

# A COMPARATIVE STUDY ON PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION

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## Chapter – 1

### Introduction

Administrative law is the resulting product of the increasing socio economic functions of the state and the increased power of government. In India, especially on 20<sup>th</sup> century, administrative law came as a separate branch of legal discipline. In today's sphere, the law focussed deeply on every aspect of individual's life. Administrative law is that branch of law which is concerned with the composition of powers, duties, rights and liabilities of the various organs of government. Today as the nation is growing and becoming very complex in every sphere of it, there is an urgent need of administrative law in the developed society which can bring out certainty, regularity and may pose a check on the misuse of powers vested in the administration.

Administrative law can be traced to the well organized administration under Mauryas and Guptas followed by the administrative system of Mughals, to the administration under the east India Company but this can be made different from the modern society in which there are many functions of state. In fact, the modern state is regarded as the custodian of social welfare and there is in every single activity performed by the modern society to have direct or indirect interference by state. Along with the duties and powers, the state is put to many other responsibilities.

According to the theory of delegated legislation, the function of the executive is to administer the law enacted by the legislature and in the ideal state; these legislative functions should be exercised by the legislators in a proper and efficient manner. But in the present scenario, the executive performs many legislative and judicial functions also. Therefore, it has been rightly said that delegated legislation is so multitudinous to perform so many functions together.

The parliamentary control over delegated legislation should be a living continuity as a constitutional remedy. The fact that the delegation of legislative power has become too broad, by this fact, the judicial control has struck, giving way to desirability and necessity of parliamentary control. The parliamentary control in India is not very effective and needs to be strengthened as that in UK. In UK, the laying off procedure is followed effectively because there all administrative rule making is subjected to the control of parliament through select committee on statutory instrument. In India, there is no statutory provision regarding 'laying' of delegated legislation which should be taken into consideration. The working of scrutiny committees is though not very effective yet they have proved to be an effective body in examining and improving the legislative control over delegated legislation.

The underlying object of the parliamentary control is to keep watch on the activities of the rule making authorities and also to provide an opportunity to criticize them if there is an abuse of power on their part. In India, the parliamentary control which is exercised is not effective which it ought to be.

The most significant development which has taken place in the present century is the growth of the legislature over executive. The development of legislative powers of the administrative authorities in the form of delegated legislation occupies a very considerable position in the study of administrative law. Delegated legislation is described as an instrument of legislative nature made by an authority in exercise of power delegated or conferred by the legislature.

## Chapter – 2

### Delegated legislation

#### 2.1 Definition

It is very difficult to give any precise definition of the term 'delegated legislation' and it becomes equally difficult to explain the scope and nature of such legislation.

Mukherjea, J.<sup>1</sup> rightly says:

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<sup>1</sup> Quoted by Chakraverti, Administrative law (1970) Pg no. 166

“Delegated legislation is an expression which covers a multitude of confusion. It is an excuse for the legislators, a shield for the administrations and a provocation to the constitutional jurists.”

Salmond states, “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>2</sup>

A simple meaning of the expression ‘delegated legislation’ may be given as under:

“When the function of legislation is entrusted to organs other than the legislature by the legislature itself, the legislation made by such organs is called delegated legislation.”

## 2.2 Reasons for growth of delegated legislation

There is no doubt that it is the twentieth century which has witnessed rapid growth of delegated legislation in almost all legal systems of the world. But that does not mean that it is the new phenomenon or there was no delegation of legislative power by legislature to executive in the past. There are many factors which are responsible for the rapid growth of delegated legislation in every modern democratic state. The traditional theory of ‘laissez faire’ has been given up by every state and the old ‘police state’ has now become a ‘welfare state’. Because of these changes, the role of the delegated legislation has become essential and inevitable.

The committee on ministers’ powers laid down certain factors which are responsible for the growth of delegated legislation which are<sup>3</sup>:

### 1. Pressure upon parliamentary time

As the nature of the state activities are expanding, the bulk of legislations is so vast that it is not possible for the legislature to devote sufficient time as required to discuss all the matters in growth. Therefore, the legislature formulated the general policy and empowers the executive to fill in the details. Thus ‘giving flesh and blood to the skeleton so that it may live’<sup>4</sup> by issuing necessary rules, regulations, bye laws etc.

