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Exploring the Principles of Judicial Review in Delegated Legislation

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Abstract

The primary role of legislation rests with the legislature, but in order to meet public needs more efficiently, legislative powers are occasionally delegated to public functionaries under specified conditions. This the delegated legislation (DL); it has shown its profound impact on the everyday lives of citizens. However, when such delegation is unchecked or poorly structured, then it can lead to negative consequences. As a result, it becomes essential for other state organs, especially the judiciary, to oversee and regulate DL. Over time, internationally the judiciary has articulated well-established principles to guide and structure the DL. States for example India, the United States, and the United Kingdom have also formulated various doctrines to scrutinize DL. This study examines those judicial principles that have been developed in modern welfare states to ensure that DL remain within legitimate boundaries. Through comprehensive qualitative analysis, this study aims to clarify the scope and application of these principles in the context of administrative law. The research concludes that a thorough understanding of these principles is essential for the judiciary and public functionaries to interpret and exercise their powers effectively in DL, in order to serve the public interest.

Keywords: Judicial Review, Administrative Law, Delegated Legislation, Excessive Delegation, Judicial Review of Delegated Legislation.



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1. Introduction

Delegated legislation (DL) is also known as subsidiary legislation. It is now regarded as a common element in common law systems. There are various forms of DL (Rana et al., 2024). Despite the variety of its forms, they all share a fundamental characteristic: they are not created by the legislative branch itself. It is not like primary legislation, which is passed directly by the legislature. DL is enacted by executive functionaries, who are granted this power through legislative delegation from the legislature (Forsyth et al., 2023, p. 731-732). Moreover, as governmental functions have become increasingly complex, the reliance on DL has grown both in its scope and significance. In modern democratic systems, legislatures now produce only a small portion of the total laws and regulations. Instead, a substantial amount of legislative power is delegated to public functionaries, primarily within administrative functionaries. These functionaries then develop detailed rules and regulations with an aim to implement and enforce the broader laws passed by the legislature. As part of the executive branch, these public functionaries now possess the main authority to create regulations that also carry the full force of law. This process is a fundamental feature of DL, where the legislature sets control policies, while these functionaries are entrusted with creating the necessary specifics to ensure effective implementation of the primary legislation.(Massey, 2008, p. 1).

This swift expansion of DL can be attributed to the growing role of modern administrations. Today governments are no longer limited to maintaining law and order, collection of taxes, or to secure national borders, rather they are increasingly focused on promotion of welfare of general public. Their goal now is to ensure that their actions promote socio-economic justice for their citizens. Consequently, public functionaries have gained such significant influence that many people perceive themselves as being governed more by these unelected officials rather by their own elected representatives (*Agricultural Market Committee v. Shalimar Chemical Works 1997*). Furthermore, the change from laissez-faire to a welfare state has also necessitated a significant increase of governmental authority. This innovative role of the state can only be realized through yielding the government certain larger powers, which allow them to address the pressing social and economic challenges facing by their country. Empowerment of the government to manage issues of modern social and economic reforms have been achieved primarily through the delegation of legislative authority. However, this delegation naturally raises important questions about the scope and extent of such powers (Massey, 2008, p. 74).

Scholars have also noted that longstanding perspectives on public welfare highlight a key rationale for DL—to serve the broader community, this objective should remain non-negotiable. This focus on welfare covers various aspects of societal well-being, including health, safety, order, morality, economic stability, and political integrity. As, in the traditional police state, the administration's primary role was law enforcement. However, in a modern welfare state, the scope of administrative functions has broadened significantly, equally the need for legislative activity. Today, it is impractical for the legislature to cover every issue through direct statutory activities. Consequently, the majority of laws which are affecting the public are formulated by public officials, rather than by the legislature itself (Sarda, 2016). This shift has occurred as the state's responsibilities have expanded, they are now required public functionaries to take on a more prominent role in governance due to the increased volume and complexity of laws (Rana et al., 2024).

