



## An Insight into the Enigma of Excessive Delegation: An Indian Perspective

Girisha Meena<sup>26</sup>

### ABSTRACT

*This paper attempts to study the theory of excessive delegation and trace its relevancy in contemporary times. The paper's objective is to showcase the impugned theories and substantively draw a coherent conclusion after undertaking an analysis of this critical Administrative law topic that exhibited an evolutionary curve and has witnessed questions over its constitutionality and abuse of power. The research would help in painting a clearer picture of the limitations of excessive delegation as well as factors to be kept in mind while deciding the presence of excessive delegation in a statute. Moreover, the study would showcase the similarities and the aspects in which other jurisdictions differ from India and the most important case laws and decisions involving excessive delegation. This research adds to the existing literature by tracing the landmark cases and the position of an excessive delegation under the Indian Constitution. The study would also help in drawing the conclusion to the age-old debate of the privy council and federal courts in the pre- independence era and views of the Supreme Court in the post-independence era regarding excessive delegation of fiscal powers, modifications, constitutional objections, power to include and exclude, power to repeal etc and aims to unravel these issues and look at the approach of the Indian parliament in solving them.*

**Keywords:** Delegation, the Henry VIII Clause, Ordinance, Ultra Vires.

### INTRODUCTION

Delegated legislation is one of the best-known topics in administrative law. In India, the governmental power is divided among the three organs horizontally, I.e. Legislature, Executive and Judiciary. In which legislature includes Parliament, Executive includes President, Vice President, Council of ministers and Attorney general and Judiciary includes Supreme Court

<sup>26</sup> B. Com. LL.B. (4<sup>th</sup> Year) Gujarat National Law University.

and other courts of laws, Chief Justice of India and other judges of Supreme Court, etc. In simple words, the law-making process is in the hands of the legislature; implementation of the law is in the hands of the Executive and Judiciary functions to apply laws to specific cases. Austin defines delegated legislation as *"impossible to have law without legislature"*, but it turns into delegated legislation when the legislature delegates its powers under pressure. As per 'Salmond', delegated legislation has been defined as *"that which proceeds from any authority other than the sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority"*.<sup>27</sup> In simple words, the law-making power of the legislature has been conferred on the executive.

Nowadays, the core of powers has been moved to the executive by the legislature. We can say, the main reasons for such growth are the burden and pressure on legislative bodies, complexity in everyday situations, unforeseen contingencies, emergencies, speediness, local requirements, public interest, and lack of formal experimentation, technicality, flexibility and many more. Sometimes, instead of doing all the legislation itself, it transfers its powers to the executive. Then all those laws resulting from the delegation from the legislative and made by the executive are known as delegated legislation. Sometimes legislative authority transfers its duties to its junior authorities, known as Sub delegation. Delegated legislation can be an independent law or a rule to existing law. They are classified into five bases that is title based (rules, regulations, bye-laws, notifications, direction), discretion based (conditional or contingent), purpose-based (executive to decide the date of commencement, implementation, tenure, etc.), authority-based (sub-delegation) and nature-based (exceptional delegation). Delegated legislation has four types, i.e. Normal, exceptional, Henry viii Clause (16th century) and finality clause.

If the court found the matter of facts that the delegation is above the permissible limits, such delegation will be excessive by law. There is not so much circumscribing in India regarding delegation, and there have been rare cases for the last 45 years which were upheld invalidated based on excessive delegation.

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<sup>27</sup> 12 SALMOND, JURISPRUDENCE 116 (Sweet & Maxwell, 1966).

## ISSUES RAISED

- I. "Whether any legal conflicts and comparisons prevail in other jurisdictions regarding it? If yes, what are they"?
- II. "Delegation allows speedy framing and implementation of rules and regulations and provides ease of governance. However, at the same time, it attracts the violation of the Constitution" How can this problem be unravelled?
- III. "How is the doctrine of excessive delegation an immediate corollary of doctrine of separation of powers and whether this approach of preventing excessive delegation is suitable for ensuring due process"?

