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TERM – PAPER            PERMISSIBLE AND IMPERMISSIBLE LIMITS OF                   DELEGATED  LEGISLATION.

(Administrative law and regulatory mechanism)                            (Paper no. YLM -117)  Submittedto:                                            Submitted by: Dr. Anu                                                                    Puru Chandvanshi                                                                                      LL.

M. 3 year (1sem.)                                                                                 Roll no. 50825  INTRODUCTIONWhenthe function of legislation is entrusted to organs other than the legislatureitself, the legislation made by such organs is called delegated legislation. Orwe can also say that when the legislature delegates its power to the administrativeand the administrative body makes any law related to the powers delegated to itthen the law made in such case is said to be delegated legislation. There is alimit to the power of delegation which is a kind of restriction over the powersto delegate.

Based on this, the delegated powers can be said to have followinglimits on it: 1)Permissible limits2)Impermissible limits. Thereis a doctrine which deals with the limits of delegated legislation and is knownas ‘ The Doctrine of Permissible Limits’. This doctrine deals with the power oflegislature which can be delegated to the administrative authorities as well asthe powers which can’t be delegated. DOCTRINE OF EXCESSIVEDELEGATIONThe legislature can delegateits legislative powers subject to its laying down the policy. the legislaturemust declare the policy of the law , lay down legal principles and providestandards for the guidance of the delegate to promulgate delegated legislation, otherwise the law will be bad on account of “ excessive delegation”. So, this doctrine means that the legislature can’t delegate unrestraineduncanalised and unqualified legislative powers on an administrative body. Delegation is valid only if it is confined to legislative policy andguidelines.

InSitaram Vishabhar Dayal1, court held that whether thepower delegated by legislature to the executive has exceeded the permissiblelimits in a given case depends upon the facts and circumstances. The questiondoesn’t admit of any general rule. POWERTO EXEMPTThe legislature can exempt any person, institutionor commodity from its purview. The reason to have an exemption clause is to:·     Reduce work of legislature.·     To remove the hardship to thepersons this may materially affect the policy of the act.            Atypical provision runs as follows:” Notwithstanding anything contained in thisAct, the Government may, subject to such conditions as they deem fit, bynotification, exempt any land or building or class of land or buildings fromall or any of the provisions of this Act or rules of regulations made thereunder.

“ Section 113 of the Tamil Nadu Town and CountryPlanning Act, 1971Such a provision may be held to be invalid ifthe Act contains no policy, guidelines or principles for the guidance of thegovernment’s discretion to exempt under this clause. Ø  InParasuraman2, the exemption clause was characterized as “ uncanalised, unlimited andarbitrary” as the Act did not lay down any principle or policy for theguidance of the government’s discretion to exempt. Ø   In Jalan Trading Co. v.

Mill Mazdoor Union3, the Supreme Court upheld s. 36 of the Payment of Bonus Act, 1965 authorizing the Government to exempt anyestablishment from the operation of the Act having regard to the financialposition and other relevant circumstances, as Parliament had given adequateguidance and laid down the principles in the light of which the power ofexemption is to be exercised.       POWER TO MODIFYSometimes, a statute confers onthe executive the power to modify or amend the parent statute.

This power makesthe executive supreme even over the Legislature, but the conferment of thispower provides flexibility in the changing circumstances. For example, ·     When some complicated scheme isintroduced, so to meet any unforeseen difficulty. ·     To prevent the delay in themaking of necessary changes in the statue by the legislature.  In Baburam Jagdish Kumar & Co. 4 it was held that power by thelegislature to a local authority or to executive Government to vary or modifyan existing law would not be unconstitutional so long as such delegation doesnot involve abdication of essential legislative power by the legislature i.

e. necessary guidelines are provided. In Rajnarain v. Chairman, Patna AdministrationCommittee5, the relevant statutoryprovision provided that the State Government could extend to a particular areaany section of the statute (The Bihar and Orissa Municipal Act, 1922) subjectto “ such restrictions and modifications as the Government may thinkfit”. The Supreme Court upheld the delegation of power but subject to whatit had said in the Delhi case that the Government could not make a change inthe essential policy of the Act.

The Court held that “ when a section of anAct is selected for application, whether it is modified or not, it must be doneso as not to affect any change of policy, or any essential change in the Actregarded a whole.” In Lachmi Narain6, the Government was givenpower to modify the schedule by giving a three months notice. In addition, theGovernment was also given power to make such modifications as it “ thinksfit”. The Government sought to amend the Act by dropping the requirementof giving three months notice for amending the schedule. The Supreme Courtdeclared this modification as ultra-vires on the ground that it changed the” essential feature” and “ legislative policy” inherent inthe Act.

The Court ruled that the requirement of three months notice to amendthe schedule was a mandatory requirement, a matter of policy, because adequatenotice to those affected was necessary so that they could make duerepresentations against the proposed change. 7Hence, it can be said that a delegation will be ultra vires if it contravenes thepolicy as policy can’t be changed by the delegate even during modification ofstatute.      Removalof Difficulties            Statutesusually contain a removal of difficulty clause, nick-named in Britain as theHenry VIII clause because “ that king is regarded popularly as theimpersonation of executive autocracy”.            Theprovision is used usually when the Legislature passes a statute implementing anew socio-economic scheme. Not being sure of what difficulties may crop up inthe future implementation of the provisions of the law, the Legislatureintroduces therein a “ removal of difficulty” clause envisaging thatGovernment may make provisions to remove any difficulty that may arise inputting the law into operation.

