



ADMINISTRATIVE LAW (BALLB 404)

DELEGATED LEGISLATION

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Delegated Legislation

- ❑ Delegated legislation, also called **secondary, subordinate, or subsidiary legislation**, refers to laws made by the Executive under the authority given by the main law (primary legislation).
- ❑ It helps in implementing and managing the rules needed to carry out the primary law effectively.
- ❑ It means laws made by authorities other than the Legislature, but with the Legislature's permission and authority. Legislation by the executive branch or a statutory authority or local or other body under the authority of the competent legislature is called Delegated legislation.
- ❑ Parliament and State Legislatures cannot give away their core law-making powers. They can only delegate less important functions, and the main question is about deciding which functions are essential and which can be delegated.
- ❑ The function of delegated legislation is it allows the Government to amend a law without having to wait for a new Act of Parliament to be passed.

Essentially, delegation was historically recorded as an English legacy. Whether there could be any continuance of the same, was taken up in the case of *In Re Delhi laws case*, as the 7 judge bench was asked by the President of India, under the powers allotted to him under Article 143 of the constitution, if delegated powers could be considered valid in any form.

The Supreme Court, after a lengthy deliberation, came to the following set of conclusions-

- ❑ The Parliament could not be allowed to absolve itself of its responsibility entirely by creating a parallel authority.
- ❑ The Indian parliament was not an agent but an authority in itself. Thus, the concept of delegate's non potest delegare, which means that a power that has been delegated cannot be sub-delegated any further, was propounded.
- ❑ The Court suggested that the parliament could only delegate its ancillary functions.
- ❑ The court also concluded that essential functions- ones which involved laying down of policies and their implementation as binding rule of law could not be delegated.

However, it was also seen that the degree of delegation of powers was debated. While, one school of thought was that the supreme authority should be allowed powers to withdraw the powers so delegated, which will also ensure that the authority has not absolved itself of its rightful powers. The other school of thought suggested that the supreme authority could set up “standards” for implementation of its policies that the delegatee must compulsorily adhere to while taking decisions. It is to be noted, that while landmark, the ratio in this judgment was altered by later decisions. As seen in *DS Garewal V State of Punjab*, the idea of powers of delegation being an essential element of the legislature's powers and the legislature having inherent powers to delegate its functions was deemed appropriate.

Necessity of Delegated Legislation

One of the most significant developments of the present century is the growth in the legislative powers of the executives. There are clear reasons why Parliament alone cannot handle all law-making tasks in today's changing circumstances. Besides other factors, the main reason is that Parliament is unable to create enough laws with the required quality to meet society's needs. This can be due to the following reasons:

- ❑ Emergencies require quick action. However, Parliament cannot respond immediately because of its political nature and the time it takes to pass a law.
- ❑ Parliament has heavy workload and often lacks the time to focus on complex and technical issues. Most of its time is spent on political matters, policy decisions, and foreign affairs, making it difficult to pass all the necessary laws.
- ❑ Some laws require specialized knowledge that Parliament members may not have. In such cases, experts in relevant fields are given the authority to make rules and regulations through delegated legislation.
- ❑ When Parliament makes a law, it cannot always predict the challenges that may arise during implementation. To address unforeseen problems, the administration is empowered to make necessary rules and adjustments.
- ❑ Delegated legislation makes laws more flexible. If a rule or regulation is found to be ineffective or problematic, it can be quickly modified. This allows for experimentation and improvement based on practical experience.

Nature and Scope of delegated legislation

The Legislature decides the overall policy of a law, while the detailed rules for implementing that policy can be delegated to other authorities. It cannot give away its core power of deciding policy to Executive. When extending a law, making changes, or repealing existing laws, the Executive must follow clear limits, as essential law-making powers cannot be delegated. To prevent misuse, the Legislature sets strict limits on delegation by including safeguards, controls, and appeal mechanisms against executive decisions. If Executive is given power to modify any part of a law, it must stay within the scope of that law. While some discretion is allowed, this power- must support the law's purpose; cannot contradict or go against it and cannot change the law's fundamental principles, identity, or structure.

In *Raj Narain Singh v. Chairman, Patna Administration Committee*, Section 3(1)(f) of the Bihar & Orissa Act gave local administration the power to apply certain parts of Bengal Municipality Act, 1884 to Patna, with necessary changes. The government decided to apply Section 104 of the Act to Patna but made some modifications. One key rule stated that before a municipality could impose taxes on an area, the people living there had to be given a chance to voice their opinions and raise objections. However, when the government issued a notification to extend Section 104, it removed the sections that allowed residents to object. The court ruled that this change went against the purpose of the Act and its intended policy and therefore action is quashed.

Merits of Delegated Legislation

- ❑ **Reduce workload of Parliament:** Parliament cannot spend time on every small detail of a law. Delegated legislation helps by allowing government departments to handle specific rules, while Parliament focuses on bigger decisions. For example The Motor Vehicles Act, 1988, provides broad guidelines for road safety and transport, but detailed rules like pollution limits and registration procedures are set by the Ministry of Road Transport and Highways through delegated legislation.
- ❑ **Flexible Lawmaking:** Laws need to be updated quickly due to changing situations. If Parliament had to amend every small rule, the process would take too long. Delegated legislation allows the government to make necessary changes without waiting for Parliament's approval.

