



Delegated Legislation in Digital and Globalized Era- A Way Forward

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Abstract: The methodology of Delegated legislation enables the Executive to adopt rules and regulations on behalf of the Parliament. The possibility of clashes between national and international rules is one of the primary concerns of delegated legislation in this period. As countries become more connected, there is a greater need for uniform norms and regulations. However, the rules and norms of different countries may differ, resulting in confusion and conflict. Another issue to be concerned about is the fast development of new technology, which makes it difficult for lawmakers to stay up. Legislators may lack sufficient experience or understanding of new technologies, resulting in impulsive decisions and laws that fail to address the challenges at hand. The present paper deals with the methodology of delegated legislation, various issues and challenges concerned with the delegated legislation in the new era of digitalization and Globalisation.

Keywords: Delegated Legislation, Globalization, Digitization, Government, Administration

1. Introduction

Delegated legislation refers to the power provided by the legislature to the executive to establish laws and regulations on its behalf. It is an approach that enables the government to make laws and regulations without parliamentary approval.

It is particularly useful when rapid and flexible decision-making is necessary. However, the increasing pace of Globalisation and digitalization has produced some challenges and issues that must be addressed. As the world becomes more interconnected as a consequence of Globalisation and technology, the difficulties of delegated legislation have expanded considerably. Furthermore, the digitalization of information has made it easier for individuals and organization to avoid limits and prohibitions and need tougher regulations and enforcement mechanisms to ensure that laws are followed and those who break them are held accountable. Now the delegated legislation has huge issues and concerns in the era of Globalisation and technology. Legislators must be educated and current on developing technology and global events to ensure that laws and regulations properly handle the issues at hand. another issue with delegated legislation in this period is the possibility of power imbalances.

The Executive branch or agencies may misuse their delegated power by enacting laws and regulations that favour particular people or sectors while harming others. This may lead to uneven treatment and unjust benefits, weakening democratic and just values. Another concern is a lack of transparency and public engagement in the delegated legislation process. These decisions are often made behind closed doors, with little or no input from stakeholders or the general public. This may result in a lack of accountability and legitimacy, undermining trust in government institutions.

Delegated legislation has a hurdle in this period due to the possibility of power imbalances. In rare cases, executive branches or agencies may abuse their delegated authority by implementing laws and regulations that

benefit certain persons or industries while hurting others. This might result in unequal treatment and illegitimate advantages, undermining democratic and just ideals. Another source of worry is a lack of transparency and public participation in the delegated legislation process. These decisions are often made behind closed doors, with little or no input from stakeholders or the general public. This may result in a lack of accountability and legitimacy, undermining trust in government institutions. To address these issues and concerns, lawmakers must emphasise transparency, public participation, and accountability in the legislative process. This may be achieved by open talks with stakeholders, frequent reporting on decision-making processes, and the establishment of independent oversight mechanisms to ensure that laws and regulations are applied fairly and efficiently.

2. The Issues & Challenges of Delegated Legislation

The absence of accountability and transparency is one of the most significant difficulties presented by delegated laws. As a result of the fact that the administration can enact laws and regulations without the consent of parliament, there is a possibility that these laws may not accurately represent the desires of the people. This might result in skepticism about the democratic process and cast doubt on government's ability to maintain its legitimacy. Delegated legislation also known as subordinate legislation, is the process by which the legislature transfers part of its ability to make laws to the executive branch or administrative bodies. Delegated legislation is an important component of the legal system in India since it enables the country to make laws in a timely and adaptable manner nevertheless, it is not without its difficulties, which may be summarised as follows:

(i) Lack of Accountability: The absence of accountability is one of the most significant difficulties presented by delegated laws. Because these laws are developed by executive agencies, rather than the legislative branch, they are not subject to the same level of scrutiny as the laws written by the legislative branch, which may result in an abuse of power. To prevent the executive branch from abusing the power that it has been assigned, there should be enough checks and balances in place.

(ii) Lack of Transparency: The absence of transparency is yet another challenge that is brought about by delegated legislation. Because administrative entities were responsible for drafting these laws, it may be difficult for regular citizens to get their hands on them. This might lead to misunderstandings and confusion over the regulations, both of which could have significant ramifications for individuals as well as for organisations.

