



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

DELEGATED LEGISLATION IN INDIA: EVOLUTION, CONSTITUTIONAL FRAMEWORK AND JUDICIAL CONTROL A PRE- AND POST-CONSTITUTIONAL ANALYSIS

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ABSTRACT :

Delegated legislation, under which the legislature entrusts law-making power to the executive or other subordinate authorities, is now an indispensable part of the modern administrative state. In India its origins lie in the colonial period, when successive Government of India Acts steadily widened executive rule-making power and courts, most notably in *Queen v. Burah* (1878), laid the early doctrinal foundations through the idea of conditional legislation. With the Constitution of 1950, delegated legislation took on a new constitutional character within a framework of parliamentary democracy, the rule of law and an implicit separation of powers. *In re Delhi Laws Act* (1951) settled the doctrine that the legislature may delegate “non-essential” functions but cannot abdicate its “essential legislative functions”, fixing the parameters of later judicial review. This paper traces the evolution of delegated legislation in India across the pre- and post-constitutional periods, examines the constitutional provisions, parliamentary controls and judicial doctrines of excessive delegation and ultra vires, and, after assessing contemporary challenges such as skeleton legislation and Henry VIII clauses, offers recommendations for reform.

Keywords: Delegated legislation; Essential legislative function; Excessive delegation; Judicial review; Parliamentary control; Conditional legislation; Constitution of India.

INTRODUCTION

The classical doctrine of separation of powers divides governmental authority among the legislature, the executive and the judiciary, and reserves law-making to the legislature.¹ No modern state, however, follows this division rigidly. The volume, technicality and speed of contemporary governance make it impossible for a legislature to enact every rule needed to implement its policy. Legislatures therefore set out the broad policy in a parent statute and leave the administrative and technical detail to the executive, through rules, regulations, orders, notifications, bye-laws or schemes. This is what is called delegated or subordinate legislation.

Sir Cecil Carr regarded delegated legislation as the inevitable companion of modern parliamentary law-making, arising from pressure on legislative time, technical subject matter, the need for flexibility and the value of experimenting before a rule is made permanent.² In India the need is heightened by the size of the polity, the range of subjects across the Union, State and Concurrent Lists, and the constant demand for flexibility in taxation, licensing, price control and welfare legislation. Yet the Indian experience cannot be understood apart from its colonial past. Long before 1950, British rule had developed an elaborate practice of executive rule-making, and the Privy Council and Indian courts had begun to ask how far such delegation could go. The shift from a colonial legislature exercising authority derived from an imperial Parliament to a sovereign Parliament under a written, federal and rights-based Constitution changed what was at stake. This paper therefore follows a pre- and post-constitutional framework to trace how the doctrine and its judicial control developed across that transition.

STATEMENT OF THE PROBLEM

Although delegated legislation is functionally indispensable, unchecked delegation can erode representative democracy, bypass legislative debate and concentrate excessive power in the executive. The Constitution neither expressly permits nor prohibits delegation, so the task of marking its limits has fallen largely to the judiciary, producing a complex and at times inconsistent body of case law. The paper addresses two questions: how the understanding

¹M.J.C. Vile, *Constitutionalism and the Separation of Powers* (2nd edn, Liberty Fund 1998) 14–18.

²C.K. Allen, *Law and Orders* (3rd edn, Stevens & Sons 1965) 1–9; see also M.P. Jain, *Indian Administrative Law* (8th edn, LexisNexis 2018) ch. 2.

of delegated legislation evolved from the colonial to the constitutional era, and how effective the present constitutional, parliamentary and judicial controls are in preventing excessive or arbitrary delegation.

RESEARCH QUESTIONS

My research focuses on five major questions.

1. How did delegated legislation develop in India before the Constitution?
2. What constitutional provisions govern delegated legislation after 1950?
3. What is the difference between permissible delegation and excessive delegation?
4. How has the Supreme Court controlled delegated legislation?
5. Whether the present system successfully balances administrative necessity with constitutional accountability.

OBJECTIVES AND SCOPE OF THE RESEARCH

The study aims (i) to trace the historical evolution of delegated legislation in India from the colonial period to the present; (ii) to analyse the constitutional framework within which delegation operates; (iii) to examine critically the judicial doctrines that control it, especially the doctrine of “essential legislative functions”; and (iv) to evaluate contemporary challenges and propose reforms. The scope is confined to Indian law, with brief comparative references to English and American practice where they clarify the Indian position.

