

ANALYSIS OF IN RE DELHI LAWS ACT CASE: CONCEPT OF DELEGATED LEGISLATION AND ITS IMPACT ON ADMINISTRATIVE LAW IN INDIA

Ashmira Moon¹

REVIEW OF LITERATURE

In this research, the student will consider certain books, journals, research articles, and authentic internet sites to fulfill the research question of the project. Some of the books are referred to by the Students and Professors. The project also includes online sources and preserve articles and some dynamic blogs.

RESEARCH QUESTION

1. What is the importance of the case in the Post Constitution?
2. What is the Impact of the case?
3. What are the limits for delegated legislation?

RESEARCH METHODOLOGY

To approach the objectives, research questions of the study, which the researcher will be going to be discussed. And the deep review will be done regarding the issues of the respected topic properly. The Researcher approached the doctrinal model of the Research Methodology. The Researcher made an effort to examine the primary sources like newspapers, books, and e-resources.

In this research, many academicians, experts, professors help in the study and gave their real contribution to the research. E-resources was the main source of the research for getting the contemporary news and relevant case laws related to the topic, which helped the researcher to think more in other dimensions.

¹BA LLB, THIRD YEAR, MAHARASHTRA NATIONAL LAW UNIVERSITY, NAGPUR.

INTRODUCTION

Delegated Legislation is one of the essential and controversial topics related to Administrative Law. The word 'Delegation' means extending the power of one person to another. So, the delegation of legislation means transferring the Authority/ Power of the superior to the subordinate. Delegated legislation is also known as the laws by the executive under the power delegated to it, by the legislature. As we know, the legislature makes laws and then the judiciary punishes the person, who infringe the laws or doesn't follow the laws. So, the legislature dealt with superior power because of the excessive burden, the delegation took place along with the power of legislation and it shifted to Administrative Function.

The case which we are going to discuss is one of the landmark judgments by the Supreme Court and also known as a 'Bible case' as far as the delegated legislation is concerned. The case had seven judges on the bench. There was a huge argument with each counselor on delegated legislation. The delegated legislation has been in existence from pre-Independence to post-Independence and as well as in post-Constitution.² The Researcher is going to discuss Post-Constitution or After Constitution, because the researcher will be dealing with the case of In re Delhi Laws Act Case.

BACKGROUND

In Re Delhi Laws Case, there were some pre-existing Acts, which contained some delegation. Let's take a look at which sections of the respective Act talks about delegated legislation.

- 1) The Delhi Laws Act, 1912: Section 7 says that "the provincial government may, by notification in the official gazette, extend with such restriction and modification as it thinks fit to the province of Delhi or any part hereof, any enactment which is in force in any part of British India at the date of such notification."³
- 2) The Ajmer- Marwar (extension of laws) Act, 1947: Section 2, "the Central Government may, by notification in the official gazette, extend to the province of Ajmer-Marwar with such restrictions and modifications as it thinks fit any enactment which is in force in any other province at the date of such notification."⁴

²ID.

³Section 7, The Delhi Laws Act, 1921.

⁴ Section 2, The Ajmer-Marwar (extension of laws) Act, 1947.

3) Part C States (Laws) Act, 1950: Section 2 runs as follows, authority was delicate to the Central Govt. for two purposes & two provisions were made.

i) To Extend & apply with restriction and modification recruitment in force in part A state to part C state.

ii) There's an ability where a delegation of powers to Central Govt. can be done to repeal or amend any corresponding law.⁵

Before Independence, during the formation of this Act, the states were divided into three kind's i.e the Part A States/ Part B States/ Part C States. These Acts were sent to the President and they entertained the doubt regarding a delegation power i.e whether such delegation was proper and permissible. So, the President of India referred to the SC under art. 123 of Constitution⁶ for seeking the opinion on delegated power given to the Executive/ Administration in the mentioned Acts.

LEGAL ISSUES

1. "Was section 7 of the Delhi Laws Act, 1912, or any of the provisions thereof, or to what extent the ultra vires the legislature which passed the said Act?"
2. "Was the section 2 of Ajmer Marwar- an extension of laws Act 1947 or any of the provisions thereof ultra vires the legislature which passed the said Act?"
3. "Is Section 2 of the Part C States (Laws) Acts 1950 or any of the provisions thereof ultra vires the parliament?"

