

DELEGATED LEGISLATION IN FAVOUR OF LOCAL AUTHORITY

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State function divided into three organs namely legislation- Legislative, Executive, and Judiciary. Legislative body of the State framing the Law for the State but due to lack of time this work delegated to executive in the interest of the welfare of the State. Now nature of the State is change and State is the welfare State last person.

One of the most significant developments of the present century is the growth in the legislative powers of the executives. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law. We know that there is no such general power granted to the executive to make law it only supplements the law under the authority of legislature. This type of activity namely, the power to supplement legislation been described as delegated legislation or subordinate legislation. The move towards unified legislation on Panchayats in Madhya Pradesh started with a study by the Rural Local Self-Government Committee set up in 1957. The end point of this exercise was the Panchayati Raj Act of 1962. Since that time the State has updated the Panchayati Raj Act a number of times. After the constitutional amendment relating to PRIs became effective in 1993, a new Panchayat Act known as the Madhya Pradesh Panchayati Raj Adhiniyam 1993 was passed by the State Legislature on 30 December 1993 and came into effect on 25 January 1994, replacing the earlier Panchayat Act of 1990. An amendment in 2001 changed the name of the Act to the Madhya Pradesh Panchayati Raj Avam Gram Swaraj Adhiniyam 1993.

It is notable that the PRI amendment to the Indian Constitution was not automatically applicable to Schedule V areas. After the Central Government passed the Provisions of the Panchayats (Extension to the Scheduled Areas) Act in 1996, however, the State Government added a new chapter to the PR Act 1993 by an amendment in December 1997 to make special provisions for panchayats in Scheduled Areas in Madhya Pradesh.¹

At one time it was thought that the State was mainly concerned with the maintenance of law and order and the protection of life, liberty and property of the subject. Such a restrictive role of the State is no longer a valid concept. Today we are living in an era of a Welfare State which has to promote the prosperity and well-being of the people. The Directive Principles lay down certain economic and social policies to be pursued by the various Governments in India; they

¹[url<http://www.humanrightsinitiative.org/publications/rti/rti_&_panchayati_raj_institutions_mp.pdf](http://www.humanrightsinitiative.org/publications/rti/rti_&_panchayati_raj_institutions_mp.pdf), retrieve 10.08.2014

impose certain obligation on the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy.²

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. Garner rightly observes that “it is perhaps more realistic to say that the government secures from parliament such subordinate legislative powers as it wishes for itself.” A trend very much in vogue today in all democratic countries is that a good deal of legislation takes place in government departments outside the houses of legislature.³

MEANING OF DELEGATED LEGISLATION

Delegated legislation, also referred to as secondary legislation, is legislation made by a person or body other than Parliament. Parliament, through an Act of Parliament, can permit another person or body to make legislation. An Act of Parliament creates the framework of a particular law and tends only to contain an outline of the purpose of the Act. By Parliament giving authority for legislation to be delegated it enables other persons or bodies to provide more detail to an Act of Parliament. Parliament thereby, through primary legislation (i.e. an Act of Parliament), permit others to make law and rules through delegated legislation. The legislation created by delegated legislation must be made in accordance with the purposes laid down in the Act. The function of delegated legislation is it allows the Government to amend a law without having to wait for a new Act of Parliament to be passed. Further, delegated legislation can be used to make technical changes to the law, such as altering sanctions under a given statute. Also, by way of an example, a Local Authority have power given to them under certain statutes to allow them to make delegated legislation and to make law which suits their area. Delegated legislation provides a very important role in the making of law as there is more delegated legislation enacted each year than there are Acts of Parliament. In addition, delegated legislation has the same legal standing as the Act of Parliament from which it was created.⁴

When a Legislature confers law-making power upon some other body, the legislative power is said to be delegated. If the legislature itself enacts the law and gives to some other body only the power of determining when, for instance, it should come into force or when it should be applied to a particular area of the state, there is no delegation of legislative power. Such legislation is called conditional legislation. In delegated legislation powers of legislation as such are transferred.⁵

DEFINITION

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.

Mukherjea J⁶ rightly says: “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.”

²Dr. J.N. Pandey, The Constitutional Law of India, 2012, Central Law Agency, Allahabad, p 409.

³ Dr. J.J.R. Upadhyay, Administrative Law, 2004, Central Law Agency, Allahabad, p (58).