RESEARCH METHODOLOGY

This is a doctrinal, black-letter study based on primary sources (constitutional provisions, statutes and judicial decisions) and supplemented by secondary literature such as textbooks, journal articles and Law Commission reports. The analysis is both chronological and thematic, comparing the pre-1950 and post-1950 judicial approaches.

CONCEPTUAL FRAMEWORK

Delegated legislation is law made by an authority other than the legislature, but under powers the legislature itself has conferred.³ It differs from primary legislation, which Parliament or a State Legislature enacts directly in exercise of plenary power, and from purely executive action, which applies existing law to individual cases without creating new general norms. It occupies a middle ground: legislative in character, since it lays down general rules of conduct with the force of law, but wholly dependent for its validity on the parent Act and bound by its limits.

Article 13(3)(a) recognises this hybrid character by including within “law”, for the purposes of Part III, any ordinance, order, bye-law, rule, regulation or notification having the force of law, so that subordinate legislation faces the same fundamental-rights scrutiny as parliamentary enactments.⁴

Forms of Delegated Legislation

In India delegated legislation takes several forms, distinguished mostly by name and by the level of the delegate: rules (usually framed by a Ministry or Department under a specific rule-making power), regulations (often framed by statutory bodies to govern their own procedure), bye-laws (made by local or statutory authorities such as municipalities), orders and notifications (used to bring provisions into force, extend an Act or grant exemptions) and schemes (broad administrative frameworks under welfare or financial legislation).

Conditional Legislation Distinguished

Indian law also separates delegated legislation proper from “conditional legislation”. In the latter the legislature itself lays down the complete rule and leaves an outside authority only to determine the fact or condition on which its operation depends, such as the date or area in which an already complete law will take effect. Since the legislative judgment is fully exercised by the legislature, courts have applied a more relaxed standard of review to conditional legislation than to genuine delegation of law-making power.⁵

³Sir John Willis, “Delegatus Non Potest Delegare” (1943) 21 Canadian Bar Review 257.

⁴Constitution of India 1950, art. 13(3)(a).

⁵See *Queen v. Burah* (1878) 5 IA 178 (PC); the distinction was later elaborated in *Hamdard Dawakhana v. Union of India* AIR 1960 SC 554 and *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Asstt. Commissioner of Sales Tax* AIR 1974 SC 1660.

The Comparative Backdrop

In the United Kingdom, because of parliamentary sovereignty, courts cannot strike down delegated legislation for “excessive delegation” by Parliament; review is limited to whether the delegate has acted within the enabling Act (substantive ultra vires) and followed the prescribed procedure (procedural ultra vires).⁶ In the United States the “non-delegation doctrine”, though seldom enforced rigorously, requires Congress to supply an “intelligible principle” to guide the delegate, failing which the delegation may be invalidated as an abdication of legislative power.⁷ Indian courts have taken a middle path. Unlike the UK, India has a written Constitution with an implicit separation of powers that limits Parliament’s own competence to delegate; unlike the strict American formulation, the “essential legislative function” test has been applied with considerable flexibility.

HISTORICAL EVOLUTION — THE PRE-CONSTITUTIONAL PERIOD

Delegated legislation in India did not begin with the Constitution. It has a long colonial history, shaped by the needs of imperial administration and by decisions of the Privy Council and the Federal Court of India.

The Government of India Acts

Under the Government of India Act 1858, legislative authority was exercised by the Governor-General-in-Council, a body deriving its power from the Crown and Parliament in Westminster, so that colonial legislation was itself a form of delegated legislation. The Indian Councils Act 1861 formally empowered the Governor-General-in-Council to make laws, and statutes increasingly conferred rule-making powers on the executive to work out administrative detail.⁸ The Government of India Act 1909 and, more substantially, the Act of 1919 extended the practice, with many welfare, revenue and regulatory statutes leaving matters of detail to executive rules.

The Government of India Act 1935 marked a significant expansion. By introducing provincial autonomy and a federal structure, it multiplied the occasions on which central and provincial legislatures delegated rule-making power over subjects distributed among the federal, provincial and concurrent lists.⁹ It was in relation to legislation under these Acts that Indian courts first faced challenges to the constitutionality of delegation.

