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LEX BONA FIDE - LAW JOURNAL is an open access, peer- reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**LEX BONA FIDE: LAW JOURNAL**

## **DELEGATED LEGISLATION AND ITS GROWTH IN INDIA**

(\*Sipra Pradhan & \*Baisakhi Priyadarshini Dash)

### **ABSTRACT**

Delegated legislation is a form of primary law regulation that allows an administration body to implement and enforce primary law requirements. It is a law enacted by someone or something else with legislative power. “Delegated legislation” is one of the most hotly disputed problems in legal theory, owing to its wide-ranging ramifications. There have also been differing viewpoints, but in current times, delegated legislation is widely employed and virtually universally accepted. This delegated legislation mechanism allows the government to bring laws into effect without having to wait for the new legislative act. Furthermore, delegating legislation grants the right to modify or alter regulations or make substantive changes to the rule under the authority granted by a legislative provision. Because more legislative branch activities occur each year than Parliamentary acts, the legislative branch is critical to the legislative process. The significance of delegated legislation and its growth in India is examined in this section.

### **INTRODUCTION**

“Administrative law governs the structure, functions, and responsibilities of administrative agencies. The fast rise of administrative law is the most important and remarkable development of the twentieth century”<sup>[1]</sup>. Although administrative law existed in some form before the twentieth century, it is during this century that the philosophy of the state's duty and function has experienced a drastic shift. “The number of government functions has skyrocketed. Presently, the state is more than just a police state with sovereign powers; as a progressive democratic state, it seeks to ensure social security and welfare for the common man, regulates labour relations, exerts control over the production, manufacture, and distribution of essential commodities, establishes a plethora of businesses, strives for equality for all, and guarantees equality in the workplace<sup>[2]</sup>”. It cleans up slums, cares for people's health and morality, educates children, and performs all of the other actions that social justice requires. To put it another way, the contemporary state looks after its inhabitants from birth to death. Administrative law's scope and reach have expanded as a result of these developments.

In today's world, the term "delegated legislation" is a big topic, and it's important in the Indian Constitution. It is the most hotly contested topic on the planet. This legislature has limited time with them since it is a time-consuming procedure in which a significant amount of time is spent debating any topic in-depth, and then passing the same passed legislation takes time because it

must travel through many levels of government before being approved. Furthermore, there are several obstacles to overcome, making the procedure difficult. So, despite dealing with technological concerns, the legislation must be correct. Delegated legislation has no precise meaning, however, it can be recognized by reading “Article 312 of the Indian Constitution of 1950”. Furthermore, due to the diverse viewpoints and interpretations of the topic among the researchers.

### **LEGISLATIVE DEVELOPMENT AFTER INDEPENDENCE**

The delegation was regarded as a legacy of the English. In the case of *In Re Delhi Laws*[3], the President of India challenged the seven-judge panel if delegated powers could be regarded lawful in any form, using the powers granted to him under “Article 143 of the constitution”. The Supreme Court arrived at the following conclusions after a thorough debate on the issues:

1. The Parliament could not be permitted to completely exonerate itself of duty by establishing a rival authority.
2. The Indian parliament was not an agency, but rather a self-governing body. As a result, the idea of "delegates non-potest delegate" was proposed, which states that once power has been assigned, it cannot be sub-delegated again.
3. According to the Court, parliament can only transfer supplementary responsibilities.
4. The court also determined that fundamental duties, such as policy formulation and execution as a legally enforceable rule of law, could not be delegated. However, the degree of delegation of authorities was also examined. While one school of thought held that the ultimate authority should be permitted to remove the powers that had been granted, ensuring that the authority did not abdicate its lawful powers.

“The opposing school of thought suggested that the ultimate authority may establish standards for the execution of its policies, which the delegate would be required to follow when making judgments. It's worth noting that, although being a landmark case, the judgment's ratio was changed by subsequent rulings. The concept of delegation powers being an integral feature of the legislature's powers and the legislature having inherent powers to delegate its tasks was declared reasonable in the case of *DS Garewal v State of Punjab*”[4].