⁴url<[http://www.lawteacher.net/English-legal-system/resources/delegated legislation.Php](http://www.lawteacher.net/English-legal-system/resources/delegated%20legislation.Php) retrieve 11/08/2014

⁵ G.C. VenkataSubbarao, Jurisprudence And Legal Theory, 2008, Eastern Book Company, Lucknow, P 115

⁶ Quoted by Chakravarti, Administrative Law (1970) 166. Cited in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p(63)

According to Salmond⁷ “Legislation is either supreme or subordinate. Whereas the former proceeds from sovereign or supreme power, the latter flows from any authority other than the sovereign power, and is, therefore, dependent for its existence and continuance on superior or supreme authority.”⁸

As stated in Halsbury’s laws of England,⁹ “when an instrument of a legislative nature is made by an authority in exercise of power delegated or conferred by the legislature it is called subordinate legislation.”¹⁰

According to Jain & Jain, “delegated legislation is used in two senses: (a) the exercise by a subordinate agency of the legislative power delegated to it by the legislature, or (b) the subsidiary rules themselves which are made by the subordinate agency in pursuance of the power as mentioned in (a). As Administrative lawyers, we are more interested in the “technique”, rather than the actual rules made, and so the term “delegated legislation” is used here in the first sense.¹¹

HISTORICAL BACKGROUND

No doubt, it is the 20th century, which has witnessed the rapid growth of delegated legislation in almost all legal systems of the world. But that does not mean that it is a new phenomenon or there was no delegation of legislative power by legislature to the executive in the past. Ever since statutes came to be enacted by parliament, there has been delegation of legislative function. The statute of 1337 contained a clause which made it felony to export wool, unless it was ordained by the king and his council. In the 15th and 16th centuries, there was frequent use of Henry VIII clause.¹² Statute of sewers of 1531 empowered commissioners to make, remake, repeal and amend laws, to pass decrees and to levy cess. Thus, the commissioners used to exercise legislative, administrative and judicial powers at a time.¹³ Mutiny act 1717 conferred on crown power to legislate for the army without the aid of parliament. In the 19th century, delegated legislation became more common and considerably increased due to social and economic reforms. In the 20th century output of delegated legislation by executive is several times more than the output of enactments by a competent legislature.¹⁴ For the study of the history of delegated legislation in India we have to look into the phases of British history. The entire development in our country can be studied in the following three phases:

⁷Salmond on Jurisprudence (12thEdn.) 116; Craies on Statute Law (7thEdn.) 297-298. “When an instrument of a legislative nature is made by an authority in exercise of power delegated or conferred by the legislature, it is called ‘subordinate legislation’.”- Halsbury’s Laws of England, Vol.44 (4thEdn.) 981-984. quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow, p63

⁸ C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow, p63

⁹Halsbury’s Laws of England, 4thEdn, Vol. 44, pp. 981-84. Quoted in Dr. J.J.R. Upadhyaya, Administrative Law 2004 Central Law Agency, p59

¹⁰Dr. J.J.R. Upadhyaya, Administrative Law 2004 Central Law Agency, p59

¹¹ M.P. Jain & S.N. Jain, Principle of administrative Law, 2004 Wadhwa and Company Nagpur, p26

¹² See, for detailed discussion, “Henry VIII clause (Removal of difficulties)”, 91 quoted in C.K. Takwani, Lectures on Administrative, (2012) Eastern Book Company, Lucknow p(67)

¹³ C.K. Allen, Law and Orders (2ndEdn.) 26-27. quoted in C.K. Takwani, Lectures on Administrative, (2012) Eastern Book Company, Lucknow p(67)

¹⁴Craies on Statute Law (7thEdn.) 290; Craig Administrative Law (2007) 368-369; Sathe Administrative Law (7thEdn.) 27; Avinder Singh v. State of Punjab, (1979) 1 SCC 137 AIR 1979 SC 321; Agriculture Market Committee v. Shalimar Chemicak Works Ltd., (1997) 5 SCC 516: AIR 1997 SC 2502. quoted in C.K. Takwani, Lectures on Administrative, (2012) Eastern Book Company, Lucknow p(67)

1. Pre 1915 period of charter stage of 1833.
 2. The period since 1915 to the government of India act, 1935 as amended by India Independent Act, 1947.
 3. The period since the introduction of the constitution of 1950.
1. The East India Company first started its operation as a trading company in India and gradually regained political influence. The charter stage of 1833 introduced important changes into the constitution of east India Company and the system of Indian Administration. The territorial possessions of the company were to be held by it but in the form of 'Trust' for this majesty. The act of 1833 vested the legislative powers exclusively in the governor- general-in-council, who was an executive head. The governor-general was expressly empowered to make laws and regulations for repealing and amending or altering any laws or regulations whatever for the time being in force within the territory. He was also empowered to make regulation as articles of war for native military officers. This was the position under the charter of 1833 about delegated legislation.
 2. Since 1915 the crown became the legislative authority of the country or they are which had come under the control of the company. Various presidency Governments war authorised to make regulations for the administration of their respective territories. The rule making powers of the presidency government were now on an increased scale. It was the beginning of the second period, which culminated in passing of the government of India Act, 1935. The act of 1935 brought an intensive scheme of delegation, by this time the report of the committee on minister's powers was submitted and approved. The case for delegated legislation was fully established. In India also delegation came to be regarded as an inevitable necessity. Under the act, the government- general had full powers to legislate in respect of a reserved subject and a permanent act also authorized to issue temporary ordinances on the advice of his ministers.
 3. Thirdly, came the period of our present Constitution, which was obviously based on the principle of separation of powers, but since a complete separation was an impossibility, it maintained the sanctity of the doctrine in modern since. Our present constitution does not prohibit the delegation of the legislative power to the executive. In the constitution itself, we have server instances where the executive has been given legislative powers. The legislative powers of the President under the Constitution are conspicuous. This includes the power to make and promulgate ordinances (Art.123).He has unrestricted authority to frame regulations 'for peace' 'progress' and 'good government', of the union territories under article 240, he can frame regulations determining the composition of the union public service commission, the number of members and staff of the commission. Again, an instance of delegation of full legislative powers from parliament to the president is found in the provisions of article 357. Moreover, the case of delegation of legislative power by the legislature to the executive was upheld by the courts as well. The opinion justifying the delegation was clearly expressed in Re Delhi laws act¹⁵ and other subsequent cases.¹⁶

