



DELEGATED LEGISLATION IN INDIA

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Abstract

Delegated legislation refers to the law-making power conferred by parliament on the executive. As the exercise of this law-making power is the derived power, not the original one, it is also called subordinate legislation. Delegated legislation is a universal phenomenon. Governmental outlook has undergone a complete change as a result of changes in social, economic and political changes in society. Changing the concept of the function of government has placed an ever-increasing burden upon legislatures. Parliament has not the time and competency to pass such an enormous number of detailed enactments. The sheer volume of business makes delegation necessary. This paper attempts to understand the concept of delegated legislation. It also focuses on the pro and cons of delegated legislation. This paper concludes with safeguards in delegated legislation.

Keywords: Delegated Legislation, Universal Phenomenon and Burden.

Introduction

Delegated legislation means the law-making power vested with the executive by the legislature itself. The rules made by the administrative authorities have the same force as the law under which they are made and since those authorities make them in pursuance of the power delegated to them by the legislature, the rulemaking power is also known as the executive legislation. The Committee on Ministers' Rights defined it as the exercise of minor legislative power in compliance with the legal powers granted by Parliament by the designated authorities and institutions. In a welfare state, the function of the state has expanded. The volume of the legislature task has increased and the legislature is unable to find adequate time for it. The pressure of work and desire of time on the part of the legislature are thus the reason for the growth of delegated legislation. Delegated legislation is the expected outcome of the increasing burden on the legislature. The members of legislature are not technically competent to deal with the complex details of legislation.

Methodology

The purpose of this paper is to define the concept of delegated legislation and examine the advantages and disadvantages of delegated legislation. This paper is descriptive and analytical in nature. The data used in it have collected from secondary resources.

Advantages of Delegated Legislation:

The advantages of delegated legislation are given below:

1. Flexibility of Rules:

Delegated legislation makes for flexibility. Laws are passed by the legislatures are comparatively rigid. Rigorous procedures of the amendment may have to be resorted to, to effect amendments in certain laws. According to James Halt, "If a legislative rule is both specific and unworkable, the administrator is in dilemma. He must either try to work the unworkable and thereby invite litigation and defeat of the real purpose of the statute or he must evade or ignore the letter of the law." Administrative rules are more easily editable by and then the rules; It is possible to make rapid use of the acquired experience. This is especially valuable in those fields where rapid technical developments are taking place.

2. Time Saving:

Delegated law enables the parliament to save its time. Government functions have increased manifold. The Legislature has neither the time nor the ability to legislate. Therefore, it relieves itself of the burden of details, delegating some of the power of lawmaking to the executive. It enables the legislature to concentrate on important issues.



3. Expert Knowledge Utilization:

Parliament is a competent body to lay down broad principals and objectives but members of parliaments are not capable enough to determine minute details. The technical details of modern legislation can be better worked out by the expert officials than by the members of the legislature.

4. Interests Affected Consulted:

Rulemaking can be easily being done in consultation with the interests affected. The administration is in daily touch with such interests whereas the legislature is not. L D White states that the drafting of the rule may and often does permit conference between the government and the parties at interest and consequently, a broad agreement which tends towards voluntary compliance.”

5. Unforeseen Contingencies Adequately Met:

The legislature is unable to foresee and provide for all the contingencies which may arise in the actual application of laws and policies. Hence administrative officials must be equipped with discretionary powers to deal with such type of situations by issuing rules.

6. Proper Drafting of Rules:

Law making power is exercised keeping the actual situation in mind by the experts deputed for the purpose by the executive; drafting of rules is apt to be more perfect.

7. Helpful During Emergency:

Parliament is not always in session. Emergencies are not unlikely phenomena, call for prompt actions. To meet emergency like war, natural calamities, etc., it is necessary to give full powers to the executive including the power of regulation by rulemaking.

8. Experimentation in New Fields:

Making of experiments is possible through delegated legislation in such fields as town planning, land development.

Disadvantages of Delegated Legislation:

The disadvantages of delegated legislation are given below:

1. Individual liberties at risk:

The main argument against delegated legislation is that it may lead to the despotism of the administrative authoritative by vesting in them the power to the legislature. The legislature consisting of the elected representatives of the people but administrative experts do not represent the people. They may prefer administrative convenience to the liberty of the people in the exercise of the rulemaking power. Lord Hewart states that subordinate parliament to evade the courts and to render the will or the caprice of the executive unfettered and supreme.