- ❑ **Allows Experts to Make Rules;** Some laws require technical knowledge, such as rules on medicine, electricity, or banking. Delegated legislation lets experts in these fields make detailed rules instead of politicians who may not have specialized knowledge. The Drugs and Cosmetics Act, 1940, allows the Drugs Technical Advisory Board (DTAB) to set safety standards for medicines, ensuring that only experts make decisions about public health.
- ❑ **Helps in Emergencies:** In times of crisis, like a pandemic or natural disaster, quick decisions are needed. If the government had to wait for Parliament's approval every time, it could delay urgent actions. Delegated legislation allows the government to respond immediately. During COVID-19, the government used the Epidemic Diseases Act, 1897, to impose lockdowns, enforce social distancing, and control travel without waiting for Parliament's approval.
- ❑ **Supports Good Governance:** Delegated legislation helps ensure that laws are implemented efficiently and in an organized manner. It improves transparency, accountability, and smooth functioning of government policies. The Right to Information (RTI) Act, 2005, allows the Central Information Commission (CIC) to frame rules for better access to information, making the government more accountable to the public.

Merits of Delegated Legislation

- ❑ **Adapts Laws to Local Needs:** Delegated legislation allows local governments or state authorities to make rules that suit their specific needs. Under Environmental Protection Act, 1986, state pollution control boards can set pollution control rules based on local environmental conditions.
- ❑ **Saves Time and Speeds Up Decisions:** Making a new law or changing an old one through Parliament takes a long time because it involves multiple discussions and approvals. Delegated legislation helps speed up the process by allowing the government to make changes without long delays. The Foreign Exchange Management Act (FEMA), 1999, allows the Reserve Bank of India (RBI) to modify foreign exchange rules quickly without waiting for Parliament's approval.
- ❑ **Allows Experimentation and Improvements:** Some policies need to be tested before they are fully implemented. Delegated legislation allows the government to introduce temporary rules, see how they work, and make changes if needed. The GST system allows the GST Council to change tax rates, add exemptions, and modify rules based on experience and feedback.
- ❑ **Makes Administration More Efficient:** Government departments and regulatory bodies can create sector-specific rules that help in better enforcement and smooth functioning of laws. The Electricity Act, 2003, allows the Central Electricity Regulatory Commission (CERC) to set electricity tariffs and rules, ensuring proper power distribution across states.
- ❑ **Encourages Public Participation:** Many delegated legislations involve discussions with industry experts, business leaders, and the general public before being finalized. This ensures that the laws are practical and acceptable to the people. The Telecom Regulatory Authority of India (TRAI) seeks public opinions before making new telecom rules, ensuring that consumer concerns are heard.

Demerits of Delegated Legislation

- ❑ **Overlapping Responsibilities-** Delegated legislation allows authorities outside the legislature, such as government departments or regulatory bodies, to make or amend laws. This can result in confusion and inconsistency, as different bodies may create overlapping or conflicting rules. Such a scenario can undermine legal certainty and efficiency. For example, If the central government enacts a rule regarding air pollution control and a state government, using its delegated powers, enacts a slightly different or stricter rule, businesses and individuals may struggle to understand which rule applies to them, leading to confusion and legal disputes.
- ❑ **Goes Against Democracy-** One of the main criticisms of delegated legislation is that it allows unelected officials or government agencies to make laws. Since these individuals are not directly accountable to the public, this weakens democratic principles and reduces transparency in lawmaking. In **D.S. Garewal v. State of Punjab (1959 AIR 512)** The Supreme Court emphasized that delegated legislation should not become a tool for bypassing the democratic process. If legislative powers are given away without proper guidelines, it can undermine democracy. Imagine a situation where a health ministry official issues a new rule restricting the sale of certain medicines without any legislative approval. Since the official is not elected, the public has no direct control or say in the law, raising concerns about democratic accountability.

Demerits of Delegated Legislation

- ❑ **Limited Parliamentary Oversight-** Unlike primary legislation, which is debated and passed by elected representatives, delegated legislation often does not go through the same level of scrutiny. This can result in laws being passed without proper discussion, leading to gaps or flaws in legal provisions. For example, If the government introduces a tax-related rule through delegated legislation without Parliament reviewing it, the rule may impose an unfair burden on taxpayers without sufficient debate or input from elected representatives. In **Indian Council of Legal Aid & Advice v. Bar Council of India (1995 AIR 691)**, the Supreme Court stressed that excessive delegation without parliamentary review can lead to arbitrary decision-making and lack of checks and balances.
- ❑ **Lack of Control and Supervision-** Due to the limited involvement of Parliament, delegated legislation may be misused. If there are no strong checks, authorities may enact rules that do not align with the original intent of the legislature or public interest. In **Hamdard Dawakhana v. Union of India (1959 AIR 554)**, the Supreme Court struck down certain rules framed under delegated powers because they went beyond the authority given by the parent Act, showing that excessive delegation without control can lead to arbitrary decisions.

Demerits of Delegated Legislation

- ❑ **Lack of Public Awareness-** One of the key drawbacks of delegated legislation is the lack of public awareness, as many rules and regulations are introduced without widespread publicity. Unlike primary legislation, which undergoes public debate in Parliament and receives significant media coverage, delegated legislation is often implemented through government notifications, departmental circulars, or executive orders, which may not always reach the general public effectively. Since people are unaware of new rules, they may accidentally violate the law. Unlike primary legislation, which is discussed in the media and the legislature, delegated laws may be published in government gazettes or official websites, which are not widely read by the public.
- ❑ A lack of awareness about newly implemented rules leads to uncertainty and confusion regarding legal obligations. This is especially problematic when different authorities issue regulations under the same parent law, creating overlapping or conflicting rules that people struggle to keep track of. For example, In tax laws, if a government department introduces new filing requirements through delegated legislation but fails to inform businesses properly, taxpayers may unknowingly miss deadlines or submit incorrect filings, leading to unnecessary fines or legal complications.