

INTERPRETATION OF DELEGATED LEGISLATION IN THE LIGHT OF RESERVE BANK OF INDIA
V. PEERLESS GENERAL FINANCE

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Abstract:

Delegated legislation means any law made by the administrations different from the Legislature, former working under later explicit delegated authority and control. Delegation shall not by itself constitute an exception from authority until it is returned under proper limits. The delegation is considered a solid foundation for institutional effectiveness. In any case the delegation should not be manipulated or unchecked.. It is just a non-important statutory role to be assigned and the bottom line is often between the essential and non-primary roles of legislation. Law-making is the main statutory role. The legislature is responsible for formulating the regulatory agenda and delegating details for the implementation of this policy. The discretion to render notifications and alterations to a statute as it is being extended, and to make modifications or repeals to current legislation, is subject to the preceding requirement that basic statutory duties cannot be delegated and each individual case must be taken into account. In order to mitigate the risks, the executive order and the actions of the Legislature are restricted by providing sufficient protections, checks and appeals. In the context of the Act, granting those powers, the authority is reserved to the executive to enforce any provisions of a Law by rule. It is a power to be applied to the statutory politics of the Act and not fly beyond or against it nor should it alter in any way the basic characteristics, identity, function or policy of the act.

The Researcher in this paper attempts to examine the concept of Delegated Legislation as incorporated and interpreted under Indian laws covering almost every aspect. Starting with a brief introduction in the Part I, Part II & Part III sheds light on the importance of the present study with account of previous pieces of literature on the same subject. Part IV however addresses the interpretations made by the Indian Judiciary with respect to delegated legislation in India. Part V focuses on the advantages whereas Part VI focuses on the misuse of delegated legislation in India. Part VII analyses the case of Peerless General Finance (1996) with Part VIII concluding the paper.

Keywords: *Delegated Legislation, Administrative Law, Constitutional Jurisprudence,*

1. Introduction

The Indian Democracy is formed by the support of the three Constitutional Pillars i.e. the Legislature, the Executive & the Judiciary and as per guidelines these branches are not to be interfering with the functions of each other. As by virtue of the Constitution of India, the Parliament is empowered to act as a supreme legislature or law making body of the Country. If one goes by the theories of political science, Parliament is often expected to enact the statutes on the basis of the will of the people to enhance the smooth functioning of society. It is an accepted fact that in case of welfare state, there are manifold functions that has to be executed by the legislature. Thereby, the Parliament given the large number of bills introduced in each session can only provide the main legal framework and principle policies for an Act. For the purposes of working of every minute detail, the Executive branch is given power through an enabling section in the Act so as to make further rules to fulfil the purposes of the clear cut procedures to supplement the Act. Thus the notion of Delegated Legislation comes forward.

1.1. Meaning of Delegated Legislation

The term “delegation” as defined in Black’s Law Dictionary as “an act of entrusting a person with the power or empowering him to act on behalf of that person who has given him that power or to act as his agent or representative.” The word “Delegate” in legal terminology as observed by Wills J. in general sense mean “not giving up of authority but conferring the authority upon someone.”¹ Delegated Legislation may also be known as Subordinate, Secondary or Ancillary Administrative legislation. According to Salmond, “Subordinate legislation is that which proceeds from any authority other than the sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority.”² As per M.P. Jain the term “Delegated Legislation” may be used in two ways; “(1) the exercise by a subordinate agency (a delegate of the legislature) of legislative power delegated by the legislature. (2) The Subsidiary rules made by the Subordinate Authority in the execution of the power bestowed on it by the Legislature.”³

To understand in layman terms, the Supreme Court of India has elucidated the concept of Delegated Laws as “The authority to make subordinate laws is extracted from the Enabling Act and it is necessary to act within the limits of authority granted by the Act by the delegate to whom such authority is granted. It is not necessary

¹ *Huth v. Clarke, Infra Note 03 at 1.*

² Salmond, Jurisprudence 116 (5th Edn, Stevens & Haynes 1916)

³ M.P. Jain & S.N. Jain, Principles of Administrative Law, pg. 2 of 43 [Chapter IV] (7th Edn, Lexis Nexis 2013)

to make laws supplanting, but complementing, the provisions of the enabling act. What is allowed is the delegation of ancillary or subordinate legislative positions, or, what is fictionally called, the power to fill in details. The legislature may give an administrative agency the power to enact the policy after establishing the legislative policy conference, and leave it to the agency to hammer out the particulars within the policy structure.”⁴

