

Introduction

Law



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INTRODUCTION Delegated legislation refers to the rules and regulations, which are passed by some person or body under some enabling parent legislation. The Interpretation Act 1967 defines it as ‘ any proclamation, rule, regulation, order, by-law or other instrument made under any Act, Enactment, Ordinance, or other lawful authority and having legislative effect’. BODY The Parliament and State Legislative Assemblies conferred legislative powers from the Federal Constitution. However, only small portion is directly made by these legislative bodies, while the larger portion of the legislation emanates from administrative authorities. In order to enact the legislation, the legislature confines itself to enunciating the general principles and policies relating to the subject matter in question. It also delegates some power to some other agencies, in order to legislate and fill in the details. Basically there are several general reasons of subsidiary or delegated legislation like to economize the legislative time, lack of expertise and specialist, there is an urgent need of response by the state and this method is said to be more flexible and elastic. The primary factors for the phenomenal popularity of delegating legislation are that modern governments are multifunctional and modern legislatures work under severe limitations. The legislature has to delegate its law-making power for the following reasons: firstly, the legislature has insufficient time to enact all the legislation, detailed in every aspect, required in a modern society. Secondly, much modern legislation is highly technical and is best left to experts or administrators on the job that are well versed with the technicalities involved and lastly, the legislature is not continuously in session and its legislative procedures are burdensome. 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, 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. 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. 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. 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

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but they are not experts to deal with highly technical matters which are required to handle by experts. Here the legislative power may be conferred on expert to deal with the technical problems, e. g. gas, atomic energy, drugs, electricity, etc. Thus, delegation is necessary in situations where laws need to be made quickly, such as in emergencies, or to be amended or repealed quickly. For instance, sec 22 of the Interpretation Acts 1948 and 1967 provides that ‘ subsidiary legislation may at any time be amended, varied, added to, revoked, suspended or revived by the person or authority by which it was made or, of that person or authority has been lawfully replaced by another person or authority, by that other person or authority’.

ADVANTAGES The advantages of delegated legislation are the following: first, Delegated legislation can be passed very quickly and is more flexible. This is because it does not have to undergo the various stages of procedure which has to be followed in Parliament or the State Legislative Assemblies. Similarly, if the need arises, delegated legislation can be just as speedily amended or even rescinded to meet the changing needs of society. Second, Delegated legislation deals with the detailed rules necessary to implement the law. As Parliament does not have sufficient time to deal with such minute details, delegated legislation is the more efficient way to fulfill this need. Lastly, certain matters may require the special skill and knowledge of experts in that area. Parliament itself may not have sufficient experts for this purpose. Thus, delegated legislation fulfils this need as well.

DISADVANTAGES On the other hand, the disadvantages of delegated legislation are the growth of delegated legislation goes against the doctrine of separation of powers. This is because law is not being passed by persons elected for that purpose (i. e. the legislature). Instead it is being passed by <https://assignbuster.com/introduction-68/>

officers of government departments. In addition, Parliament is unable to effectively supervise the making of delegated legislation due to lack of time. As a consequence, many rules and regulations may have been passed without proper consideration of some very important factors. Last but not least, there are too much law is passed through delegated legislation without sufficient Parliamentary control. CONTROL Initially, Parliament has control in that the enabling or parent Act passed by Parliament sets out the framework or parameters within which delegated legislation is made. In addition, there are scrutiny committees in both Houses of Parliament whose role is to consider the delegated powers proposed by a Bill. However, these committees have limited power. European legislation is considered by a specific committee and local authority byelaws are usually subject to the approval of the Department of the Communities and Local Government. All bills are subject to review by the Joint Committee on Statutory Instruments. Some bills must be approved by Parliament before they can become law. This is known as affirmative resolution. Others are subject to negative resolution, which means that the bill will become law unless it is rejected within 40 days of being laid before Parliament. There are many important reasons why it is necessary to have controls over delegated legislation. Currently delegated legislation is made by non-elected bodies away from democratically elected politicians (parliament) , as a result many people have the power to pass delegated legislation, which provides a necessity for control, as without controls bodies would pass outrageous unreasonable legislation which was attempted in the past; in the *Strickland V Hayes Borough Council* (1986) where a bylaw prohibiting the singing or reciting of any obscene language generally, was held to be unreasonable and as a

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result the passing of this delegated legislation was rejected. Below I describe cases where controls over delegated legislation have been essential in order to avoid authorities abusing their powers, the particular cases are: *R v Secretary of State for Education and Employment, ex parte National Union of Teachers* (2000) and *Commissioners of Custom and Excise v Cure and Deely Ltd* (1962). Another issue which occurs making controls over delegated legislation vires is sub legislation, which is where law making is handed down another level to people other than those who were given the original power to do so, to implement important policies. Creating criticism that our law is made by civil servants (who may know hardly anything about the law) and just Å'rubber stamped by the Minister of that apartment, this requires law passed by these civil servants to be checked by the scrutiny committee of parliament or the courts. Finally delegated legislation can share the same issues as Acts of Parliament such as obscure wording that can lead to difficulty in understanding the law, which again makes controls necessary as parliament or the courts can stop unclear legislation, which will affect the lives of hundreds of people from passing. Delegated legislation is also subject to control by the courts whose judges can declare a piece of delegated legislation to be ultra vires. Ultra vires means 'beyond powers', so the court would be saying that a piece of delegated legislation went beyond the powers granted by Parliament within the enabling Act. If the court does this, then the delegated legislation in question would be void and not effective. Procedural ultra vires is where the enabling Act sets out the procedural rules to be followed by the body which has been given the delegated power. The court can find the delegated legislation to be ultra vires and void if these rules were not followed. In the *Aylesbury Mushroom*

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case (1972) Agricultural Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd (1972) 1 All ER 280 delegated legislation required the Minister of Labour to consult 'any organisation ... appearing to him to be representative of substantial numbers of employers engaging in the activity concerned' about the establishment of a training board. The Minister failed to consult the Mushroom Growers' Association which represented about 85 per cent of all mushroom growers. Therefore, the delegated legislation was declared to be ultra vires on procedural grounds. Substantial ultra vires is where the delegated legislation goes beyond what Parliament intended. In *R v Secretary of State for Education and Employment, ex parte National Union of Teachers* (2000) QBD, the High Court determined that an SI concerning teachers' pay and appraisal arrangements went beyond the powers provided under the Education Act 1996. Therefore, the delegated legislation was declared to be ultra vires on substantive grounds.

CONCLUSION After having reviewing the controls that exist over delegated legislation I have discovered many flaws in the system such as the Scrutiny Committee not being able to consider the merits of any piece of delegated legislation (only whether the delegated legislation has been correctly used) and the Scrutiny Committee having no power to alter any statutory instruments and parliament only being able to approve, withdrawal or annul legislation. As a result the different controls are not satisfactory; however there are reformations that could take place to improve the current delegated legislative process. Parliament should be able to amend a statutory instrument rather than just withdrawing it, approving it or simply annulling it. Another reformation that could take place in order to improve the current system of delegated legislation is for parliament to viresly consider the critical findings of the

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Scrutiny Committee, as it is appalling to know that months and years of hard work from the Scrutiny Committee on delegated legislation is simply ignored by parliament. CONSIDERATION INTRODUCTION Factual question: can Kwat claim the reward as promise? Legal question: have Kwat given “consideration” for the promise made to him?