Queen v. Burah (1878): The Doctrine of Conditional Legislation

Queen v. Burah remains the foundational decision on delegated and conditional legislation in India.¹⁰ The Indian legislature had enacted a statute removing the Garo Hills from the jurisdiction of the ordinary civil and criminal courts and empowering the Lieutenant-Governor to extend its provisions to other areas and to decide how existing laws would apply there. The Calcutta High Court held this an invalid delegation of legislative power. The Privy Council, speaking through Lord Selborne, reversed that decision. It held that the Indian legislature, acting within the powers committed to it, possessed plenary powers of legislation as large as those of the Imperial Parliament, subject only to the limits of the authorising statute.¹¹ The impugned provision was characterised not as a delegation of law-making power but as conditional legislation: the legislature had itself laid down a complete law and left the Lieutenant-Governor only to decide when and where it would operate.

Burah established two propositions that shaped Indian doctrine for the next century. First, a legislature exercising plenary power within its field is not precluded from entrusting subordinate matters to an executive agency. Second, there is a critical difference between delegating the power to make law and leaving to an outside authority the determination of a fact or contingency on which a complete law is to operate.

Refinements in the Early Twentieth Century

Later Privy Council and Federal Court decisions applied and refined the *Burah* principle. In *Russell v. The Queen* and later Canadian and Australian precedents cited with approval in India, the same conditional-legislation reasoning was extended to laws coming into force on the happening of specified events.¹² In India, the Federal Court established under the 1935 Act addressed the outer limits of permissible delegation in *Jatindra Nath Gupta v. Province of Bihar* (1949), decided on the eve of the Constitution.¹³ A provincial legislature had authorised the provincial government to extend the life of a restrictive statute and to do so with such modifications as it thought fit. The Federal Court held this invalid: a power to modify the substance of the Act went beyond conditional legislation and amounted to an impermissible delegation of the legislature’s own law-making function.

⁶Carltona Ltd v. Commissioners of Works [1943] 2 All ER 560; H.W.R. Wade and C.F. Forsyth, *Administrative Law* (11th edn, OUP 2014) ch. 22.

⁷J.W. Hampton Jr. & Co. v. United States 276 US 394 (1928); *Whitman v. American Trucking Associations* 531 US 457 (2001).

⁸M.P. Jain, *Outlines of Indian Legal and Constitutional History* (7th edn, LexisNexis 2014) chs. 6–8.

⁹Government of India Act 1935, ss. 100–104 and Seventh Schedule.

¹⁰*Queen v. Burah* (1878) 5 IA 178 (PC).

¹¹*Ibid* 194–195.

¹²See discussion in H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 2015) vol. 1, ch. 2, referencing *Russell v. The Queen* (1882) 7 App Cas 829.

¹³*Jatindra Nath Gupta v. Province of Bihar* AIR 1949 FC 175.

Jatindra Nath Gupta anticipated, in embryonic form, the distinction that would dominate post-constitutional jurisprudence: delegation of ancillary or subordinate functions is permissible, but delegation of essential legislative functions, particularly the power to alter or repeal the policy of the parent Act, is not. Operating without a written, rights-based Constitution limiting legislative competence, the colonial courts nonetheless built a functional vocabulary that the Supreme Court would inherit and develop after 1950.

HISTORICAL EVOLUTION — THE POST-CONSTITUTIONAL PERIOD

The Constitution came into force on 26 January 1950 and transformed the context of delegation. Parliament and the State Legislatures no longer draw their authority from an external imperial source but from the Constitution itself, the supreme law. Although there is no express separation-of-powers clause, the Supreme Court has consistently held that a broad separation among legislature, executive and judiciary is a basic feature of the constitutional scheme, discernible from the distinct vesting of legislative power (Articles 245 and 246), executive power (Articles 53 and 154) and judicial power in the courts.¹⁴

CONSTITUTIONAL PROVISIONS BEARING ON DELEGATION

Article 245 vests Parliament and the State Legislatures with plenary power to make laws for the whole or part of India or of the State, while Article 246 read with the Seventh Schedule distributes subject-matter competence among the Union, State and Concurrent Lists. Because delegated legislation draws its authority from the parent Act and must fall within the field that Act occupies, its validity is ultimately traceable to these provisions. Article 13(3)(a) subjects it to fundamental-rights scrutiny, so a rule or notification may be struck down not only for exceeding the parent Act but also for violating Part III. Article 312 and similar provisions allow Parliament to create all-India services and delegate related rule-making power, while Articles 77(3) and 166(3), on the transaction of government business, treat executive rule-making as an ordinary incident of governance.