In the case of *NOVVA ADS v. Secretary, Department of Municipal Administration and Water Supply*,⁵ it was made clear that, “a delegated legislation must be read with context of that of the primary statute (parent/enabling Act) and if any conflict arises, the primary statute is to be the prevailing one in such circumstances.” But it doesn’t mean that delegated legislation is to be disregarded, it shall be read in a meaningful manner with the presumption that it does give effect and benefits the principal provisions and if a case may arise where two possible rules are laid out, then it is upon the test that one which makes the provision more workable and respect the statutory scheme must be preferred.⁶ Delegated Legislation had surpassed the legislation made by the legislature in terms of both qualitative and quantitative importance. Thereby, the Supreme Court envisaged that, “The need for delegated legislation is that when the legislative body creating the law is in a stronger position to adjust the Act to special situations after the Act comes into effect, it is framed with care and minuteness. Delegated law provides for the use of expertise and the consultation of interests that are influenced by the functional functioning of the laws.”⁷

1.2. Need of Delegated Legislation

The Supreme Court observed that, “The primary argument for delegated legislation is that the legislature is overwhelmed and the demands of modern-day society are dynamic, and any logistical challenge that might occur after the statute has begun to work can not be foreseen. Delegated law serves those needs. The rules framed under the authority conferred by the statute endorse legislation and, if lawfully made, have binding effect as a law enacted by the competent legislature.”⁸ Similarly, the notes of Herbert Morrison (1964) shall also be taken into consideration while discussing the importance of Delegated Legislation. As per his analysis there lay three reasonable arguments favouring the concept of Delegated Legislation which are as follows:-

⁴ *St. John’s Teachers Training Institute v. Regional Director, NCTE*, (2003) 3 SCC 321

⁵ (2008) 8 SCC 42; relied on *ITW Signode India Ltd. v. CCE*, (2004) 3 SCC 48

⁶ *Ramesh Mehta v. Sanwal Chand Singhvi*, (2004) 5 SCC 409; *Deepak Girishbhai Soni v. United India Insurance Co. Ltd.*, (2004) 5 SCC 385

⁷ *Sukhdev Singh v. Bagatram Sardar Singh*, (1975) 1 SCC 421

⁸ *Ibid.*

- ❖ Evolution of law in as per modern norms and conditions makes it nearly impossible for the Parliament to enact a law with full-fledged details for its administration as the implementation today is much more complex as compared to the law in the 19th century.⁹
- ❖ Commenting upon the factor of practicality, it was opined that in no circumstance can a law maker foresee the upcoming trends of the society. An apt law which was based upon the principals of present times may start become ineffective with the changing conditions and thus changing principals. And in that case, rapid solution would be to revise the delegated legislation rather than going through the whole parliamentary amendment process.¹⁰
- ❖ Lastly, justifying the system of Delegated Legislation, it was made clear that without the authority of the statute, no minister is able to create any laws. It's ultimately the legislature which controls the powers and functions of the delegate authorities by generating his accountability by way of the parent Act.¹¹

Though in his arguments, Morrison supported the system of Delegated Legislation he also suggested that, “the parliament shall keep a watchful and even jealous eye on it at all stages.”¹² However one more author C.K. Allen (1945) criticize the same ideology and said that, “These are all sound reasons within due limits for delegation, the kind, in reality, that has always been recognised as a realistic and essential part of our governmental system. But if they are used to justify the limitless extension of executive powers, they will become unsound and risky. Speed and productivity can be purchased at too high a price, and we should have known from many instances that the state that considers productivity its highest god is very capable of being an all-devouring beast.”

2. Significance of the Study

Executive branch works on a ground level, they better know the implications and results of an Act when it comes to force. Delegated Legislation is required to simplify the technical complications in the statutes by allowing the Government to make necessary changes. But in modern times, it has become easier for the

⁹ Herbett Morrison, Government and Parliament: A Survey from the Inside, (Oxford University Press 1954); <https://www.questia.com/library/1018668/government-and-parliament-a-survey-from-the-inside>

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

administrators to take undue advantage of power and misuse to their benefit which is why Study of Interpretation of Delegated Legislation has to be done covering all the factors and principles laid out so far.