2. Delegation of unlimited powers:

The legislature may delegate too many powers to executives. It may limit itself merely to the passing of ‘skeleton’ laws and leave even matters of principles to be determined by rules. According to Kemp, “when the charter is so indefinite, the courts certainly cannot control it, and parliament can do so only by revoking it altogether; but in such circumstances which tends to become increasingly common, the responsibility rests with parliament itself, and the executive cannot be charged with exceeding powers which place so heavy a burden upon it.”

3. Poor publicity of rules:

The agreements for publication of the rules may be inadequate and unsatisfactory with the result that the average person may be unaware of them. This adversely affects the interest of the people.

4. Costly judicial remedy:

Courts have the power to protect the citizen against the vagaries of law-making. The citizen may find it difficult to avail himself of judicial remedy on account of the procedural difficulties, cost and the delay involved. In India, prior approval of the government has to be secured before any administrative authority can be sued in the court.

5. No concern to public interest:

In rulemaking, administrative agencies consult only the organized interests and the unorganized general public is left out of consideration. The administrative have no means of making themselves aware of the needs and wishes of the general public.



6. Inadequate scrutiny:

Inadequate scrutiny of rules and regulations by parliament makes delegated legislation develop into despotism. Main function of the parliament is to control the executive. Yet the parliamentary scrutiny of the Delegated Legislation has not been adequate.

7. Too much flexibility:

Too much flexibility leads to confusion and causes chaos. The multiplicity of amendments exhausts the patience of those who have to follow and apply them. It adversely affects the administration.

8. Privileged position of the state:

Even if the judicial remedies are available to citizens cannot expect a fair deal from the courts especially when they are pitched against the state. In India, the state enjoys a privileged position.

Safeguards in Delegated Legislation:

The safeguards in delegated legislation are given below:

1. Well defined limits:

The first safeguard required is that the delegation of legislative power by the parliament should always be subject to well-defined limits. The committee on ministers' powers recommended that "The proper boundaries of the power of lawmaking that Parliament intends to provide to a Minister must always be clearly defined by the Constitution in clear language; when given discretion; its boundaries must be defined precisely." This is beneficial advice to be followed by legislatures irrespective of the constitutional setup of the country.

2. Publication:

The rules and regulations must be published and properly publicized. In India, there appears to be general statute on the matter, but the statute delegating the law-making power themselves requires antecedent as well as subsequent publication in the official Gazette. In the USA the Federal Register Act, 1935 provides for the publication daily, in the Federal Register of all rules regulation and orders of 'general applicability and legal effects', while antecedent publicity is secured by Administrative Procedure Act, 1946 which requires notice of the purposed rules to be published Federal Register.

3. Judicial Review:

There is a safeguard of judicial review of delegated legislation by the courts. In this connection, the function of the courts is to see that the exercise of the delegated authority is not broader than the terms of the delegation. If it is the rules made will be declared void. In Britain, Parliamentary laws are not subject to judicial review and the courts enquire in to and determine only the validity of the rules made under them.

4. Parliamentary scrutiny:

The fourth safeguard is to be found in the arrangements of scrutiny of the delegated legislation by the legislature. In Britain, this is done through the various forms of 'in laying' of rules before parliament as prescribed in the Acts under which they are made. In India, the parliamentary scrutiny of delegated legislation is much less developed than in Britain. In most cases, the parent statutes contain no provision for the laying of the rules made under them before the parliament. Where such provision exists, the laying required is either of them simply for the information of the parliament or for a prescribed period of fourteen days to two months after which the rules become effective unless they are modified by parliament meanwhile. An example of such case is a proclamation of emergency issued by the president which is required to lay before each house of the parliament and which unless approved by the two houses ceases to be operative after the expiry of two months.

5. Uniform procedure:

The uniform procedure should be adopted in regard to all regulations requiring them to be numbered, printed, published and cited.

6. Parliamentary control:

Parliamentary control over the delegated legislation is a proper safeguard against misuse of this power by the executive. In India, an elaborate system of the parliamentary control of the delegated legislation has been provided.



7. Explanatory Memorandum:

Explanatory note should be attached to all regulations so that the layman is fully familiar with the necessity of a particular regulation. An explanatory Memorandum to be added with the Enabling Act indicating clearly what types of regulation should be made under the bill if it is enacted.

Conclusion

The delegated legislature is a necessary evil, in the modern state. It is necessary because Parliament does not have time and members of legislature are not technically trained. To enact detailed legislation on all kinds of subjects on which laws have to be made. It is evil because the delegated power is open to abuse in the absence of proper safeguards vigilance. The rulemaking authority should be delegated to a trustworthy authority approved by the government. In India, Delegated Legislation is on the increase in scope, volume, and nature.

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