THE “ESSENTIAL LEGISLATIVE FUNCTION” DOCTRINE

The cornerstone of the post-constitutional framework is that the legislature may delegate ancillary or subordinate functions relating to the implementation of a policy, but not its essential legislative function: determining legislative policy and formulating it as a binding rule of conduct. Laid down in *In re Delhi Laws Act, 1912*, the doctrine requires the parent statute to state sufficient policy or guiding principles, so that delegated legislation fills in administrative detail and does not amount to an abdication of the legislature’s constitutional role.

PARLIAMENTARY CONTROL MECHANISMS

Judicial review operates only after rules are made and, typically, only when they are challenged. The Constitution and parliamentary practice have therefore developed complementary controls, both before and after rule-making.

Laying procedures. Most modern parent statutes require rules or regulations to be “laid” before each House of Parliament for a specified period, commonly thirty days, during which either House may modify or annul them. There are three broad types: (i) simple laying, with no power of annulment, mainly for information; (ii) laying subject to negative resolution, under which the rule takes effect at once but lapses if either House disapproves it within the period; and (iii) laying subject to affirmative resolution, under which the rule has no effect until both Houses approve it, the strictest form of control, generally reserved for rules of particular importance.¹⁵

The Committee on Subordinate Legislation. Both the Lok Sabha and the Rajya Sabha have such Committees, which examine whether the rule-making power conferred by Parliament has been properly exercised within its limits. They report on rules that make unusual or unexpected use of the power, impose a tax not authorised by the parent Act, exclude judicial review or operate retrospectively without express authority.¹⁶

Publication and consultation requirements. Many parent statutes require draft rules to be published for public objections and suggestions before finalisation (“antenatal” control) and final rules to be published in the Official Gazette as a condition of taking effect (“postnatal” control). The General Clauses Act, 1897 supplies default rules, for instance on when a notification takes effect, where the parent Act is silent.¹⁷

¹⁴Ram Jawaya Kapur v. State of Punjab AIR 1955 SC 549; Indira Nehru Gandhi v. Raj Narain AIR 1975 SC 2299; Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225.

¹⁵M.P. Jain, *Indian Administrative Law* (8th edn, LexisNexis 2018) 143–150.

¹⁶Rules of Procedure and Conduct of Business in Lok Sabha, r. 317–322; see also Subhash C. Kashyap, *Parliamentary Procedure* (2nd edn, Universal Law Publishing 2006) ch. 24.

¹⁷General Clauses Act 1897, ss. 23–24; Harla v. State of Rajasthan AIR 1951 SC 467 (a law must be published or promulgated to be enforceable).

JUDICIAL CONTROL OF DELEGATED LEGISLATION

Judicial review is the most robust and consistently exercised control over delegated legislation in India. Courts examine it on two broad grounds: substantive ultra vires, where the authority has exceeded the power conferred or the parent Act itself impermissibly delegates essential legislative functions, and procedural ultra vires, where the delegate has not followed mandatory procedural conditions such as prior publication or consultation.¹⁸

In re Delhi Laws Act, 1912 (1951)

The Presidential Reference in *In re Delhi Laws Act, 1912* is regarded as the foundational post-constitutional authority on the limits of delegated legislation.¹⁹ The President sought the Supreme Court's opinion under Article 143 on three statutes that empowered the executive to extend laws in force in one part of India to another, in one instance with such "restrictions and modifications" as the executive thought fit. The seven-judge Bench delivered seven separate opinions and no single ratio, but a working majority converged on three propositions: (i) the legislature cannot delegate its essential legislative function, namely determining policy and enacting it as a binding rule; (ii) subject to this, it may delegate ancillary powers, including extending an existing law to a new area and even modifying it in matters of detail, provided the essential features or policy are untouched; and (iii) a delegation permitting modification so wide as to alter the legislative policy itself would be unconstitutional.

Applying these principles, the Court upheld two of the three provisions but held the third invalid to the extent that it authorised the executive to extend any enactment in force in India with such modifications as it thought fit. So unrestricted a power could reach the policy of the extended law and would be an impermissible surrender of essential legislative function.²⁰ The case supplied the enduring "essential legislative function" test: Parliament may delegate the power to fill in details, but not the power to determine policy.

