DELEGATED LEGISLATION-CLASSIFICATIONS-FORMS-REASONS FOR THE GROWTH

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INTRODUCTION

Administrative Law is that portion of law which determines the organization, powers and duties of administrative authorities. The most significant and outstanding development of the twentieth century is the rapid growth of administrative law. Though administrative law has been in existence, in one form or the other, before the 20th century, it is in this century that the philosophy as to the role and function of the State has undergone a radical change. The governmental functions have multiplied by leaps and bounds. Today, the State is not merely a police State, exercising sovereign functions, but as a progressive democratic State, it seeks to ensure social security and social welfare for the common man, regulates the industrial relations, exercises control over the production, manufacture and distribution of essential commodities, starts many enterprises, tries to achieve equality for all and ensures equal pay for equal work. It improves slums, looks after the health and morals of the people, provides education to children and takes all the steps which social justice demands. In short, the modern State takes care of its citizens from ‘cradle to grave’. All these developments have widened the scope and ambit of administrative law.
**Delegated Legislation: Meaning**

One of the advances in the realm of administrative process made during these days is that apart from 'pure' administrative function, the executive performs legislative function as well. Due to a number of reasons, there is rapid growth of administrative legislation. According to the traditional theory, the function of the executive is to administer the law enacted by the legislature, and in the ideal State, the legislative power must be exercised exclusively by the legislators who are directly responsible to the electorate. But, in truth, apart from 'pure' administrative functions, the executive performs many legislative and judicial functions also. It has, therefore, been rightly said that the delegated legislation is so multitudinous that a statute book would not only be incomplete but misleading unless it be read along with delegated legislation which amplifies and supplements the law of the land.

It is very difficult to give any precise definition of the expression 'delegated legislation.' It is equally difficult to state with certainty the scope of such delegated legislation. According to Salmond, legislation is either supreme or subordinate. Whereas the former proceeds from sovereign or supreme power, the latter flow from any authority other than the sovereign power, and is, therefore, dependent for its existence and continuance on superior or supreme authority. Delegated legislation thus is a legislation made by a body or person other than the Sovereign in Parliament by virtue of powers conferred by such sovereign under the statute.

A simple meaning of the expression 'delegated legislation' may be given as: ‘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.’

**Reasons for Growth of Delegated Legislation:**

Many factors are responsible for the rapid growth of delegated legislation in every modern democratic State. The traditional theory of ‘laissez faire’ has been given up by every State and the old ‘police State’ has now become a ‘welfare State.’ Because of this radical change in the philosophy as to the role to be played by the State, its functions have increased. Consequently, delegated legislation has become essential and inevitable.

i. **Pressure upon Parliamentary Time**: As a result of the expanding horizons of State activity, the bulk of legislation is so great that it is not possible for the legislature to devote sufficient time to discuss all the matters in detail. Therefore, legislature formulates the general policy and empowers the executive to fill in the details by issuing necessary rules, regulations, bye-laws, etc. In the words of Sir Cecil Carr, delegated legislation is “a growing child called upon to relieve the parent of the strain of overwork and capable of attending to minor matters, while the parent manages the main business.”

ii. **Technicality**: Sometimes, the subject-matter on which legislation is required is so technical in nature that the legislator, being himself a common man, cannot be
expected to appreciate and legislate on the same, and the assistance of experts may be required. Members of Parliament may be the best politicians but they are not experts to deal with highly technical matters which are required to handled by experts. Here the legislative power may be conferred on expert to deal with the technical problems, e.g. gas, atomic energy, drugs, electricity, etc.

iii. **Flexibility:** At the time of passing any legislative enactment, it is impossible to foresee all the contingencies, and some provision is required to be made for these unforeseen situations demanding exigent action. A legislative amendment is a slow and cumbersome process, but by the device of delegated legislation, the executive can meet the situation expeditiously, e.g. bank-rate, police regulation export and import, foreign exchange, etc. For that purpose, in many statutes, a ‘removal of difficulty’ clause is found empowering the administration overcome difficulties by exercising delegated power.

iv. **Experiment:** The practice of delegated legislation enables the executive to experiment. This method permits rapid utilization of experience and implementation of necessary changes in application of the provisions in the light of such experience, e.g. in road traffic matters, an experiment may be conducted and in the light of its application necessary changes could be made. Delegated legislation thus allows employment and application of past experience.

v. **Emergency:** In times of emergency, quick action is required to be taken. The legislative process is not quipped to provide for urgent solution to meet the situation. Delegated legislation is the only convenient remedy. Therefore, in times of war and other national emergencies, such as aggression, break down of law and order, strike, 'bandh', etc. the executive is vested with special and extremely wide powers to deal with the situation. There was substantial growth of delegated legislation during the two World Wars. Similarly, in situation of epidemics, floods, inflation, economic depression, etc. immediate remedial actions are necessary which may not be possible by lengthy legislative process and delegated legislation is the only convenient remedy.

vi. **Complexity of Modern Administration:** The complexity of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions. By resorting to traditional legislative process, the entire object may be frustrated by vested interests and the goal of control and regulation over private trade and business may not be achieved at all.

The practice of empowering the executive to make subordinate legislation within the prescribed sphere has evolved out of practical necessity and pragmatic needs of the modern welfare State.