TYPES OF DELEGATED LEGISLATION

The following are the three main types of delegated legislation:-

¹⁵AIR 1951 SC 332. Quoted in Dr. U.P.D. Kesari, Administrative Law, 2007 Central Law Publication, p52

¹⁶ AIR 1954 SC 569 : AIR 1961 SC 4. Quoted in Dr. U.P.D. Kesari, Administrative Law, 2007 Central Law Publication, p 52

- **By Laws:** They are made by Local Authorities to deal with matters within their particular locality.
- **Statutory Instruments:** These are made by government ministries and they insert the detail to acts of Parliament. Statutory instruments makeup the majority of delegated legislation that is made. Around 3000 statutory instruments are assumed each year.
- **Orders in Council:** They are made by the queen on the advice of the government and are usually made when parliament is not sitting. They can be used by the government in emergency situations.¹⁷

IMPORTANCE OF DELEGATED LEGISLATION

There are several reasons why delegated legislation is important. Firstly, it avoids overloading the limited Parliamentary timetable as delegated legislation can be amended and/or made without having to pass an Act through Parliament, which can be time consuming. Changes can therefore be made to the law without the need to have a new Act of Parliament and it further avoids Parliament having to spend a lot of their time on technical matters, such as the clarification of a specific part of the legislation. Secondly, delegated legislation allows law to be made by those who have the relevant expert knowledge. By way of illustration, a local authority can make law in accordance with what their locality needs as opposed to having one law across the board which may not suit their particular area. A particular Local Authority can make a law to suit local needs and that Local Authority will have the knowledge of what is best for the locality rather than Parliament. Thirdly, delegated legislation can deal with an emergency situation as it arises without having to wait for an Act to be passed through Parliament to resolve the particular situation. Finally, delegated legislation can be used to cover a situation that Parliament had not anticipated at the time it enacted the piece of legislation, which makes it flexible and very useful to law-making. Delegated legislation is therefore able to meet the changing needs of society and also situations which Parliament had not anticipated when they enacted the Act of Parliament.¹⁸

GROWTH OF DELEGATED LEGISLATION

There has, therefore, been rapid growth of delegated legislation in all counties and it has become indispensable in modern administrative era. Further leading to growth of Delegated Legislation may be particularized as follows- According to I.P. Massey

1. Legislation on ever widening fronts of a modern welfare and service state is not possible without the technique of delegation. It is trite but correct to say that even if today parliament sits all the 365 days in a year and all the 24 hour, it may not give that quantity and quality of law which is required for the proper functioning of a modern government. Therefore, delegation of rule making power is a compulsive necessity. It also gives on advantage to the executive, in the sense that a Parliament with an onerous legislative time schedule may feel tempted to pass skeleton legislation with the details to be provided by the making of rules and regulations.¹⁹

¹⁷[url<http://www.lawteacher.net/English-legal-system/resources/delegated-legislation-Php](http://www.lawteacher.net/English-legal-system/resources/delegated-legislation-Php) 11.08.2014

¹⁸[url<http://www.lawteacher.net/English-legal-system/resources/delegated-legislation-Php](http://www.lawteacher.net/English-legal-system/resources/delegated-legislation-Php) 11.08.2014

¹⁹*Agricultural Market Committee v. Shalimar Chemical Works Ltd.*, (1997) 5 SCC 516. Quoted in I.P. Massey, *Administrative Law*, 2012, Eastern Book Company, Lucknow. P 81