Rajnarain Singh v. Chairman, Patna Administration Committee (1954)

In *Rajnarain Singh* the Supreme Court synthesised the fragmented reasoning of the *Delhi Laws Act* opinions into a workable test.²¹ It distinguished a delegation to modify a statute in matters of detail, which is permissible, from one to modify its essential features or policy, which is not, being tantamount to delegating the legislature's own law-making authority. The judgment is frequently cited as distilling the majority view into a single "policy versus detail" formula that lower courts could apply more predictably.

Hamdard Dawakhana v. Union of India (1960)

In *Hamdard Dawakhana* the Supreme Court struck down a provision of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 that empowered the Central Government to specify by notification the diseases and conditions in relation to which advertisements would be prohibited.²² The power to decide which diseases fell within the prohibition was itself a matter of legislative policy, going to the heart of what conduct was criminalised, and the Act supplied no discernible standards to guide the executive's discretion. This was excessive delegation of essential legislative function. The case shows that even a delegation confined to a narrow subject matter can be unconstitutional if the parent Act furnishes no adequate guiding policy.

Vasantlal Maganbhai Sanjanwala v. State of Bombay (1961)

By contrast, in *Vasantlal Maganbhai Sanjanwala* the Court upheld a delegation empowering the State Government to fix minimum wages for employments notified under the Minimum Wages Act, 1948. The statute's stated object, preventing the exploitation of unorganised labour, together with the elaborate procedure for fixing wages (committees, publication of proposals and consideration of objections), supplied sufficient policy and safeguards to guide and confine the delegate's discretion.²³ Read together, *Hamdard Dawakhana* and *Vasantlal* show that constitutional validity turns on whether the parent Act articulates policy and procedural safeguards, rather than on the mere breadth of the delegated power.

Gwalior Rayon Silk Mfg. Co. v. Assistant Commissioner of Sales Tax (1974)

In *Gwalior Rayon* a provision of the Madhya Pradesh General Sales Tax Act empowering the State Government to fix the rate of tax was challenged as excessive delegation, because the Act prescribed no upper ceiling.²⁴ A majority of the Constitution Bench upheld it. Fixing tax rates calls for flexibility and administrative expertise and may validly be left to the executive so long as the Act indicates the taxable event, the class of persons and goods, and the general purpose, the rate itself being a matter of detail rather than fundamental policy. The decision reflects a post-1970s trend towards a more pragmatic and deferential approach to fiscal and economic delegation, given the difficulty legislatures face in fixing precise figures across changing

¹⁸I.P. Massey, *Administrative Law* (9th edn, Eastern Book Co. 2017) ch. 4.

¹⁹In re The Delhi Laws Act, 1912 AIR 1951 SC 332.

²⁰Ibid, per Kania CJ and Fazl Ali J (majority reasoning as subsequently synthesised in Rajnarain Singh).

²¹Rajnarain Singh v. Chairman, Patna Administration Committee AIR 1954 SC 569.

²²Hamdard Dawakhana v. Union of India AIR 1960 SC 554.

²³Vasantlal Maganbhai Sanjanwala v. State of Bombay AIR 1961 SC 4.

²⁴Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Asstt. Commissioner of Sales Tax AIR 1974 SC 1660.

economic conditions.

St. Johns Teachers Training Institute v. Regional Director, NCTE (2003)

In *St. Johns* the Supreme Court restated the established tests. A rule must be read consistently with the parent Act and, where two constructions are possible, the one sustaining its validity is preferred; but a rule cannot add to or travel beyond the statutory provision under which it is made, nor override the plain terms of the parent Act.²⁵ The decision represents the Court's settled approach to substantive ultra vires review by the early 2000s.