**Nature and Scope of delegated legislation**
Delegated legislation means legislation by authorities other than the Legislature, the former acting on express delegated authority and power from the later. Delegation is considered to be a sound basis for administrative efficiency and it does not by itself amount to abdication of power if restored to within proper limits. The delegation should not, in any case, be unguided and uncontrolled. Parliament and State Legislatures cannot abdicate the legislative power in its essential aspects which is to be exercised by them. It is only a non essential legislative function that can be delegated and the moot point always lies in the line of demarcation between the essential and nonessential legislative functions. The essential legislative functions consist in making a law. It is to the legislature to formulate the legislative policy and delegate the formulation of details in implementing that policy. Discretion as to the formulation of the legislative policy is prerogative and function the legislature and it cannot be delegated to the executive. Discretion to make notifications and alterations in an Act while extending it and to effect amendments or repeals in the existing laws is subject to the condition precedent that essential legislative functions cannot be delegated authority cannot be precisely defined and each case has to be considered in its setting. In order to avoid the dangers, the scope of delegation is strictly circumscribed by the Legislature by providing for adequate safeguards, controls and appeals against the executive orders and decisions. The power delegated to the Executive to modify any provisions of an Act by an order must be within the framework of the Act giving such power. The power to make such a modification no doubt implies certain amount of discretion but it is a power to be exercised in aid of the legislative policy of the Act and cannot travel beyond it; or cannot run counter to it; or can’t certainly change the essential features, the identity, and structure or the policy of the Act.

Under the constitution of India, articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The delegation of legislative power was conceived to be inevitable and therefore it was not prohibited in the constitution. Further, Articles 13(3)(a) of the Constitution of India lays down that law includes any ordinances, order bylaw, rule regulation, notification, etc. Which if found in violation of fundamental rights would be void. Besides, there are number of judicial pronouncements by the courts where they have justified delegated legislation. For e.g. : In re Delhi Laws Act case1; Vasantlal Magan Bhaiv. State of Bombay2; Avtar Singh v. State of Jammu and Kashmir3.

While commenting on indispensability of delegated legislation Justice Krishnalyer has rightly observed in the case of Arvinder Singh v. State of Punjab4, that the complexities of modern administration are so bafflingly intricate and bristle with details, urgencies, difficulties and need for flexibility that our massive legislature may not get off to a start if they must directly and comprehensively handle legislative business in their plentitude, proliferation and

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1AIR 1961 SC 332
2AIR 1961 SC 4
3AIR 1977 J&K 4
4AIR1979 SC 321
Delegation of some part of legislative power becomes a compulsory necessity for viability.

A provision in a statute which gives an express power to the Executive to amend or repeal any existing law is described in England as “Henry VIII Clause” because the King came to exercise power to repeal Parliamentary laws. The said clause has fallen into disuse in England, but in India some traces of it are found here and there, for example, Article 372 of the Constitution authorizes the president of India to adopt pro Constitutional laws, and if necessary, to make such adaptations and modifications, (whether by way of repeal or amendment) so as to bring them in accord with the provisions of the Constitution. The State Reorganization Act, 1956 and some other Acts similar thereto also contain such a provision. So long as the modification of a provision of statute by the Executive is innocuous and immaterial and does not effect any essential change in the matter.

Classification of Administrative Rule-Making Power Or Delegated Legislation:

Administrative rule-making or delegated legislation in India is commonly expressed by the term “statutory rules and orders”. However, this classification is not exhaustive as it appears in other forms also, i.e. regulation, notification, bye-law, scheme and direction. These terminologies are confusing because different words are used for the same thing and same words are used for different things.

Title-Based Classification:

i. Rule: The term “rule” is defined in the General Clauses Act, 1897 as a rule made in exercise of power conferred by any enactment and shall include a regulation made as a “rule” under any enactment. These rules may be made applicable to a particular individual or to a general public. It may include rules of procedures as under the Atomic Energy Act, 1948, and also the rules of substantive law.

ii. Regulations: This term is not confined to delegated legislation. It means an instrument by which decisions, orders and acts of the government are made known to public. But in the sphere of administrative rule making, the term relates to a situation where power is given to fix the date for the enforcement of an Act, or to grant exemptions from the Act or to fix prices, etc.

iii. Order: This term is used to cover various forms of legislative and quasi-judicial decisions. Orders may be specific or general. The former refers to administrative action while the latter refers to administrative rule-making.

iv. Bye-laws: The term has been confined to rules made by semi-governmental authorities established under the act of legislatures.

v. Directions: The term is used in two senses. The Constitution gives powers to Central Government to issue directions to State Governments for the execution of its laws. In this sense it has no application to delegated legislation. In the second sense, the term
“direction” is an expression of administrative rule-making under the authority of law or rules or orders made there under. These may be recommendatory or mandatory. If mandatory, these have the force of law.

vi. Scheme: The term refers to a situation where the law authorizes the administrative agency to lay down a framework within which the detailed administrative action to proceed.

The Committee on Ministers’ Powers\(^5\) has recommended for simplification of the nomenclature, confining the term “rule” to the statutory instrument regulating procedure, the term “regulation” to describe the substantive administrative rule-making, and the term “order” to instruments exercising executive and quasi-judicial decisions.

**Discretion-based classification (conditional legislation)**

In the case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfillment of certain conditions and what is delegated to an outside authority, is the power to determine according to its own judgment whether or not those conditions are fulfilled. In case of delegated legislation proper, some portion of the legislative power of the Legislature is delegated to the outside authority in that, the Legislature, though competent to perform both the essential and ancillary legislative functions, performs only the former and parts with the latter, i.e., the ancillary function of laying down details in favour of another for executing the policy of the statute enacted. The distinction between the two exists in this that whereas conditional legislation contains no element of delegation of legislative power and is, therefore, not open to attack on the ground of excessive delegation, delegated legislation does confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation.