2. Today, legislation has become highly technical because of the complexities of a modern government. Therefore, it is convenient for the legislation to confine itself to policy statements only, as the legislators are sometimes innocent of legal and technical skill, and leave the law-making sequence to the administrative agencies.
3. Ordinary legislative process suffers from the limitation of lack viability and experimentation. A law Passed by Parliament has to be in force bill the next session of Parliament when it can be repealed. Therefore, in situation , which require adjustments frequently and experimentation, administrative rule – making is the only answer.
4. In situations where crisis legislation is needed to meet emergent situations, administrative rule making necessity because the ordinary law-making process is overburdened with constitutional and administrative technicalities and involves delay.
5. In some situation it is necessary that the law must not be known to anybody till it comes into operation. For example, in case of imposition of restrictions on private ownership, it is necessary that the law must be kept secret till it comes into immediate operation, otherwise people could arrange their property right in such a manner as to defeat the purpose of the law. This secrecy can be achieved only through administrative action because the ordinary legislative process is always very open.
6. Where government action involves discretion i.e. expansion of public utility services, administrative rule-making is the only valid proposition.
7. Today there is a growing emergence of the idea of direct participation in the structuring of law by those who are supposed to be governed by it because indirect. Participation through their elected representatives more often proves a myth. Therefore, administrative rule making is a more convenient and effective way and provides for this participation.²⁰

DELEGATED LEGISLATION IN INDIA

Under the Constitution of India, Articles 245 and 246 provide that the legislative power shall be discharged by the Parliament and the State Legislatures. There is nothing in the Constitution whereby it can be inferred that the Legislature cannot delegate its legislative power to anybody else. But it does not mean that power of legislation includes the power of delegation. In the Constitution itself we find several provisions where the Executive heads, i.e., the President and the Governors of the different States have been empowered to make laws under certain conditions, for instance, when the Parliament or State the Legislatures are not in sessions. During the President's rule, it is clear from these the Executive has been authorized to make laws for the State. It is clear from the provisions that it was not the intention of Constitution-makers that the legislative functions should be carried out by the Legislatures only. The delegation of legislative power was conceived to be inevitable and therefore it was not prohibited in the Constitution Secondly, Article 13(3)(a) of the Constitution of India lays down that "Law" includes any ordinances, order bye-law rule, regulation, notification etc. which if found in violation of fundamental rights, mentioned in Chapter III would be void. It is well settled that the rules, regulations, by laws, etc., are not made by the Legislature but by the agencies other than the Legislature, namely, the Executive and local bodies under the delegated authority. It thus makes clear that our Constitution indirectly envisages the delegation of legislative functions to

²⁰Agricultural Market Committee v. Shalimar Chemical Works Ltd.,(1997) 5 SCC 516. Quoted in I.P. Massey, Administrative Law,2012, Eastern Book Company, Lucknow. P 81

the executive to a limited extent. Besides, there are a number of judicial pronouncements²¹ by the Courts where they have justified delegated legislation. In re Delhi Laws Act case²², the Court observed that- 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 give wide powers to various authorities on suitable occasions. Delegated legislation has become a present day necessity, and it has come to stay- it is both inevitable and indispensable. The Legislature has now to make so many laws that it has no time to devote to all the legislative details and sometimes the subject on which it has to legislate is such a technical nature that all it can do, is to state broad principles and leave the details to be worked out by those who are more familiar with the subject. Again when complex schemes of reform are to be subject of legislation, it is difficult to bring to out a self- contained and completed Act straightway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is made.

In VasantlalMaganBhai's case²³ the Supreme Court reiterated that subordinate legislation has now become well settled. There is nothing wrong in such legislation become the modern condition have compelled the legislature to entrust its duty to administrative agencies. It is now well settled that power of delegation is a Constituent element of the legislative power as a whole, and in modern times when legislature enacts law to meet the challenge of the complex socio-economic problems they often find it convenient and necessary to delegate subsidiary or ancillary power to the delegate of their choice for carrying out the policy laid down by the Act. The legislature has only to lay down the policy. With the proliferation of socio-economic activities, it is highly inconvenient for the legislature to legislate on ancillary and subsidiary matters. It is, therefore, left to the rule- making authority to frame appropriate rules for carrying into effect the policy and purposes of Act.²⁴

Krishna Iyer, J. in Avindersingh v. State of Punjab²⁵ conceded to the indispensability of delegated legislation by observing that the complexities of modern administration are so bafflingly intricate and bristle with details, urgencies, difficulties and need for flexibility that our massive legislatures may not get off to a start if they must directly and comprehensively handle legislative business in all their plenitude, proliferation and particularization. Delegation of some part of legislative power becomes a compulsive necessity for viability. If the 500-odd parliamentarians are to focus on every minuscule of legislative detail leaving nothing to subordinate agencies the annual output may be both unsatisfactory and negligible. The law making is not a turn- key project, read made in all details and once this situation is grasped, the dynamics of delegation easily follows.

The discussion can be divided into two stages:

- (a) Pre – Constitution Period
- (b) Post- Constitution Period

²¹(1883) 9 AC 117. Quoted in Dr. U.P.D. Kesari, Administrative Law, 2007 Central Law Publication, Allahabad p58.