The notion of delegation powers was examined in another well-known case, “*Lachmi Narain v Union of India*”[5]. “The Central Government extended the Bengal Finances (Sales Tax) Act, 1941 to the Part State of Delhi by a notification under section 2 of the Part State (Laws) Act, 1950. The granted sales tax exemption on numerous items was given by several announcements, however, the exemption was afterwards revoked through another notice. The legitimacy of the withdrawal is challenged by dealers who indulge in certain commodities. The

court found that the Central Government's notice was outside its authority and that any notification made by the Central Government is thus null and ineffectual[6]”.

“In the case of *Raj Narain Singh v Chairman Patna Administration Committee*”[7], “section 3(1)(f) of the Bihar & Orissa Legislation authorised the local administration to apply the provisions of any part of the act (Bengal Municipality Act, 1884) to Patna with such modifications as it saw proper. Section 104 was taken up by the administration and applied to the town of Patna after certain changes were made”. “One of the Act's most important elements was that no municipality with taxing authority could be imposed on a community without first giving its residents a chance to be heard and a chance to oppose”. The portions of the notification that gave people the chance to object were left out. It was deemed to be a violation of the Act's purpose.

### **DELEGATED LEGISLATION'S CONSTITUTIONALITY**

In India, lawmakers have been considered to have broad delegation powers under their sovereign status. Nevertheless, this power is subject to restrictions. “Essential legislative duties such as determining or adopting a legislative policy and officially implementing that policy into a binding rule of behaviour cannot be delegated by the Legislature. Unidentifiable and unregulated authority' cannot be delegated by the legislature[8]”.

“The delegation is valid only if the legislative policy and guidelines for implementing it are sufficiently written out, and the delegate is only authorised to carry out the strategy within the legislative parameters. The question of whether a statute suffers from excessive delegation must be determined in light of the subject matter, the scheme, the statute's provisions, including its preamble, and the facts and circumstances in which the legislation was passed”. “It was decided in *Pandit Banarasi Das Bhanot v State of Madhya Pradesh*”[9] “that the authority to tax is a well-known legislative authority, and that the Legislature has been given wide discretion to delegate the right to lay out the specifics of a tax policy to a delegate. Justice Venkatarama Aiyer, in upholding a power delegated to the State Government for amending the Plan relating to exclusions in a Sales Tax legislation”, noted that it is not inconsistent with the constitution for the Legislature to entrust to the executive the authority to determine details relating to the operation of taxation laws, such as the selection of individuals on whom the tax is to be compensated, the rates at which it is to be levied regarding different classes of goods, and the like. The Court Further held in *Harishankar Bagla v State of MP*[10] that “section 3 of the Essential Supplies (Temporary Powers) Act, 1946, which gave the Central Government broad powers to issue orders regulating or prohibiting the production, supply, and distribution of essential commodities, was legal because it laid out a clear principle and provided sufficient guidance”. It was decided that the power provided by the clause in question should be used to

preserve or increase the supply of any vital product, or to ensure their equal distribution and availability at reasonable rates. In “Kishan Prakash Sharma v Union of India”<sup>[11]</sup>, the Supreme Court's Constitution Bench The Supreme Court established a formula for determining the constitutional limit of delegated legislation on July 13. In this decision, the Supreme Court concluded that the Legislature must determine the limitations of the authority delegated by expressing the law's policy and establishing criteria for those who can carry it out. “As a result, the delegation is only legal when the legislative policy and the parameters for implementing it are sufficiently written out, and the delegate is only authorised to carry out the policy within the legislative guidelines. After establishing a legislative policy, the Legislature may delegate authority to an administrative agency to sort out the specifics within the plan's structure”<sup>[12]</sup>. “When the Constitution entrusts the task of drafting laws to Parliament and state legislatures, it implicitly precludes them from delegating that obligation to another entity. The fact that Parliament cannot work in-depth on the numerous needs of giving effect to the statute is a point of compromise, and hence that area will be supplied by the delegate. The Supreme Court declared in State of Rajasthan v Basant Nahata”<sup>[13]</sup> that it is a part of the legislative duty for the legislature to delegate authority to the executive. Under Article 245 of the Constitution, it is a part of the legislative authority as a whole. However, such delegation of power cannot be broad, unanalyzed, or unguided. When delegating such power, the Legislature must provide criteria or standards to allow the delegatee to operate within the scope of the legislation. The theory upon which the Legislature's power is to be exercised must be stated. Also, it is common knowledge that crucial legislative tasks cannot be delegated. “As a result of delegated legislation, procedural authorities are often transferred to the executive branch. There could be no doubt that the court will not declare a statute invalid based on delegation of essential legislative functions or conferring unguided, uncontrolled, and vague powers on the delegate without considering the preamble of the Act as well as other provisions of the statute if they provide a good means of determining the meaning of the offending statute”<sup>[14]</sup>.