To ensure that DL fulfills its intended purposes, there are various controls that have been established in worldwide democratic systems. These controls can generally be categorized into two main types: judicial controls, which are being exercised by the courts, and the parliamentary

controls, which are being enforced through legislative oversight (Swarnim, 2020). Scholars observed that in order to truly safeguard public welfare and to protect the interests of the people in Pakistan, it is imperative to enhance both judicial and parliamentary oversight of DL. Amongst these, the judicial oversight is the most important one (Vijeta, 2023). Without establishment of these mechanisms, the core objective of DL powers to public functionaries cannot be fully achieved (Hussain, 2022). Furthermore, in view of the practical significance of DL, its regulation demands careful attention. One primary method is parliamentary scrutiny; however, doubts have been raised about the effectiveness of this oversight as an adequate and the sufficient meaningful check on DL (Fowler et al., 2021). Though reforms to improve the parliamentary scrutiny process are necessary, yet it is equally important to explore alternative control mechanisms that can operate alongside it (Chng, 2024). This paper focuses on controlling DL through a different avenue: judicial review (JR). It is well-established that DL is subject to judicial scrutiny, that is how it makes this as an important mechanism to ensure its legality and accountability.

2. Importance of This Research

This research is imperative for several reasons. It will aid in public accountability through placing its focus on the judicial scrutiny of excessive delegation, to ensure that public functionaries act only in the public's best interest. It also clarifies the boundaries of legislative authority and shed light on the scope of powers which are delegated to officials. This study contributes to a clearer legal framework regarding DL. Through reviewing effective oversight of DL in the shape of principles laid down by higher courts, this study aims to promote socio-economic justice in the realm of administrative law and also to protect citizens' rights within the context of modern welfare states. It also identifies the need for reforms in judicial oversight mechanisms, eventually it lays down the groundwork for future legislative improvements. With global relevance in this study, the findings can inform similar discussions in other common law jurisdictions, thereby enriching the discourse on control of DL. Ultimately, this research contributes significantly to administrative law through offering insights on the principles of JR on DL for scholars, practitioners, and policymakers simultaneously it is also encouraging researchers to further explore the JR oversight mechanisms in DL.

3. Research Methodology

This study primarily employs a qualitative approach to investigate the principles of JR of DL. The methodology consists of three key components. Firstly, a qualitative analysis is performed through a thorough review of available legal texts, which includes academic literature, articles, and expert commentaries, which enable an exploration of both theoretical and practical dimensions of the subject. Secondly, the study includes comprehensive analysis of case laws with an aim to illustrate how the judiciary has interpreted the principles of JR of DL. Finally, a brief comparative analysis is also conducted during the study with an aim to examine the topic in other states, such as India, England, and the America. Together, these methods provide a comprehensive exploration of principles of JR of DL, through integration of theoretical insights, practical case studies, and international comparisons, all to enhance our understanding of its regulation and oversight.

4. Judicial Review of Delegated Legislation

In many democratic countries, the validity of DL can be assessed by the courts through the application of two key tests: Substantive Ultra Vires and Procedural Ultra Vires (Takwani, 2005, p. 102). The courts have now settled that they may invalidate a piece of DL if its content violates the provisions of the enabling Act, another principal enactment, or constitutional principles. Additionally, the court can as well declare DL illegal if it exceeds the authority granted by the

enabling Act or if it infringes upon rights established by other laws (Craig, 2003, p. 389). S. P. Sathe in his work has noted that, rather than opposing the DL power, it is more beneficial to focus on regulating its usage through a strong legislative and judicial oversight. This approach stresses the importance of regulation how DL powers are exercised by keeping accountability and legality (Sathe, 2004, p 51). Therefore, the Committee on Minister's Powers in England disagreed with critics who viewed DL as entirely negative. They acknowledged its clear benefits, as long as statutory powers are exercised and functions are carried out properly. However, they also recognized the inherent risk of its abuse and emphasized on the need for its appropriate safeguards (Robson, 1932).