### 2. Technicality

Sometimes, the subject matter on which the legislation is required to be made is so technical in nature that the legislator, being a common man is not able to legislate upon it and there comes to the rescue the assistance of the experts. Therefore, the legislative powers may be

<sup>2</sup> Salmond, Jurisprudence, Pg no. 116 (12<sup>th</sup> edition)

<sup>3</sup> Delhi laws act, 1912, in Re, AIR 1951 SC 332

<sup>4</sup> Garner, Administrative law (1985) Pg no. 49

conferred on the experts to deal with the technical problems e.g. gas, atomic energy, drugs, electricity etc.

### 3. Flexibility

At the time of passing any legislative enactment, it becomes impossible to see any contingencies that may arise. Therefore in that case a legislative amendment is a slow and cumbersome process but by the device of delegated legislation, the executive can meet the situation expeditiously e.g. policy regulations, foreign exchange etc. for this purpose, in many statutes, a 'removal of difficulty' clause is found empowering the administration to overcome difficulties by exercising delegate power.

### 4. Emergency

In time of emergency, quick action is required to be taken. Though the legislative process is overburdened with lot many things and with the growing changes, it is not possible for the legislature to provide for the urgent solution to meet the situation. The only thing that comes to the rescue is the delegated legislation. Therefore, in the case of war, external aggression, 'bandh' etc. the executive is vested with special wide powers to deal with this situation.

## 2.3 Forms of delegated legislation

Delegated legislation may take several forms that can be positive or negative, usual or unusual. Broadly stating, delegated legislation may be classified on following principles:<sup>5</sup>

#### 1. Title based classification

Delegated legislation may be in the forms of rules, regulations, bye laws, notification, orders, ordinances etc.

#### 2. Discretion based classification

Discretion may be conferred on the executive to bring the act into operation on fulfilment of certain conditions. Such legislation is called 'conditional' legislation.

#### 3. Purpose based classification

A classification may be based on the nature and extent of the power and the purposes for which the power is to be exercised. Thus, the executive can be empowered to fix the appointed day for the act to come into force, to extend the provisions of the act and to suspend or to modify the provisions of the act.

#### 4. Authority based classification

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<sup>5</sup> Wade & Forsyth, Administrative law (2005) Pg no. 867-69 ; Massey, Administrative law (2007) Pg no. 74-82

A statute may also empower the executive to delegate further powers conferred on it to its subordinate authority. This is known as 'sub delegation'.

## 2.4 Delegated legislation in England

In England, parliament is sovereign and it is the parliament which can enact laws. But as observed by C.K Allen: "nothing is more striking in the legal and social history of the nineteenth century in England than the development of subordinate legislation".<sup>6</sup>

The reasons for the growth of delegated legislations as stated earlier i.e. pressure on the parliamentarians, technicalities, complexity, flexibilities are equally responsible for the development of delegated legislation in England. Parliament had no time to deal with these various matters in details. Therefore, it compelled parliament to delegate its 'legislative office' to government.

During two world wars, there was tremendous increase in delegated legislation. In various fields massive inroads were made in comparatively personal matters of citizens e.g. education, employment, pension, health, social planning etc. in twentieth century, parliament was obliged to delegate extensive law making power in favour of government. Ultimately, there was lot of hue and cry and matter went to committee on ministers' power in 1929. The committee submitted its report in 1932. It was observed that, "we doubt, whether parliament itself has fully realised how extensive the practice of delegated legislation has become, or the extent to which it has surrendered its own functions in the process, or how easily the practice might be abused".<sup>7</sup>

The committee rightly stated:

"The system of delegated legislation is both legitimately permissible and constitutionally desirable for certain purposes, within certain limits, and under certain safeguards".<sup>8</sup>

## 2.5 Delegated legislation in U.S.A

Under the constitution of United States of America, the delegated legislation is not accepted in theory because of two doctrines:

### (a) Separation of powers

This doctrine is recognised by the constitution of U.S.A. Article I expressly confer on the congress all legislative powers. Article II states that the executive power shall be vested in a president and under article III; the judiciary has power to interpret the constitution and

<sup>6</sup> Law in the making (1993) Pg no. 531

<sup>7</sup> Report of committee on ministers' power (1932) Pg no. 62

<sup>8</sup> Report of committee on ministers' power (1932) Pg no. 51



declare any statute unconstitutional if it does not conform to the provisions of the constitution.

