

CONDITIONAL LEGISLATION AND SUBORDINATE LEGISLATION

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ABSTRACT

One of the advances in the domain of authoritative cycle made during these days is that separated from 'unadulterated' regulatory capacity, the chief performs administrative capacity too. Because of various reasons, there is fast development of regulatory enactment. As per the customary hypothesis, the capacity of the leader is to manage the law sanctioned by the law making body, and in the ideal State, the administrative force must be practiced only by the officials who are straightforwardly dependable to the electorate. However, in truth, aside from 'unadulterated' authoritative capacities, the chief performs numerous administrative and legal capacities moreover. It has, thusly, been appropriately said that the designated enactment is incalculable to such an extent that a rule book would not exclusively be inadequate yet deceptive except if it be perused alongside assigned enactment which intensifies and supplements the tradition that must be adhered to. It is hard to give any exact meaning of the articulation 'designated legislation. It is similarly hard to state with sureness the extent of such appointed enactment. As indicated by Salmond, enactment is either incomparable or subordinate. Though the previous continues from sovereign or preminent force, the last stream from any position other than the sovereign force, and is, in this manner, subordinate for its reality and duration on unrival or incomparable authority. Delegated enactment consequently is an enactment made by a body or individual other than the Sovereign in Parliament by righteousness of forces presented by such sovereign under the resolution. A basic importance of the articulation 'assigned enactment' might be given as: 'When the capacity of enactment is depended to organs other than the assembly by the governing body itself, the enactment made by such organs is called appointed enactment.'¹ The most important case relating to process of conditional legislation is HAMDARD DAWA KHANA VS UOI.

¹ AIR 1960 SC 554.

INTRODUCTION

Many factors 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 this radical change in the philosophy as to the role to be played by the State, its functions have increased. Consequently, delegated legislation has become essential and inevitable.

1. Pressure upon Parliamentary Time: As a result of the expanding horizons of State activity, the bulk of legislation is so great that it is not possible for the legislature to devote sufficient time to discuss all the matters in detail. Therefore, legislature formulates the general policy and empowers the executive to fill in the details by issuing necessary rules, regulations, bye-laws, etc. In the words of Sir CECIL CARR, delegated legislation is "a growing child called upon to relieve the parent of the strain of overwork and capable of attending to minor matters, while the parent manages the main business."

2. Technicality: Sometimes, the subject-matter on which legislation is required is so technical in nature that the legislator, being himself a common man, cannot be expected to appreciate and legislate on the same, and the assistance of experts may be required. Members of Parliament may be the best politicians but they are not experts to deal with highly technical matters which are required to be handled by the experts. Here the legislative power may be conferred on expert 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 is impossible to foresee all the contingencies, and some provision is required to be made for these unforeseen situations demanding exigent action. 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. bank-rate, police regulation export and import, foreign exchange, etc. For that purpose, in many statutes, a 'removal of difficulty' clause is found empowering the administration overcome difficulties by exercising delegated power.

4. Experiment: The practice of delegated legislation enables the executive to experiment. This method permits rapid utilization of experience and implementation of necessary changes in application of the provisions in the light of such experience, e.g. in road traffic matters, an experiment may be conducted and in the light of its application necessary changes could be made. Delegated legislation thus allows employment and application of past experience.

5. Emergency: In times of emergency, quick action is required to be taken. The legislative process is not equipped to provide for urgent solution to meet the situation. Delegated legislation is the only convenient remedy. Therefore, in times of war and other national emergencies, such as aggression, break-down of law and order, strike, 'bandh', etc. the executive is vested with special and extremely wide powers to deal with the situation. There was substantial growth of delegated legislation during the two World Wars. Similarly, in situation of epidemics, floods, inflation, economic depression, etc. immediate remedial actions are necessary which may not be possible by lengthy legislative process and delegated legislation is the only convenient remedy.

6. Complexity of Modern Administration: The complexity of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions. By resorting to traditional legislative process, the entire object may be frustrated by vested interests and the goal of control and regulation over private trade and business may not be achieved at all. The practice of empowering the executive to make subordinate legislation within the prescribed sphere has evolved out of practical necessity and pragmatic needs of the modern welfare State.²

Classification of Administrative Rule-Making Power OR Delegated Legislation

Administrative rule-making or delegated legislation in India is commonly expressed by the term “statutory rules and orders”. However, this classification is not exhaustive as it appears in other forms also, i.e. regulation, notification, bye-law, scheme and direction. These

²https://thefactfactor.com/facts/law/civil_law/administrative-law/growth-of-delegated-legislation/4262/

terminologies are confusing because different words are used for the same thing and same words are used for different things.

Title- Based Classification:

1. **RULE:** The term “rule” is defined in the General Clauses Act, 1897 as a rule made in exercise of power conferred by any enactment and shall include a regulation made as a “rule” under any enactment. These rules may be made applicable to a particular individual or to a general public. It may include rules of procedures as under the Atomic Energy Act, 1948, and also the rules of substantive law.