In the context of legislative power DL, Justice Subba Rao remarked in the *V.M. Sanjanwalla* case that delegation carries inherent risks. A legislature that is inundated or dominated by a strong executive may exceed its delegation limits. It might fail to establish clear policies, present its policies in vague and general terms, or neglect to provide standards for guidance of the executive. Consequently, it could grant the public functionary arbitrary power to alter or modify established policies without retaining any effective control over DL. This relinquishment of legislative authority, either partially or entirely, exceeds the acceptable bounds of delegation (*Vasantlal Maganbhai Sanjanwala v. The State of Bombay 1961*). In a different case, regarding JR of DL, it was also noted that when the constitutionality or interpretation of any legislation—whether enacted by Parliament or created by a public functionary through DL—is at stake, it is futile to argue that a court of higher jurisdiction cannot exercise its power of JR. It is essential to differentiate between a decision of public functionary that establishes policy and one that is made under its legislative powers within the umbrella of DL. Legislation, whether passed by Parliament or a legislative body or enacted by the public functionaries, must be interpreted in accordance with the established principles which have been set forth by the court. The determination of whether a piece of legislation is *ultra vires*, or the implications and meanings which are derived from its interpretation, will depend on the specific legislation in question and its relationship to constitutional provisions and other pertinent factors (*Bombay Dyeing & Manufacturing Co. LTD v. Bombay Environmental Action Group and others 2005*). Thus, to implement check and balance on DL is essential. In this context, one may categorize the principles, for the control and regulation of DL into two distinct areas: first, Judicial Principles, and second, Legislative Principles. However, in this study only judicial principles are covered.

4.1. Judicial Principles

In a separate case, the Supreme Court of India while addressing the question whether a specific rule was entirely valid observed that the court has now established that there is a presumption which support the constitutionality or validity of DL while placing the onus on the challenger to prove its invalidity. It is recognized principle that DL can be contested on several grounds, including an absence of legislative competence to enact the DL, infringement of fundamental rights, violation of any provisions within the Constitution, non-compliance with the statute under which it was created, surpassing the authority which is granted by the enabling Act, incompatibility with existing laws, and manifest arbitrariness or unreasonableness to such an extent that the court might conclude the legislature never intended to authorize the creation of such rules. Furthermore, the court further stated that when evaluating the validity of DL, it must deliberate on the nature, purpose, besides framework of the enabling Act, in addition to the scope of the power DL under that Act. The court must then determine whether the DL adheres to the parent law. If DL is directly in conflict with a binding provision of the law, then the court task is relatively straightforward. However, if the argument is that the discrepancy or non-conformity of the DL does not relate to

an explicit provision of the enabling law but rather to the broader objectives and framework of the parent law, then the court should exercise carefulness before declaration the legislation invalid (*State of Tamilnadu and another v. P. Krishnamurthy and others* 2006).

In a similar vein, the Court ruled in another case that the validity of DL can be challenged if it is ultra vires to the Constitution or to the governing Act, or if it contradicts the fundamental principles of the laws of the land. Furthermore, legislation may be deemed invalid if it is deemed so arbitrary or unreasonable that no fair-minded authority would have enacted it. The court also stated that rules could be declared invalid if they are manifestly unjust, oppressive, outrageous, unauthorized, or violate general legal principles. Additionally, rules may be considered invalid if they are so vague that their prohibitions cannot be clearly understood, or if they are so unreasonable that they cannot be reasonably linked to the DL powers or if they indicate bad faith (*Supreme Court Employees Welfare Association v. Union of India* 1989).

The following are the principles established by the judiciary in JR of DL:

4.1.1. Legislature must not delegate its ‘Essential Legislative Functions’.

The issue before us is defining what constitutes an essential legislative function (ELF) and identifying the limits within which such functions can be delegated. To address this, we will examine various case laws. The first significant ruling by the Indian Supreme Court regarding the validity of delegated legislation was in the case of *Re Delhi Laws Act*, decided by a Constitution bench comprising seven judges, who each delivered separate judgments (Mohandoss, 1984). However, in the case of *B. Shama Rao*, Justice Shelat summarized the views of the seven judges from the *Re Delhi Laws Act* case, while noting that the significant divergence of opinion among them, apart from their shared conclusion to partially uphold the validity of the laws, makes it challenging to derive a binding general principle for future cases under the doctrine of stare decisis. He stressed that a decision is binding not merely because of its conclusion, but due to its ratio and the principles it establishes. Consequently, the consensus among the judges included several key points: first, that legislatures, both before and after the Constitution, hold plenary power within their respective domains and were never delegates of the British Parliament. Second, they possess the authority to delegate powers within certain limits—not because such authority is inherent in legislative power, but because it is recognized in the United States as essential for the effective exercise of legislative authority in a modern state which is facing diverse activities and complex challenges. Lastly, while delegation of an ELF that amounts to partial abdication is not permissible, and the judges agreed that delegation could apply to subsidiary and ancillary powers (*B. Shama Rao v. Union Territory of Pondicherry* 1967).