In the case of *field v. Clarke*<sup>9</sup>, the US Supreme court observed:

“That congress cannot delegate legislative power to the president is a principle universally recognised as vital to the integrity and maintenance of the system of government ordained by the constitution.”

(a) Delegates non potest delegare (a delegate cannot further delegate)

According to this doctrine, a delegate cannot further delegate his powers. As the congress gets power from people, therefore it cannot delegate its legislative power to the executive or to any other agency in this aspect. Hence, it is a cardinal principle of representative government, that the legislature cannot delegate the power to make laws to anybody or authority.<sup>10</sup>

Though, in practice, it was not possible for the congress to delegate its legislative power to the executive. Governmental functions were increased and it was impossible for the congress to enact all the statutes with all particulars. In this case, Supreme Court could not shut its eyes and tries to create a balance between these conflicting issues.

In *Panama refining co. v. Ryan*<sup>11</sup>, popularly known as hot oil case, under Section 9(c) of the National Industrial Recovery Act (NIRA), 1933, the president was authorised by the congress to prohibit transportation of oil in interstate commerce in excess of the quota fixed by the state concerned. The policy of the act was to ‘encourage national industrial recovery’ and ‘to foster fair competition’. The supreme court by majority held that the delegation was invalid. According to the court the congress has not declared any legislative policy or standard.

In case of *National Broadcasting Co. v. U.S.*<sup>12</sup>, vast powers were conferred upon the federal communication committee (FCC) to license broadcasting stations under the Communications Act, 1934. The criterion was ‘public interest, convenience of necessity’. Though it was vague or ambiguous, the Supreme Court held it to be a valid standard.

## 2.6 Delegated Legislation India

The delegated legislation in India can be broadly discussed in two stages which are:

(a) Pre constitution period

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<sup>9</sup> (1892) 143 US 649

<sup>10</sup> *Pennsylvania case*, (1873) 71 Locke’s appeal 491(497)

<sup>11</sup> (1934) 293 US 388

<sup>12</sup> (1943) 319 US 190

In case of *R. v. Burrah*<sup>13</sup>, this is considered to be the leading authority on the subject, by the Act of 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 act applicable to Khasi, Jaintia and Naga hills in the Garro hills. Later, 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 challenged the said notification. The High Court of Calcutta<sup>14</sup> upheld the contentions of appellants and held that section 9 of the act as *ultra vires*.

On appeal the Privy Council reversed the decision of Calcutta High Court and held that Indian legislature was not a delegate of the imperial parliament and it had plenary powers of legislation as those of imperial parliament itself. Here in this case, the governor general did not create a new legislative power but only extend the provisions of the act enacted but the competent legislature.

(b) Post constitutional period

*Delhi laws Act, 1912 In Re*<sup>15</sup> was the leading case decided by the Supreme Court on the delegated legislation after the constitution came into force. A reference was made to the Supreme Court by the president of India under Article 143 of the constitution in the following circumstances:

The central government was authorised by section 2 of the 'part C' State (laws) Act, 1950 to extend to any 'part C' state with such modifications and restrictions, 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' states.

The Supreme Court with a seven judge's bench who heard the reference gave their separate opinions 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 repeal a law already in force in the 'part C' state was bad; and
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.

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<sup>13</sup> (1878) 3 AC 889

<sup>14</sup> *Empress v. Burrah & Book Singh*, ILR 3 Cal 64

<sup>15</sup> AIR 1951 SC 332

After the Delhi laws Act, 1912 in *Re, Hamdard Dawakhana v. Union of India*<sup>16</sup> was probably the first case in which Central act was held ultra vires on the ground of excessive delegation. The Drugs and Magic remedies (Objectionable advertisements) Act, 1954 was enacted by the parliament to control advertisement of certain drugs. Section 3 laid down a list of diseases for which advertisement was prohibited and authorised the central government to include any other disease in the list. The Supreme Court held section 3 invalid as no criteria, principle was laid down and the power delegated was unguided and uncontrolled.

