

On to the adoption of
the doctrine of



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On the contrary in the United States, due to the adoption of the doctrine of separation of powers legislative powers have to be exercised by the Congress and it cannot be delegated to any other organ of the government. Further, it is argued that since Congress was a delegate, it could not further delegate its power.

However, strict adherence to these principles soon proved to be impracticable as the State undertook several economic and social functions, Therefore, the Supreme Court of the United States has made a distinction between essential legislative powers and non-essential powers and has held that the essential legislative powers cannot be delegated (293 U. S. 388-4935).

In India, the question of permissible limits of delegation legislative power arose soon after India's independence. In *Jitendra Nath v. Province of Bihar* (A. I. R. 1949 F. C.

175), the Federal Court in India held that there could be no delegation of legislative powers beyond conditional legislation. The decision however, in this case created confusion. In cast a shadow on many laws which contained similar provisions. With a view to removing doubts as to the validity of delegation, the President of India under Article 143 of the Constitution invited the Supreme Court to give its opinion by referring three Central Acts, namely Section 7 of the Delhi Laws Act, 1912; Section 2 of the Ajmer-Marwar Act, 1947 and Section 2 of the Part ' C' States Act, 1950. On close examination of various judgements delivered in the reference case, two different points of view were presented to the Court.

One, delegation to the executive was essential. On the other hand, it was contended that there existed an implied prohibition against delegation of legislative power by the Parliament. The Supreme Court took a via media between these distinct views. While it accepted that delegation of legislative power was ancillary to legislation, it observed that Parliament cannot delegate the essential legislative powers. It can delegate the power of filling up of details or of supplementing the legislation to the executive.

In the two cases (Delhi Laws Act, 1912 and Ajmer-Marwar Act, 1947), the Supreme Court held section 7 of the Delhi Laws Act, 1912 and section 2 of the Ajmer-Marwar Act, 1947 which gave powers to the government to extend with such restrictions and modifications as it thought fit any enactment was in force, was valid. However, section 2 of the Part ' C' States Laws Act, 1950, which empowered the State to make provision for the repeal or amendment of any corresponding law which was for the time being applicable to the Part V State was void as it amounted to excessive delegation of legislative power. The question is what constitutes essential legislative function (which cannot be delegated by Parliament).

In *Raj Narain v. Chairman, Patna Administration Committee* (AIR 1954 S. C. 569) the Supreme Court accepted that " exactly what constitutes an essential feature cannot be enunciated, in general terms". The Court however, attempted to spell out it in *Harishankar Bagla v.*

M. P. State (AIR 1954 S. C.

, 468,) as follows: " The essential legislative function, consists in the determination of choice of the legislative policy and of formally " enacting

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that policy into a binding rule of conduct". The Court upheld the delegation of legislative power under Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, empowering the Central Government to provide by order for regulating or prohibiting the production or supply of certain essential commodities so far as it appears to be necessary or expedient for maintaining or increasing supplies to any essential commodities. In *Mukhan Singh v. State of Punjab* (AIR 1964 S. C. 381) the Supreme Court upheld section 3 of the Defence of India Act, 1962, which empowered the Central Government to make rules as it appears expedient to it for defence of India and maintenance of public order and safety? Where it appears that there existed an implied prohibition against delegation of legislative power by Parliament, the Court had held the invalidity of the delegation. In *Harkchand v. Union of India* (AIR 1970 S.

C. 1453), Section 5(2) of the Gold Control Act 1968 was held to be invalid on the ground of excessive delegation. The section authorised the Administrator so far as it appeared to him to necessary or expedient for carrying out the provisions of the Act, to regulate by licences, permits or otherwise the distribution, manufacture, acquisition, disposal, use of consumption of gold. The court held that the power was legislative in nature and was not controlled either by any guidance in the Act or by a provision of legislative control.

Similarly, the power to impose taxes an essential legislative function. The legislature must think and decide how much to tax and whom to tax. However, it is difficult for the legislature to taxation in full. Resort to delegation of power is unavoidable under certain circumstances.

In *Devi Das v. State of Punjab* (AIR 1967 S. C. 1895) the Supreme Court upheld a provision which authorised the executive to levy a sales tax at a rate between 1% and 2%.

In the same case, however, where power was given to the government to levy sales tax at such rates as it deem fit, the delegation was held to be invalid. In *G. B. Modi v. Ahmedabad Municipality*, the Supreme Court observed that absence of such provision per se did not make delegation of legislative power invalid.

Further, in India, the government has the power to bring minor changes in the provisions of the Act. The Court in, *N. C. I.*

Mills Co. v, Assistant Collector, Central Excise (AIR 1971 S. C. 454) held that “ that power to restrict and modify does not give the power to make essential changes” and that “ it is confined to alterations of a minor character and no change in principle is allowed”.