The Court in another case also ruled that the legislature is not permitted to delegate its responsibility for establishing legislative policy regarding a measure or for formulating it into a rule of conduct. It is the duty of the legislature to define the main law's policy and the legal principles that will govern specific cases while also providing standards to direct the officials or entities which are responsible for enforcement of the law. The ELF involves determination or selection of the legislative policy and formally enacting that policy as a binding rule of conduct. The preamble and the sections of the Act must adequately articulate the legislative policy, and the nature and scope of the Act should also indicate that the specifics of that policy can only be developed through delegation of them to a subordinate authority, all within the established framework of that policy only (*Harishankar Bagla v. State of M.P.* 1955). Furthermore, the court also determined in another case that a legislature burdened by excessive demands or one that is dominated by a powerful public functionary may exceed the permissible boundaries of delegation.

The complete or partial relinquishment of legislative power to another agency is beyond what can be considered acceptable. It is therefore the court's responsibility to interpret the challenged statute fairly, generously, and liberally with an aim to determine if the legislature has indeed surpassed these limits. However, this liberal interpretation should not lead courts to attempt to unearth a hidden legislative policy that justifies arbitrary powers granted to public functionaries. It is therefore the court's obligation to unequivocally invalidate any arbitrary powers bestowed upon the public functionaries by the legislature (*Devi Das Gopal Krishnan etc. V. The State of Punjab & Others* 1967).

In Pakistan, the courts have had a similar view. In an earlier ruling, the court affirmed that the principle of separation of powers—encircling the legislative, executive, and judicial branches—implies that legislative authority cannot be delegated to any entity other than the legislature itself. The legislature is not allowed to relinquish or transfer its ELF, which are granted to it solely by the constitution. This requirement is evident within the constitution, and it makes the proposition irrefutable. Consequently, it has been established that the ELF cannot be delegated or assigned to any external authority, such as the public functionaries (*Haji Ghulam Zamin v. A. B. Khondkar* 1965). In the *Al Mutwakkal Flour Mills* case, a policy letter issued by the authority was contested on the basis that it was regarded as a regulatory order. Upon reviewing the policy letter, the court determined that there were significant restrictions which were imposed on trade, occupation, or profession by the policy letter. The legislature is not allowed to relinquish or delegate the ELF that are exclusively granted to it by the constitution (*Al Mutwakkal Flour Mills v. The Province of Punjab* 1999).

4.1.2.Delegated legislation must be intra-vires to enabling Act.

The landmark case on this matter is *Sibnath Banerji* case, which involved habeas corpus petitions filed on behalf of nine individuals detained in various jails under orders issued pursuant to Rule 26 of the Defence of India Rules, 1939. The relevant portion of Rule 26, as it stood since 1940, states: “26. (J) The Central Government or the Provincial Government, if satisfied that a specific individual is acting in a manner prejudicial to the defense of British India, public safety, maintenance of public order, relations with foreign powers, peaceful conditions in tribal areas, or the efficient prosecution of the war, may issue an order directing that he be detained.” In determining whether the rules were ultra vires to the enabling Act, the court expressed disagreement with the Chief Justice of the Federal Court regarding the interpretation of Sub-sections (J) and (2) of Section 2 of the Defence of India Act. The respondents' counsel could not uphold that assertion or argue for the invalidity of Rule 26. The court concluded that the function of Sub-section (2) is merely illustrative; the rule-making authority is granted by Sub-section (1). The "rules" mentioned in the opening line of Sub-section (2) refer to those authorized by Sub-section (1), and the provisions of Sub-section (2) do not limit Sub-section (1), as clearly indicated by the phrase "without prejudice to the generality of the powers conferred by Sub-section (1) (*Emperor v. Sibnath Banerji* AIR 1945).

