INTRODUCTION

This article is an attempt to understand the evolution and development of delegation, associated statues and norms in India, in some detail. It aims to answer these questions by referring to some landmark judgments and existing parliamentary procedures. It also aims to critique the existing system of delegation in India, analyze the judiciary and parliament’s role in defining and re-defining the various norms that have been set for allowing delegation of powers and responsibilities in India. This article aims to discuss these major research questions:

1- What do you mean by delegation?
2- What can be delegated and how?
3- What kind of supervision can the parliament undertake?

DEFINITION OF DELEGATION

The current trend, in almost every democratic country is, to promote the need to “delegate” or transfer some functions of the legislature to the executive, i.e. essentially make the executive promulgate the legislature’s tasks. This is meant to ensure that the legislature is not overburdened in any way and some set of tasks can be decentralized.

Thus, according to Salmond, delegation refers to the idea that some powers are exercised by authorities other than sovereign power and these powers can only be exercised upon approval from other superior authority. In essence, no delegation of powers can happen without approval from a superior authority. Furthermore, there can be sub-delegation of these powers, by the authority that has acquired these powers by delegation in the first place. This concept is known as “sub-delegation of powers”. There are broadly three types of sub-delegation that are allowed- Sub delegation of legislative powers, Sub delegation of judicial powers and Sub delegation of administrative powers.

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1 MP JAIN AND SN JAIN, PRINCIPLES OF ADMINISTRATIVE LAW, 42 (Justice GP Singh and Justice Alok Aradh, 6th edn., 2013).
2 Id., 1.
3 CK Takwani, Lectures on Administrative Law (5th, Eastern Book Company, Lucknow 2012) 1
WHAT CAN BE DELEGATED AND HOW

DEVELOPMENT OF DELEGATION POST INDEPENDENCE

Essentially, delegation was historically recorded as an English legacy. Whether there could be any continuance of the same, was taken up in the case of In Re Delhi laws case, as the seven judge bench was asked by the President of India, under the powers allotted to him under Article 143 of the constitution, if delegated powers could be considered valid in any form.\(^4\)

The Supreme Court, after a lengthy deliberation, came to the following set of conclusions:\(^5\)

1. The Parliament could not be allowed to absolve itself of its responsibility entirely by creating a parallel authority.
2. The Indian parliament was not an agent but an authority in itself. Thus, the concept of delegate’s non potest delegare, which means that a power that has been delegated cannot be sub-delegated any further, was propounded.
3. The Court suggested that the parliament could only delegate its ancillary functions.
4. The court also concluded that essential functions- ones which involved laying down of policies and their implementation as binding rule of law could not be delegated.

However, it was also seen that the degree of delegation of powers was debated. While, one school of thought was that the supreme authority should be allowed powers to withdraw the powers so delegated, which will also ensure that the authority has not absolved itself of its rightful powers. The other school of thought suggested that the supreme authority could set up “standards” for implementation of its policies that the delegatee must compulsorily adhere to while taking decisions.\(^6\)

It is to be noted, that while landmark, the ratio in this judgment was altered by later decisions. As seen in DS Garewal V State of Punjab, the idea of powers of delegation being an essential element of the legislature’s powers and the legislature having inherent powers to delegate its functions was deemed appropriate.\(^7\)


\(^5\)Id., A.

\(^6\)Id., 5.

\(^7\)Id., 6.
ABDICATION TEST AND STANDARD TEST

The biggest impact of the *In Re Delhi Laws* case, can be seen in *Rayon Silk Manufacturing Co. V. Assistant Commissioner of Income Tax*. This case saw the development of two sets of tests to determine validity of delegated laws. The first being standard test, as indicated in the *In Re Delhi laws* case, allowed the legislature to set up “standards” of implementation of policy, which could be withdrawn by the legislature in cases of non-adherence or violation. This was propounded by Justice Khanna. While, Justice Matthews, on the other hand, came up with the “abdication test”. This allowed delegated legislations to be valid, till and until the powers to repeal the parent act or the act confirming such powers lay with the legislature. Majority rejected this idea put forth by Justice Matthews\(^8\).

POLICY AND GUIDELINE TEST

This test was accepted in *Registrar Of Co-Operative V K. Kunhambu*. The bench concluded that legislature inherited the powers to delegate. But, too much of delegation could lead to potential despotism and thus the legislature must exercise some caution and restraint. The legislature via express provisions, preamble or other statutory means empower delegation of powers. These means may also be seen as guidance for the delegatee\(^9\). Delegation was encouraged with regards to welfare legislations and directive principles of state policy. The court accepted the “policy” and guidelines” theory that had been promulgated in the earlier case of *M. K. Paplah & Sons vs The Excise Commissioner*\(^10\).