In *Sardar Inder Singh v. State of Rajasthan*\(^6\), it was laid down that when an appropriate Legislature enacts a law and authorizes an outside authority to bring it into force in such area or at such time as it may decide, that is conditional and not delegated legislation. Following this decision in *State of Tamil Nadu v. K Sabanayagam*\(^7\), the Supreme Court held: “The distinction between conditional legislation and delegated legislation is this that, in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective (*Hampton and Co. v. U.S.*)\(^8\) and the latter involves delegation of rule-making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in

\(^{5}\) Committee on Ministers’ Powers, Report 45,23,51, 52 (1932).
\(^{6}\)AIR 1957 SC 510
\(^{7}\)AIR 1998 SC 344
\(^{8}\)(1927) 276 US 394
the case of conditional legislation the power of legislation is exercised by the legislature conditionally, leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend. Thus when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and sub-serve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation.

The Supreme Court said that conditional legislation can be broadly classified into three categories:-

In the first category when the Legislature has completed the task of enacting a Statute, the entire superstructure of the legislation is ready but its future applicability to a given area is left to the subjective satisfaction of the delegate who being satisfied about the conditions indicating the ripe time for applying the machinery of the said Act to a given area exercises that power as a delegate of the parent legislative body. When the Act itself is complete and is enacted to be uniformly applied in future to all those who are to be covered by the sweep of the Act, the Legislature can be said to have complied its task. All that it leaves to the delegate is to apply the same uniformly to a given area indicated by the parent Legislature itself but at an appropriate time. This would be an act of pure and simple conditional legislation depending upon the subjective satisfaction of the delegate as to when the said Act enacted and completed by the parent Legislature is to be made effective. As the parent Legislature itself has laid down a binding course of conduct to be followed by all and sundry to be covered by the sweep of the legislation and as it has to act as a binding rule of conduct within that sweep and on the basis of which all their future actions are to be controlled and guided, it can easily be visualized that if the parent Legislature while it enacted such law was not required to hear the parties likely to be affected by the operation of the Act, its delegate exercising an extremely limited and almost ministerial function as an agent of the principal Legislature applying the Act to the area at an appropriate time is also not supposed and required to hear all those who are likely to be affected in future by the binding code of conduct uniformly laid down to be followed by all within the sweep of the Act as enacted by the parent Legislature.

However, there may be second category of conditional legislations wherein the delegate has to decide whether and under what circumstances a completed Act of the parent legislation which has already come into force is to be partially withdrawn from operation in a given area or in given cases so as not to be applicable to a given class of persons who are otherwise admittedly

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governed by the Act. When such a power by way of conditional legislation is to be exercised by the delegate a question may arise as to how the said power can be exercised. In such an eventuality if the satisfaction regarding the existence of condition precedent to the exercise of such power depends upon pure subjective satisfaction of the delegate and if such an exercise is not required to be based on the prima facie proof of factual data for and against such an exercise and if such an exercise is to uniformly apply in future to a given common class of subjects to be governed by such an exercise and when such an exercise is not to be confined to individual cases only, then even in such category of cases while exercising conditional legislative powers the delegate may not be required to have an objective assessment after considering rival versions on the data placed before it for being taken into consideration by it in exercise of such power of conditional legislation.

Where the delegate proceeds to fill up the details of the legislation for the future which is part of the integrated action of policy-making for the future, it is part of the future policy and is legislative. But where he merely determines either subjectively or objectively - depending upon the "conditions" imposed in the Statute permitting exercise of power by the delegate - there is no legislation involved in the real sense and therefore, applicability of principles of fair play, consultation or natural justice to the extent necessary cannot be said to be foreclosed. The fact that in such cases of 'conditional legislation' these principles are not foreclosed does not necessarily mean that they are always mandated. In a case of purely ministerial function or in a case where no objective conditions are prescribed and the matter is left to the subjective satisfaction of the delegate no such principles of fair play, consultation or natural justice could be attracted. That is because the very nature of the administrative determination does not attract these formalities and not because the determination is legislative in character. But there may be a third category of cases wherein the exercise of conditional legislation would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive the rival class of persons who otherwise might have already got statutory benefits under the Act and who are likely to lose the existing benefit because of exercise of such a power by the delegate. In such type of cases the satisfaction of the delegate has necessarily to be based on objective consideration of the relevant data for and against the exercise of such power. May be such an exercise may not amount to any judicial or quasi-judicial function, still it has to be treated to be one which requires objective consideration of relevant factual data pressed in service by one side and which could be tried to be rebutted by the other side who would be adversely affected if such exercise of power is undertaken by the delegate.

In such a third category of cases of conditional legislation the Legislature fixes up objective conditions for the exercise of power by the delegate to be applied to past or existing facts and for deciding whether the rights or liabilities created by the Act are to be denied or extended to particular areas, persons or groups. This exercise is not left to his subjective satisfaction nor it is a mere ministerial exercise.
**Nature-based classification (exceptional delegation):**

Classification of administrative rule-making may also be based on the nature and extent of delegation. The Committee on Ministers’ powers distinguished two types of parliamentary delegation:

1. **Normal Delegation**

   There are two types of normal delegation:

   A. **Positive delegation.**- Where the limits are clearly defined in the Parent Act, it is called positive delegation.

   B. **Negative delegation.**- Where the delegated power does not include power to do certain things, it is known as negative delegation *e.g.* power to legislate on matters of policy or power to impose tax.

2. **Exceptional Delegation.**

   Exceptional delegation is also known as Henry VIII clause. Instances of exceptional delegation may be as follows:

   A. Power to legislate on matters of principle.


   C. Power giving such a wide discretion that it is almost impossible to know the limits.

   D. Power to make rules which cannot be challenged in a court of law.

**Purpose-based classification:**

1. **Enabling Acts:** - Appointed day clause: under this the executive has to appoint a day for the Act to come into operation.