Professor Wade in this regard has noted that even though Acts of Parliament carry sovereign authority, yet legislation created under DL powers is only valid if it strictly adheres to the authority granted to it. Even in situations where such regulations require approval through resolutions from both Houses of Parliament, however, they remain classified as DL, and it always allow the courts to assess their validity (Wade, 1988, p. 683). Therefore, in the *Pakistan Television Corporation* case, when Section 3 and the first schedule of the Federal Excise Act, 2005, were amended through DL, the court ruled that since these were statutory provisions, they could only be amended by an Act of Parliament. It was held that DL, such as a Statutory Regulatory Order, could not be used to

amend these provisions. (*Pakistan Television Corporation Ltd. V. Commissioner Inland Revenue 2019*)

4.1.3. Delegated legislation must be intra-vires to Constitution.

In the case of *Basant Nahata*, the Indian top court has noted that the argument that the judiciary should not interfere with policy decisions lacks merit. On the other hand, it was emphasized that a legislative policy must adhere to the constitutional commands. Furthermore, even policy decisions are not immune to judicial review and can be scrutinized by the courts (*State of Rajasthan & Ors. V. Basant Nahata 2005*). In another case, it was held that whether legislation is passed by the legislature or through DL, it serves to implement the state's legislative policy. However, such legislation must not violate the Constitution. DL, in addition to being in compliance with the Constitution, must also adhere to the limits set by the parent Act under which it is made. It is well-established that DL must be reasonable, it must align with the legislative policy, and faithfully reflect the purpose and objectives of the Act, while being enacted in good faith (*Bombay Dyeing & Manufacturing Co. LTD v. Bombay Environmental Action Group and others 2005*). The courts have consistently observed that DL holds a statutory character, with the key limitation being that it must not violate the provisions of the parent law or the Constitution (*Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat 2008*).

In a landmark case in Pakistan, the vires of a notification issued based on the approval of a secretary and an advisor under the Sales Tax Act, 1990, was challenged. The court held that the power in question was conferred solely and exclusively on the Federal Government under section 3 of the Act. Though Parliament could delegate certain functions to subordinate authorities on the basis of the Federal Government's recommendation under Article 98 of the Constitution, yet this provision did not allow for the transfer of any legislative powers to subordinate officials. The court emphasized that the levy of taxes is a function of Parliament, and transferring such power to the executive would undermine the doctrine of parliamentary supremacy and the principle of separation of powers (*Mustafa Impex Karachi v. The Government of Pakistan 2016*).

4.1.4. The enabling Act must be intra-vires to Constitution.

A law, once enacted, may either be constitutional or unconstitutional. Historically, courts offered not much but limited grounds for declaration of a law unconstitutional, which included legislative competence, infringement of fundamental rights guaranteed by the Constitution, and the law's reasonableness. The first two grounds had clear boundaries in terms of their scope and application, while the third—reasonableness—remained more ambiguous and uncertain. However, as legal interpretations evolved, the range of grounds for declaration of a law unconstitutional expanded over time. In his book *Shorter Constitution of India*, D.D. Basu has outlined the grounds on which laws could be invalidated, through referencing various judgments of the Indian Supreme Court. These grounds include: (i) violation of any fundamental right specified in Part III of the Constitution; (ii) legislation on a subject not assigned to the relevant legislature as per the distribution of powers in the 7th Schedule, along with related Articles; (iii) contravention of mandatory constitutional provisions that impose limitations on legislative powers; (iv) for state laws, trying to operate beyond the state's jurisdiction; and (v) cases where the legislature has abdicated its essential legislative function or made excessive delegation of that power to another body (Das, 2007).

4.1.5. Delegated legislation must be made in consonance with the prescribed procedure of enabling Act.

Craies observed that though the courts cannot question the validity of statutes, yet they can generally review the validity of DL. Courts require proof that such rules were made and issued according to statutory authority, unless the statute mandates them to be judicially recognized. In the absence of an explicit statutory provision, courts may investigate whether the DL power was exercised in compliance with the statute, and it can consider the procedure, form, substance, or any attached sanction. Consequently, courts may declare a regulation or any DL invalid and ultra vires if it fails to meet statutory requirements (Craies & Edgar, 1971, p. 297).