(iii) Inconsistency: Because distinct administrative entities have the potential to interpret the laws in a variety of ways, delegated legislation has the potential to introduce discrepancies into the legal system. Because of this, there is a greater potential for people and enterprises to experience confusion and ambiguity, which makes it more difficult for them to comply with the rules.

(iv) Lack of Expertise: Administrative entities are required to have a very high degree of skill to carry out the tasks of laws that have been assigned to them to ensure that the law is followed properly. On the other hand, many of these government entities may not have access to the data they need to make well-informed judgments. This might result in laws that are poorly worded and could have outcomes that were not intended by the legislators. Because of a lack of adequate information, this would be the inevitable result.

(v) Constitutional Concerns: The use of delegated legislation has raised concerns about its compatibility with the Indian Constitution. The Constitution grants law-making powers to the legislature, and some argue that delegating these powers to administrative agencies undermines the democratic process and constitutional principles. In conclusion, delegated legislation is an important tool for law-making in India, but it has its challenges to ensure that delegated legislation is effective and in line with constitutional principles, there is a need for greater accountability, transparency, and expertise in the law-making process.

(vi) Lack of Public Participation: When it comes to matters of delegated legislation, it is standard practice to exclude members of the general public from taking part in the process of lawmaking. This is often the case as a result of the fact that executive agencies are responsible for the large majority of the work in this sector. This will probably lead to the passage of laws that don't effectively meet the needs and concerns of the vast majority of people in the population. To ensure that the laws are followed without bias or favouritism, there is an immediate and critical need for a larger engagement of the general people in the work of delegated

legislative authorities. Increasing the amount of engagement from the general population might achieve this goal.

(vii) Delay in Implementation: The delegation of legislative authority has resulted in a delay in the execution of the policy, which presents an additional problem. Because these laws were developed by administrative institutions rather than by elected representatives in the legislature, the implementation of these laws may take much more time than is typical. Individuals and companies who are impacted by these laws may be put in a state of uncertainty and confusion as a direct result of the situation as a consequence of the delay that has occurred as a direct result of the situation.

(viii) Limited Scope for Judicial Review: Because of the limited scope for judicial review that delegated legislation provides, it may be difficult to dispute or overturn badly crafted laws. This can lead to situations in which people or companies are unduly harmed by these laws, and they have no legal option for redress.

(ix) Lack of Uniformity: It is possible that delegated law in various states or areas of India may not have the same level of uniformity, which can cause confusion and inconsistency in the legal system. This can make life difficult for people and enterprises who operate in many states or regions.

One of the most serious problems with delegated legislation is a lack of openness. These laws are not subject to the same amount of examination and discussion as other laws since they are not enacted by the Legislature. Because of this lack of openness, legislation may be approved without taking into account all important issues there is also a lack of public engagement in this process, which decreases openness even more.

(x) Excessive Delegation: Excessive delegation is one of the most serious problems with delegated laws. This happens when the Legislature delegates too much of its legislative authority to executive entities. This may result in executive bodies passing laws that are beyond their competency or do not represent the desires of the people. Excessive delegation may also result in the perception of the Legislature abdicating its role and handing too much authority to the administration. Finally, delegated legislation is an essential aspect of the Indian legal system it does, however, have its drawbacks, including a lack of transparency, accountability, and excessive delegation to guarantee that laws are established in the public interest, the Legislature must find a balance between transferring authority to executive entities and keeping its power.

To address the above mentioned issues, India urgently needs to modify the delegated legislation process. This might involve raising the amount of public participation, boosting transparency and accountability, enhancing the degree of expertise among administrative entities that develop laws, and widening the scope of judicial review of these laws. These kinds of adjustments will help to ensure that delegated legislation is both effective and consistent with the objectives expressed in the Constitution, while also responding to the needs of the individuals and businesses affected by these laws the risk of regulatory capture is just another hurdle to overcome.

This phenomenon occurs when the interests of one group, in particular, are prioritized above those of the general community. In certain cases, regulatory capture may result in a situation in which the government is essentially serving the interests of private enterprises rather than the broader public.