## LIMITATION ON DELEGATION OF LEGISLATURE'S POWER

In India, the Constitution circumscribes and puts limitations on the legislature's powers and court functions to watch that the limitations and restrictions are correctly enforced. The position of the UK in this regard is that parliament is considered the supreme power, and there is no restriction on parliament to delegate its power further, and they are permitted to delegate limitless powers. However, the House of Lords faulted this type of comprehensive delegation and condemned this doctrine. India and USA follow the same pattern because of the existence of the theory of separation of power

The delegated legislation, unless the Constitution permits it is void. The essential legislative features cannot be delegated, and the non-essential features such as commencement of the statutes, supplying details adoption of active statutes, modifications, an extension of statutes, power to promulgate ordinances etc., are permissible. The higher authority should not be racked with excessive delegation. Do the facts decide whether the delegation is excessive or not? If the delegation is excessive, it will be declared void. Prior to the commencement of the Constitution, the case "*Jatindra Nath v. Province of Bihar*"<sup>28</sup> held that the legislature could not delegate its power to the executive beyond the 'conditional legislation'. After the Constitution came into force, the primary question was the status regarding independence and restrictions of delegation and whether there is a limitation on the delegation of powers

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<sup>28</sup> *Jatindra Nath v. Province of Bihar*. AIR 1949 FC 175.

legislative or not? Legislature cannot suspend its power regarding the fundamental rights of the executive bodies for making laws.

## DOCTRINE OF EXCESSIVE DELEGATION

Excessive delegation means "when the legislature excessively delegates its legislative function to any other authority, such delegation will be held unconstitutional".<sup>29</sup> The delegation should not go beyond the permissible limit. There are not many cases of excessive delegation in the US so far. The first case which was held unconstitutional based on the excessive delegation was "*Panama Refining Company vs Ryan*"<sup>30</sup>, and in the US, a few significant cases of this doctrine includes "*Schechter Poultry Corp. Vs. the US*"<sup>31</sup> and "*Carter v. Carter Coal Co.*"<sup>32</sup>. Even though the Supreme Court in India has validated the doctrine of excessive delegation in some cases, only those arose in emergent situations. There are no express provisions in the Constitution of India regarding the matter of to which extent delegation is permissible or restricted. This decision will rest in the hands of the Supreme Court on the case to case factual basis that delegation would be permissible or not. The doctrine of excessive delegation holds the law creation, law implementation and law enforcement together. When there is a balancing of fundamental rights, the legislature cannot delegate its power further because the legislature is expected to more, not less, when a law is created regarding fundamental rights.

### PRINCIPLES TO DETERMINE EXCESSIVE DELEGATION:

1. The essential functions and the powers that make legislative policies are impermissible to be delegated.
2. Only certain functions in the time of need and based on reasonableness can be delegated in the modern dynamic society.
3. If the responsibilities and functions granted to the executive are lawful and reasonable, then they will be permissible. There cannot be a mere reason to declare the legislation due to excessive delegation when it says that the legislature must make more detailed provisions.

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<sup>29</sup> Basheer, S., 2020. Excessive Delegation In The Judicial Appointments Bill? | Law And Other Things. [online] Law and Other things. Available at: <<https://lawandotherthings.com/2014/08/excessive-delegation-in-judicia/>> [Accessed 19 October 2020].

<sup>30</sup> *Panama Refining Company v. Ryan*, (1935) 293 U.S. 388.

<sup>31</sup> *Schechter Poultry Corp. v. U.S.*, (1935) 295 U.S. 495.

<sup>32</sup> *Carter v. Carter Coal Co.*, (1936) 298 US 238.

THE LAW OF ANY STATUTE MUST BE SUBJECT TO TWO TESTS IF IT IS ASSAILED ON THE GROUNDS OF EXCESSIVE DELEGATION-

1. Whether the crucial or legislative duty or responsibility is delegated?
2. Whether the articulation of such statute is done under the surveillance of legislature or not?

## **SIGNIFICANT U.S.A. CASE LAWS ON THE DOCTRINE OF EXCESSIVE DELEGATION**

India and USA are in the same position. Both follow the doctrine of separation of power. Certain restrictions are there in the USA for the delegation of legislation.