In case of *Indian express newspaper v. Union of India*<sup>17</sup>, the apex court observed that subordinate legislation does not enjoy the same degree of immunity as substantive legislation enjoys. 'Unreasonableness' is one of the grounds of judicial review available in respect of delegated legislation. If the state intends to impose a condition, it should be reasonable one. If it is impossible to be performed or is otherwise unreasonable, it cannot be held valid.

### Chapter – 3

#### Parliamentary control over delegated legislation

It is open to parliament to confer upon anyone it likes the powers which it has but of the parliament delegates legislative powers to any other authority i.e. executive, it must ensure that those powers are properly exercised by the administration and there is no misuse of such powers by the executive.

In *Avinder Singh v. State of Punjab*<sup>18</sup>, Krishna Iyer J. rightly stated that parliamentary control over delegated legislation should be a living continuity as a constitutional necessity.

As the control of the legislature over delegated legislation, Jain and Jain<sup>19</sup> state:

“In a parliamentary democracy, it is the function of the legislature to legislate. If it seeks to delegate its legislative powers to the executive because of some reasons, it is not only the right of the legislature, but also its obligation, as principal, to see how its agent i.e. the executive carries out the agency entrusted to it. Since it is the legislature which grants legislative power

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<sup>16</sup> AIR 1960 SC 554

<sup>17</sup> AIR 1986 SC 515

<sup>18</sup> AIR 1979 SC 321

<sup>19</sup> Principles of Administrative law (2007) 175



to the administration, it is primarily its responsibility to ensure the proper exercise of delegated legislative power, to supervise and control the actual exercise of this power and ensure against the danger of its objectionable, abusive and unwarranted use by the administration.”

### **3.1 Object of parliamentary control**

The underlying object of parliamentary control is to keep watch over the rule making authorities and if there is an excess of power exercise or there is abuse of power, it provides an opportunity to the parliament to criticise them<sup>20</sup>. This mechanism is described as “legislative veto”.

It becomes very important for the legislature to keep a close watch on the functions and power of executive, since the risk of power by the executive is inherent in the process of delegated legislation. The fact that judicial control over delegated legislation is not sufficient enough to keep administrative agencies within the boundaries of delegation and there is an urgent need and necessity which parliament may be able to exercise efficiently.

The parliament provides a number of safeguards to secure the proper exercise of the power by the delegate. The control is done in two ways:

1. Control at the time of passing of parent act
2. Control when legislature scrutinizes the delegated legislated.

### **3.2 Forms of parliamentary control over delegated legislation**

In India, parliamentary control of administrative rule making is implicit as a normal constitutional function because the executive is responsible to the parliament. There are three types of parliamentary control exercised over delegated legislation which are:

1. Direct general control

The first form of parliamentary control is exercised at the time of passing the enabling act. The proceedings which are initiated in the parliament are in the nature of general and direct control. In India, various methods and mechanisms are used such as debates on the delegating bill which includes aspects such as necessity, type of delegation and the

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<sup>20</sup> Lohia Machines Limited v. Union of India AIR 1985 SC 421

authority to whom power is delegated. Further, any member may ask questions on any aspect of delegation of legislative powers and if dissatisfied can give notice for discussion under Rule 59 of the procedure and conduct of business in Lok Sabha rules. Also, any member may move a resolution on motion, if the matter regarding delegation of power is urgent and immediate and the reply of the government is unsatisfactory<sup>21</sup>.

However in India, these methods are rarely used. This is purely because of lack of practice. Scholars however believed that this method should be used extensively and effectively so as to nip the vices of delegation in the bud<sup>22</sup>.

## 2. Direct special control

This control mechanism is exercised through the techniques of “laying” on the table of the house rules and regulations framed by the administrative authority. This technique of laying was made in the Reorganization Act of 1939 to 1969, which authorize the president to reorganize the executive government by administrative rule making. In comparison to England, this technique is extensively and effectively used because the entire administrative rule making is subject to the supervision of parliament under the statutory instrument act, 1946.