2. **Extension and application Acts:** The technique of administrative rule-making may sometimes be used for extension and application of an Act in respect of a territory or for duration of time or for any other such object. Power may be delegated to extend the operation of Act to other territories.

3. **Dispensing and Suspending Acts:** - To make exemption from all or any provision of the Act in a particular case or class of cases or territory, when circumstances warrant it. These are meant to enable the administration to relieve hardship which may be occasioned as a result of uniform enforcement of law.
4. Alteration Acts: - Technically alteration amounts to amendment, yet it is a wide term & includes both modification and amendment. Power to modify Acts has mostly been delegated as a sequel to the power to the power of extension and application of laws. The power of modification is limited to consequential changes, but, it overstepped it suffers challenge on the ground that it is not within the legislative intent of modification. In *Queen v. Burah* The Privy Council held, that the 9th section of the Act conferring power upon the Lieutenant-Governor to determine whether the Act of any part of it should be applied to a certain district, was a form of conditional legislation and did not amount to delegation of legislative powers. It is like “removing difficulty” so that the various states may coexist.

5. Power to make rules: To carry out the purpose of the Act.

6. Classifying and fixing standard Acts: - Power is given to fix standard of purity, quality or fitness for human consumption.

7. Clarify the provision of the statutes Acts: To issue interpretation on various provision of the enabling Act.

**Forms of delegation**

There are various forms of delegated legislation. The reason for this is that there is no uniform pattern of delegation in the delegating legislations. Although there are various forms of delegation, the parameter for determining the question of validity is the same, that is, the legislature must lay down the policy of the Act. It is therefore that the doctrine of excessive delegation has been invoked in a large number of cases to determine the validity of provisions delegating legislative power. Some of these cases are discussed here to illustrate the working of the principle. The cases have been classified from the point of view of the nature of the power conferred under following broad categories:

(a) Amplification of policy.

(b) Modification.

(c) Removal of difficulties.

(d) Inclusion and Exclusion.

(e) Taxation.

These categories are not mutually exclusive as they are governed by the same over all consideration of the principle of "excessive delegation". The truth, however, remains that due to the compulsions of modern administration; the Courts have allowed extensive delegations of legislative power especially in the area of taxation and welfare legislation. This point will be clear from the following discussion of the cases in which the validity of delegated legislation has been challenged on the ground of excessive delegation.
(a) Amplification of policy

It is trite to say that to some extent, delegated legislation involves abandonment of its function by the legislature and enhancement of powers of administration. Many a time, the legislature passes Acts in "skeleton" form containing only the barest of general principles and leaves to the executive the task of not only filling in "details" but even that of amplifying policies. The legislature often uses broad-worded provisions, giving wide powers to the delegate to make such rules as appear to it to be "necessary" or "expedient" for carrying out the purposes of the Act without laying down any standards to guide the discretion of the delegate and the delegate is in substance given blank cheque to do whatever it likes in the delegated area of authority. In reality, under the skeleton type of legislation, the flesh and blood-not to mention the soul-of the scheme of legislative regulation are left entirely to administrative discretion. The vires-the limits-of the authority delegated have become so broad as to cover almost all administrative rulemaking within the particular area of legislation.

A good example of amplification of policy is Section 3 of the Essential Supplies (Temporary Powers) Act, 1946. Section 3 of the Act reads as follows:

The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing the equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

The validity of Section 3 was challenged on the ground of excessive delegation. Under this provision the executive was authorized to promulgate delegated legislation not only to fill in details in the statute but even to decide question of policy. However, in Hari Shanker Bagla v. State of Madhya Pradesh10, the Supreme Court upheld the delegation on the ground that the legislature has laid down the essential principles or policy of the law, namely, "maintenance or increase of supply of essential commodities and securing equitable distribution and availability at fair prices." Delivering the judgment, Mahajan, C.J., observed:

"The preamble and the body of sections sufficiently formulate the legislative policy and the ambit and the character of the Act is such that the details of that policy can only be worked out by delegating them to a certain authority within the framework of that policy."11

In Bagla case12 the validity of Section 6 of the Essential Supplies (Temporary Powers) Act was also challenged on the ground of excessive delegation of power to the Executive. Section 6 declares that an order made under section 3 shall have effect notwithstanding anything contained in, any Act or instrument other than this Act. It was contended before the Court that the power would have the effect to repeal by implication any existing law and, therefore such a wide power

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10 AIR 1954 SC 465
11 Ibid.
12 Ibid.
could not be delegated on the authority of the Reference case. Rejecting the contention the Court held that Section 6 does not either expressly or impliedly repeal any of the provisions of the pre-existing law. The purpose is simply to bypass them where they are inconsistent with the provision of the Essential Supplies (Temporary Powers) Act and orders made under it. The Court pointed out that even if it be conceded, for the sake of argument, that an existing law stood repealed by the extents of its repugnancy with the order made under Section 3, by implication, then the repeal "is not by an act of the delegate" but it is by the "legislative act of the Parliament itself", because it is Parliament which has declared in Section 6 that an order made under section 3 "shall have effect notwithstanding any inconsistency in this order with any enactment other than this Act." In this way, judicial sanction was given to a very broad delegation of power.

