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3rd Year, BBA LL.B. (Hons.)**CRITICAL EVALUATION OF JUDICIAL CONTROL OVER
DELEGATED LEGISLATION WITH THE DOCTRINE OF ULTRA
VIRES****ABSTRACT**

Delegated legislation is any sort of legislation that is secondary or alternative to primary legislation, and it is the use of delegated legislation by an entity subordinate to the parliament. This subordinate authority, which could be the executive, council of ministers, or a specific administrative agency, gets its powers from such a law passed by parliament. There are instances when the legislature lacks the specialized background or expertise necessary to enact legislation on a certain subject, or when there is insufficient time to execute laws that regulates every facet of that subject. In these kind of instances, the legislature might design a legislation and delegate its legal system power to the executive, which may frame rules, by-laws and guidelines under the purview of such legislation. Because of its growing importance, complexity, and concerns to individual liberty, delegated legislation has taken a prominent place in public administration. When a subordinate authority exceeds the set limits, the Court has the right to nullify it on the grounds that it is in violation of the enabling Act. There are only a few instances in India where it Judiciary can take such measures. This article goes into the subject's horizons to explain the several views of judicial control and how the courts must determine whether the power granted is legally acceptable. In addition, the article will discuss the circumstances in which delegated law will be legitimate and in compliance with the main legislation.

Keywords: Delegated legislation, public administration, legislature, Judiciary, subordinate.

INTRODUCTION

Legislation, also known as secondary legislation or subordinate legislation, is the activity of an executive authority in making laws based on powers granted to them by primary legislation to meet the demands of the main law. Because of its numerous implications, delegated legislation is a contentious topic in contemporary theory.

In this context, the judiciary is empowered to exercise judicial control when flaws emerge as a result of India's separation of powers, which includes broad checks-and-balance mechanisms. As a result, through judicial review, the Courts can determine the legitimacy of delegated laws and regulations. The Indian Constitution empowers the legislature to enact legislation for the country's good. A collection of laws is required to carry out those major pieces of legislation. Due to the legislature's inability to fulfil all of its tasks, the executive branch is enlisted to assist.

As a general rule, the concept of substantive ultra vires establishes that the regulation authority lacks the necessary substantive jurisdiction to issue the contested regulations in line with the enabling statute. It has everything to do with the breadth, degree, and scope of the legislative authority delegated to the parent statute by the legislature. In the concept of substantive ultra vires, one of the limbs is the concept of exercising control over subsidiary laws, which courts have employed to do so. As a result, the authority that has been granted is consistent with the Constitution and other major statutes. When a subordinate or delegated legislation exceeds the delegate's jurisdiction or conflicts with the parent or enabling act, the judiciary is not required to alter the legislation but may instead strike it down directly, thereby establishing the judiciary's ability to do so.

Fundamentally, delegated legislation means that the executive branch has been empowered to develop policies for the administration and implementation of fundamental legislation. Delegated legislation is a crucial component of administration since it allows the executive to operate in the legislative capacity. The court exercises significant oversight over delegated legislative authority through the judicial review procedure. The concept of substantive ultra vires is one of two mechanisms by which the judiciary monitors the administration.

Due to the Courts' legal mandate to follow the rule of law prescribed, judicial review of statutory instruments is recognised as an essential form of manipulation on delegates

legislations. The primary responsibility of the court is to ensure that the challenged delegated law is implemented within the scope of the power delegated to it by the enabling act, and that decisions are influenced in accordance with the Law.

There were several arguments that no legislative body could possibly delegate the authority to make laws to another department because such a high prerogative had just been delegated to the legislature because of its own "wisdom, judgement, but rather patriotism, and not to those of the other persons," and if it pursues delegating the faith rather than implementing it, it will operate the doctrine of ultra vires. The laws enacted as a result of primary legislation must be consistent with the goals outlined in the Act of Parliament. Legislation has the same legal standing as the Act of Parliament from which it was derived, but it can be amended more quickly.

THE DOCTRINE OF ULTRA VIRES - A CRITICAL EVALUATION

This concept was developed to keep administrative authorities in check so that they did not exceed their authority. The legislature establishes the procedure to be followed as well as the authority that can be exercised. It is critical to note that the law of supra vires does not apply to activities performed by individual citizens, but rather to acts performed by authorities and personnel clothed with no legal authority. Furthermore, while all ultra vires acts are invalid, not all void acts are ultra vires.¹ In addition, while all ultra vires acts are invalid, not all void acts are ultra vires. An inaccurate conduct committed by a person with vested legal authority, for example, is void and not ultra vires merely.

In this decision², It was decided that wherever delegated legislation is written in ambiguous terms, the doctrine of substantive ultra vires must be applied and upheld to ensure that "no broad language be used for granting power." However, despite the fact that delegated legislation is critical to maintaining the smooth operation of the legal system, I believe that it should not be exempt from the checks and balances that apply to any other piece of legislation. It is necessary to conduct judicial oversight of delegated legislation in order to ensure that the administration does not overstep its authority boundaries. When compared to the delegating authority, the subordinate legislation derives its authority from the authority of the delegating authority. It is neither enforceable or valid if a subordinate law legislates beyond of this

¹ B.C. Sarma, THE LAW OF ULTRA VIRES, (New Delhi: Eastern Book Company), 2004.