*"Panama Refining Company vs Ryan"*<sup>33</sup>

This was the first case in the record which held a provision unconstitutional based on "excessive delegation. The constitutional validity of the National Industrial Recovery Act was challenged. In the lower court, it was held validated, but in the Appellate court, it was found to be unconstitutional by 8:1 on the grounds of excessive delegation. For Injunction and enforcement of NIRA had been sought by Panama Refining Co. The decision said that excessive delegation was there while enacting the law. Test of the delegation laid down

*"SchechterPoultry Corpn. v. the US."*<sup>34</sup>

The validity of Sec.3 of NIRA was challenged because, in this, the President has taken down the authority to develop a code of conduct among the industries and business groups. It was held that power was excessively conferred upon the executives and, thus, unconstitutional. The parent act prescribed no standard.

## **INDIAN DECISIONS ON EXCESSIVE DELEGATION**

### **1. THE PRIVY COUNCIL ON DELEGATED EXCESSIVE LEGISLATION**

Subordinate authority should remain out of burden. The imperial parliament has circumscribed the power of delegation. It should not be beyond the expressed limits by the Act of Imperial

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<sup>33</sup> Panama Refining Company vs. Ryan, (1935) 293 U.S. 388.

<sup>34</sup> SchechterPoultry Corpn v. U.S, (1935) 295 U.S. 495.

parliament. The council act says that the Governor cannot create legislative power. Only conditional delegation is permissible, as upheld in *Queen v. Burah*.

## **2. ESSENTIAL LEGISLATIVE FUNCTION**

*Harakchand v. India*<sup>35</sup>

The validity of the Gold Control Act of 1968 was challenged. Section 5(2)(b) held invalid based on excessive delegation of power. The power was upheld to be "legislative".

*DK Trivedi v. Gujarat*<sup>36</sup>

The contention was made on the validity of Sec. 15(1) of the Mines and Minerals Act, 1957 because the excessive delegation of the power made the state government act arbitrarily, and the delegation is canalised and unguided. The court upheld the validity and held that it did not amount to excessive delegation because the state government was following the guidelines, and there were objects for the reason of conferring the power on the government. The unlimited authority was there on the executive.

## **3. CONSTITUTIONAL OBJECTIONS AND EXCESSIVE DELEGATION**

There are two kinds of delegations of executive power. One can be legislative and, on the other hand, can be executive. The permit of legislative power can be question marked based on excessive delegation, and the permit of executive delegation may be challenged based on violation of Article 14 of the Indian Constitution, i.e. Right to equality. If any law suffers from the excessive delegation, then the rule, i.e. essential legislative function, cannot be delegated, strikes that down and decreases the arbitrary power use.

## **4. EXCESSIVE DELEGATION AND FEDERAL COURT**

*Emperor v. Benorilal Sharma*<sup>37</sup>

The ordinance was held unconstitutional by the Calcutta High Court. The powers of special courts were provided in an ordinance that government will allow which types of offences are to be tried by special courts and can be extended to other territories, and establishment of the special courts can be done to those extended areas also. This power was challenged. Such Unconstitutionality was that the legislature's power was excessively delegated, and the position of *Queen v. Burah* was retraced. The courts took a rigid approach.

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<sup>35</sup> *Harakchand v. India*, (1970) 1 SCR 479.

<sup>36</sup> *DK Trivedi v. Gujarat*, (1986) 1 SCR 479.

<sup>37</sup> *Emperor v. Benorilal Sharma*, (1945) 47 BOMLR 260.

*Jatindra Nath v. Province of Bihar*<sup>38</sup>

Rejected Queen v. Burah and Benorilal case and put stringent views. This case has put a restriction on the scope of Legislative actions. Legislative cannot further delegate beyond the conditional legislation. Also, Federal Court upheld legislative delegation as ultra vires. The power to extend the life of the Act and the power of modification is invalid and cannot be delegated to the executive. This case created doubt, narrowed the scope, and created a shadow and confusion on similar provisions.

## **5. EXCESSIVE DELEGATION OF FISCAL POWER**

*Gwalior Rayon Silk Manufacturing Co Ltd. V Assistant Commissioner of Sales Tax*<sup>39</sup>

The validity of Section 8 (2)(b) of the Central Sales Tax Act was put in a question on charging the sales tax on the commercial activities of interstate trade at a 10 per cent rate or the rate authorised interstate, whichever will be higher is applicable. The section was held valid by the judges.