By Section 4 of the Statutory Instruments Act, 1946, where subordinate legislation is required to be laid before parliament after being made, a copy shall be laid before each house before the legislation comes into operation<sup>23</sup>. However, if it is essential that it should come into operation before the copies are laid, it can be done so but the copies should be laid before the Lord Chancellor and the speaker of the House of Commons explaining why the copies were not laid beforehand. Under Section 6 of Statutory Instrument Act, 1946, the draft of any statutory instrument should be laid before the parliament<sup>24</sup>.

### Laying on table

<sup>21</sup> <http://www.lawteacher.net/free-law-essay/constituional-law/parliamentary-control-of-administrative-rule-making-constituional-law-essay>, last accessed on 10 April 2018

<sup>22</sup> <http://www.linkedin.com/pulse/effectivenss-parliamentary-control-over-delegated-legislation-bharat-kumar-singh> accessed on 10 April 2018

<sup>23</sup> Section 4 of Statutory Instruments Act, 1946

<sup>24</sup> Section 6 of Statutory Instrument Act, 1946

In almost all countries, the procedure of 'laying on the table' of the legislature is followed. It serves two purposes: firstly, it helps the legislature in informing as to what all rules have been made by the executive authorities in exercise of delegated legislation. Secondly, it provides the forum to the legislators to question or challenge the rules made or proposed to be made. Through this "safety valve" the legislature exercises supervision, check and control over executive rule making power. The object of this Laying techniques bring legislature into close and constant contact with the administration.

### Types of laying

The select committee on delegated legislation summarised the laying procedure under following heads<sup>25</sup>:

1. Laying without further provision for control

In this type of laying the rules and regulations come into effect as soon as they are laid. It is simply to inform the house about the rules and regulations.

2. Laying with immediate effect but subject to annulment

Here the rules and regulations come into operation as soon as they are laid before the parliament. However, they cease to operate when disapproved by the parliament.

3. Laying subject to negative resolution

In this process the rule come into effect as soon as they are laid before the parliament, but shall cease to have effect if annulled by a resolution of the house.

4. Laying subject to affirmative resolution

This technique takes two forms: firstly, that the rules shall have no effect or force unless approved by a resolution of each house of parliament. Secondly, that the rules shall cease to have effect unless approved by an affirmative resolution.

5. Laying in draft subject to negative resolution

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<sup>25</sup> Delegated legislation in India, ILI 1964, Pg no. 166-169

Such a provision provides that when any act contains provision for this type of laying the draft rules be placed on the table of the house and shall come into force after forty days from the date of laying unless disapproved before that period.

#### 6. Laying in draft subject to affirmative resolution

In this type of laying the instrument or draft rules shall have no effect unless approved by the house. In India, there is no statutory provision requiring 'laying of' of all delegated legislation. In the absence of any general law in India regulating laying procedure, the scrutiny committee made the following suggestions:

- (a) All acts of parliament should uniformly require that rules to be laid on the table of the house 'as soon as possible'
- (b) The laying period should uniformly be thirty days from the date of final publication of rules and
- (c) The rule will be subject to such modifications as the house may like to make<sup>26</sup>.

#### Legal consequences of non compliance with the laying provisions

In India, the consequences of non compliance with the laying provisions depend on whether the provisions in the enabling act are mandatory or directory. Upon that basis consequences are drawn out. However in England, the provisions of Section 4(2) of the Statutory Instrument Act, 1946 makes the laying provision mandatory for the validation of statutory instrument.

In *Narendra Kumar v. Union of India*<sup>27</sup>, the Supreme Court held that the provisions of section 3(5) of the Essential commodities Act, 1955 which provided that the rules framed under the act must be laid before both houses of parliament, are mandatory and therefore clause 4 of the non ferrous control order, 1958 has no effect unless laid before parliament.