²² Re Delhi Laws Act Case, AIR 1951 SC 332; D.S. Grewal v. State of Punjab AIR 1959 SC 512; KeshavIyengar v. State of Mysore, AIR 1956 Mys 204; VasantlalMaganBhai v. State of Bombay, AIR 1961 SC 4. Quoted in Dr. U.P.D. Kesari, Administrative Law, 2007 Central Law Publication, p 58.

²³AIR 1961 SC 4. Quoted in Dr. U.P.D. Kesari, Administrative Law, 2007 Central Law Publication, Allahabad. p59

²⁴S. Avtar Singh v. State of Jammu and Kashmir, AIR 1977 J and K 4. Quoted in Dr. U.P.D. Kesari, Administrative Law, 2007 Central Law Publication, Allahabad. p 59

²⁵AIR 1979 SC 321. Quoted in Dr. U.P.D. Kesari, Administrative Law, 2007 Central Law Publication, Allahabad. p59

(a) Pre- Constitution Period:-

R. v. Burah²⁶ is considered to be the leading authority on the subject. By Act XXII of 1869, the area of Garro Hills was removed from the jurisdiction of civil and criminal courts, and by section 9, the Lieutenant Governor was empowered to extend mutatis mutandis all or any of the provisions of the Act applicable to Khasi, Jaintia and Naga Hills in the Garro Hills and to fix the date of such application. By a notification dated 14 October 1871, the lieutenant Governor extended all the provisions of the Act to the District of Khasi and Jaintia Hills. The appellants who were convicted of murder and sentenced to death, challenged the notification.

The High Court of Calcutta²⁷ by a majority upheld the contention of the appellants and held that Section 9 of the Act was ultra vires the powers of the Indian legislature. According to the court, the Indian legislature was a delegate of the Imperial Parliament and, therefore, further delegation (sub-delegation) was not permissible.²⁸

On appeal, the Privy Council reversed the decision of the Calcutta High Court. It held that Indian legislature was not an agent or delegate of the Imperial Parliament and it had plenary powers of legislation as those of the Imperial Parliament itself. It agreed that the Governor General-in-Council could not, by legislation, create a new legislative power in India not created or authorised by the Council's Act. But in fact it was not done. It was only a case of conditional legislation, as the Governor was not authorised to pass new laws, but merely to extend the provisions of the Act enacted by the competent legislature upon fulfilment of certain conditions.²⁹ In *Jatindra Nath Gupta v. Province of Bihar*³⁰, the Bihar Maintenance of Public Order Act, 1948 was to remain in force for one year. However, the power was conferred on the provincial Government to extend the operation of the Act for a further period of one year. By a majority, the Federal Court held that the power to extend the operation of the Act beyond the period of one year was a legislative act, and therefore, could not be delegated. However, in a dissenting judgement, Fazl Ali J³¹ upheld the provision as the extension of the Act, for a further period of one year could not amount to its re-enactment. It merely amounted to a continuance of the Act for which the maximum period was contemplated by the legislature itself.

It is submitted that the minority view was correct and subsequently in *Sardar Inder Singh v. State of Rajasthan*³², the Supreme Court upheld a similar provision.

(b) Post-Constitution period:-

Delhi Laws Act, 1912, re³³ was the first leading case decided by the Supreme Court on delegated legislation after the Constitution came into force. A reference was made to the

²⁶ (1878) 3 AC 889; (1877-1878) 5 IA 178 (PC). Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p76

²⁷ *Empress v. Burah*, ILR (1877) 3 Cal 63: 1 CLR 161. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p76

²⁸ See, for detailed discussion, "Sub-delegation", 107. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p76

²⁹ See, for detailed discussion of "Conditional legislation", 103. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p77

³⁰ AIR 1949 FC 175; 1949 FCR 595. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p77

³¹ *Ibid*, AIR 194. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p77

³² AIR 1957 SC 510 : 1957 SCR 605; see also, "Conditional legislation", 103. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p77

³³ AIR 1951 SC 332 : 1951 SCR 747. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p77

Supreme Court by the President of India under Article 143 of Constitution in the following circumstances:

The Central Government was authorised by Section 2 of the Part C States (Laws) Act, 1950 to extend to any Part C State with such modifications and restrictions 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 Act) which might be in force in the Part C State.

The Supreme Court was called upon to decide the legality of the aforesaid provision. All the seven Judges who heard the reference gave their separate opinions “exhibiting a cleavage of judicial opinion” on the question of limits to which the legislature in India could be permitted to delegate its legislative power. The majority held the provision valid subject to two limitations:

1. The executive cannot be authorised to repeal a law in force and thus, the provision which empowered the Central Government to the repeal a law already in force in the Part C State was bad.
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.

The importance of Delhi Laws Act, 1912, re³⁴ cannot be under-estimated 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 extend of such permissible delegation of power by the legislature.

Principle formulated in Delhi Laws Act, 1912, re-As noted above, all the seven judges gave their separate opinion. Many a time a question is ask whether any principle was formulated by the majority opinion. The answer is not simple as there is difference of opinion amongst jurists on this point.