In the Kerala Samsthana Chethu case, while dealing with a question that whether Rules 4(2) and 9(10)(b) of the Kerala Abkari Shops Disposal Rules, 2002, were ultra vires the Abkari Act, the court ruled that a rule must not only obey to the provisions of the Act under which it is made but it must also align with the provisions of any other legislation. A piece of DL cannot contradict any plenary law enacted by Parliament or the State Legislature (*Kerala Samsthana Chethu Thozhilali Union v. The State of Kerala & Ors* 2006). The Supreme Court of Pakistan also has clarified that rules originate from a statute and are created by a competent authority exercising its DL power under that Act. According to the relevant principles established for interpreting statutes, their application is restricted to the law under which they are formulated and cannot be applied to any other law. This limitation holds unless the application of such rules is explicitly granted, borrowed, or referenced in a manner that allows for their use in a different legal context (*Province of Punjab v. Rana Ziladar Khan* 2013).

4.1.6. Delegated legislation must be reasonable.

The courts maintain that the test of reasonableness is essentially aligned with concepts such as social engineering, interest balancing, and other approaches proposed by contemporary sociological theories to address the issue of judicial interference. This test is not applied in isolation; rather, it is assessed within the framework of real-life circumstances (*Om Prakash and the Others v. The State of U.P.* 2004). In India, the unreasonableness of DL can now be contested on the basis of a violation of Article 14 of the Constitution, which ensures equality before the law. However, this cannot be allowed to be misused. The legal position is now firmly established that a bye-law cannot be invalidated by the Court solely on the basis of unreasonableness, even if the Court believes it goes beyond what is "necessary" or fails to include certain provisions that the Court considers fair and beneficial. The Court cannot deem a bye-law unreasonable simply because the judges disapprove of it. Except a bye-law can be shown to be clearly unjust, arbitrary, inequitable, or biased in its application, it cannot be declared invalid by the Court on grounds of unreasonableness (*Maharashtra State Board of Secondary And Higher Secondary Edu v. Paritosh Bhupesh Kumar Sheth, etc* 1985). Lord Russell, in his examination of the test of reasonableness, stated that if rules are discovered to be biased and lop-sided in their application among diverse groups, if they are clearly unjust, if they reveal bad faith, or if they impose oppressive or unnecessary restrictions on the rights of those affected without justification in the views of reasonable individuals, then the Court could reasonably conclude, "Parliament never intended to grant the authority to create such rules; they are unreasonable and ultra vires" (*Kurese v. Jhonson* 1989).

4.1.7. Delegated legislation must be based on good faith.

In the Shri Sitaram Sugar Co. Ltd. case, it was observed that the power delegated by statute is constrained by the scope and objectives of the statute itself. The delegate is required to act in good

faith, reasonably, within the authority granted (*intra vires*), and it must base its decisions on relevant and material facts. Whether the delegate's actions are classified as legislative, administrative, or quasi-judicial, they must align with the Constitution and the laws of the country. The case also clarified the grounds on which DL can be subject to JR, including violations of constitutional provisions and the enabling Act. Furthermore, JR can also be invoked on the additional grounds of discrimination, consideration of irrelevant or extraneous factors, and actions taken in bad faith (which is otherwise known as *malafide*). This case underscored that the actions of delegates are not beyond scrutiny through JR, to ensure that they operate within the legal framework set forth by the Constitution and other statutes (*Shri Sitaram Sugar Co. Ltd. V. Union of India 1990*). Likewise, in another significant ruling, the Supreme Court of India has noted that any arbitrary exercise of power, whether legislative, administrative, or quasi-judicial, all are subject to the restrictions imposed by the Constitution: this ensures equality before the law. The Court also emphasized that the power which are DL is inherently limited by the statute's terms and must adhere to its objectives. The delegate must exercise this power in good faith; he must act reasonably; he should stay within the authority granted (*intra vires*); he must make decisions on the basis of relevant and material facts. The doctrine of JR mandates that the authority entrusted with delegated power operates within the limits of that power and does not misuse it. Moreover, the Court highlighted that it is not enough for an instrument to merely conform to the parent Act; it must also comply with constitutional principles, to make sure that the exercise of DL is both lawful and just (*Tata Cellular v. The Union of India 1994*).