Because this kind of legislation is drafted without the approval of parliament, there is frequently a lack of public consultation. This can make it difficult for citizens to provide input on significant regulatory issues that affect their everyday lives. Another problem is the possibility that different regulations will conflict with one another. Because different government agencies can draft delegated legislation, there is a possibility that different regulations will conflict with one another. In India, several executive organisations, such as the Central and State Governments, regulatory agencies, and local authorities, have been given the authority to delegate responsibilities and tasks. In addition, this capacity may be used by the local government. Delegated legislation, even though it has the potential to be a successful approach for speeding up the legislative process, does not come without its own set of problems.

3.1 Possible solutions to address the issues of delegated legislation in India: This committee should report to parliament, and their recommendations should be taken into consideration before the finalisation of the legislation. The regulatory oversight committee should be established to maintain a check on the delegated legislation by examining and screening each of them.

(i) Ensuring Adequate Consultation: It is vital to confer with stakeholders, especially those who are likely to be impacted by any delegated legislation, before the passage of any law that would be delegated to them as a result of this, the proposed rules will be more likely to be fair, equitable, and efficient.

(ii) Improved Public Participation: Increasing the amount of openness and accessibility around the legislative process will go a long way toward fostering more engagement from the general people.

The legislature may make use of social media and other online channels to solicit views and suggestions from the general public about potential amendments to delegated legislation. This will assist in ensuring that the interests of the general public are taken into consideration throughout the decision-making process.

(iii) Strengthening Judicial Review: Strengthening judicial review of delegated legislation can help prevent abuse of power. The court should review the law-making process and identify whether it was done within the scope of authority. Judicial review also serves as a check and balance system against legislative misfeasance.

(iv) Establishing a Code of Conduct: A code of conduct should be established for those involved in the delegated legislation process. This will help ensure that all parties involved are held to a high standard of ethical behaviour and prevent any conflicts of interest. The code should outline specific rules and guidelines for those involved in drafting, reviewing, and finalizing delegated legislation.

(v) Creating an Independent Review Board: An independent review board should be created to oversee the regulatory oversight committee's work. This board would consist of experts in various fields who can provide objective analysis and recommendations on proposed regulations. The board's findings should be made public, allowing for transparency and accountability in the decision-making process.

(vi) Regular Performance Evaluations: Regular evaluations of the regulatory oversight committee's performance should be conducted to ensure that it is fulfilling its duties effectively. These evaluations should assess the committee's ability to identify potential issues with proposed regulations, its responsiveness to stakeholder feedback, and its overall impact on the legislative process. Any necessary changes or improvements identified through these evaluations should be implemented promptly.

(vii) Improving Transparency: More public monitoring and engagement in delegated legislative processes have to be encouraged to enhance levels of openness. This may be accomplished by mandating that executive bodies publish draught laws to receive feedback and input from the general public before such laws are completed. The legislature may also choose to create committees or commissions that are tasked with reviewing delegated legislation and providing the public with a report on their findings.

(viii) Enhancing Accountability: Increased judicial scrutiny of delegated legislation is one way to improve government transparency and accountability. It is possible to do this by providing the judiciary with the authority to examine the constitutionality and validity of legislation that has been delegated and to overturn any laws that violate basic rights or go beyond the boundaries of delegation.

In addition, the legislative branch can develop systems that allow executive entities to report on their law-making activities and provide justification for their judgments.

(ix) Reducing Excessive Delegation: To cut down on excessive delegation, the Legislative Branch should guarantee that it keeps its primary law-making tasks while delegating to administrative entities only the powers that are absolutely required and very precise. This may be accomplished by legislating explicit criteria for delegation, elaborating on the objectives and constraints of delegation, and keeping an eye on how it's put into practice the legislative branch has the authority to demand that executive entities provide periodic reports on how they use the authorities they have been assigned, as well as to request approval or amendment from them when required. Overall, increasing openness, bolstering accountability, and cutting down on excessive delegation are three strategies that may assist in mitigating the negative effects of delegated law in India while retaining its positive aspects. The responsibility that the Constitution places on the Legislature to guarantee that all laws advance the public benefit and safeguard individual liberties must be carried out.