ROLE OF EXPRESS PROVISIONS

In the case of *Ganpati Singhji v. State of Ajmer*\(^11\), the role of express provisions while deciding the level of delegation was discussed. In this very case, a Chief Commissioner had chosen to further sub-delegate his powers, without there being corresponding provisions in the parent act. It was held that any such sub delegation without there being corresponding provisions in the parent act could be termed as *ultra vires*.

\(^{8}\) *Id.*, 7.
\(^{9}\) *Id.*, 8.
\(^{10}\) *Id.*, 9.
\(^{11}\) 1955 AIR 188, 1955 SCR (1)1065
There could be several other types of restrictions on delegation via express provisions-

1. Rank specific delegation- As stated in *Ram Chandra Vyas vs State Of Uttar Pradesh And Anr* “if the statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited.”\(^{12}\). This meant that officials of or above a certain rank, as specified in the parent statute, could be allowed to undertake the powers allotted in the delegation. If not adhered to, this was an express violation of the express norms of delegation.

2. Conditional delegation- Sometimes, the parent act, expressly mentions the need for certain conditions or situations to arise or to be met, before the power of delegation can be so exercised. An instance of this can be seen in *Radhakrishan v. State*\(^{13}\). The parent statute in this case required the sub-delegate to seek the requisite approval from the original delegate to legitimately undertake the act of delegation, without which the sub-delegate’s action was held to be *ultra vires*.

**CONSISTENCY OF DELEGATION**

In the case of *Ashok Lanka & Others v/s Rishi Dixit & Other*, the court declared \(^{14}\)“We are not oblivious of the fact that framing of rules is not an executive act; there cannot be any doubt whatsoever that such subordinate legislation must be framed strictly in consonance with the legislative intent as reflected in the rule making power”. Thus, in essence, the delegated legislation has to find and maintain a balance that does not hurt the intent behind the primary legislation and the parent act. This is essential to ensure legitimacy of the delegated legislation.

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\(^{12}\) AIR 1969 All 480

\(^{13}\) AIR 1952 Nag 387

\(^{14}\) (2005) 5 SCC 598.
PARLIAMENTARY SUPERVISION

Parliament is adequately equipped to oversee delegated matters via\(^\text{15}\)-

A. Debate on the Act

When an act is being passed in either houses of the parliament, The Members of Parliament (MPs), could debate about the statute in question. Furthermore, they could be aided by the relevant departmental committee that had been constituted on the same. This is a highly efficient method of debating the extent and efficacy of delegation in different statutes. As seen in the case of Companies Bill, 2009, which subsequently became Companies Act, 2013, the Standing Committee on Finance, felt that there had been excessive delegation in some provisions, which was subsequently corrected.

B. Statutory Motion

MPs could seek a statutory motion, after the tabling of a rule, to annul or modify rules. There is usually a period of 30 sitting days, provided in the parent act, wherein, the rules of an act will be tabled to MPs to bring in amendments as necessary. In case of modification or annulment of the said rule, these changes will be deemed to be effective and accordingly will have prospective effect, with past actions not being affected.

This helps in re-assuring parliamentarians that there will not be any mis-use of powers. For instance, in the 2012 budget session the Information Technology (Intermediaries Guidelines) Rules, 2011, was threatened with annulment. While, efforts were being made to introduce modifications in the Airports Authority of India (Major Airports) Development Fees Rules, 2011. However, in the end, they were passed unchanged after a slew of assurances by the concerned ministers.

C. Question Hour

This is a vastly under used method of parliament scrutiny. The Question hour allows parliamentarians to enquire about statutes. However, statistically, it is not frequently used. An

\(^{15}\) prsindia.org, Parliamentary Scrutiny of Executive Rule Making 
instance being that between December 2011 and August 2012, wherein there were only 2 queries, both associated with the Civil Liability for Nuclear Damage Rules, 2011.

**D. Committee on Subordinate Legislation**

Both houses of the Parliament have a Standing Committee on Subordinate Legislation. They are meant to ensure proper exercise of delegatory powers by the parliament. Their powers include ensuring (a) if the rules that have been drafted are in harmony with the Constitution and the Act under which they have been drafted; (b) There was no abnormal delay in publishment of the rules (c) These rules have not been retroactively applied (d) They do not hamper the powers of the judiciary (e) They are to be funded via the Consolidated Fund of India.

