

## **An Article on Sub Delegation**

*-Suarbhi Rathbi\**

### **I Introduction**

Legislation is a law which is enacted by a legislature or any governing body. It is also known as statutory legislation as it is derived from a statue. An item of legislature before becoming a law is known as bill and broadly known as legislation. There are many purpose of legislation such to regulate, to authorize, to outlaw, to provide etc. the expression legislation is derived from two Latin words, legis and lation. *Legis* means law and *lation* means to make. Therefore, it means, the law making power. The law making body or authority is known as legislature. The constitution of India empowers the legislature to make laws in the country. The government has three main organs, the legislative, the executive and the judiciary. No one form of organ can do the work of the other two. The legislative has legislative powers, the executive has executive power and the judiciary has the judicial powers. There cannot be any intervention in between. But there is so much work pressure that alone the supreme authority cannot complete the work hence the authority delegate the work to a subordinate.

Delegated legislation means transfer of authority or power by the superior to the subordinate. Accordingly, when a subordinate by virtue of delegated authority passes a resolution or a law or legislation, it is known as delegated legislation. There are several authors defined delegated legislation, here are some of them. According to Salmond, delegation legislation is which proceeds from any authority other than sovereign power and is dependent for its continued existence and validity on some superior authority. Black law's dictionary defined delegation as an act of entrusting a person with the power or empower the person to act on behalf of that person who has given him that power as agent or his representative. Justice P.B. Mukherjee has observed about delegated legislation, he stated that delegated legislation is an expression which covered a multitude of confusion. He viewed is as an excuse for the legislature, a shield for the executor and a provocation to the Constitutional Jurist. M.P Jain termed it in two sentences: Exercise by subordinate agency or agency that is lower in rank to legislature delegated to it by the Legislature, the subordinate rules made by the Subordinate Authority in the execution of the power bestowed on it by the Legislature.

## **II Types of delegated legislation**

### **1. Title**

- i. Rule- rule means a rule made in exercise of powers given by any enactment and includes regulation based as a rule under any enactment.
- ii. Regulation- it means an instrument by which decisions, order an acts of the government are made known to the people.
- iii. Order- there is not much difference between order and rule. Order means a set of rules to be followed by the individuals.
- iv. By-laws- it means rules made by semi-government authorities established under the act or statute.
- v. Direction- directions are generally framed by the head of the department to regulate the internal functions of the department. It may be mandatory or suggestive in nature.
- vi. Scheme- it is used to refer to a situation where the executive or the administrative authority is authorized by the act or statute to lay down a framework within which a concerned authority is to function.

### **2. Purpose-**

- i. Power to bring the act into operation- all acts contained commencement clause. In majority of the acts the commencement clause empowers the respective government to appoint a day for the commencement of the act to come into force.
- ii. Power to extent the scope or life of the act- the legislature may pass an act declaring that it is applicable to limited territories, persons, commodities or it shall apply for a particular period of time.
- iii. Power to include or exclude persons or objects- the legislature may pass an act applicable to a particular individual, class or person, institutions or commodities but empowers the government to include any other similar type of individuals, class, institutions or commodities within the purview of the act. The act may empower the government to exempt the certain person, class, institution or commodity.

### III Reasons for growth of Delegated legislation

1. Pressure upon Parliamentary times- in modern welfare state, the bulk of the legislature has increased and it does not have sufficient time to discuss minor details. Consequently, this power was delegated to executive or other agency. The legislature passes skeleton legislation and gives the authority the power to supply flesh and blood to the skeleton by making rules, regulations, by-laws, orders etc.
2. Technicality- the subject matter of the legislation is of technical nature, it requires handling by the experts. In such cases, it becomes necessary to delegate to appropriate authority the power to deal with such subject matter,
3. Flexibility- delegated legislation or subordinate legislation is more flexible than ordinary legislation, by-laws etc if found to be defective may easily be amended.
4. Emergency situation- the economic and national emergency requires quick actions but because of being over burden the legislation finds it very difficult to act as promptly as the situation demands. Hence it delegates the power to make rules, regulations to the subordinate legislations to deal with such situation.

### IV Case Analysis

*Chintaman Vs. State of Madhya Pradesh*<sup>1</sup>, in this case the District Collector under delegated authority passed an order prohibiting bidi manufacturer. It was held void. Since it violates freedom of trade profession guaranteed under Article 19(1)(g).

*AIR India Vs. Nargis Mirza*<sup>2</sup>, in this case the regulation made by Air India provided termination of service of an airhostess on her 1<sup>st</sup> pregnancy, held violative of Article 14, 19 and 21 of Indian Constitution.

---

\* Suarbbi Rathi is a student at Amity Law School, Kolkata.

<sup>1</sup> AIR 1951 SC 118

<sup>2</sup> AIR 1981 SC 1829

*Ram Prasad Vs. State of UP*<sup>3</sup>, in this case the UP Panchayat Raj rule framed under the parent act that is UP Panchayat Raj Act, 1947 was held to be ultra vires the parent act.

*AV Nachane Vs. Union of India*<sup>4</sup>, the rules framed by union government under the delegated authority by LIC with regards to bonus to class 3 and class 4 employess were held void since its supersede the terms of the Bonus Settlement Act, 1974.

---

<sup>3</sup> AIR 1952 All HC 843

<sup>4</sup> AIR 1982 SC 1126.