*Avinder Singh V. Punjab*<sup>40</sup>

In this case test for the extent of the delegation was rested by Justice Krishna Iyer-

- I. There are powers of the legislature, and it cannot efface itself.
- II. The Essential legislative powers cannot be further delegated. Delegation is not restricted to essential functions.
- III. If there is excessive delegation, the parliament should be ready to control that.

*Shiv Dutt Raj Fateh Chand V. India*<sup>41</sup>

The validity of Section 9(2A) of the Central Sales Tax Act, 1956 was challenged. The provisions of this Act say that the penalties will be the same as they were in General Sales Tax Law, and it was upheld by a court on the basis that there was no presence of excessive delegation.

*MP V. Mahalaxmi Fabric Mills Ltd.*<sup>42</sup>

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<sup>38</sup> Jatindra Nath v. Province of Bihar, AIR 1949 FC 175.

<sup>39</sup> Gwalior Rayon Silk Manufacturing Co Ltd. v. Assistant Commissioner of Sales Tax, (1974) 2 SCR 879.

<sup>40</sup> Avinder Singh v. Punjab, (1979) 1 SCR 845.

<sup>41</sup> Shiv Dutt Raj Fateh Chand v. India, (1983) 3 SCR 198.

<sup>42</sup> MP v. Mahalaxmi Fabric Mills Ltd., (1995) Supl.1 SCC 642.

Section 9(3) of the Mines and Minerals Act, 1957, was questioned. The court decided that there was no excessive delegation of powers. In this Act, the Central Government was given some powers to increase the rate of royalty regarding minerals.

## **6. EXCESSIVE DELEGATION AND POWER TO MAKE MODIFICATIONS**

The Constitution itself delegates powers to make suitable modifications to the Act by Article 372.

*Raj Narain Singh v. Chairman, Patna Administration Committee*<sup>43</sup>

The validity of Section 3 (1)(f) of the Bihar and Orissa Act was challenged. Supreme Court, in this case, has drawn the boundaries and specified precisely is the extent of constitutional delegation and are essential functions of the legislative. The executive acted beyond the scope of its powers by making modifications.

## **7. EXCESSIVE DELEGATION CONCERNING THE INDIAN CONSTITUTION**

*In re Delhi Laws Act*,<sup>44</sup> This case is also known Bible case for delegated legislation. There were two pre-existing acts and forms before the independence, viz. The Delhi Laws Act, 1912, Ajmer Merwara Act, 1947 and Part C State Act, 1950. In Delhi Law Act, 1912, the modification rights were given to the provincial government by virtue of Sec.7 of this Act. In the Ajmer Merwara Act of 1947, certain rights regarding the modifications in the official gazette by notification to the Central Government. Before independence, India was classified into three types of states namely. Part A, B, C. Delhi was in part C, which was under the full control of the Central Government without any specified Act. Thus, after independence, parliament created a Part C State Act law 1950. In this Act, most of the powers were given to Central Government regarding amendments and modifications. This Act was gone for the President's signature to become law. President gave the idea that this has been excessive delegation to the executive by the parliament because excessive rights have been given to the executive. President seeks Supreme Court advice under Article 143 of the Indian Constitution. The matter came to Supreme Court regarding the validity of Part C State Act, 1950.

Supreme Court observes all three acts, namely The Delhi Laws Act 1912, Ajmer Merwara Act, 1947 and Part C State Act, 1950. The main issue was whether the legislature could delegate its powers to the executive or not? From the government's side, MC Setalvad contended that

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<sup>43</sup> Raj Narain Singh v. Chairman, Patna Administration Committee, (1955) SCR 290.

<sup>44</sup> In re Delhi Laws Act, (1951) SCR 747.



delegation is unavoidable, and it comes automatically with the law-making power, and there are no restrictions on delegation. The opponent lawyer M.C Chatterjee contended that the principle of Separation of Power had been adopted in India. It follows *delegata potestas non potest delegari*, which means that re-delegation of powers is not allowed because the legislature itself is the result of the delegation of people, and there should be a restriction on delegation. Supreme Court held that Sec.7 of the Delhi Law Act and Sec.2 of the Ajmer Merwara Act are both valid because the delegation is regarding modification and allowed. Some Part C State Laws Act provisions were invalid as they involved excessive delegation.

## **8. EXCESSIVE DELEGATION OF POWER TO REPEAL**

*Re Delhi Laws Act*<sup>45</sup>

In this case, it was upheld that the authority to make repeal an existing act is an essential legislative function, and it cannot be delegated. This case is a leading example where the excessive delegation was held to be ultra vires.