² Palm oil research and development board Malaysia & Anor v premium vegetable oils [2005] 3 mlj 97

prescribed area. If a subordinate legislation goes beyond the authorised limitations, conflicts with the primary authority, disregards the specified method, is irrational, or is made in bad faith, a court can declare it to be "superior to the primary authority" and hence invalid. In certain types of cases, the judiciary has this authority.

The smooth operation of administrative law and rule-making systems is dependent on the existence of this type of effective oversight. The doctrine of *supra vires* is a fundamental principle of administrative law that cannot be overstated.

According to the idea, a government can only wield the authority that has been delegated to it by the legislature. It is *intra vires* for the authority to take action if it is carried out within the scope of the authority granted to it; nevertheless, it is *ultra vires* for the authority to take action if it is carried out outside the scope of the authority granted to it. The doctrine of *supra vires* is separated into two sections: the substantive component and the procedural section of the concept.

Ultra vires, or outside the sphere of jurisdiction, means that a piece of delegated legislation is null and void and cannot be enforced by the federal government. Any individual's rights or obligations are not affected by this decision. Regulations that violate the Constitution are believed to be legitimate unless they are found illegal by an appropriate court of law. Only when a rule can be split into its valid and invalid sections can the invalid portion of the rule be repealed and the legal portion of the regulation be allowed to continue in operation, according to the rule. If the legitimate and invalid components of a regulation are hopelessly jumbled together, the entire regulation must be thrown out. A rule that has been declared null and void cannot be utilised as the basis for any administrative action. A rule that is null and void shields someone from being prosecuted.

Whether a regulation is legitimate or unenforceable can be disputed in a court of law, either directly or indirectly. This can be done as part of a defence to a civil claim based on the contested rule, or as part of a defence in a criminal prosecution for breaching the contested rule. Someone can contest the legality of an administrative action by calling into question the regulation that was invoked in the action in which the action was taken. A person whose interests are jeopardised by a piece of delegated legislation has the right to challenge the validity of the law in court if the legislation is unconstitutional. It is possible that the court will issue an injunction or declaration, or a *mandamus*, or that the individual who has been mistreated will be awarded damages, depending on the circumstances.

It is referred to as substantive ultra vires when a subordinate or delegated legislation exceeds the scope of authority assigned to the delegate or disagrees with the parent or enabling legislation. As a result, the validity of subordinate or delegated legislation may be contested in the Courts of Justice. A provision in some Parent Acts expressly waives the jurisdiction of the courts (exclusion clause). Regardless of whether or not there are any exclusion clauses, English courts have the authority to rule that secondary law is in violation of the enabling act. The Indian government's position on the issue, notwithstanding this, is uncertain. It is recommended to adopt the same attitude as English law because the government may abuse its power by enacting rules that go beyond the scope of the enabling Act, leaving citizens with no recourse or other options.

Secondly, by passing an Act of Parliament, the Parliament can delegate legislative authority to anybody or any organisation, allowing them to pass legislation. As a result, the underlying legislation can contain a higher degree of depth and nuance. Legislative authority is granted by the Parliament in line with statute law, and it is this authority that enables for the formulation of new legislation and regulations. Any delegated legislation, on the other hand, must be executed in accordance with the legal framework that is currently in effect.

INSTANCES WHEREIN DELEGATED LEGISLATION CAN BE QUESTIONED

When the delegated legislation is unreasonable and arbitrary

Delegation laws can be declared unconstitutional by the Supreme Court when they are deemed to be illogical or arbitrarily imposed by Congress. A fundamental right to equal equality before the law and fair treatment is guaranteed by Article 14 of the Constitution, which declares categorically that the state has the power to outlaw discrimination and prejudice based on race, caste, sexual orientation, or any other factor is prohibited.³ Moreover, while a bye-law may be challenged on the basis of unreasonableness, it is not possible to challenge a statutory rule on the basis of unreasonableness because statutory rules made under delegated legislation are enacted as if they were part of the legislation itself; as a result, the fairness or reasonableness of the rules themselves are not matters for the Courts to consider, unless the administrative rule-making is challenged on the basis of being unreasonable pursuant to Article 14 of the Constitution. One rule stated that air hostesses' employment would be terminated if they

³ Air India v. Nargesh Meerza, AIR 1981 SC 1829.

became pregnant or married for the first time, or if they reached the age of 35, whichever occurred first. Following the provisions of Article 14 of the Constitution, the Court determined that the regulation was unconstitutional since it was irrational and arbitrarily imposed. This is akin to the Supreme Court's decision to repeal the Rule that mandated that a government employee guilty of a crime be given Rs. 1 basic sustenance allowance while his appeal was being heard, which was subsequently overturned.

Where the Subordinate Legislation is in Conflict with the Delegating Legislation

If secondary legislation conflicts with or contradicts the delegating statute's objectives, it will be ruled ultra vires, as the latter will take precedence⁴. The Act required a quorum of three members of the Panchayati Adalat, while the Rule established under the Act required more. The Court ruled that the Rule was unlawful due to this contradiction⁵.