According to PatanjaliSastri CJ³⁵:

“Undoubtedly, certain definite conclusion were reached by the majority of the judges, it is difficult to say that any particular principle was laid down, which can be of assistance in the determination of other cases.”

Seervai³⁶ is also of the same view.

On the other hand, Bose J³⁷ and Basu³⁸ observed that in spite of separate opinions, certain principles have been laid down by the Supreme Court in Delhi Laws Act, 1912, re. Jain and Jain³⁹ are right when they state that on two points there was similarity in the outlook evidenced in the opinions. First, keeping the exigencies of the modern government in view, Parliament and State Legislatures in India need to delegate legislative power if they are to be able to cope with the multitudinous problems facing the country, for it is neither practicable nor feasible to expect that each of the legislative bodies could turn out

³⁴ AIR 1951 SC 332 : 1951 SCR 747. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p78

³⁵ KathiRaningRawat v. State of Saurashtra, AIR 1952 SC 123 : 1952 SCR 435. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p78

³⁶ Constitutional Law of India, Vol.II (1976) 1196. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p78

³⁷ Rajnarain Singh v. Patna Admn. Committee, AIR 1954 SC 569 : (1955) 1 SCR 290. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p78

³⁸ Commentaries on the Constitution of India, Vol. IV, 141. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p78

³⁹ Principles of Administrative Law (2007) 64-68. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p78

complete and comprehensive legislation on all subjects that need to be legislated upon. Second, since the legislature derives their powers from the written constitution which creates them, they could not be allowed the same freedom as the British Parliament in the matter of delegation; some limits should be set or their capacity to delegate.

The major difficulty was, and it was on this point that the judges differed: where to set the limit, and what were to be the permissible contours within which an Indian legislature could delegate its legislative power?

It *Harishankar Bagla v. state of M.P.*⁴⁰, under section 3 of the Essential Supplies (Temporary Powers) Act, 1946 the Central Government was empowered to issue an order for the regulation of production, distribution, etc. of essential commodities. By Section 6, it was provided that “an order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act”. Both the sections were challenged on the ground of excessive delegation of legislative power. The Supreme Court held that the object of section 6 was not to repeal or abrogate any existing law, but to bypass the same where the provisions there of were inconsistent with the provisions of the Act. The court also held that the legislative policy was laid down in the Act and there was no excessive delegation. Thus, very broad delegation of legislative power was judicially sanctioned.

It is submitted that the view taken by the Supreme Court was erroneous inasmuch as, the legislative policy had been laid down in the Preamble and title of the Act. Certain diseases had been mentioned and the government was empowered to include and to bring within its purview any other disease. There was nothing objectionable in such provision and prior to this case as well as in subsequent cases, such a provision had been held valid by the court in a number of cases.⁴¹ It is not necessary that the legislature should “dot all the i’s and cross all the t’s of its policy.”⁴²

In *Gwalior Rayon Silk Mfg. (Wvg.) Co Ltd. v. CST*⁴³ (Gwalior Rayon), under section 8(2)(b) of the of Central Sales Tax Act, 1956, Parliament did not fix the rate of Central Sales Tax but adopted the rate applicable to the sale or purchase of goods within the appropriate State in case such rate exceeded ten per cent. The said section was challenged on the ground that Parliament in not fixing the rate itself and in adopting the rate applicable within the appropriate State has not laid down any legislative policy and had abdicated its legislative function.

On behalf of the Sales Tax Department, a pre-emptive argument was put forward that while conferring power upon a delegate to make subordinate legislation, the legislature need not disclose any policy, principle or standard because if the legislature can repeal an enactment, as it normally can it retains sufficient control over the authority making the subordinate legislation.⁴⁴

⁴⁰ AIR 1954 SC 465 : (1955) 1 SCR 380. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p79

⁴¹ *Edward Mills Co. Ltd. v. State of Ajmer*, AIR 1955 SC 25; *Banarsi Das Bhanot v. State of M.P.*, AIR 1958 SC 909; 1959 SCR 427; *Sable Waghire & Co. v. Union of India*, (1975) 1 SCC 763; AIR 1975 SC 1172; *Babu Ram Jagdish Kumar v. State of Punjab*, (1979) 3 SCC 616; AIR 1979 SC 1475; *Brij Sunder Kapoor v. Ist ADJ*, (1989) 1 SCC 561; AIR 1989 SC 572. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p80

⁴² *Ramesh Birch v. Union of India*, 1989 Supp (1) SCC 430, 471; AIR 1990 SC 560. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p80

⁴³ (1974) 4 SCC 98; AIR 1974 SC 1660. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p80

⁴⁴ C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p80

Section 116(3) of the Delhi Municipal Corporation Act, 1957, which empowered the commissioner to declare any plant or machinery as part of land or building for the purpose of determination of reteablevalue was declared invalid for the purpose of determination of reteable value, was declared invalid since it delegated unguided and uncanalised legislative power to the executive.⁴⁵