(b) Modification

Sometimes, a provision is made in the statute conferring power on the executive to modify the existing statute itself. This is really a drastic power as it amounts to amendment of the Act which is legislative Act. In this way it makes the executive supreme even over the legislature. But sometimes such power is necessary for flexibility of approach to meet the changing circumstances. In Indian legislative practice the power to modify statutes has mostly been delegated as sequel to the power of extension and application of laws. Thus, under the powers conferred by the Delhi Laws Act, 1912 the Central Government extended the application of the Bombay Agricultural Debtors' Relief Act, 1947 to Delhi. The Bombay Act was limited in application to the agriculturists whose annual income was less then Rs. 500 but that limitation was removed by the Government.

Power of modification has also been given to administrative authorities in cases which may be characterized as "legislation by reference".13 This is a device by which the power to modify is delegated to make the adopted statute fit into the adoptive statute. For example, section 21 of Excess Profits Act, 1940 provides that the provisions of the section of Income Tax Act, 1922 mentioned therein shall apply with such modifications as may be made by rules.

Varieties of Modification. - In Hari Shanker Bagla v. State of Madhya Pradesh14 the provision was considered and held valid, which laid down that the delegated legislation made under the enactment would be operative although inconsistent with some other enactment.

In Banarsi Das v. State of Madhya Pradesh,15 the provision which empowered the delegate to bring in certain sale transactions under the purview of Sales-Tax Act was upheld against the challenge of excessive delegation.

In Delhi Laws Act case16 it was held that power may be conferred on the executive to extend an enactment already in force in one area to other areas with modification as the executive considers

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13 Allen, Law In. the making p. 51 (7th Ed.); Law and Orders, p. 172 (3rd Ed.)
14 AIR 1954 SC 465
15 AIR 1958 SC 909
fit. But the power to modify the underlying policy of Act is an essential legislative function and therefore delegation of power to modify an Act without any limitation is not valid.

In *Lachmi Narain v. Union of India*\(^7\) the Court has observed that the power to make "restrictions and modifications" in the enactment sought to be extended is not a separate and independent power but is an integral constituent of the power of extension. This power exhausts itself once the enactment is extended, then the power of modification cannot be exercised again.

The nature and extent of modification has been clarified by the Supreme Court in *N.C.J. Mills Co. v. Asstt. Collector, Central Excises*\(^8\). In this case the Court said that the power to modify does not import the power to make essential changes and that "it is confined to alterations of a minor character and no change in principle is involved." In this way, if the changes are not essential in character, the delegation is permissible. In *Sri Ram v. State of Bombay*\(^9\), power was given to the government to vary the ceiling area if it was satisfied that it was expedient to do so in public interest. The Court upheld such a broad statement of policy as 'public interest' sufficient to upheld the virus of delegation.

**(c) Removal of difficulties-(Henry VIII clause)**

Sometimes, power is conferred on the government to modify the existing statute for the purpose of removing difficulties so that it may be brought into full operation. When the legislature passes an Act, it cannot foresee all the difficulties which may arise in implementing it. Legislature, therefore, introduces in the statute a "removal of difficulty" clause envisaging that government may remove any difficulty that may arise in putting the law into operation.

Generally two types of "removal of difficulties" clauses are found in the Indian statutes. One, a narrow one which empowers the executive to exercise the power to remove difficulties consistent with the provisions of the enabling Act. In such a case, the Government cannot change any provisions of the statute itself; *e.g.*, Section 128 of the States Re-organisation Act, 1956 lays down as under:

If any difficulty arises in giving effect to the provisions of this Act, the President may by order do anything not inconsistent with such provisions which appear to him to be necessary or expedient for the purpose of removing difficulty.

If the statute provides so, it is not objectionable. According to Committee on Minister's Powers\(^20\) the sole purpose of Parliament in enacting such a provision is "to enable minor

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16 AIR 1951 SC 332  
17 AIR 1976 SC 714.  
18 AIR 1971 SC 454.  
19 AIR 1959 SC 459.  
20 The Committee on Minister's Powers Report, 1932 p. 36.
adjustments of its own handiworks to be made for the purpose of fitting its principles into the fabric of existing legislation, general or local" Sir Cecil Carr's\(^{21}\) view is that the device is draftsman's insurance policy in case he has overlooked something. In exercise of such powers the government cannot modify the Parent Act nor can make any modification which is not consistent with the Parent Act.\(^{22}\)

The other type of "removal of difficulties" clause is very broad and empowers the executive in the guise of removal of difficulties to modify even Parent Act or any other Act. A classic illustration of such clause is found in the Constitution, itself which under Article 392 (1) authorised the President to direct by order that the Constitution would, during such period, as might be specified have effect subject to such adaptations, whether by way of modification, addition or omission, as he might deem to be necessary or expedient. This is nicknamed as Henry VIII Clause incorporated in the Constitution of India. Similarly, Article 372 of the Constitution conferred power of making adaptations and modifications in the existing law to bring it in accord with the Indian Constitution. However, it may be noted that such a provision is usually for a limited period.

\((d)\) **Inclusion and Exclusion:** As a matter of common practice, legislature passes law to confer power on the government to bring individuals, bodies or commodities within, or to exempt them from, the purview of a statute. In this way, the range of operation of a statute can be expanded or reduced through the device of delegated legislation.

\((i)\) **Range of Inclusion**

Sometimes, the legislature after passing the statute makes it applicable, in the first instance to some areas and class of persons, but empowers the government to extend the provisions thereof to different territories, persons, bodies or commodities. The Minimum Wages Act, 1948 has been passed, as mentioned in the preamble, "to provide for fixing minimum wages in certain employment". The Act applies to the employments listed in the schedule, but the government is empowered to add any other employment thereto and thus to extend the operation of the Act to that employment. The legislature has not laid down any norms on which the government may exercise its power to add any employment to the schedule. Even then, in *Edward Mills Co. v. State of Ajmer*\(^{23}\), the Supreme Court held that the provision was valid as the policy was apparent on the face of the Act which was to fix Minimum Wages in order to avoid exploitation of labour in those industries wages were very low because of unorganized labour or other causes.