In short, whether the Indian Parliament and State Legislature had the power to transfer its sole functions of a legislative body to executive authority. And if so, then to what limits can it be done so?

JUDGEMENT

(i) In the first Issue, the Act delegated the authority to the provincial government to the Delhi area with some restrictions and modifications in any parts of the British India laws. The Supreme Court held section 7 as valid by the majority of opinion. (ii) In the second issue, the

⁵Section 2, Part C States (Laws) Act, 1950.

⁶Art. 123, Constitution of India, 1950.

Act delegated the power to the Central Government to the extent to the provinces with some modification and restriction as much as it fits in the Act, and again the Supreme Court held this section 2 to be Valid. (iii) Part C states automatically come under the Central Government without having their legislature. So, the Parliament has to legislate them somehow or other. The delegated power was given to the Central Government to the extent of the Part C states with some modification and restriction as much as it can be in force to any Part A states.

The Central Government has also delegated some exclusive powers to like to repeal the Act or to amend any corresponding laws which applied to the Part C States. The Supreme Court kept this section valid till modification and restriction but when it comes to repeal or amend any act or any laws, it goes invalid. So, the Supreme Court declared it void because the laws were applicable to Part C and held to be an essential function and delegation would amount to the excessive delegation on part of Parliament.

Based on the opinion of the seven judges (which the researcher is going to talk about it further), Supreme Court decided their Judgment:

1. "Separation of Power" is not presented as something related to the Indian Constitution from its inception.
2. Indian Parliament was never a representative of anyone. Hence, the doctrine of "*delegatus non potest delegare*" (no transfer of power can be anymore transferred) cannot be held to be applying here.
3. Parliament cannot relinquish itself by making a parallel authority.
4. Only auxiliary capacities or non-essential tasks can be given.
5. There's a restriction on the giving of authority. The Legislative powers should not transfer its vital processes to determine the legislation's policy and to enforce it into definitive standards of behaviors.

Overall, the judgment legitimized the delegation of the legislative power by the legislature to the administrative organ/ it gives an overall limit on delegation by the legislature.⁷

ANALYSIS OF THE OPINION

Seven different judges all had their suppositions. In the present hearing, half the number of judges thought to permit delegated legislation, while the others demarked the scope of the possible delegating of power. A lot of extremist views were kept forward by the judges. **M.C. Setalvad** thought, that this authority always comes along with the authority of the legislature and in the end, doesn't result in separation of the authorities.⁸ **M.C. Chatterjee** took the view that there is an existence of separation of power in many countries including India and India follows, "*Delegated Non Potest Delegare*". There is an indirect restriction on delegation of power.

There was unity on two points: first was that the Central Government and state legislature had to deal with their authorities in order to deal with the deteriorating condition of the societal conditions in the country, as we can't expect each and everything to come with a complete enactment on all the subjects looked to be administered on. The second point was that the lawmaking body got its capacity from the Constitution, and the opportunity in the British Constitution can't be allowed and restrictions are required

(i) **Power to Legislature Include Power of Delegate:**

Many of the counselors' intention was that the legislature should only be enacted by the legislature as a sole concern. They can't get leave or retire from the task of law-making to another body because their sole duty or power is given to them by the constitution. After the end of the discussion, it cleared that the power to make laws come with the delegation of power.

(ii) **Limits of Delegation:**

If the legislature wants to delegate the power then they can do so, but with certain conditions. As the delegation will also be with the non-essential function. That means, the legislature

⁷Chhavi Agarwal, In Re Delhi Laws Act Case: Landmark in Concept of Delegated Legislation in India, [www.manupatra.com/roundup/333/Articles/In re Delhi Laws Act Case.pdf](http://www.manupatra.com/roundup/333/Articles/In%20re%20Delhi%20Laws%20Act%20Case.pdf), (last visted on Oct 19, 2020).

⁸Supra Note 2, at 70.

can't delegate any essential or sole policy of the act of law to the executive to modify it or amend it. Although the amendment is not applicable at all. **J. Mukhraj**a stated that, if the policy approaches the acts in a broad sense, then the formulation of the details for the policies can be passed to the executive. No essential matter can be delegated.