The delegated legislation is in conflict with the prescribed procedure of law

It is necessary to follow a specific method described in the parent Act in order for the delegated law to be certified legitimate and in compliance with it. This procedure is usually laid out in the Act. Unless the administrative authority follows the procedure described in the parent Act when exercising its primary regulating jurisdiction, the delegated law will be declared null and illegal by the courts.⁶

Where the delegated legislation is mala fide in nature

When legislation is implemented with malice aforethought or with an ulterior motive, it may be found to be extra vires and subject to judicial review. For the benefit of the general people and the entire nation, the government's rule-making authority must be exercised in a fair and honest manner. A court could throw out the law if it is applied in an improper manner. Subbarao v. I.T. Commissioner, the Madras High Court held that "it has been demonstrated time and time again that rules authorised by a passing are just as effective as if they were part of the Act

⁴ Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank, 1983 (10) TMI 270 SC.

⁵ Ram Prasad v. State, AIR 1958 All 143.

⁶ AIR Reduction Co. v. Hickel, 420 F 2d 592 (DC Cir 1969).

itself," and "the assertion of their reasonableness is not a subject for the police to examine as it is with the Act itself," the court stated.⁷

JUDICIARY- A BRIDGE IN-BETWEEN ?

Judicial oversight of delegated legislation has been criticised, and it may be ineffective today because it is primarily dependent on the scope of the legislative provision conferring the powers of statutory instruments. The argument is that delegated law is extremely important; for example, in a crisis, delegated legislation is critical in crisis management.

It enables local governments to draught laws that are tailored to their specific needs, resulting in better management of affairs. It relieves some of the legislature's overburdened responsibilities. As a result, delegated legislation is required, as the judiciary should not be required to judge every provision on the basis of fairness; however, if the judiciary also finds that the executive is overstepping its bounds and violating a doctrine of separation of powers, it does not hesitate to restore executive privilege to its proper place, Unless it is banned, the judiciary has the right to decide whether a legislation passed by the legislature is in accordance with existing laws and constitutional principles⁸. It was also postulated and enshrined that delegated legislations are indeed effective laws that govern India.⁹ As a result, the judiciary exerts judicial oversight over these statutes as well, using two key criteria to determine if the outsourced law is substantively or procedurally ultra vires ¹⁰

TEST OF MEASURING RULES.

Rules must be compatible with the parent statute's requirements. A rule cannot be used to expand the scope of a statutory provision. A rule must take precedence over a statutory provision. If a rule exceeds the scope of the Act's provision, it must be repealed. Ultra vires rules are those that exceed the authority bestowed on the rule-making body by the applicable statute.

A rule must satisfy two conditions in order to be valid: it must correspond to the terms of the statute under which it is made, and it must also be within the scope and purview of the authority

⁷ AIR 1952 Mad 127.

⁸ S. P. Sathe, *Judicial Review in India: Limits and Policy*, 35 OHIO St. L.J. 870 (1974).

⁹ DR. SHAKIL AHMAD KHAN, *PRINCIPLES OF ADMINISTRATIVE LAW* 37 (M.P. Jain 1963).

¹⁰ V.N. Shukla, *Judicial Control of Delegated Legislation In India*, 1 JOURNAL OF THE INDIAN LAW 357, 358 (1959).

forming the rule. If either of these two requirements is not met, the rule is null and void. To apply the doctrine of ultra vires, the court must first interpret the statutory provisions to ascertain the scope of delegation of authority, then interpret the delegated legislation at issue, and finally determine whether the same is within or outside the scope of the statutory authority conferred.

CONCLUSION

Judicial monitoring is essential because it helps to maintain the validity of laws while also safeguarding the fundamental rights of Indian nationals and citizens abroad. If the enabling act or any provision of it is found to be in violation of the Constitution, the delegated legislations adopted under it are also found to be in violation of the Constitution, because the legislation derives all of its legality from the ordinance, which is in violation of the Constitution. It is necessary to strengthen the advisory groups that advise Parliament and to pass legislation such as the Statutory Instruments Act, which establishes uniform standards for the laying and manufacturing of all legal instruments, in order to ensure the long-term viability of Parliament's control over delegated legislation in India. It may be necessary to add a specific authority body to the board of trustees in order to improve the effectiveness of monitoring assigned legislation over the course of time. Additionally, efforts should be taken to improve Parliament's control over designated enactment, in addition to the other methods indicated above. The tenets and standards of the Legal Executive should be tied together by the requirements of the future generations.

However, despite the fact that delegated legislation lessens the burden on parliament, it might operate in a way that is unfair and unfairly enforced in some instances. One thing that should not be missed is the fact that government officials are not permitted to operate outside of their scope of authority in any manner. For this reason, when determining whether a bill is unconstitutional or ultra vires on the basis of fairness, the judge should not assume the legislature's intelligence. Whenever any subordinate legislation is assessed, it should go without saying that a baffling amount of complication is discovered, rendering the technique ineffective. Delegation of authority, in my opinion, eventually leads to more effective governance in the long run.