*AV Nachane v. India*<sup>46</sup>

The validity of Section 48(2)(cc) of the Life Incorporation Council (Amendment) Act, 1981 was challenged. The powers regarding making rules for the Act were given to the central government and upheld to be void on the grounds of excessive delegation.

## **9. EXCESSIVE DELEGATION AND POWER TO INCLUDE AND EXCLUDE.**

*Edward Mills Co v Ajmer*<sup>47</sup>

The validity of the Minimum Wages Act 1951 was impeached and was held illegal. The central government was given certain powers to add a schedule by way of notification for fixing minimum wages for the industries by Section 27. The government was given the power to include or exclude industries that will fall or not fall under this specific Act.

*Hamdard Dawakhana v India*<sup>48</sup>

The validity of Section 3(d) Drugs and Magic Remedies Act was in question based on legislative power being excessively delegated. This Act has given several powers to the Central

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<sup>45</sup> Re Delhi Laws Act, (1951) SCR 747.

<sup>46</sup> AV Nachane v. India, (1982) 2 SCR 246.

<sup>47</sup> Edward Mills Co v. Ajmer, (1955) 1 SCR 735.

<sup>48</sup> Hamdard Dawakhana v. India, (1960) 2 SCR 671.

Government to carry out. The court upheld the validity as illegal on excessive delegation of its powers.

### **EXCESSIVE DELEGATION AND ARTICLE 14**

The principle of delegated legislation can be challenged based on unreasonableness and arbitrariness. In several cases, the High Court has given the view that unreasonableness is not a basis for challenging delegated legislation. If there is arbitrariness presented in the delegated legislation, it can be challenged by Article 14. Any rule that cannot be there that forbids Article 14 and the rule made by the delegation should be approved by the parent act. In India, excessive delegation is ultra vires, and authorisation by the parent act is a must. In the matter of *Air India v. Nargesh Meerza*,<sup>49</sup> the regulation was held to be unconstitutional and contravening Article 14 because a rule was passed regarding the retirement of an air hostess in which after accomplishing the age of 35 years or getting first pregnancy or marriage within four years of service whichever is earlier the retirement will take place. Also, the regulation did not give certain rights in the increment of the age of retirement to the managing director, but this uncontrolled and unguided discretionary power was conferred to the managing director, which was declared unconstitutional.

If excessive delegation is subject to being arbitrary, then it can easily be assailed by Article 14. The Constitution does not talk about the delegation exactly. However, we can get somewhat ideas from Article 312. We can conclude that some delegation is unrestricted and unavoidable. In Article 312, it is given that Rajya Sabha has a new branch of All India Service with the majority votes. In the *Sikkim v. Surendra Sharma Case*<sup>50</sup>, the court decided that termination of the service of the staff is unconstitutional by Article 14 and Article 16 if solely based on residential and not living in that locality. Constitution provides a view that delegation is permissible in a controlled and restricted manner. Powers of delegated legislation are dealt with within Article 312 of the Constitution, and it lies with the legislatures automatically. The unlimited delegation is impermissible, and the legislature cannot lose its complete control over the functions. Hence, the Constitutionality of excessively and unlimited delegation is void.

### **RELEVANCY IN CONTEMPORARY TIMES: RECENT TRENDS**

Delegated legislation is prevalent in several nations across the world. In India, the government neglected to engage with stakeholders before adopting the "Right to Information (Amendment)

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<sup>49</sup> *Air India v. Nargesh Meerza*, (1982) 1 SCR 438.

<sup>50</sup> *Sikkim v. Surendra Sharma*, (1994) 5 SCC 282.

Act, 2019", further contributing to the controversy surrounding the Amendment. Its passage into law portends a dismal future for the fundamental ideals of oversight and accountability. In *"Bihar State Govt. Secondary School Teachers Assn. v. Ashok Kumar Sinha"*,<sup>51</sup> the judge noted that an administrative authority's judgement issued by the court could not be turned over by modifying its regulations. It would be an obstruction of justice. This ruling suggested that the judiciary would not allow excessive delegated legislation to be established. In another recent issue, the government sought to supervise rather than manage the publisher of news or current affairs content by announcing the *"Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021"* ("Intermediaries Rule 2021"), including over-the-top or OTT platforms. It also includes a due diligence process for social media intermediaries, who will be fined if they do not comply; thus, it suffers from excessive delegation. It has sparked several debates.