There are two types of “ removal ofdifficulty” clauses:(a)        A narrow power under which “ powerto remove difficulties” has to be exercised consistent with the provisionsof the parent Act. In such a case, the Government cannot modify any provisionof the statute itself. Here, the resultant order made by the Executiveto remove the difficulty should not change the basic policy of the parent Act. The removal of difficulty order cannot change any provision of the parent Act; the order is to give effect to the Act.(b)       The other, a broader version, may authorizemodification of the parent Act, or any other Act, in the name of removal ofdifficulties. Usually, such a power is limited in point of time, say two orthree years. In principle, such a power is objectionable as it vests a vastarsenal of power in the Executive.

Requirementsfor application of Henry VIII clause: three requirements must be fulfilled for a removal of difficulty order to bemade by the Executive, viz.:(1)          that a difficulty has arisen ingiving effect to the provisions of the scheme:(2)          that the order to be made issuch as appears to the Government to be necessary or expedient for the purposeof removing the difficulty; and(3)          That the order is notinconsistent with any provision of the scheme. Importantpoints related to Henry VIII clause:·     Here the modification of theparent Act is not permitted and the removal of difficulty order is not finaland its validity can be tested in a court of law.·     If there is no difficulty, thepower to remove the difficulty cannot be exercised.

The court can therefore gointo the question whether any difficulty has in fact arises.·      The essential provisions of the Act cannot beamended; only minor changes can be made in the parent Act.·     In Jalan trading company v. MillMajdoor union8, Supreme Court was called upon to decide the legality of section 37 of paymentof bonus act, 1965. The court in this case by majority of 3: 2 held that sec 37of the said act is ultra vires on the ground of excessive delegation. The courtwent on further and said that central government delegated such powers to theexecutive which was not permissible.

·     Later in Gammon India ltd v. union of India9, the minority view of Jalan trading case was adopted by the court which saysthat functions exercised by the central govt. were not legislative functions, sotheir delegation was permissible.·     After that in Patna Universityv. Amita Tiwari10, the court held that “ removal of difficulty” clause had only limited applicationand cannot be applied in every situation having some difficulty. FUNCTIONS WHICH CAN NOT BEDELEGATED (IMPERMISSIBLE DELEGATION)Thefollowing functions can’t be delegated by the legislature to the executive:·     Essentiallegislative functionsThere is no bar in the constitution of Indiaagainst the delegation of legislative power to the executive, but the essentiallegislative FUNCTIONS can’t be delegated to the executive at all.

Thus laying down a legislative policy is thefunction of legislature only and by entrusting this power to other body, thelegislature can’t escape from its duty and create a parallel legislature.  ·     Repealof lawPower to repeal a law is an essentiallegislative function. So, if legislature delegates this power to executive, itwill be excessive delegation and will become ultra vires. ·     ModificationModifying the act in relation to its importantaspects is essential legislative function. So, delegation of such power tomodify the act without any limitation is not permissible. ·     ExemptionWithout laying down norms and policy forguidance delegation of power of exemption to executive is not impermissible. ·     removalof difficultyUnder the guise of removing difficulty, legislature cannot enact a Henry VIII clause and delegate a function or powerwhich is essential in nature or which cannot be delegated normally. ·     RetrospectiveoperationThe power of law making in India vests in thelegislature.

Parliament can pass a law retrospectively or prospectively subjectto the provisions of the constitution. But this principle cannot be applied inthe case of delegated legislation. Giving an act a retrospective operation isan essential legislative function which cannot be delegated by the legislatureto the executive. SAFEGUARDSREGARDING DELEGATION OF POWERS TO THE EXECUTIVE: ·     Legislature should lay downguidelines for delegation or exercising the power of delegation.·     To make delegate to act withinthe framework of the statute, legislature has to set a criteria or standardregarding delegation of powers.·     Delegation should bereasonable.·     Delegation should be limitednot unlimited.·     Delegate should not modify thebasic legislation.

·     Delegation of powers shouldn’tbe uncanalised and uncontrollable.·     Legislature must set the limitsof the power delegated by declaring the policy of the law.·     Essential functions cannot bedelegated.   CONCLUSION: Delegationof powers is helpful but excessive delegation is harmful.

Delegation havevarious advantages like reduction of work load of the legislature etc. but whathas to be done by the legislature has to be done by itself only. That is whythere is a well defined arena of the delegated legislature beyond which there willn’tbe allowed any delegation of powers and that is known as impermissible limitsof delegated legislation. Delegation of powers helps in division of excessivework load too but safeguards and proper control mechanisms should be presentand implemented to have a proper canalized and controlled delegation of powers.                                                                                                                                    BIBLIOGRAPHYBOOKS: 1)    C. K. Takwani, Lectures on Administrative Law, 4th edition, 2008.

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1  Sitaram Vishambhar Dayal v. State of U. P. AIR 1972 SC 1168, para7, p. 1170 L1972)2SCR 141. 2 A.

N. Parsuraman v. State of Tamil Nadu, AIR 1990 SC 40. 3 AIR 1967 SC 691. 4 . Baburam Jagdish Kumar & co. v.

State of Punjab, (1979) 3 SCC616 ; AIR 1979 SC 1475, PARA 30, P. 14845 AIR 1954 SC 569, para32, 37 and 39. 6 AIR 1976 SC 714: (1976) 2 SCC 953 ; XII ASIL 475 (1976). 7  See ‘ principles ofadministrative law’ by Jain and Jain.

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