Grounds and Techniques of Judicial Review

This body of case law has produced a reasonably settled set of grounds on which delegated legislation may be invalidated: (i) the parent Act delegates an essential legislative function without adequate policy guidance; (ii) the delegated legislation exceeds the power conferred (substantive ultra vires); (iii) mandatory procedural requirements such as publication, consultation or laying have not been observed (procedural ultra vires); (iv) it violates fundamental rights under Part III through Article 13(3)(a); (v) the power has been exercised mala fide or for a collateral purpose; and (vi) it is manifestly arbitrary or unreasonable.²⁶ Where only part of a rule or notification is invalid, courts apply the doctrine of severability, striking down the offending portion and preserving the rest, unless the two are so inextricably linked that the one would not have been made without the other.²⁷

From Strict Scrutiny to Pragmatic Deference

A discernible arc runs through this jurisprudence. Immediately after *Delhi Laws Act*, courts applied the essential-function test rigorously, particularly where delegation touched individual liberty or criminal liability, as in *Hamdard Dawakhana*. By the 1970s, in cases such as *Gwalior Rayon* and later fiscal and economic matters, the Court took a markedly more deferential stance, upholding broad delegations in technical and economic fields on the reasoning that policy may be stated in general terms while technical detail, including rates and limits, is left to the executive. This reflects a growing recognition of the complexity of the regulatory state and a confidence that procedural and parliamentary safeguards, with residual judicial review, are adequate checks even where delegation is broadly framed.

COMPARATIVE AND CRITICAL ANALYSIS: PRE- AND POST-CONSTITUTIONAL PERIODS

Comparing the colonial and constitutional periods shows both continuity and transformation. The analytical tool devised in *Burah*, the distinction between conditional legislation and true delegation, survives essentially intact after 1950 and is still invoked, for example, to separate bringing a statute into force in different areas from a genuine transfer of rule-making authority. Likewise, the seeds of the essential-function doctrine are visible in *Jatindra Nath Gupta*, which separated merely extending a law from empowering the executive to modify its substance.

What changed fundamentally after 1950 was the constitutional register in which these questions were litigated. Colonial courts judged delegation solely by the powers imperial statute conferred on the colonial legislature, a question of statutory vires. Post-constitutional courts place the same question within a written Constitution embodying popular sovereignty, an entrenched chapter of fundamental rights and a federal distribution of powers, which impose constitutional, not merely statutory, limits on the legislature's own competence to delegate. This is why the Supreme Court in *Delhi Laws Act* derived an implied constitutional limit, the essential-function doctrine, instead of simply asking, as English courts still do, whether the delegate stayed within the parent Act. Parliamentary and procedural controls, namely laying procedures, the Committees on Subordinate Legislation and mandatory publication, are themselves a post-independence innovation, largely absent in comparable form under colonial practice, and reflect a deliberate choice to supplement judicial review with continuous legislative oversight in a self-governing democracy.

CONTEMPORARY ISSUES AND CHALLENGES

Skeleton Legislation and Henry VIII Clauses

A recurring concern is "skeleton legislation": parent statutes that state only the barest policy and leave almost all substantive content to delegated rules. Particularly troubling are "Henry VIII clauses", named after the English statute that let King Henry VIII legislate by proclamation, which authorise the executive to modify or override provisions of the parent Act or other primary legislation by subordinate instrument. Following *Delhi Laws Act* and *Rajnarin Singh*, Indian courts have generally treated a power to modify the essential features or policy of an Act as impermissible. Narrower clauses, however, such as those empowering the executive to remove "difficulties" in applying a new law for a limited transitional period, continue to be enacted,

²⁵St. Johns Teachers Training Institute v. Regional Director, NCTE (2003) 3 SCC 321.

²⁶See generally Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India AIR 1986 SC 515 (delegated legislation may be tested for unreasonableness in a manner primary legislation, owing to legislative supremacy, ordinarily cannot).

²⁷R.M.D. Chamarbaugwala v. Union of India AIR 1957 SC 628 (severability doctrine, applied analogously to subordinate legislation).

and their compatibility with the essential-function doctrine needs case-by-case scrutiny.²⁸

Delegated Legislation During Emergencies

Delegated power expanded dramatically during the COVID-19 pandemic, as the Union and State Governments issued a vast body of orders, guidelines and notifications, many under the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005, to regulate movement, commerce and public conduct with the force of law. The episode showed both the need for rapid, flexible rule-making in genuine emergencies and the risks of thin legislative guidance, minimal parliamentary oversight and limited opportunity for real-time judicial review. It underlines the continuing relevance of robust ex ante safeguards, especially in emergencies.