Furthermore, in *Hiralal P. Harsora v. Kusum Narottamdas Harsora*,<sup>52</sup> it was found that the legislative object might be deduced from the preamble, which states the Act's intended goal and purpose. According to current practice, only a tiny portion of overall legislation now emanates from the legislature. The executive acts as a delegate of the legislative and promulgates the majority of the law, which is referred to as "delegated legislation." In *Harvey v. The Minister for Social Welfare in the United States*,<sup>53</sup> the issue was what is known as a Henry VIII clause, which is a statutory provision that allows an administrative body to make delegated legislation that can amend existing legislation. Courts have held this form of delegated legislation to be unconstitutional, even though it does not create a new principle. This case does not involve any sort of delegated law.

Furthermore, in *Canada* there has been balancing trends in news between legislature and executive. *Wherever, in the U.K.*, where these matters are more highly advanced than under any other parliamentary democracy, the first two of these prerequisites are met by the Statutory Instruments Act, 1946, and by various Statutory Instruments Regulations made under that Act. In most cases, the legislature establishes legislation that covers broad ideas. Such as the COVID-19 pandemic, which has produced a global health catastrophe in our era and is the greatest challenge the globe has faced since WWII. This has served as a leading beacon of the Indian Constitution's delegated legislation.

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<sup>51</sup> Bihar State Govt. Secondary School Teachers Assn. v. Ashok Kumar Sinha, (2014) 7SCC 416.

<sup>52</sup> SLP (Civil) No. 9132 of 2015.

<sup>53</sup> 1989 WJSC-SC 1637.

## ANALYSIS

Our Indian framework is designed to separate powers and legislature; the executive and judiciary have distinct and separate functions to perform. Though, a strict separation of power is not there. Our Indian Constitution distinguishes those functions and authorises the legislature as a law-making body. Certain powers are conferred upon the three organs of government, and they cannot be conferred on other institutions. The legislature works to frame laws and policies and mount them as decorum. Sometimes parliament remains overburdened, and over-pressure and delegation may happen. It is a kind of unavoidable situation. However, we can say delegation can be unavoidable to some extent. After that, it will be unconstitutional. Delegation should not be unlimited and excessive. The restrictions on delegation and how much delegation is allowed are not clearly stated anywhere. The ultimate authority lies in such matters with Supreme Court. Courts decide what type and extent of delegation it is on the factual basis of the matter. It is impracticable that the legislature will perform its all functions, and here is, the idea of delegation arises. The doctrine of excessive delegation carries out two goals- Firstly, the governance of democratic accountability is ensured in the laws and secondly, the court provides minimum delegation of the laws to the courts with some noticeable degree to held ultra vires. As we can say, there are two sides to a coin. Several disadvantages, advantages and risks are auxiliary to delegation. We can also assume that there is a need for delegation to some extent only. Excessive delegation and unlimited delegation are not at all required for the country. When parliament is overburdened, delegation plays a positive role, and the legislature gets help from the executives in law-making functions. Also, law building needs specific experience and skills in making a particular type of law, and we can say that executive can have a positive role in that. The emergent and necessary situations sometimes need legislation for the smooth and flexible functioning to cope with the slow law-making process, which requires practical application, discussions, etc. In the dynamically societal changing situations, delegated legislation sometimes supports when contingencies occur and the circumstances that were not anticipated occur. When sometimes any position arises in which technical assistance is required, and members of legislation cannot help in that matter, delegation turns out to be functional. There can be certain times when expert advice and clarifications are required, and delegation is proved to be convenient in those circumstances. Without waiting for a new act to be passed by parliament, the government can make law through delegated powers. Time and resource-saving is the most significant advantage of delegation. Sometimes the position arises where the authorities to whom the powers have been delegated know the ground reality and can act according to that specific situation's needs.

