BLOGS

Delegated Legislation in Administrative Law

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Introduction

The Constitution of India grants the power to the legislature to make laws for the country. However, due to the multifarious activities of a welfare state, it becomes impractical for the legislature to perform all functions.

In such cases, delegated legislation comes into play. Delegated legislation is the process by which the executive is given the authority by the legislature to make laws in order to implement and administer the requirements of primary legislation.

While delegation of legislative powers is necessary, it is crucial to maintain control over the process to prevent abuse of power.

Meaning of Delegated Legislation

Delegated legislation, also known as subordinate or secondary legislation, refers to laws made by individuals or bodies authorized by the legislature to create detailed regulations under a specific Act of Parliament.

Delegated legislation derives its authority from an enabling Act passed by the legislature. The Act grants the responsible authority the power to create regulations within the scope defined by the primary legislation.

Need for Delegated Legislation

Delegated legislation plays a significant role in the overall process of lawmaking in India. In fact, there is often more delegated legislation each year than there are Acts of Parliament. This

highlights its importance and impact on the legal framework of the country.

- One of the primary reasons for the need for delegated legislation is the practicality of the legislative process. The legislature, consisting of elected representatives, is responsible for framing laws and policies. However, with the multifaceted activities of a welfare state and the increasing complexity of societal issues, it is not always feasible for the legislature to address every minute detail or issue through primary legislation. Delegated legislation provides a mechanism to delegate certain legislative functions to the executive, allowing for efficient implementation and administration of the laws.
- Delegated legislation also ensures that laws are made by individuals or bodies with specialized knowledge and expertise in specific areas. For instance, local authorities may be permitted to enact laws that take into account the unique needs and circumstances of their particular area, rather than imposing uniform laws that may not be suitable for every locality. This decentralization of lawmaking promotes localized decision-making and fosters more effective governance at the local level.
- Furthermore, in emergency situations, delegated legislation becomes particularly valuable. It allows for swift action and immediate response without the need to wait for specific Acts of Parliament to be passed. This flexibility is crucial in times of crisis when quick decisions and measures are required to address unforeseen circumstances.
- Another advantage of delegated legislation is its ability to fill gaps in existing laws or address situations that were not originally foreseen by the parliament. Societies and their needs evolve over time, and delegated legislation provides the necessary flexibility to adapt to these changes. It enables the government or authorized bodies to introduce new regulations, modify existing provisions, or repeal outdated laws to ensure that the legal framework remains relevant and responsive to the changing needs of society.

Position under the Constitution of India

The case of ***D. S. Gerewal v. State of Punjab***, provided important clarity on the constitutional provisions regarding delegated legislation in India. It emphasized that **Article 312** of the Constitution of India, which pertains to the authority of delegated legislation, does not curtail the inherent power of delegation vested in the legislature.

The Court highlighted that the wording of Article 312 should not be interpreted as negating the customary power of delegation that is typically vested in the legislature. This ruling reaffirmed the significance of delegated legislation as a legitimate and recognized process for the efficient functioning of the legislative system in India.

In the case of ***Raj Narain Singh v. Chairman Patna Administration Committee***, Section 3(1)(f) of the Bihar & Orissa Act granted the local administration the power to extend certain provisions of the **Bengal Municipality Act, 1884** to Patna, with modifications as deemed appropriate. The government specifically chose to apply Section 104 of the Act to the town of Patna after making modifications.

One crucial aspect of the Act was the provision that no municipality with the authority to levy taxes could be imposed on a locality without providing its residents an opportunity to be heard and to raise objections. However, the sections that allowed for such an opportunity to object were omitted from the notification. The court held that this action amounted to interfering with the intended policy of the Act.

The case of ***J.K. Industries Limited v. Union of India***, provided clarity on the boundaries of delegated legislation. The Supreme Court emphasized that while the Legislature has broad powers of delegation, it cannot delegate unrestricted or uncontrolled power. Delegated legislation is confined by legislative policies and guidelines.

The court's ruling in this case signifies that even though the Legislature can delegate its powers, it must do so within the framework of established legislative policies and guidelines. This ensures that the delegated authority does not have unfettered discretion and operates within the intended boundaries set by the legislature.

Criticism of Delegated Legislation

Potential overlap of functions: Delegated legislation allows authorities other than the legislature to make and amend laws, which can lead to confusion and inconsistency within the legal framework. The involvement of multiple bodies in lawmaking can result in overlapping jurisdictions and conflicting regulations.

Contrary to democratic spirit: Delegated legislation is often criticized for empowering unelected individuals or bodies to create and modify laws. This delegation of legislative powers bypasses the democratic process and raises concerns about the accountability and representation

of those making the laws.

Insufficient parliamentary scrutiny: Delegated legislation undergoes less scrutiny by the parliament compared to primary legislation. The limited involvement of elected representatives in the process raises questions about the adequacy of checks and balances. It can also result in laws being enacted without thorough deliberation and debate.

Lack of control and oversight: Due to the reduced parliamentary scrutiny, there is a lack of effective control and oversight over delegated legislation. This can lead to the misuse of delegated powers and the enactment of laws that may not align with the original intent of the legislature. The absence of sufficient accountability mechanisms can undermine the democratic principles of transparency and responsibility.

Lack of publicity and awareness: Delegated legislation often suffers from a lack of public awareness. The sheer volume of delegated legislation makes it challenging to effectively communicate and publicize the laws. This can result in a lack of awareness among the public, leading to non-compliance or misunderstandings about legal requirements.

While delegated legislation offers advantages such as flexibility and specialized expertise, it is not without its drawbacks. It is important to strike a balance between delegated powers and the need for transparency, accountability, and public awareness in the lawmaking process.

Conclusion

Delegated legislation plays a crucial role in managing the increasing number of legislations and the technicalities involved. However, it is essential to maintain control over the delegation of powers to prevent potential abuses. Judicial control, along with legislative and procedural control, can help maintain a balance.

Such legislation can be challenged on grounds of substantive ultra vires, the constitutionality of the parent act, and reasonableness. With proper checks and balances, delegated legislation can be a useful tool in adapting to the changing needs of society while ensuring accountability and transparency.

Note: This post was first published in September, 2023.