In *M.P. High Court Bar Assn. v. Union of India*⁴⁶, the Supreme Court declared that under the Constitution, the power to legislate lies with the legislature. Hence, the power to make laws, cannot be delegated by the legislature to the executive. In other words a legislature can neither create a parallel legislature nor destroy its legislative character. Essential legislative function must be retained by the legislature itself. Such functions consist of determination of legislative policy and its formulation as a binding rule of conduct. But it is equally well-settled that once essential legislative function is performed by the legislature and the policy has been laid down, it is always open to the legislature to delegate to the executive ancillary and subordinate powers necessary for carrying out policy and purpose of the Act as may be necessary to make the legislation complete, effective and useful.⁴⁷

DELEGATION IN FAVOUR OF LOCAL AUTHORITY

(a) General

Local authorities are subordinate branches of government's activities. They are democratic institutions managed by representatives of the people. They function for public purposes and take away apart the government affairs in local areas. They are political sub-divisions and agencies which exercise apart of state functions.⁴⁸

(c) Nature and scope

where legislature confers power of delegated legislation on local authorities such as municipalities, Panchayats, local boards, etc. the question must be decided bearing in mind various considerations. There is wide area of delegation in the matter of imposition of taxes. Such taxes are for local needs for which local enquiries have to be made. They are usually left to the representatives of the local populations, including those who pay taxes. Moreover, such taxes vary from place to place and from commodity to commodity. The problems of different local bodies may also be different. One local authority may require one kind of tax at a particular rate at a particular time while another local authority may need another kind of tax at another rate at some other time. It is impossible for legislature to enact laws for the imposition of uniform taxes in all local areas. Considering the democratic set up of local bodies which need the proceeds of such taxes for their own administration, it is appropriated to leave the local authorities power to impose and collect taxes. It is not necessary to specify all the situations in which taxes can be imposed. It is also not necessary to fix the rates at which taxes can be imposed and even the

⁴⁵ *Krishna Mohan (P) Ltd. v. MCD*, (2003) 7 SCC 151: AIR 2003 SC 2935. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p83

⁴⁶ (2004) II SCC 766: 2005 SCC (L&S) 27. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p84

⁴⁷ C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p84

⁴⁸ *MCD v. Birla Cotton Mills*, AIR 1968 SC 1232, 1254: 1968 3 SCR 251. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p97

determination of the tax-rate can be left to such local authorities, provided legislature has taken care to specify sufficient safeguards necessary in fixing the rate.⁴⁹

(c) Object

Local authorities need money to perform various statutory functions and their needs vary with the prevailing exigencies. The power to impose and collect tax, however, must necessarily be limited by the expenses required to discharge such function. A local authority cannot spend public money indiscriminately or for any purpose other than those specified in the act which creates it.⁵⁰

(d) Judicial approach

Judiciary has adopted liberal attitude in the matters of delegation of legislative power in favour of local authorities. In various cases, it has been held that the power to impose tax, to prescribe the maximum or minimum rate of tax, to fix class or classes of persons or the description or descriptions of articles or properties to be taxed and to lay down the system of assessment and exemptions, if any, to be granted can be left to local bodies and conferment of such power does not amount to excessive delegation.⁵¹

In *MCD v. Birla Cotton mills*⁵² (MCD), Wanchoo CJ stated, "(I)t appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation."⁵³

(e) Limitations

Even if it is conceded that while deciding the question of constitutionality of a provision permitting delegated legislation, delegation is made in favour of an elected body responsible to the people and is accountable to the local electorate is a relevant consideration, it is not the conclusive factor in holding the delegation valid and permissible. If that be true, Parliament may justifiably and indiscriminately delegate its power to other bodies by constituting them from among the representatives of the people.⁵⁴

(f) Principles

In the leading case of *MCD*⁵⁵ after considering foreign and Indian decision on the points the following principles have been laid down by Wanchoo CJ:

1. The delegation was to an elected body responsible to the people, including those who pay taxes and to whom the councillors have every four years to turn to for being elected;

⁴⁹ Ibid, AIR 1261-1263; see also, *Corpn. of Calcutta v. Liberty Cinema*, AIR 1965 C 1107: (1965) 2 SCR 477. Quoted in C.K. Takwani, *Lectures on Administrative*, 2012 Eastern Book Company, Lucknow p97

⁵⁰ *MCD v. Birla Cotton Mills*, AIR 1968 SC 1232, 1254: 1968 3 SCR 251. *Avinder Singh v. State of Punjab*, (1979) 1 SCC 137: AIR 1979 SC 321. Quoted in C.K. Takwani, *Lectures on Administrative*, 2012 Eastern Book Company, Lucknow p98

⁵¹ Ibid; see also, *Gulabchand Bapalal Modi v. Municipal Corpn. of Ahmedabad City*, (1971) 1 SCC 823: AIR 1971 SC 2100. Quoted in C.K. Takwani, *Lectures on Administrative*, 2012 Eastern Book Company, Lucknow p98

