BLOGS

Judicial Control on Delegated Legislation

Samridhi M · 04 Mar 2026

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Introduction

Delegated legislation, also known as secondary legislation or subordinate legislation, refers to the granting of law-making powers by the higher authority (usually the legislature) to a lower authority, such as the executive or administration. This delegation allows the lower authority to enact specific laws and regulations under the authority and framework provided by the parent statute.

While the delegation of powers is necessary for efficient governance, it is crucial to have control mechanisms in place to ensure that these delegated powers are exercised appropriately and within the limits set by the parent statute and the constitution. The three primary control mechanisms for delegated legislation are parliamentary control, judicial control, and executive control.

Each of these mechanisms serves as a check and balance to maintain the legality, constitutionality, and procedural compliance of the laws enacted through delegated legislation. This ensures that the delegated legislation is in line with the intent of the legislature, respects fundamental rights, and upholds the rule of law.

Types of Control on Delegated Legislation

Parliamentary control over delegated legislation involves the responsibility of the Parliament to ensure that the powers transferred to the executive are exercised appropriately and without abuse of authority.

Judicial control over delegated legislation is an essential form of control in most countries. It allows the courts to review the validity of delegated legislation. Judicial review is justified based

on the constitutional obligation of the courts to uphold the rule of law.

The judiciary ensures that the laws made by Parliament are not inconsistent with the constitution and that delegated legislation falls within the limits set by both the parent statute and the constitution. Judicial control is considered effective because courts have the power to invalidate a law if it is found to be ultra vires (beyond the scope) of the parent statute or the constitution.

Procedural and executive control refers to the rules and procedures that may be established by the legislature to govern the exercise of delegated powers by the executive. These controls include pre-publication and consultation with expert authorities, publication of delegated legislation, and laying of rules before the legislature.

Judicial Control on Delegated Legislation

When the parent act is ultra vires the constitution: If the parent act itself violates the provisions of the constitution, it is considered void and unconstitutional. In such cases, any delegation of legislative powers made under the parent act is also rendered void.

The courts have the authority to strike down both the parent act and the delegated legislation if they are found to be in violation of constitutional provisions.

- Delegated legislation not authorized by the enabling act: Delegated legislation derives its authority from the enabling act, which sets out the scope and limits of the delegated powers. If the delegated legislation exceeds the authority granted by the enabling act, it can be invalidated by the courts. The courts ensure that the delegated legislation remains within the boundaries established by the enabling act and does not go beyond the powers conferred upon the delegate.
- Delegated legislation is ultra vires the constitution: In certain cases, the parent act may be constitutional, but the delegated legislation made under it may violate the constitution. For example, if the delegated legislation infringes on fundamental rights or contravenes other constitutional provisions, it can be struck down by the courts. The courts examine the constitutionality of the delegated legislation separately from the parent act and ensure that it does not exceed the limits imposed by the constitution.
- Delegated legislation is ultra vires the parent act: The validity of delegated legislation can be questioned if it is found to be beyond the scope of the powers granted by the parent act. The courts examine whether the delegated legislation stays within the boundaries set by the parent

act. If the delegated legislation exceeds the authority conferred by the parent act, it can be deemed ultra vires and invalidated by the courts.