4. Advantages and Disadvantages of Delegated Legislation

Delegated legislation is a method of establishing laws that involve the transfer of legislative power from the Parliament to other authorities or organisations. This method is also known as "direct legislation." The process of establishing laws in this manner is referred to as "delegated legislation." A kind of legislation is often referred to as subsidiary legislation, subordinate legislation, and auxiliary legislation, among other titles. The process has several advantages and disadvantages which can be as follow.

A. Advantages: The following advantages of delegated legislation can be counted as-

(a) It can promote flexibility and adaptability by enabling the delegated authorities to respond quickly and effectively to changing circumstances and emerging issues, such as technological developments, environmental challenges, or international relations. This can be beneficial for several reasons, including:

(b) It has the potential to improve democracy and participation by including local governments, civil society, or other stakeholders in the law-making process, as well as by permitting public engagement and comment on the rules or regulations that are being proposed.

(c) It can save parliamentary time and resources by enabling the Parliament to focus on the most important policy issues and principles while delegating the details and technicalities to experts or officials who have more knowledge and experience in the relevant fields. This allows the Parliament to save time and resources while still ensuring that the most important policy issues and principles are addressed.

The Parliament will not need to spend as much time or money using this method the below-mentioned steps can help in delegating work and help in administration.

(i) Efficiency: The use of delegated legislation is essential for the creation of rules and regulations in a timely way that is also efficient.

(ii) Flexibility: This is achieved via delegated legislation, which enables laws to be flexible and adaptable, as well as quickly updatable to account for shifting requirements and conditions.

(iii) Expertise: Delegated legislation enables experts to create detailed and specialised rules and regulations in areas where the legislature may lack sufficient knowledge and enables experts to create detailed and specialised rules and regulations in areas where the legislature may lack sufficient knowledge. Delegated legislation enables experts to create detailed and specialised rules and regulations in areas where the legislature may lack sufficient knowledge. This is particularly important in a field like technology that is undergoing fast change and seeing the emergence of new businesses and methods regularly.

(iv) Accessibility: Delegated legislation makes it easier to create rules and regulations that are clear, concise, and straightforward so that they can be followed by all of the relevant parties without confusion.

(v) Cost-effective: Delegated legislation may be a cost-effective approach to produce rules and regulations since it may not need the same number of resources as regular legislative procedures. This makes it a viable alternative to traditional legislative processes. This is of utmost importance in this day and age of digitalization and Globalisation, when governments are still required to maintain fiscal stability while still delivering essential services.

B. Disadvantages: Delegated legislation also has some disadvantages such as:

- **Lack of control:** It can undermine the supremacy and accountability of the Parliament by transferring its power to unelected or unrepresentative bodies, who may not be subject to sufficient parliamentary or judicial scrutiny or control

- **Inconsistency:** It can create confusion and inconsistency by producing a large volume and variety of rules or regulations, which may not be easily accessible or understandable to the public or the courts

- **Risk of abuse or misuse of power:** It can pose a risk of abuse or misuse of power by the delegated authorities, who may act beyond their scope or mandate, or in conflict with the constitution or the parent act.

- **Lack of accountability:** Delegated legislation may lack the same level of accountability as traditional legislative processes since it is often created by unelected officials with little oversight.
- **Reduced transparency:** Delegated legislation may lack the same level of transparency as legislative processes, since it may be created behind closed doors by unelected officials.
- **Potential for abuse:** Delegated legislation may be used to promote the interests of particular groups or individuals, rather than the public interest.
- **Lack of public participation:** Delegated legislation may be created without the same level of public participation and engagement as traditional legislative processes, resulting in rules and regulations that do not reflect the needs and interests of the wider public.
- **Lack of uniformity:** Delegated legislation may result in inconsistent or conflicting rules and regulations across different jurisdictions, which can create confusion for businesses and individuals operating across borders.
- **Potential for legal challenge:** Delegated legislation may be subject to legal challenge if it exceeds the scope of authority granted by the legislature or violates fundamental rights. This can lead to uncertainty and instability in the legal system, undermining trust in government institutions.