\(^{21}\)Concerning English Administrative Law. 1941 p. 44.

\(^{22}\)Jalan Trafiing Co. v. Mill MazCJoor Sabhill. AIR 1967 SC 691; Sinai v. Union of India. AIR 1975 SC 797

\(^{23}\)AIR 1955 SC 25
In a number of cases, the power to add to the schedule has been upheld. The Punjab General Sales Tax Act, 1948 levied a Purchase Tax on goods except the items mentioned in the schedule annexed. This meant that if the government added an item to the schedule it became tax exempt. In *Babu Ram v. State of Punjab* the Supreme Court upheld the provision against challenge on the basis of excessive delegation.

A statute may empower the executive to expand the range of its operation through methods other than amending schedule. For instance, the Essential Commodities Act, 1955 covers certain specified commodities mentioned in the Act and further gives power to the Central Government to declare any other commodity as 'essential commodity' and thus making the Act applicable to it as well. In *Mohamed Ali v. Union of India* the Supreme Court upheld a provision of Employees' Provident Funds Act, 1952 empowering the Central Government to bring within the purview of the Act such establishments as it might specify.

But where the Court does not find any policy for guidance in the statute the provision is held invalid. Thus, in *Hamdard Dawakhana v. Union of India*, section 3 of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 was challenged. This provision prohibited an advertisement suggesting that a medicine could be used for curing any venereal disease or any other disease specified in the rules. The Court held that no standards or principles had been laid down in this Act for specifying 'Many other disease' in the rules and hence the power delegated to make rules was invalid.

**(ii) Range of exclusion.**

There are certain statutes which give power to the government to exempt from their operation any persons, institutions or commodities. Such a provision is invariably upheld. For instance, in *Jalan Trading Co. v. Mill Mazdoor Union*, the Supreme Court held the provision valid, which authorised the Central Government to exempt any establishment from the range of the operation of the Act having regard to the financial position and relevant factors.

In *Registrar Co-operative Societies v. K Kunjabmu* the Court upheld the validity of section 60 of the Madras Co-operative Societies Act, 1932 which was a 'near Henry VIII clause.' Section 60 provides as follows:

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25 AIR 1979 SC 1475
26 AIR 1964 SC 980.
27 AIR 1960 SC 554.
28 AIR 1967 SC 691
29 AIR 1980 SC 350
The State Government may by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be prescribed in the order.

Such a broad clause was held valid as the Court found the policy of the Act stated in the preamble, *viz.*, to facilitate the formation and working of co-operative societies.

**(e) Taxation**

Taxing power is an inherent power of any State. In a democratic system, taxation is exclusively the function of legislature. The fundamental canon of democracy is "no taxation without representation." Taxation is, therefore, a strong weapon in the hand of legislatures to control the executive. However, delegation has permeated even the tax area. When legislature passes the statute to levy a tax, it leaves some elements of taxing power to the executive. The doctrine of excessive delegation is applied by the Court to determine the validity of the delegation of taxing power. The permissible limits of a valid delegation of taxing power can be comprehended by analysing the individual cases decided by the Supreme Court.

Power may be delegated to government to exempt an item from the purview of tax. In *Orient Weaving Mills v. Union of India*[^31], a provision authorizing the Central Government to exempt any excisable goods from duty was held valid against the plea of excessive delegation.

Power may be given to the Central Government to bring additional transactions within the purview of a tax. In *Banarsi Das v. State of Madhya Pradesh*[^32], delegation of power to the government to bring any goods within the purview of Sales-tax Law was upheld.

**Delegated Legislation In Britain**

**(i) Absolute Delegation**

In Britain, there prevails the principle of sovereignty of Parliament. This doctrine implies that Parliament is supreme and has unlimited power to make any law. Consequently Courts cannot question parliamentary law on any ground. In *R. v. Halliday*[^33], it has been rightly observed, "The British Constitution has entrusted to the two Houses of Parliament, subject to the assent of the king, an absolute power untrammeled by any instrument obedience to which may be compelled by some judicial body." Parliament may accordingly delegate to any extent its powers of law-making to an outside authority. The limits of delegated legislation In the British Constitution, if there are to be any, therefore remain a question of policy and not a justifiable issue to be decided by the courts of law. The doctrine of excessive delegation has no application in Britain.

[^31]: AIR 1963 SC 89
[^32]: AIR 1958 SC 909
[^33]: 1917 AC 260
(ii) Remedy in the hands of Parliament: An important point to note is that in Britain the remedy lies in the hands of Parliament itself. Parliament can control the delegation of power by it if it so pleases. There is no external agency to compel Parliament to do so. It is not necessary for Parliament to lay down in a delegating statute any standard, policy or norm for guiding the delegate in exercising the power entrusted to him. The delegate may be left free to draft delegated legislation in any way he likes. He can evolve his own policy or standard in exercising delegated power.

However, sovereignty of Parliament does not mean that there are no principles to which the practice of delegation must conform. It has been suggested by the Committee on Minister's Powers: "The precise limits of law-making power which Parliament intends to confer on a Minister should always be expressly defined in clear language by the statute which confers it: When discretion is conferred its limits should be defined with equal clearness." The committee, it should be noted, expressed a principle basically similar to standard requirement.

Delegated Legislation in U.S.A.