Accountability and Transparency Concerns

Studies of Indian rule-making have repeatedly noted that laying requirements are often observed only formally, with little substantive debate on subordinate legislation; that pre-legislative consultation, though increasingly encouraged by government policy, is applied inconsistently across ministries; and that judicial review, being litigation-dependent and confined to the provisions challenged, cannot substitute for systematic parliamentary or administrative scrutiny of the rule-making process as a whole.²⁹

The Case for a Statutory Instruments Act

The United Kingdom has consolidated its framework in the Statutory Instruments Act, 1946. India has no comprehensive statute governing the making, publication, laying and review of subordinate legislation; procedure varies from one parent Act to another, and general principles come only residually from the General Clauses Act, 1897 and judicial doctrine. Commentators and law reform bodies have recommended a comprehensive Statutory Instruments Act to standardise definitions, publication requirements, laying procedures and consultation norms, reducing inconsistency and strengthening accountability.³⁰

SUGGESTIONS

Codification of a uniform framework. Parliament should consider enacting a comprehensive Statutory Instruments Act laying down uniform definitions, publication norms, laying procedures and consultation requirements for all forms of delegated legislation, in place of the present Act-by-Act approach.

Strengthening parliamentary committees. The Committees on Subordinate Legislation should have adequate legal and technical staff and sufficient time for substantive scrutiny, and compliance with their recommendations should be tracked, with periodic reporting to the House.

Mandatory and meaningful pre-legislative consultation. The Pre-Legislative Consultation Policy should be placed on a statutory footing, with minimum consultation periods, mandatory publication of draft rules and publication of responses to public comments alongside the final rule.

Sunset and review clauses for emergency delegation. Powers exercised in emergencies should carry mandatory sunset clauses and periodic parliamentary review, so that extraordinary rule-making does not become a permanent feature of governance.

Calibrated judicial scrutiny. Courts should continue to apply heightened scrutiny to delegations touching criminal liability, fundamental rights or taxation without a ceiling, while remaining deferential in fiscal and technical-regulatory fields where flexibility is genuinely needed, preserving the balance struck since *Gwalior Rayon*.

FINDINGS

My research has resulted in three major findings.

First, delegated legislation is an essential feature of modern administration.

Second, the Constitution permits delegation but does not permit the legislature to surrender its essential legislative function.

Third, judicial review acts as an important constitutional safeguard against excessive and arbitrary delegated legislation.

Therefore, the objective should not be to eliminate delegated legislation, but to ensure that it remains within clearly defined legal and constitutional boundaries.

²⁸See generally Aparna Chandra and others, “Legislative Delegation and the ‘Removal of Difficulties’ Clause” in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (OUP 2016).

²⁹Law Commission of India, First Report on Liability of the State in Tort (1956) and subsequent reports have periodically flagged inadequate parliamentary scrutiny of delegated legislation; see also Government of India, Pre-Legislative Consultation Policy (2014).

³⁰M.P. Jain, *Indian Administrative Law* (8th edn, LexisNexis 2018) 151–155, discussing the UK Statutory Instruments Act 1946 as a comparative model.

CONCLUSION

Delegated legislation in India has travelled a long doctrinal path: from the Privy Council's pragmatic accommodation of colonial administrative need in *Queen v. Burah*, through the Federal Court's early effort to police the limits of delegation in *Jatindra Nath Gupta*, to the Supreme Court's foundational statement of the essential-legislative-function doctrine in *In re Delhi Laws Act* and its refinement in *Rajnarin Singh*, *Hamdard Dawakhana*, *Vasantlal Maganbhai Sanjanwala*, *Gwalior Rayon* and *St. Johns Teachers Training Institute*. What began as a colonial question of statutory vires became, after 1950, a genuinely constitutional inquiry into the limits of Parliament's own law-making competence, conducted against a written Constitution, an entrenched chapter of fundamental rights and an implicit but firmly recognised separation of powers.

The resulting framework of control, constitutional (the essential-function doctrine and Article 13(3)(a)), parliamentary (laying procedures and the Committees on Subordinate Legislation) and judicial (substantive and procedural ultra vires review), has on the whole let India reap the administrative benefits of delegation while containing its most serious risks. Yet skeleton legislation and Henry VIII clauses, the vast expansion of executive rule-making in emergencies and persistent gaps in parliamentary and public scrutiny show that the safeguards, though doctrinally sound, remain unevenly enforced. A calibrated combination of codification, stronger parliamentary oversight, meaningful public consultation and continued judicial vigilance, attentive to the lessons of both periods, offers the most promising way to reconcile the administrative necessity of delegated legislation with accountability, transparency and the rule of law.

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