4.1.8. Delegated legislation must be made for carrying out the purpose of the Act.

The courts of law have observed that rules framed under an Act must be made strictly to implement the provisions of that Act only. Both the authority to create rules and the ability to enforce terms and conditions are limited by the provisions of the Act and must be aligned with the legislative intent. The rules should not contradict the other provisions of the Act or they should not violate the constitutional or statutory frameworks. In determination whether a DL is *ultra vires*, it is essential to consider the purpose of the entire enactment, that is started from the preamble to the final provision. If the rules serve the overall objective of the Act, they cannot be considered *ultra vires* (*Kerala Samsthana Chethu Thozhilali Union v. The State of Kerala & Ors 2006*). This is because a regulation is a rule or order prescribed by a higher authority for managing specific affairs, and it implies a general rule for guiding actions. Rules and regulations are part of DL, which derives its authority from the enabling Act. It is essential that the entity granted the power to make DL operates within the boundaries set by the Act. Rules should not replace the provisions of the enabling Act but rather complement them. What is allowed is the delegation of auxiliary or subordinate legislative functions, often referred to as the power to fill in the details. After defining the legislative policy, the legislature can delegate the discretion to an administrative body to implement that policy, and while leaving it to that body to work out the specifics within the framework of the established policy (*St. Johns Teachers Training v. Regional Director, National Council for Teacher Education 2003*). Similarly, in the Flying Cement Company case, when Section 31(5) of the Regulation of Generation, Transmission, and Distribution of Electric Power Act, 1997, which stated that "a distribution company shall pay to the federal government such surcharge as the federal government may notify from time to time in respect of each unit of electric power sold to consumers," was contested. The court ruled that this section failed to define the structure and nature of the surcharge to be imposed on electric power sales. Moreover, it did not provide any legislative parameters, guidelines, or policy for determining the amount, nature, or number of surcharges to be levied. This was considered an improper delegation of essential

legislative functions, which is not authorized by law (*Flying Cement Company v. The Federation of Pakistan 1945*).

5. Summary of Principles

The courts of law on the subject of DL have time and again expounded by explaining that DL allows the delegate to execute the legislative mandate by either creating rules or regulations that interpret and apply the key legal principles which are outlined in the parent legislation. Alternatively, it may involve issuing more detailed administrative directions for implementation of the law. DL is meant to enforce and operationalize the law, not to alter or override it. Its role is to address specifics and fill in the gaps while at the same time to maintain the fidelity to the core legislative principles. In the event of a conflict, the DL must give way to the legislature's intent, as it is subordinate to, and not above, the law. Furthermore, the courts have also clarified that rules and notifications, being forms of DL, are subject to the parent statute through JR. Any instrument or notification which is issued under DL authority is designed to support and promote the objectives of the parent law, rather than contradict or invalidate its express provisions. Thus, DL is limited by the boundaries of the authority which is granted by the enabling Act, to ensure that it aligns with the statute's purpose and intent (*Muhammad Amin Muhammad Bashir Ltd. V. The Government of Pakistan 2015*).

In view of the above referred study on the JR of DL, the principles can be summarized as under:

- I.** A DL cannot exceed the boundaries set by the section of the law under which it is framed. If it extends beyond the intended scope of the statute, it must defer to the statute and cannot stand.
- II.** The public functionaries' authority to make DL in the shape of rules and regulations is intended to realize the legislature's policy and intent, but this authority is confined within the limits which have been granted by the law. Therefore, rules must align with and not contradict with the provisions of the legislation they stem from.
- III.** If the rules created as DL under a statute conflict with the statute's provisions or undermine the legislature's intent, they are invalid. They must faithfully represent and support the statute's objectives.
- IV.** The public functionaries cannot assume powers which are not explicitly provided by the statute. Rules cannot extend or expand the scope of the Act beyond what is authorized and must not conflict with the Act or contradict other laws.
- V.** Rules must be interpreted in harmony with the statute. If there is a contradiction between the statute and the rule, the rule must be adjusted to fit the statute. In cases where reconciliation is impossible, the statute takes precedence over the rule.
- VI.** Rules that go beyond or violate the statute are considered ultra vires (beyond authority) and they cannot be enforced. These rules must be discarded when they are inconsistent with the statute's provisions.
- VII.** Rules and regulations are designed to regulate and limit the powers which are conferred by the statute, to ensure that statutory authority is exercised within its intended scope.
- VIII.** There is no significant difference between rules and regulations; both are forms of DL, and the power to create them originates from the statute itself and not beyond it.