⁵² AIR 1968 SC 1232: (1968) 3 SCR 251. Quoted in C.K. Takwani, *Lectures on Administrative*, 2012 Eastern Book Company, Lucknow p98

⁵³ Ibid, AIR 1244: SCR 269-270. See also, *Avinder Singh v. State of Punjab*, (1979) 1 SCC 137, 151: AIR 1979 SC 321. Quoted in C.K. Takwani, *Lectures on Administrative*, 2012 Eastern Book Company, Lucknow p98

⁵⁴ *MCD v. Birla Cotton Mills*, AIR 1968 SC 1232, 1243, 1264. Quoted in C.K. Takwani, *Lectures on Administrative*, 2012 Eastern Book Company, Lucknow p98

⁵⁵ AIR 1968 SC 1232: (1968) 3 SCR 251. Quoted in C.K. Takwani, *Lectures on Administrative*, 2012 Eastern Book Company, Lucknow p98

2. The limits of taxation were to be found in the purposes of the Act for the implementation of which alone taxes could be levied and thought this factor was not conclusive, it was nonetheless relevant and must be taken into account with other relevant factors;
3. The impugned section 150 itself contained a provision which required that the maximum rate fixed by Corporation should have the approval of the government;
4. The act contained provisions which required adoption of budget estimates by the Corporation annually;
5. There was a check by the courts of law where the power of taxation is used unreasonably or in non-compliance or breach of the provisions and objects of the Act.⁵⁶

The doctrine of excessive delegation of legislative power applies to the conferment of such power on local authorities as well. The constitutional power to legislate in respect of a particular subject such as Local Government⁵⁷ does not carry with it the power to delegate essential legislative functions. Authority to legislate in respect of powers of local bodies may include authority to confer power upon local bodies to impose and collect tax but such power cannot override constitutional limitations against abdication of essential legislative functions. The expression “power” does not include authority to delegate the essential legislative function without disclosing principles, policy or standard guiding the local bodies in the exercise of the power. It is submitted that the following observation of Shah J (as he then was) in MCD⁵⁸ lay down correct law on the point. His lordship rightly state:

A local authority is undoubtedly an instrument of the state in the matter of local government restricted to a particular area in which it functions. By investing a local authority with powers of legislation for administration of the Act relating to local government, sovereign power of the state is entrusted to the body for limited purpose; but the entrustments of power is as a delegate, and must in our view be within the limits of permissible entrustment consistent with the constitutional scheme. The power of the state to legislate in matters of taxation within the allotted field is plenary, but in entrusting that power to a local authority the legislature cannot confer unguided authority.⁵⁹

CONCLUSION

Perhaps most disappointing of all is the legislation enacted by the State governments in regard to the Scheduled areas. In most cases they have conspicuously avoided devolving the powers recommended by the 1996 Extension Act. In many instances State government have exploited an ambiguity in the Act, and powers have not been devolved to the gram sabha at the village level, but remain with a Panchayat or even a non-elected state government authority at a higher level. Crucially, furthermore, not a single State Panchayat Act, or any of their subsequent amendments to date, has included a clause making Panchayats or gram sabhas at a village level

⁵⁶ AIR 1968 SC 1232, 1245-1247: 1968 3 SCR 251; see, Gulabchand Bapalal Modi v. Municipal Corpn. of Ahmedabad City, (1971) 1 SCC 823: AIR 1971 SC 2100, 2106. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p99

⁵⁷ Constitution of India, Sch. VII, Entry 5, List II. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p99

⁵⁸ AIR 1968 SC 1232: (1968) 3 SCR 251. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p99

⁵⁹ Ibid, AIR 1261; see also, B. Krishna Bhat v. State of Karnataka, (2001) 4 SCC 127: AIR 2001SC1885. Quoted in C.K. Takwani, Lectures on Administrative, 2012 Eastern Book Company, Lucknow p99

into effective Institutions of Self-Government. Even where powers have been devolved, for example in control over minor forest produce, the State government has retained the right to assume their powers and authority and to over-rule the Panchayats and gram sabhas at any time. In the view of Mahi Pal, in a recent report, the majority of the states have completed the formalities in regard to devolution of powers in scheduled areas, but with the exception only of Maharashtra, Orissa, and to some extent M.P., they have entirely avoided the spirit of the legislation.⁶⁰

Although there are no express provisions in the Constitution of India to permit the delegation of legislative power, the judicial trend observed in respect of delegated legislation is in accordance with the intent of founding fathers our Constitution whose main concern was the adaptability of the Constitution with changing needs of the time. There is a requirement of detail research on the extent to which the executive have exercised the delegated legislative power in accordance with the path shown by the Legislature.

⁶⁰ See Mahi Pal, 'Panchayats in Fifth Scheduled Areas', *EPW*, May 2000.