(iii) Delegation of power to make Modification or Alteration:

The Counselor noted that only the legislature should have the power to change the law in whatever way that is permissible. But in the case of delegation, if the changes are carried out with the design and don't play with the image or the framework then no question should be asked against it but the modification shouldn't be changing the main policy, it should keep the policy intact and let that policy be the essential thing.⁹

REPEAL OF LAW

Authority to repeal law is a sole function of the legislature and delegating that power to the government can be ultra vires to the power to delegate. The few judges held this section to be perfectly valid but the remaining counselors weren't in favour. Their opinion was that the essential function can't be delegated under any condition. In short, the legislature can't renounce its authority in the same manner how it not allowed delegation of its essential power.

IMPACT OF THE CASE

Many questions arose regarding the limits of the delegation of power, after In re Delhi Case. The first case was "*Gwalior Rayon Silk Manufacturing Co. v. Assistant*"¹⁰ "sec8(2)(b) of Central Sales Tax Act,1956" states that the sales tax on interstates sale at the rate of 10% or the rate applicable to the sale or purchase of goods in the state whichever is higher. This line was complained to be excessively delegating for the reason that no such policy was laid out in the original Act. But the Act was held to be legitimate or valid. Some of the judges stated the "standard test" for delegation i.e if the law-making body gives power to authority to make delegated legislation, then it should lay down set down the policies or unique guidelines as far as the delegation is concerned. On the Abdication test- the legislature doesn't abdicate its power.

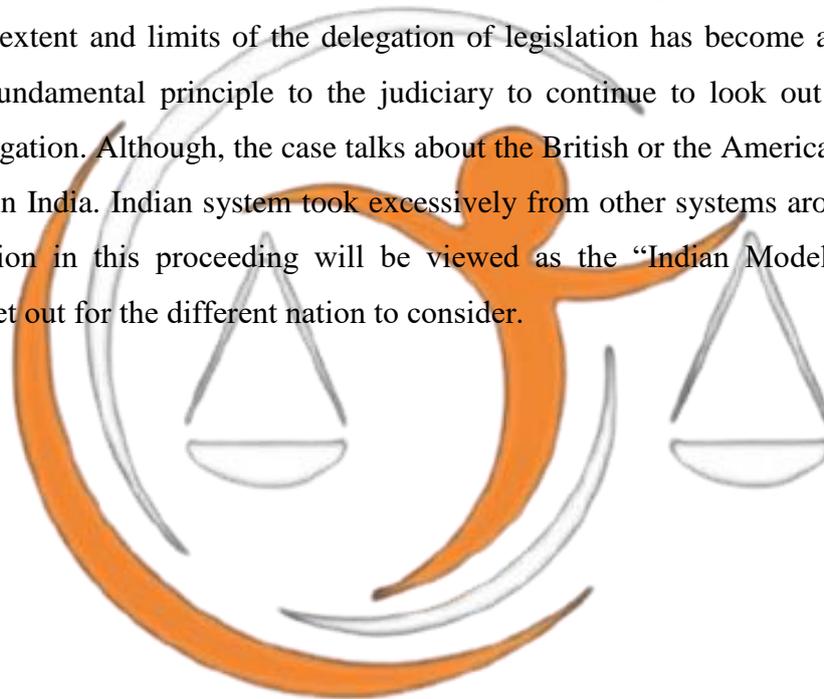
⁹Lawctopus, <https://www.lawctopus.com/academike/delegated-legislation-re-delhi-laws-act>, (last visted on Oct 19, 2020).

¹⁰ (1974) 4 SCC 98

Indeed, even in proceedings of “*Brij Sunder v. First Additional District Judge*”¹¹ the court permitted the augmentation of laws that are to be made in the future of even some other state to which this state body couldn't get a chance to use its mind. In addition to this, in the case “*Registrar of Co-operative Societies v. K Kanjambu*”¹² the court overruled the “policy and Guidelines” test. All the proceedings maintained the Constitutional Validity of it.

CONCLUSION

After reading the entire case, there were only issues regarding the limitations, while delegating the power to an executive. But currently, delegated legislation is not an issue of debate. Nowadays, societal changes are happening in our country, and for that, different limits and controls should be formed. This case laid down the platform on which the issue regarding the extent and limits of the delegation of legislation has become accessible. This case gave a fundamental principle to the judiciary to continue to look out for any issues regarding delegation. Although, the case talks about the British or the American model it isn't implemented in India. Indian system took excessively from other systems around the globe but the situation in this proceeding will be viewed as the “Indian Model on Delegated Legislation” set out for the different nation to consider.



¹¹ (1989) 1 SCC 561

¹² (1980) 1 SCC 492