In “Delhi Race Club Limited V. Union of India”<sup>[15]</sup>, the Supreme Court concluded that delegation of legislative responsibilities is guided by two basic principles-

- “The delegation of the non-essential legislative duty of determining the rate of imposts is required to satisfy the many needs of a welfare state, but that before delegating such a function, a clear legislative policy must be established” and;
- When delegating the ability to establish the tax rate, the Act in question must provide some direction, control, safeguards, and checks, among other things.

It is self-evident that the second premise will not be applicable unless the imposition is a tax.

As a result, such delegation of a non-essential job is permitted as long as the legislative policy is established in plain words and advises the delegate.

“In *Holystar Natural Resources (P) Limited V. Union of India*<sup>[16]</sup>, it was argued that Section 2(1)(o) of the SARFAESI Act violated Article 19(1)(g) of the Indian Constitution since it provided financial institutions/RBI unrestricted discretion and arbitrary authority to label any firm as an NPA.” The borrower's right to dispute the procedures was severely limited under the SARFAESI Act, and the repercussions were severe. As a result of allowing banks/financial institutions/RBI to define what constitutes a nonperforming asset (NPA), borrowers' businesses, professions, and trade have suffered greatly. “The court looked at Section 2(1)(o) of the Act, which defines NPA as a borrower's asset or accounts receivable that has been assessed as substandard, questionable, or lost asset by banks or financial institutions according to RBI norms<sup>[17]</sup>”. NPA is classified into one of the three categories listed in clause 4.1 of the RBI guidelines. When an account falls into one of these categories, it is classified as a nonperforming asset (NPA) under RBI rules clause 2.1. The categorization is based on the degree of well-defined credit weakness and the degree of reliance on collateral security for dues collection. “The RBI has been tasked by the legislature to identify, characterise, and categorise various assets in line with current worldwide best practises as well as the country's evolving economic situation. The Court believes that the legislature defined NPA and that the RBI offered directions to enhance the bank's asset quality and to recover public funds quickly. That there's no undue delegation or flexibility for banks to operate on their whims and fancies; instead, they are controlled by RBI recommendations, which are established under Section 21 of the Banking Regulation Act, 1949<sup>[18]</sup>”.

### **THE RAPID GROWTH OF DELEGATED LEGISLATION CAN BE ATTRIBUTED TO SEVERAL FACTORS**

- The strain on Parliament - As the number of activities in states grows, so does the need for legislation, and Parliament cannot spend enough time on all of them. As a result, the Parliament has enacted policies that empower the administration to establish legislation under them.
- Technical point - There are instances when some subject subjects necessitate technicality, necessitating the use of specialists who are professionals in such fields, while members of Parliament are not experts in such fields. As a result, professionals are granted such ability to deal with technological issues such as gas, atomic energy, pharmaceuticals, and so on.
- Versatility - Parliament can't anticipate every eventuality when adopting legislation, thus some measures must be included. However, the amending procedure is both times consuming and inconvenient. As a result, the delegated legislation process assists the executive authority in making laws that are appropriate for the scenario. They have a big

role in formulating the legislation when it comes to bank rates, policy regulation, and so on.

- Emergencies - In an emergency, the legislative system is unable to give an immediate solution to the problem. In this circumstance, delegated legislation is the only option. As a result, in times of war or other national emergencies, the executive branch is given greater authority to deal with the crisis.
- The rising complexity of contemporary administration – “With the state's tasks being enlarged and rendered to the economic and social spheres as well, there is a need to move to new reforms and provide greater powers to different authorities on specific and appropriate occasions[19]”. “In a nation like Bangladesh, where control over private commerce, company, or property may be necessary, it is necessary to provide the government adequate ability to implement such a policy so that prompt action may be done[20]”.