5. Suggestion for Minimizing of Delegated Legislation in India

To address these issues and concerns, lawmakers must emphasis on transparency, public participation, and accountability in the legislative process. Open discussions with stakeholders, frequent reporting on decision-making processes, and independent monitoring systems to ensure that laws and regulations are implemented fairly and efficiently may help achieve this. It is essential, to make certain that the policies that are put into action in India are effective, transparent, and do not infringe upon the rights and liberties of individuals, to address the difficulties and problems that are associated with delegated legislation. This is because it is essential to make certain that the policies that are put into action in India are effective, transparent, and do not infringe upon the rights and liberties of individuals. This is because it is very necessary to guarantee that the policies that are ultimately implemented in India are efficient, open to public scrutiny, and do not infringe upon the rights and freedoms of people.

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Additionally, this is because it is of the utmost importance to ensure that the problems associated with delegated legislation can be solved by employing certain effective approaches:

(i) Strengthening the Legislative Oversight: The legislative branch must increase the level of monitoring it performs over the agencies that are responsible for producing delegated laws to ensure that delegated laws are written correctly. This is because the legislative branch is responsible for ensuring that delegated laws are written correctly. This may be beneficial in ensuring that these organisations are held responsible for their activities and that they are held accountable for the decisions and policies that they generate.

(ii) Enhancing Public Participation: The general public should be given a role that is more substantial in the decision-making process when it comes to the method of making decisions on delegated legislation. This would ensure that the people's voice is heard. This will probably be useful in ensuring that the requirements and interests of the general public will be adequately reflected in the policies that are, in the end, decided upon.

(iii) Improving Transparency: Government agencies charged with the creation of delegated legislation must disclose their decision-making processes to the general public and make it easier for citizens to participate in such processes. This is because these organisations need to draft legislation. Citizens could, as a direct consequence of this, have a greater awareness of the decision-making and execution processes, which might work in their favour.

(iv) Protecting Constitutional Rights: It is not permissible for legislation that has been delegated to lower levels of government to infringe upon the fundamental rights and liberties of people, as described in the Constitution the government is required to take steps to ensure that the policies that are put into force do not infringe upon basic rights in any way, and these steps must be taken immediately.

(v) Reviewing Existing Laws: Existing laws that are related to delegated legislation need to be analysed to find any gaps, inconsistencies, and areas in which they may be made more effective by new legislation. This is necessary to fulfil the requirements of delegated legislation.

It is possible to effectively handle the hurdles and issues related to delegated legislation as long as particular processes are followed. However, this is a conditional possibility. If this is done, it will help to guarantee that the policies that are implemented are effective, transparent, and respect the rights and freedoms of individuals while also encouraging democracy and accountability. If this is done, it will also contribute to guaranteeing that the policies that are implemented respect the rights and freedoms of individuals.

6. Conclusion

Delegated legislation is a critical tool for creating flexible and quick-to-implement laws and regulations. However, the increasing pace of Globalisation and digitization has created new hurdles and challenges that must be addressed to ensure the success of this approach.

By fostering openness, accountability, and public engagement, as well as harnessing digital technology, we can guarantee that delegated legislation remains a vital instrument for policymaking in the twenty-first century. Technology can play a significant role in alleviating the challenges and concerns raised by delegated legislation. The use of artificial intelligence (AI) to assess whether or not the regulations of several government agencies conflict with one another can be used.

This may help firms streamline compliance operations and ensure that policies are consistent with one another. An example would be the employment of blockchain technology in the legislative process to improve transparency and accountability when a decentralised ledger system is implemented, it becomes far more difficult for anyone to falsify or amend laws without being caught. Building trust in the democratic process and ensuring that laws truly reflect the will of the people may both benefit from this. Furthermore, the use of digital platforms provides the ability to broaden the breadth of public participation in the legislative process. People may, for instance, participate in conversations with authorities and express their ideas on a variety of regulatory topics via online forums that could be established for this purpose. This helps to ensure that the regulations are impacted by a wide variety of perspectives and that they accurately reflect the interests and concerns of all relevant stakeholders.

In the era of Globalisation and digitization, delegated legislation presents new issues and causes for worry; nevertheless, technology offers new solutions to these problems. When we use artificial intelligence (AI), blockchains, and digital platforms, we can make the legislative process more transparent, accountable, and open to public involvement. In conclusion, this will assist in guaranteeing that delegated legislation will continue to be a useful tool for policymaking far into the twenty-first century by guaranteeing that it will continue to be an efficient instrument.

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