Further in *Jan Mohammad v. State of Gujarat*<sup>28</sup>, the court deviated from its previous judgement. Section 26(5) of the Bombay agricultural produce markets Act, 1939 contained a laying provision but the rules framed under the act could not be laid before the provincial legislature in its first session as there was then no functioning legislature because of World War II

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<sup>26</sup> C.K Takwani, Lectures on Administrative law, Eastern Book Company, 2010

<sup>27</sup> AIR 1960 SC 430

<sup>28</sup> AIR 1966 SC 385

emergency. The rules were placed during the second session. Court held that the rules remained valid because the legislature did not provide that the non laying at its first session would make rules invalid.

Even if the requirement of laying is only directory and not mandatory, the rules framed by the administrative authority without conforming to the requirement of laying would not be permissible if the mode of rule making has been violated.

### 3. Indirect control

This form of indirect control is exercised by the parliament through its committees. Taking into consideration to strengthen the parliamentary control over delegated legislation, scrutiny committees were established<sup>29</sup>. In India, there are standing committees of parliament to scrutinise the delegated legislation. In England, the select committee on statutory instruments was established by the House of Commons in 1944. In 1950, the law minister made a suggestion for the establishment of committee which is to be based on the select committee on statutory instrument of England, to examine the delegated legislation and bring to the notice to the house. Such a committee known as the committee on subordinate legislation of Lok Sabha was appointed on December 1, 1953<sup>30</sup>.

The main functions of the committee are to examine:

- (a) Whether the rules are in accordance with the general object of the act,
- (b) Whether there are any rules which can be more appropriately dealt with in the act,
- (c) Whether it is retrospective, etc.

There is also a similar committee of the Rajya Sabha which was constituted in 1964. It discharges the same functions as that of the Lok Sabha committee.

### Recommendations by the committee on subordinate legislation

The committee on subordinate legislation has made the following recommendations in order to streamline the process of delegated legislation in India which are as follows:

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<sup>29</sup> Treatise on Administrative law, 1996 Vol 1 Pg no. 136

<sup>30</sup> *ibid*



- (a) Power of judicial review should not be taken away or curtailed by rules.
- (b) A financial levy or tax should not be imposed by rules.
- (c) The language in which the rules are written should be simple and clear and should be ambiguous.
- (d) Legislative policy must be formulated by the legislature and details may be left to the executive to supply.
- (e) Discriminatory rules should not be framed by the administration.
- (f) Rules should not be made behind the rule making power conferred by the parent act.
- (g) There should not be inordinate delay in making of rules by the administration.

The working of the committee is on the whole satisfactory but the recommendation which are laid should be fairly followed otherwise it would lead in miscarriage of justice. The working of committee has proved to be fairly effective body in properly functioning, examining and effectively improving upon the delegated legislation in India.

Sir Cecil aptly remarks: “it is evidently a vigorous and independent body”<sup>31</sup>.

## **Chapter – 4**

### **Effectiveness of parliamentary control over delegated legislation**

#### **4.1 In India**

The legislative control over administration in parliamentary countries like India is not really effective that ought to be. The reasons for the effectiveness of such parliamentary control over delegated legislation can be studied as under<sup>32</sup>:

1. The parliament has neither time nor expertise to control the administration which has grown with the growth of nation in relation to volume and complexity.
2. The size of the parliament is too large and unmanageable to be effective.
3. The legislative leadership lies with the executive and it plays a significant role in formulating policies.

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<sup>31</sup> Parliamentary control of delegated legislation, Public law, 1956 Pg no. 200

<sup>32</sup> Laxmikanth, Public administration, Tata Mc-graw-hill education, Pg no. 212,  
[http://books.google.co.in/id=9JCVqJI4gC&dq=is+parliamentary+control+over+delegated+legislation+effective+ness&source=gbp\\_navlinks\\_s](http://books.google.co.in/id=9JCVqJI4gC&dq=is+parliamentary+control+over+delegated+legislation+effective+ness&source=gbp_navlinks_s) accessed on 13 April 2018

4. The growth of delegated legislation reduced the role of parliament in making detailed laws and increased the powers of bureaucracy.
5. The majority of the support is enjoyed by the executive in the parliament which reduces the possibility of effective criticism.
6. There is a lack of strong and steady opposition in the parliament which has also contributed to the ineffectiveness of legislative control over administration in India.
7. Parliamentary control over delegated legislation is general and mostly political in nature.
8. There is no automatic machinery for the effective scrutiny on behalf of the parliament as a whole and the complexities are so much that it becomes very difficult to rely on such scrutiny.