- Delegated legislation is ultra vires any general law or rule of law: Delegated legislation can be challenged if it contradicts or renders an existing law unlawful. The courts ensure that delegated legislation does not make lawful what is otherwise unlawful. If the delegated legislation is found to be in conflict with established general laws or the principles of the rule of law, it can be declared ultra vires and struck down by the courts.
- Unreasonableness: Generally, a statute cannot be challenged on the grounds of unreasonableness. However, if delegated legislation is considered unreasonable based on the circumstances of a particular case, it may be invalidated by the courts. The concept of reasonableness depends on the facts, context, and impact of the legislation, and the courts have the authority to assess the reasonableness of the delegated legislation in question.
- Mala fide (bad faith): Challenging delegated legislation on the grounds of bad faith or ulterior motives is challenging to prove. However, in rare cases where there is strong evidence of bad faith or improper motives, it can be a basis for invalidating the legislation. Courts may examine the intentions and actions of the delegatee to determine if there was a malicious or improper purpose behind the enactment of the delegated legislation.
- Excessive delegation: Excessive delegation refers to a situation where the delegation of law-making power goes beyond what is considered reasonable and necessary. While the courts in India rarely strike down delegated legislation on the grounds of excessive delegation, excessive delegation can be subject to criticism. It is generally accepted if it is expressly or implicitly provided for in the enabling act.
- Sub-delegation: The general rule is that a delegate cannot re-delegate its authority. However, in some countries with written constitutions, sub-delegation may be permitted if there is a specific provision allowing for it. In such cases, the validity of an act carried out under sub-delegation can be questioned if it is found to be ultra vires the enabling act or the constitution.
- Non-compliance with court orders: If the government fails to comply with a court order regarding delegated legislation, the court has the power to invalidate that particular act. Courts rely on the principle of judicial review to ensure that government actions and legislation align with their judgments and orders. Failure to comply with a court order may result in the delegated legislation being declared invalid.

- Non-application of mind: Delegated legislation can be invalidated if it is evident that the delegatee did not consider the relevant facts and circumstances while exercising their powers. The courts examine whether the delegatee has applied their mind to the issues at hand and made a reasonable and informed decision. If it is found that the delegatee did not adequately consider the relevant factors, the delegated legislation may be invalidated on the grounds of non-application of mind.

These control mechanisms play a crucial role in ensuring that delegated legislation remains within the legal boundaries, respects the constitution, and upholds the principles of legality and fairness. The courts act as guardians of the rule of law and exercise their authority to scrutinize and, if necessary, invalidate delegated legislation that goes beyond its prescribed limits or violates fundamental legal principles.

Cases on Judicial Control over Delegated Legislation

***Kruse v. Johnson*:** In this case, the United Kingdom court established criteria to determine the reasonableness of by-laws. The court held that by-laws would be considered unreasonable if they were partial or unequal, manifestly unjust, disclosed bad faith, or involved oppressive interference with the rights of the people without any justifiable reason. This case highlights the court's role in reviewing and striking down by-laws that do not meet these standards of reasonableness.

Delhi Law Act Case: In this case, the power was granted to the Central Government through an act to repeal pre-existing laws. However, the court held that the exercise of such power was ultra vires, meaning it went beyond the scope of authority granted by the law. The court's decision in this case emphasizes its role in ensuring that the executive branch acts within the limits set by the law and does not exceed its delegated powers.

Chintaman Rao's Case (*Chintaman Rao v State of Madhya Pradesh*): This case dealt with the prohibition of making bidis (hand-rolled cigarettes) during the agriculture season by a Deputy Commissioner. The court held that this prohibition was in violation of Article 19(1)(g) of the Indian Constitution, which guarantees the right to practice any profession, occupation, or trade. The court's decision showcases its role in reviewing executive actions and striking them down if they infringe upon fundamental rights enshrined in the constitution.

***Chandran v. R*:** In this case, the court emphasized that if the power to make by-laws is entrusted to the legislature, it must be exercised within the limits defined by the legislature. If the by-laws

exceed these limits, they can be struck down. This case underscores the court's authority to review and invalidate legislative decisions, including by-laws, if they go beyond the prescribed authority or violate any legal principles.

These cases demonstrate the judicial control over the executive branch's actions and decisions. The judiciary plays a vital role in ensuring that executive actions align with constitutional provisions, statutory limits, and principles of reasonableness and fairness. By reviewing executive actions and striking down those that are deemed unconstitutional, unreasonable, or exceeding the delegated authority, the courts act as a check on the executive branch and protect the rights and interests of the citizens.