The committee will submit a report to the government, citing if the aforementioned rules have been adhered to and seek the government’s response. Based on the government’s response, the committee will submit an Action taken report, accessing the implementation of its recommendations.

However, the Standing committee on Subordinate Legislation, cannot look into all such delegatory actions, for instance, routine governmental actions like land acquisition, change in customs tariffs etc.

**OBSERVATIONS BY THE STANDING COMMITTEE**

In 2011, Lok Sabha’s Standing committee on subordinate legislation, issued a report, which observed\(^\text{16}\).

1. Of the 4731 subordinate legislations that were tabled in the Lok Sabha, 40 rules and regulations, i.e., less than one per cent, were looked into by the Lok Sabha Committee on Subordinate Legislation.

2. The government indulged in inordinate delays, while trying to frame and publish rules.

\(^\text{16}\) *Id.*, 15.
**PREVIOUS RECOMMENDATIONS BY THE STANDING COMMITTEE**

Lok Sabha’s standing committee on subordinated legislation, had previously suggested\(^{17}\) -

(a) Rules were not to exceed the scope of the Act  
(b) Rules were to be framed within a maximum period of six months from the date of the Act coming into force  
(c) Rules were not to have a retrospective effect, unless the Act expressly provided  
(d) Rules were to be laid in Parliament within 15 days of their publication in the Gazette. If there was a delay, then reasons for the delay were to be explained  
(e) The power of judicial review were not be curtailed by rules.

**MEASURES SUGGESTED BY RAJYA SABHA-**

Rajya Sabha, came up with these measures\(^{18}\) -

1- All notifications were to be compulsorily published in the official gazette.  
2- If a state was under President’s rule, statutory orders and rules were to be laid.  
3- Subordinate legislations were to be framed within a set time period of six months.  
4- All existing and future legislations, should be tabled on the house for 30 sitting days with a right to modification for one additional session post the period of 30 sitting days.  
5- A time line was to be set for acting on the committee’s recommendations.  
6- Permission should be sought from the committee whenever there were delays in framing or laying of rules.  
7- All orders that were framed under Constitution or any statute were to be compulsorily laid.  
8- Subordinate legislation was to be uploaded on the website of ministries.  
9- Appended delay statement was to be issued when there were delays while the law was being framed or laid.  
10- Proper language and format were to be adhered to while making the legislation.

\(^{17}\) *Id.*, 16.  
\(^{18}\) asgp.co, INTER PARLIAMENTARY UNION, Association of Secretaries General of Parliaments, **ANNEXURE to COMMUNICATION from MR. Shumsher K. SHERIFF Secretary General, Rajya Sabha (Council of States), Parliament of India on “Parliamentary Control over Subordinate Legislation in India”, available at http://www.asgp.co/sites/default/files/Annexure.pdf (Last visited on 8th February, 2016).
CHALLENGES TO DELEGATION

These problems exist that dither proper delegation:\n1- Government does not furnish proper facts to the sub-ordinate committee.
2- The information provided could be incomplete or ambiguous.
3- There are technicalities and complexities that arise when subordinate legislations are scrutinized.
4- There is no central system available to look into inconsistencies in delegated legislations and suggest remedies accordingly.
5- There are inordinate delays while delegated legislation are being framed or laid.

CONCLUSION

Thus, summing up, the judiciary and the parliament’s role in handling delegatory authority could be termed to be a symbiotic relation. Delegation is a vital tool towards ensuring better administration. Complete centralization or decentralization of powers is highly problematic. Thus, there is a need to regulate the level of delegation that can be allowed. It is the judiciary that has stepped in to regulate, whenever the parliament’s handling of delegation has been found to be inept or insufficient. The various norms- ancillary function, guidelines, policy test etc, have been suggested only to help the parliament in carrying out its mandate better.

The Parliament, on the other hand, is also adequately equipped. While, motions and debates have been fairly used to supervise delegated legislations, there is an urgent need to utilise question hour and standing committees even more. It is to be noted that standing committees suffer from many infirmities. They are not provided with complete details; rules are laid and framed after inordinate delays. These issues have led to problems while administering delegation. Thus, the need of the hour is to enforce the recommendations by these standing committees on a priority basis. There is an urgent need to bring in these changes to ensure greater efficiency in overall administrative set up.

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\(^{19}\) Id., 18.