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DELEGATED LEGISLATION AND THE LIMITS OF ADMINISTRATIVE RULE-MAKING IN INDIA

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Each year, Parliament enacts only a small portion of the regulations that actually guide the governance of India. The majority of these regulations originate from ministries, departments, and regulatory authorities operating under the authority granted to them by the Parliament. For an example, under the Companies Act, 2013, the Ministry of Corporate Affairs has issued fifty-six rules, released eighteen circulars, and made approximately two hundred and twenty-five amendments to the rules established under this one law. When applying this pattern to every significant central legislation, it becomes evident that the overall substantive framework of Indian law is crafted not only by elected representatives but also includes the Executive authorities. This form of lawmaking, is known as delegated legislation. It is essential for effective modern governance. Now this raises an uncomfortable question: how much law-making power can Parliament hand over before it stops being Parliament that actually governs?

The Delegated legislation consists of rules, regulations, notifications, and orders issued by the executive under authority granted by a parent statute. Legislatures delegate for practical reasons. Parliament cannot foresee every technical detail, respond rapidly to changing circumstances, or manage the extensive administrative demands of governing the country. This is due to the wider scope of the Legislature to cover the whole country as diverse and complex as India. Delegation enables the executive to adjust rules to real-world conditions without repeatedly amending Acts of Parliament by reacting to the immediate conditions at the regional level. The main challenge is determining where legitimate delegation ends and abdication of legislative responsibility begins.

The foundational answer came from the Supreme Court's seven-judge bench in In re Delhi Laws Act.[1] The case arose out of a Presidential Reference under Article 143, asking whether the legislature could validly delegate power to the executive to extend, modify, and even repeal laws in certain territories. Although the judges disagreed on many points, they agreed on one fundamental principle: The Essential Legislative function, which is the formation of legislative policy and it's formulation as a legally binding code of Conduct, these are not to be delegated. The court upheld that only the extension and alteration of already-existing laws were permitted under the provisions of the Delhi Laws Act and the Ajmer-Merwara Act. However, the Part C States Act was partially overturned because it went too far and gave the administration the authority to completely repeal laws, which the Court determined went beyond acceptable delegation to abdication.

This distinction still frames every dispute over delegated legislation today, but its practical implementation has proven much more complicated than the doctrine implies. Two recent episodes illustrate the strain:

I. In 2020, the three farm laws were introduced through ordinances rather than the ordinary legislative process, triggering widespread protest over the absence of meaningful consultation and legislative scrutiny before rules with enormous economic consequences took effect.

II. Separately, in the litigation concerning the 2016 decision to withdraw high-value currency notes, the Supreme Court's majority upheld the delegation of that power to the Centre, but Justice B.V. Nagarathna's dissent contended that such delegation was arbitrary and constituted an undermining of parliamentary supremacy through unchecked executive rule-making.[2] Even where courts ultimately validate the delegation, sharp disagreement among the judges themselves signals that the essential function test leaves considerable room for interpretation.

Formal safeguards do exist on paper. Rules are intended to be examined by the parliamentary committees on subordinate legislation once they are drafted, and courts have the authority to use judicial review to invalidate any delegation that interferes with essential law-making. In

[1]Bharat Vasani & Varun Kannan, The Rise & Rise of Delegated Legislation – Do We Need More Safeguards?, India Corp. L. (Jan. 6, 2022), https://corporate.cyrilamarchandblogs.com/2022/01/the-rise-rise-of-delegated-legislation-do-we-need-more-safeguards/; In re Delhi Laws Act, AIR 1951 SC 332.
[2]Vivek Narayan Sharma v. Union of India, (2023) 3 SCC 1 (Nagarathna, J., dissenting).

practice, both inspections are delayed. On one hand the parliamentary Committee's oversight is retrospective, and on the other hand judicial review is triggered only when a rule is contested—often years after it has already influenced behaviour on the ground. Public consultation before rules are finalised also remains inconsistent; for instance, the draft rules under the Information Technology Act concerning intermediary liability, drew criticism for not involving enough public participation prior to it's notification.

None of this means delegated legislation should be curtailed or completely eliminated. A governance would come to a standstill within a week if a legislature attempted to draft every technical regulation. However, the essential legislative function test, devised in 1951 for a very different administrative state, may be too abstract to effectively limit an executive that now enacts laws by notification at an extraordinary scale and remarkable speed. What might actually help is less abstract doctrine and more procedural discipline: mandatory pre-publication consultation windows for rules with significant public impact, better-resourced parliamentary committees empowered to annul rules rather than merely comment on them, and a judicial posture that favours real scrutiny over reflexive deference whenever delegated power touches fundamental rights.

Efficient governance and democratic accountability are not naturally opposed to one another, but they will only stay inherently antagonistic unless the protections or provisions around delegation are given the same weight as the delegation process itself. Until then, the discrepancy between what Parliament passes and what really controls the citizens' day-to-day lives will continue to widening quietly, with one notification at a time.