconstitutional, for example, being violative of a fundamental right.

Sometimes, the Parent Statute may be constitutional but the rules made there under may suffer from the vice of unconstitutionality. Then, the rules, when challenged, cannot survive.

The rules made may be ultravires the delegating statute. E.g. Parent Law permitting the delegate to exempt tax upto 10%. But, the rule granting exemption to the extent of 15% or rules creating new offences.

Procedural Ultravires

Where the rule-making authority does not abide by the procedural requirements which the parent law lays down like, for example, 'consultation with affected interests". Procedural requirement may also relate to 'previous publication' or 'laying the rules' made before parliament.

Non-compliance with the Procedural Requirement may not always lead to invalidation since judiciary has carved out to a distinction between mandatory and directory procedural provisions.

Illustrations :

- a) State Government required to make rules with the concurrence of the Central Government – Failure – Rules Ultravires.

b) Age of a High Court Judge – President of India to decide after consultation with the Chief Justice of India – No consultation – Decision void.

Publication – Statute – Rules made to be published in the Official Gazette. Rules being published in Local News Paper.

Supreme Court – No procedural irregularity

Parliamentary control – Laying procedure.

Mere compliance with the laying procedure will not authenticate the rules when the rules are ultravires the constitution or the parent statute.

Broadly speaking, in India, 'Laying in procedure' is regarded as Directory and failure to lay may not affect the validity of the rules.

- Lok Sabha and Rajya Saha committees on Sub-ordinate Legislation function as the Watch Dogs over Delegated Legislation made by administrative agencies to ensure that the delegate in making rules, etc. shall act intravires.