#### **4.2 In England**

In England the technique of laying is very extensively used because the administrative delegation is subject to the supervision of the parliament under the statutory instruments act. 1946. The most common form of provision provides that the delegation comes into immediate effect but is subject to annulment by an adverse resolution of either house.<sup>33</sup>

#### **4.3 In U.S.A**

In U.S.A., the techniques which are used in England are not extensively used nor there any special committee to scrutinise the same. Therefore, the control of the congress over delegated legislation is highly limited. There are certain recommendations made which are as follows<sup>34</sup>:

1. The limits which has been prescribed for the law making power which parliament intends to confer on a minister should always be expressly defined in clear language by the statute which confers it and when discretion is conferred, its limit should be defined with equal clearness.
2. The use of “Henry VIII Clause” conferring power on a minister to modify the provisions of acts of parliament should be abandoned in all and should not be permitted by parliament.

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<sup>33</sup> *ibid*

<sup>34</sup> Geoffrey Philip Wilson, Cases and materials on Constitutional and Administrative law, 1976 Pg no. 362

3. This clause should never be used except for the purpose of bringing an act into operation and should be subject to time limit of one year from the date of passing of act.
4. The use of the clauses which are designed to exclude the jurisdiction of the courts to enquire into the question of legality of a regulation or order should be abandoned in all cases.
5. Enabling act should contain express provision that the rules made there under would be subject to such modifications as the house may like to make.

## Chapter – 5

### Conclusion

After analysing the role of delegated legislation it can be said that delegated legislation has come to stay and the ground reality of its existence and continuance in the present legal system cannot be ignored. With the growing nation and more functions to be performed by the legislature and thereby delegating its functions to the executive is equally grave to be taken into consideration. It is therefore, of utmost importance that there should be proper control on exercise of legislative power by the executive. There are certain safeguards which are laid down to be followed which operate at two levels: firstly, when legislature is delegating such power in favour of executive; and secondly, there should be 'control mechanism' so that the power is not abused by the executive.

Further, it can be said that the safeguards which are laid down can be efficiently followed when the legislature lay down certain policy and perform essential legislative functions. If this is not done, then the consequences will be bad. But as stated, even where the delegation is legal and lawful, there should be 'control mechanism' to ensure proper exercise of power by the executive.

The parliamentary control over delegated legislation it can be said that it is considered as weak, undeveloped in the present legal system. Though recommendations are made which would have an impact in near future. The reasons which are there for its weakness is that of too much dependence on the court for every single matter, lack of legal skills with the parliamentarians etc.

It is important to note that in a country like America which has strict separation of powers thereby making parliamentary control a mere fiction in accordance to their constitution and incorporates in their constitution as per their mandate. In the similar way, India with a quasi federal structure and the separation of power failed to realise the significance and effectiveness of parliamentary control as a check on excessive delegation.

The parliamentary controls in England are most effectively utilized and have great functioning throughout the system because it is done in a non political atmosphere with the uniform law which scrutinizes it. Many recommendations which are made in the statutory instruments act, 1946 are being followed by India. Thus, India should learn from this and strive to move away from dreams of individual power to realizing the value of true democracy.

In India, if the parliamentary control of administration rule making is to be made a living continuity and be strengthened as the statutory instruments act, 1946, it is necessary that the role of committees of parliament and a separate law should be made regarding that. The control which is exercised i.e. direct general control and direct special control can be both effectively utilized both in their own field which can thus be helpful for avoiding future litigation and harassment to the people of our democracy. Further, the court on which the parliamentary proceedings are much dependent are caught in the web of lack of uniform laws as they decide cases differently on different principles. In that case, judiciary too has failed to give a clear direction.

Thus, the evils of the necessity called delegated legislation can be kept in check by the parliament, judiciary and by keeping to strict procedures. Amongst this, it is the parliament who should take active interest and control in order to reduce pressure on judiciary by not merely dependent on judiciary and keep alive the doctrine separation of power without clogging the wheels the government.