### **DELEGATED LEGISLATION'S IMPORTANCE**

A variety of causes have contributed to the rise of delegated legislation in modern democracies. A state's functions are no longer limited to maintaining public order, enforcing laws, and protecting its borders. The Union and State Legislatures lack the time and expertise needed to address the technological and circumstantial complexities that are inextricably linked to modern-day complicated existence. Delegated law aids in anticipating and catering to unanticipated and unknown scenarios in this situation. “This is why delegated law and contemporary administration are unavoidable and necessary. The state's role includes ensuring that its inhabitants achieve the goals specified in Parts III and IV of the Indian Constitution. As a result, there has been an upsurge in legislative activity. The functioning of a modern-day state takes place on such a broad scale, from managing people's daily lives to overseeing the country's socio-economic development, with the Central Government, which has been striving since independence to develop a democratically socialist pattern, to a massive organization and administration of various ventures, particularly private trade and commerce; such circumstances only create gaps that can only be filled with ever-increasing resources. This desire for legislation places a significant strain on the Legislature's job, which, in addition to legislating, also oversees the government, engages in dialogue with it, influences its policies, and exposes public grievances, among other things. Because of its benefits of flexibility, elasticity, expedition, and possibility for experimentation, the delegated legislative system continues to gain appeal[21]”. We already know that many socioeconomic systems are now experimental and that no one can forecast the potential difficulties that may develop while they are being implemented. Instead of the legislature modifying the laws over and over, the procedure of

delegated legislation allows for continual adaptation and modification to unusual future situations and experimentation experiences. Wade and Phillips believe that delegated legislation meets the needs of today's complex world, stating that "something less cumbersome and more expedient than an Act of Parliament shall be available to amplify the main provisions, to meet unforeseen contingencies, and to facilitate adjustments that may be required after the scheme has been put into operation." "The Defence of India Act, 1971, and the Enemy Property (Amendment and Validation) Act 2017, for example, are examples of circumstances when the government was prepared and the executive had the necessary standby authorities. The Supreme Court cited the following reasons for transferring legislative authority to the government in the case of Agricultural Marketing Committee v. Shalimar Chemical Works Ltd"[22].-

- The region for which delegated legislative powers are granted may be technically sophisticated, to the point where it may not be conceivable, or perhaps even difficult, to spell out all of the permutations in the statute.
- "The Executive may be required to experiment to determine how the original law functioned and, as a result, to fill in the remaining specifics[23]".
- "It offers the Executive an advantage in the sense that a government with a tight legislative timetable may be enticed to adopt skeletal legislation with the specifics given by legislation and requirements[24]".

## **CONCLUSION**

In India's legal system, power separation is such a well notion. Nevertheless, it is clear that only the court has total independence, and that the legislative and the executive will never be able to act freely. Several of the main reasons for this is that there must be communication and cooperation between lawmakers and law enforcers. Subsidiary law is more adaptable, less expensive, and simpler to change and repeal in the case of a loss or incapacity to enforce primary legislation. When contingencies aren't needed at the time of implementation, a subordinate law may enact an Act to rapidly address them. The legislature is incapable of making quick, precise, and sensitive choices. These, among many others, would be the primary drivers of today's tremendous expansion of delegated legislation. "Delegated law is a concept that has a lot of ambiguity," stated Justice PB Mukerjee. It is a smokescreen for politicians, executives, and civil lawyers. Throughout this culture, the psychological and operational social-economic technologic speed triumphs over traditional compact and calm political ideas and processes, and it is hailed as a need and seen as unavoidable. Politicians are accused of abdicating their power and evading their responsibilities to democratic voters, according to one critique. At Runnymede, the King lost his constitutional authority and Parliament lost its

legislative power, resulting in administration but bureaucracy supplied the country's government. "Delegated Legislation is the most significant type of such co-relation. It's a method by which the legislature delegated part of its legislative powers to the executive branch. The lawmakers create the foundation for particular statutes and then give them over to the executives, who are then in charge of creating the rules, ordinances, regulations, procedures, and other elements inside that framework. Because of the increasing complexities of contemporary administration and the legislators' lack of administrative knowledge, this is critical. Delegated legislation has been a popular practice in modern legislation, and it surely aids executive branch officials in better and more effective law enforcement. This authority, however, is indeed not absolute. Administration may only create rules, regulations, bylaws, processes, and the like, not laws. Furthermore, it is subject to several checks and balances, the most important of which is the judiciary. However, the current expansion of this process is unrivalled, and it is enabling greater governance in the country.



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