The control of delegated legislation should not be affected and used appropriately. Sometimes excessive and uncontrolled delegations arise and make them unreasonable and arbitrary. We have Article 14 of the Indian Constitution to safeguard against such arbitrary and discriminatory delegations. When excessive and uncontrolled delegation arises, the court announces it as ultra vires. The bodies should not act beyond the limits of powers granted to them. The delegation should not be mala fide and not beyond the intention of parliament. The legislation will be void if the court declares that void.

### **CRITICISM:**

There are several critical aspects of excessive delegations which are to be noticed.

- Overlapping of powers and responsibilities is one of the main criticisms of excessively delegated legislation. The control of the power of the legislature has also been decreased. The spirit of democracy would be harmed if the unelected people made a delegation.
- The encroachment of the executive in the area of the legislative's rulemaking powers. Also, sometimes the public may have difficulties when the authority makes the laws without much discussion and lack of debate.
- Parliamentary scrutiny is a must for the matters, and this can result in irregularities and deficiencies in the law because of these contingencies and unforeseen circumstances can occur.
- When the law constructing procedure is delegated, then it can be of absences of exposures and lack of experimentation. Sometimes, Political gain can also result from delegation and lead to arbitrary conclusions.
- Nowadays, Political parties sometimes force the law-making authorities to make the law of their choices.
- The principle of the power of separation is violated by excessive delegation. The powers in the delegation are neither systematic nor consistent. This can result in illogical and complex laws.
- The discretion level of the executive is to the fullest if there is unlimited delegation, which can result in discriminatory and adverse outcomes because the executive can use the responsibilities and function in whichever way they want.

- When delegation happens, the rights of law-making power from the newly elected members are taken away, and the power goes into the hands of unelected members. Thus, the legislation results in undemocratic procedures.

## CONCLUSION

The concept of delegated legislation is best known in administrative law. However, we can see that there have been rare cases of excessive delegation in India during the last forty years. This topic is a very debatable issue because of its various applications. Unlimited or excessive delegation occurs when the powers are complete without any restrictions conferred to the executive by the legislatures. Courts apply this doctrine when the validity of any statute has been assailed due to delegated legislation and when it comes out that delegation is beyond the limit and excessive, the court can adjudge that as *ultra vires*. The delegation should have within the scope and too broad power not to be conferred on the executive. If the authority exceeds its power and executives start making laws, it will be known as excessive delegation because the legislature must make the laws.

The policy implementation is the duty of the executive. This research paper also discusses the significant Indian decisions regarding excessive delegation. The doctrine of separation prevails in India, and by its virtue, we can say that excessive delegation is unfavourable and harmful. The power of delegation must not be "unconfined and vagrant" and should not "run riot". There has been a need for delegated legislation and, on the other hand, criticism also. However, we can conclude that delegation to some extent, is reasonable and unavoidable and there is a need also, but such delegation should not be excessive and unlimited.

On the one hand, the excessiveness of power residing is more of a deficiency in the system and an invitation to danger. The Indian Constitution permits delegated legislation, and it subsists in the form of by-laws, rules, regulations etc. Our Indian mechanism of law building prefers delegation, and to avoid its arbitrary use, and for its smooth function in the administration process, the constitutional validity of such laws is considered. The Constitution works as a safeguard and protection from the unlimited and biased delegation.

In emergency times, The ground of excessive delegation is of much use during the emergency times because the grounds for attacking the validity of the Act or law because Article 14 gives right to move to the court for enforcement of fundamental rights got suspended. Fundamental Rights are taken away in an emergency by the President. Article 19 and Article 14 automatically get suspended according to Article 359(1) and Article 358 of the Indian

Constitution, and the excessive delegation works as a wall against government authoritarianism.

The central enigma is why is excessive delegation ultra vires? Several grounds to be looked at and considered as the description of law at hand, the applicability of the law along with the preamble is vital, the scheme of such law, and the background of the law. The nature itself of the excessive delegation held it as illicit. The delegation should not be offending any provisions of the Indian Constitution. It should remain discrimination-free. To ensure the constitutional validity of such a statute, Article 14 and Article 19 plays the most significant role. Those laws are to be declared invalid by their character itself, which are prejudiced against anyone without authorisation. If we see delegation globally, we can say that it is permissible in some countries and others, it is circumscribed. If the country's Constitution remains silent, then the court is the ultimate authority to decide its validity that to what extent it is permissible. In the USA, stringent rules are applied so that power delegated power has remained in safe hands and cannot be misused.

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