2. **REGULATIONS:** This term is not confined to delegated legislation. It means an instrument by which decisions, orders and acts of the government are made known to public. But in the sphere of administrative rule making, the term relates to a situation where power is given to fix the date for the enforcement of an Act, or to grant exemptions from the Act or to fix prices, etc.

3. **ORDER:** This term is used to cover various forms of legislative and quasi-judicial decisions. Orders may be specific or general. The former refers to administrative action while the latter refers to administrative rule-making.

4. **BYE-LAWS:** The term has been confined to rules made by semi-governmental authorities established under the act of legislatures.

5. **DIRECTIONS:** The term is used in two senses. The Constitution gives powers to Central Government to issue directions to State Governments for the execution of its laws. In this sense it has no application to delegated legislation. In the second sense, the term “direction” is an expression of administrative rule-making under the authority of law or rules or orders made there under. These may be recommendatory or mandatory. If mandatory, these have the force of law.³

6. **SCHEME:** The term refers to a situation where the law authorizes the administrative agency to lay down a framework within which the detailed administrative action to proceed.

<https://www.legalbites.in/need-permissible-limit-and-classification-of-administrative-rule-making-power/>

³ADMINISTRATIVE TRIBUNAL AND CLASSIFICATION OF ADMINISTRATIVE ACTION A Brief Overview.

The Committee on Ministers' Powers⁵ has recommended for simplification of the nomenclature, confining the term "rule" to the statutory instrument regulating procedure, the term "regulation" to describe the substantive administrative rule-making, and the term "order" to instruments exercising executive and quasi-judicial decisions.

What is the difference between Delegated Legislation and Conditional Legislation?

The distinction between conditional and delegated **legislation** is that, in the former, the delegated power is that of determining when a legislative declared rule of conduct shall become effective, [Hampton & Co. v. United State, (1927) 276 U.S. 394] and the later involves delegation of rule-making power which constitutionally may be exercised by the administrative agent.

This means that legislature; having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority.

In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute, while, in the case of conditional legislature the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority, the time and manner of carrying its legislation into effect as to also the determination of the area to which it is to extend.

Queen vs. Burah (1878) 3 A.C.889, Charles Russel v. Queen (1882) 7 A.C.829 ⁴

Emperor vs. Benorilal Sharma I rider Singh v. State of Rajasthan, Raghunath Pandey vs. State of Bihar⁵

Thus, when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and sub serve the purposes of the legislation, the manner in which the requirements of the statute are to be met and the rights created therein to be enjoyed, is an exercise of delegated legislation.⁶

⁴ 3 App CAS 889, (1877-78) LR 3 App CAS 889, [1878] UKPC 1, [1873] 3 AC 889, [1878] UKPC 26

⁵ AIR 1943 Cal 285

⁶ 1998 232 ITR 908 Patna

But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect it is conditional legislation

Hamdard Dawakhana V. Union of India. To put in the language of American case Field and Co. v. Clark.⁷

To assert that a law is less than a law because it is made to depend upon a future event or act to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed or the things future and impossible to fully know.

The proper distinction was pointed out in this case thus: "The legislature cannot delegate its power to make a law, but it can make to a law delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. There are many things upon which wise and useful legislation must depend which cannot be known to the law making power and must, therefore, be subject of enquiry and determination outside the hall of legislature.

CONSTITUTIONALITY OF DELEGATED LEGISLATION

The question generally arises whether any limitations or checks have - been laid down under the Indian Constitution against the delegation of powers by the legislature to an outside authority. As a matter of fact, in a state having a written constitution which forms the fundamental and paramount law of the nation, the legislature must act within the ambit of the powers defined by the constitution and subject to the limitations prescribed thereby. Every Parliamentary Act or the legislation which is against or contrary to the provisions of the Constitution is null and void, and the duty of keeping the legislature within its bounds, in a system incorporating the doctrine of judicial review, devolves upon the courts. Our Indian Constitution incorporates the doctrine of judicial review of legislation as to its conformity with the constitution. On the other -hand, there is no written constitution in England which circumscribes the powers of Parliament which is sovereign in the eyes of law. There does not exist in any part of the British Empire any person or body of persons, executive,

⁷1960 AIR 554, 1960 SCR (2) 671

legislative or judicial, which can pronounce void any enactment passed by the British Parliament on the ground of such enactment being opposed to the Constitution, or on any ground whatever, except, of course it is being repealed by Parliament. The British Constitution has entrusted to the two Houses of Parliament, subject to the assent of the King, on absolute power untrammelled by any written instrument obedience to which may be compelled by some judicial body. Parliament may accordingly delegate to any extent its powers of law-making to an outside authority. As a matter of law, Parliament may surrender all its power in favour of another body as it actually did in 1807, when the English and Scottish Parliament passed Acts of Union providing for the coming into existence of a new body, Parliament of Great Britain. The limits of delegate legislation in the English Constitution, if there are to be any, must, therefore, remain a question of policy and not a justiciable issue for the courts.⁸

OCCURENCES OF CONDITIONAL LEGISLATION

1. The assembly engages the chief to extend the movement of a current law to a particular zone or district.
2. To decide and choose the hour of use of an Act to a given zone.
3. To widen the range of a Temporary Act, subject to most extreme period fixed by the authoritative gathering.
4. To decide and choose the degree and cut off points inside which the rule or Act should be employable and usable.
5. Finally, to present an extraordinary law if the considered circumstance has emerged in the assessment of the administration.