(i) Delegation in Theory

In American Constitution we find a different principle in operation. The position is different in the sense that under the Constitution of U.S.A., delegated legislation is not recognized in theory because of two doctrines:

(a) The doctrine of separation of powers

The U.S. Constitution is based on the doctrine of separation of powers. By Article 1, legislative power is expressly conferred on the Congress, and the courts have power to interpret the Constitution and declare any statute unconstitutional if it does not conform to their views of the Constitution. In the leading case of Field v. Clark the American Supreme Court observed: "The Congress cannot delegate legislative power to the President is a principle universally recognized and vital to the integrity and maintenance of the system of government ordained by the Constitution."  

(b) Delegatus non potest delegare: A delegate cannot further delegate

Besides the doctrine of separation of powers, the U.S. Supreme Court has also invoked the doctrine of delegatus non potest delegare against delegation by the Congress. The doctrine means that a delegate cannot further delegate its powers. As the Congress gets power from the people, and is a delegate of the people in that sense, it cannot further delegate its legislative power to the executive or to any other agency, Legislatures stand in this relation to the people

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34 (1892) 143 US 649
whom they represent. Hence, it is a cardinal principle of representative government, that legislature cannot delegate the power to make laws to any other body or authority.  

Delegatus non protest delegare is a fundamental principle of delegation jurisprudence. Clarifying the scope and limit of this principle, the Court held that the Central Government can delegate any of its statutory power to the State Government, if permitted by law. However, two factors would determine its validity: (i) whether sub-delegation is authorised by statute either expressly or impliedly, (ii) whether, exercise of sub-delegation is within the scope and limit of delegation, meaning thereby that even if statutory power to delegate functions is expressed in wide general terms it will not necessarily extend to everything. The Court explained that implied sub-delegation is commonly not the characteristic found in peace time legislation. Applying the principle, the Court held that if a guideline for determining inter se seniority was to be laid down, the State alone could do so in terms of Article 162 of the Constitution.

(ii) Delegation in Practice

In theory, it was not possible for the Congress to delegate its legislative power to the executive. However, strict adherence to the non-delegation doctrine was not practicable. Due to increase in governmental functions, it was impossible for the Congress to enact all the statutes with all particular details. The Supreme Court recognized this reality and tried to create "a balance between the two conflicting forces: doctrine of separation of powers barring delegation and the inevitability of delegation due to the exigencies of the modern government." The most that can be asked under the separation of powers doctrine is that the Congress lay down the general policy and standards that animate the law, leaving the agency to refine those standards, 'fill in the blanks', or apply the standards to particular cases. Thus, pragmatic considerations have prevailed over theoretical objections. With the change in time, the courts have relaxed the rigors of the doctrine of separation of powers and permitted broad delegation of powers provided that the Congress itself should lay down policies or standards for the guidance of delegate. The Congress should not give a blank cheque to the Executive to make any rules it likes. If this is done, it would amount to an abdication of functions by the Congress. The point to be noted is that if Congress transfers to others "the essential legislative functions with which it is vested" the statute doing so will be held unconstitutional.

The test in the words of Justice Cardozo is: "to uphold the delegation there is need to discover in terms of the Act a standard reasonably clear whereby the discretion must be governed." If the statute contains no standard to limit delegation of power, it amounts to giving a blank cheque to

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make law in the delegated area of authority and, thus, the agency rather than the Congress becomes primary legislator. The working of this rule is illustrated with reference to a few cases.

In *Panama Refining Co. v. Ryan*, popularly known as the Hot Oil case, Congress authorized the President to ban oil in inter-state-commerce when it was produced in excess of quota fixed by each state. The policy of the Act was "to encourage national industrial recovery" and "to foster fair competition". The majority of the court held that "the Congress has declared no policy, has established no standard, has laid down no rule". Accordingly the delegation in favour of the President was impermissible and the Act was unconstitutional.

**Delegated Legislation in India**

(i) Pre-Constitution Period.

As regards pre-Constitution period relating to delegated legislation in India, Queen v. Burah is considered to be the leading authority propounding the doctrine of conditional legislation. In 1869, the Indian legislature passed an Act purporting to remove the district of Garo Hills from the jurisdiction of the civil and criminal courts and the law applied therein, and to vest the administration of civil and criminal justice within the same district in such officers as the Lieutenant-Governor of Bengal might appoint for the purpose. By section 9, the Lieutenant-Governor was empowered from time to time, by notification in the Calcutta Gazette, to extend, *mutatis mutandis*, all or any of the provisions contained in the Act to the Jaintia, Naga and Khasia Hills and to fix the date of application thereof as well. By a notification dated October 14, 1871, the Lieutenant Governor extended all the provisions of notification which was challenged by Burah who was convicted of murder and sentenced to death.

The High Court of Calcutta by a majority upheld the contention of the appellant and held that section 9 of the Act was *ultra vires* the powers of the Indian Legislature. In the opinion of the Court, the Indian Legislature was a delegate of the Imperial Parliament and as such further delegation was not permissible.

Thereupon the Government appealed to the Privy Council. The Act was held valid by the Privy Council. It was held that the Indian Legislature was not an agency or delegate of Imperial Parliament and it had plenary powers of legislation as those of Imperial Parliament. It agreed that the Governor-General in Council could not, by legislation create a new legislative power in India not created or authorized by the Council's Act of Imperial Parliament. However, in fact it was not done. It was a case of only conditional legislation, as the Governor was not empowered to pass new laws but merely to extend the provisions of the Act already passed by the competent legislature upon fulfillment of certain conditions.