- IX.** Statutory bodies known as public functionaries are authorized by the Act to create rules and regulations which is DL, however, they are required to be consistent with the Act. These rules must address matters within their lawful domain and support the purpose of the legislation.
- X.** Public functionaries cannot create rules that conflict with or undermine the core provisions of the law under which they are operating. Any such rules will be considered invalid.
- XI.** DL must remain within the scope of the parent Act. A rule cannot be made that contradicts the Act, and similarly, regulations must not conflict with either the statute or the rules derived from it.
- XII.** If a statute is discriminatory on its face or can be applied in a discriminatory manner, or if it violates constitutional provisions, it can be declared void from its inception (void ab initio).
- XIII.** Fundamental rights, protected by the Constitution, are placed beyond the reach of state organs—whether public functionaries or legislative. These rights cannot be violated, restricted, or taken away by DL. It must be ensured that they remain inviolable.

These principles highlight the regulating limitations which have been designed by the courts of law through the usage of JR on DL. These principles emphasized that any shape of DL either rules or regulation, all must faithfully reflect the will of the legislature, all must adhere to constitutional mandates, and all must support the statute's objectives without overstepping the bounds of authority which is granted by the law (*Mir Shabir Ali Khan Bijrani v. The Federation of Pakistan 2018*).

6. Conclusion

The power to make rules, which is DL, is granted solely to further the primary objectives of the main law, and it cannot extend beyond that purpose. Parliament delegates its legislative authority to public functionaries in those areas where it may lack the necessary technical expertise or where timely responses to changing circumstances or specific needs are required. This delegation provides further flexibility in application and execution of the main law through allowing public functionaries to create necessary rules that align with legislative goals. However, these statutory rules and regulations must not broaden the scope of the statute under which they are formulated. The public functionary is obligated to craft DL that faithfully implement the legislature's main intent at the same time while remaining within the boundaries set by that law. Any extension or overreach beyond this mandate is impermissible and would undermine the very purpose of DL (*Muhammad Fahad Malik v. The Pakistan Medical and Dental Council 2018*).

In view of the above referred principles of JR on DL, the conclusion of this research underscores the delicate balance which is required when delegating legislative powers to public functionaries. While the efficiency and adaptability provided by DL are essential to meet the current times evolving public needs, yet at the same time, it must also be closely regulated to avoid misuse or overreach. For this purpose, the judiciary's role has become paramount in this respect, as courts are entrusted with the task of ensuring that DL remains within the framework established by the parent statute and does not violate constitutional principles through the usage of JR.

Furthermore, through the analysis of case laws from Pakistan, India, the United States, and the United Kingdom, this study emphasizes that DL, either they are statutory rules or regulations, must align with the legislative intent, without attempting to expand or to contradict the core provisions of the parent law. The power to legislate cannot be arbitrarily transferred to subordinate bodies without clear guidelines, limits, and oversight. The courts, as guardians of constitutional and

legislative boundaries, are instrumental in striking down any unlawful or excessive delegation that may undermine democratic governance or infringe on fundamental rights.

Therefore, the conclusion of this study advocates for a refined and well-structured approach while using DL by public functionaries, where its use is justified, but always kept within defined limits. The judiciary, through careful interpretation and effective usage of JR, must continue to refine the principles of administrative law that ensure that DL is keep serving its intended purpose: to advance the public interest without compromising legislative sovereignty or the main intent besides the constitutional safeguards. Public functionaries, in turn, must apply these principles with responsibility, with an aim to ensure that their regulatory actions do not exceed the authority which is granted to them by law.

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