Conditional Legislation permits better usage and better reach of laws as it gives them plentiful prudence to work and to settle on choices with respect to execution in the most ideal way. Along these lines, all the cutting edge financial government assistance plans are an arrangement of the law making body, however they have gotten effective in the nation on account of their usage. All the "when, where and how" parts of execution have been ticked liberally by the administration as a result of the watchfulness that they have been given by the

⁸ <https://researchers.mq.edu.au/en/publications/rethinking-the-constitutionality-of-delegated-legislation>

assembly for the usage of the Acts surrounded by the legislators. However, this attentiveness can't be practiced past the force that has been designated. Whenever surpassed, at that point that activity is invalid and void.⁹

CATEGORIES OF CONDITIONAL LEGISLATION

1. In the main class, when the Legislature has finished the assignment of ordering a Statute, the whole structure of the enactment is prepared however its future propriety to a given district is left to the emotional fulfilment of the agent who being satisfied and fulfilled about the conditions demonstrating the right an ideal opportunity for applying the arrangements of the said Act to a given area practices that power as a representative of the parent authoritative body. Right when the Act itself is done and is endorsed to be reliably applied in future to every single one of the people who are to be made sure about by the extent of the Act, the Legislature can be said to have finished its assignment. This would be a demonstration of straightforward as can be restrictive enactment relying on the abstract fulfilment of the representative concerning when the said Act authorized and finished by the parent Legislature is to be made successful.

2. The second classification of restrictive enactments wherein the representative needs to choose whether and under what conditions a finished Act of the parent enactment which has just come into power is to be halfway pulled back from activity in a given territory or in given cases so as not to be material to a given class of people who are generally in fact administered by the Act. In such sort of cases, the representative needs to act adversely by pulling back the working demonstration, completely or somewhat because of any reasons for activity of administration

3. The third classification of cases wherein the activity of contingent enactment would rely on fulfilment of the agent in target realities set by one class of people looking for advantage of such an activity so as to deny the adversary class of people who in any case may have just got legal advantages under the Act and who are probably going to lose the current advantage on account of activity of such a force by the representative. In such kind of cases the fulfilment

⁹DR N. V. PARANJAPE Studies in Jurisprudence and Legal Theory, 8th Edition, Central Law Agency

of the representative has essentially to be founded on target thought of the pertinent information for and against the activity of such force.

The milestone case for designation of enactment is the Re : Delhi Laws Act Case [4], which spun around the topic of in the case of giving the Lt. Lead representative the ability to broaden the use of law is designation of intensity? Privy committee saw that Indian assembly isn't a specialist or representative however was expected to have whole powers of enactment and of a similar sort of the parliament itself. It was seen that Indian council had practiced its judgment regarding the spot, individual, law, powers and what the lead representative was needed to do was to make it endless supply of specific conditions. This is called restrictive enactment which was maintained by the court. In JATINDRA NATH v. Territory of BIHAR, it was held that there could be no designated enactment in India past contingent enactment.¹⁰

BIBLIOGRAPHY/REFERENCES

The information for this project has been taken from the following sources:

Jain, M.P. & Jain, S.N.; (2007) Principles of Administrative Law, 6th Ed., Vol. II, WADHWA Nagpur.

• I P MASSEY, Administrative Law, (8th ed.2012), EBC Publication.

• S P SATHE, Administrative Law, (7th Edition, Reprint 2012), LEXIS NEXIS Publication.

TAKWANI C.K. (2007) Lectures on Administrative Law. Eastern Book Company, Lucknow.

• DURGA DAS BASU & A. K. Nandi, "Administrative Law", Rep. 2006, Kamal Law house, Kolkata.

¹⁰<https://www.lawyersclubindia.com/articles/Conditional-legislation-and-delegated-legislation-1126.asp>

AIR 1951 SC 347.

<http://www.manupatra.com/roundup/333/Articles/In%20re%20Delhi%20Laws%20Act%20Case.pdf>

- www.legalservicesindia.com/article Doctrine OF Permissible Limits under Delegated Legislation under the Indian Constitution: of India
- books.google.co.in/books/about/ Delegated Legislation in India, US and England
- aclawresearch.blogspot.com Development of delegated legislation in India
- www.lawyersclubindia.com/articles Delegated Legislation in India
- elearning.vtu.ac.in/P3/CIP71/3.pdf Delegated Legislation
- www.napsipag.org/pdf/Dr.M.shamsur_rahman.pdf. The delegated legislation
- <http://abhinavkls1.blogspot.in/2014/01/delegated-legislation>



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