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42 Ibid.
43 (1878) 3 AC 889
The decision of the Privy Council is open to two different interpretations. One interpretation is that since the Indian legislature is not a delegate of British Parliament, there is no limit on the delegation of legislative power. But the other interpretation is that since Privy Council has validated only conditional legislation, therefore, delegation of legislative power is not permissible.\[^{44}\]

The question of constitutional validity of delegation of powers came for consideration before the Federal Court in *Jatindra Nath Gupta v. Province of Bihar*\(^ {45}\). In this case the validity of section 1 (3) of Bihar Maintenance of Public Order Act, 1948 was challenged on the ground that it empowered the Provincial Government to extend the life of the Act for one year with such modification as it may deem fit. The Federal Court held that the power of extension with modification is not a valid delegation of legislative power because it is an essential legislative function which cannot be delegated. In this way for the first time it was ruled that in India Legislative powers cannot be delegated.\[^{46}\]

(ii) Post-Constitution Period

(a) Constitutionality of Delegated Legislation. - As the decision in *Jatindra Nath case* had created confusion, the question of permissible limits of delegation of legislative power became important. Therefore, in order to get the position of law clarified, the President of India sought the opinion of Supreme Court under Article 143 of the Constitution. The question of law which was referred to the Supreme Court was of great Constitutional importance and was first of its kind. The provision of three Acts, \textit{viz.},

(i) Section 7 of the Delhi Laws Act, 1912;

(ii) Section 2 of the Ajmer-Mewar (Extension of Laws) Act, 1947; and

(iii) Section 2 of the Part C States (Laws) Act, 1950, was in issue in Delhi Laws Act Case, Re.\[^{47}\]

There were a few Part C States. Delhi was one of them. Part C States were under the direct administration of the Central Government as they had no legislature of their own. Parliament had to legislate for these States. It was, therefore, that Parliament passed a law, the Part C States (Laws) Act, 1950.

The Central Government was authorized by section 2 of the Part C States (Laws) Act, 1950 to extend to any Part C State with such modifications and restriction as it thinks fit, any enactment in force in a Part A State, and while doing so, it could repeal or amend any corresponding law (other than a central law) which might be in force in the Part C States. Really, it was a very sweeping kind of delegation.

\[^{44}\text{AIR 1949 FC 175.}\]
\[^{45}\text{AIR 1949 FC 175}\]
\[^{46}\text{Delegated Legislation in India, p. 81 (1964) : Indian Law Institute, New Delhi, Publication}\]
\[^{47}\text{AIR 1951 SC 332}\]
The Supreme Court was called upon to determine the constitutionality of this provision. All the seven judges who participated in the reference gave seven separate judgments "exhibiting a cleavage of judicial opinions on the question of limits to which the legislature in India should be permitted to delegate legislative power". By a majority, the specific provision in question was held valid subject to two limitations:

(1) The executive cannot be authorized to repeal a law in force and thus, the provision which authorized the Central Government to repeal a law already in force in the Part C States was bad; and

(2) By exercising the power of modification, the legislative policy should not be changed, and thus, before applying any law to the Part C State the Central Government cannot change the legislative policy.

(b) Principles laid down in the Reference Case.

In Re Delhi Laws Act may be said to be "Siddhanatawali" i.e. principles as regards constitutionality of delegated legislation. The importance of the case cannot be under-estimated inasmuch as on the one hand, it permitted delegation of legislative power by the legislature to the executive, while on the other hand; it demarcated the extent of such permissible delegation of power by the legislature. In this case it was propounded:

(a) Parliament cannot abdicate or efface itself by creating a parallel legislative body.

(b) Power of delegation is ancillary to the power of legislation.

(c) The limitation upon delegation of legislative power is that the legislature cannot part with its essential legislative power that has been expressly vested in it by the Constitution. Essential legislative power means laying down policy of law and enacting that policy into a binding rule of conduct.

(d) Power to repeal is legislative and it cannot be delegated.

The theme of Re Delhi Laws Act case is that essential legislative function cannot be delegated whereas non-essential can be delegated.

Conclusion

Delegated or subordinate legislation means rules of law made under the authority of an Act of Parliament. Although law making is the function of legislature, it may, by a statute, delegate its power to other bodies or persons. The statute which delegates such power is known as Enabling

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49 Ibid.
50 Indian Law Institute, Cases and materials on Administrative Law in India, 1966, p. 220.
Act. By Enabling Act the legislature, lays down the broad guidelines and detailed rules are enacted by the delegated authority. Delegated legislation is permitted by the Indian Constitution. It exists in form of bye rules, regulations, orders, bye laws etc. There are many factors responsible for its increase: Parliament and State Legislature are too busy to deal with the increasing mass of legislations, which are necessary to regulate daily affairs. Modern legislation requires technicality and expertise knowledge of problems of various fields, our legislators, who are politicians are not expected to have such knowledge. Subordinate legislations are more flexible, quickly and easily amendable and revocable than ordinary legislation, in case of failure or defect in its application. When contingencies arise which were not forceable at the time of making it, subordinate legislation can pass an act quickly to handle them. Quick, effective and confidential decisions are not possible in body of legislatives. So, executives are delegated with power to make rules to deal with such situations. These are the main factors, besides many others, for the fast increase in delegated legislation today. Justice P B Mukerjee has stated “Delegated legislation is an expression which covers a multitude of confusion. It is an excuse for the legislators, a shield for the administrators and a provocation to the constitutional jurists. It is praised as a necessity and felt as inevitable in our world where social economic technological psychological and administrative speed outstrips the spacious and placid traditional legislative ideals and processes. It is criticized as an abdication of power by legislators and an escape from the duty imposed on them by voters of democracy. In England the king lost the legislative power at Runnymede and parliament lost legislative at stampede that followed since to provide the government for the country through administration and bureaucracy”.

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