The research work will be helpful to the readers, academicians, students, or any other researcher in understanding the need for amending the parliamentary procedure for the better supervision of Delegated Legislations. It is of great importance that one should understand the necessity of delegated laws but on the same, these laws shall be subject to a good level of scrutiny. It would also be helpful for the jurists and law practitioners in understanding the importance of judicial review of a subordinate or secondary legislation.

Peerless General Finance (1996), Supreme Court of India's Judgement would be critically analysed giving out more clear picture as to on what basis the Judiciary interpret such cases. The study would benefit the upcoming lawyers as the whole concept of delegated legislation will be put forward through interpretative perspective highlighting loopholes in practice.

3. Review of Literature

Literature Review is the brief outlook of the subject of the paper; opinions and comments held previously by various academicians & jurists. It summaries the presentation of Research Work carried out so far. Following are some pieces of literature reviewed:

- ❖ In his book review **P.M. Bakshi** duly respected the remarks given in the Imperial Gazetteer (1907) which were extracted by **H.S. Bhatia**. It was noted that, "To a large degree, India has followed a modest and colonial tradition of allowing public authorities and local bodies to make supplementary regulations, instructions or by-laws to carry out in detail the aims and objects of a specific statute. The first Act which conferred such delegated authority was obviously No. XI of 1850; but now a bill that does not have an ancillary rule-making power is barely signed into law for a few days, offering certain protections in the form of preliminary publication for criticism, prior sanction, and so on, as may be considered expedient."¹³
- ❖ **V.N. Shukla** while interpreting the **Articles 13, 32 & 226** of the India Constitution stated that, "the Parliament in no way possesses the power to oust the jurisdiction of courts from reviewing the laws,

¹³ P.M. Bakshi, Delegated Legislation in India by B. Bharadvaja, J.I.L.I. 482, 482 (September 1978); <https://www.jstor.org/stable/43950613?seq=1>

parent or secondary.”¹⁴ But this is only theory and rarely aligns with the practice. It is a trend that Courts are less interested in striking down these provisions due to the presumption that Parliament maintains an oversight.

- ❖ While Reviewing a Book on Delegated Legislation¹⁵ **Hla Aung** noted that, “judicial review of delegated legislation centered around the doctrine of ultra vires which has two aspects — substantive and procedural.” Further it was said that, “a Delegated Legislation cannot be said to be enabled by the Act, if and so the delegated law violates the fundamental law, or is unreasonable and have formed under bad faith.”¹⁶
- ❖ In their paper **Saad Abdulbaqi Sabti & YP Rama Subbaiah** stressed upon the need of the delegated legislation citing numerous reasons and scenarios but on the same concluded that, “Delegated law needs to be regulated because it is produced more privately than laws and by non-elected bodies or persons at risk of sub-delegation and misuse of power. While their drawbacks are fairly powerful, the existing controls on delegated legislation are largely restricted in their controls. Enabling provisions can enable very broad powers, affirmative resolutions do not enable amendments, negative resolutions do not always allow opposition or discontent to be expressed, reports from the Scrutiny Committee is not always considered, and the courts cannot always be considered.”¹⁷
- ❖ Similarly, **Chris Angus** in his paper also concluded on the same that despite criticisms, delegation of laws have become an integral part of the system as without such instruments the complexities in governance may increase. He also suggested that, “Increased use of these methods can make it more difficult to scrutinise them, with an increased risk of producing legislation that is poorly considered. In recognising cases of overreach, current protections can be fairly successful. However, the constraints of current oversight mechanisms mean that more change may be needed to ensure that delegated legislation is adequately scrutinised.”
- ❖ Delegated Legislation being a widely accepted practice in modern legal age, still is one of the most debatable issues just by the reason of its diverse implications. Thereby, there are some contrary views

¹⁴ V.N. Shukla, Judicial Control of Delegated Legislation in India, I.L.I. 357, 358 (April 1959); <http://www.jstor.com/stable/43953794>

¹⁵ Tripathi, Delegated Legislation in India (Indian Law Institute 1964); *Infra*.

¹⁶ Hla Aung, Delegated Legislation in India, NUS 147, 147 (July 1966); <http://www.jstor.com/stable/24862429>

¹⁷ Saad Abdulbaqi Sabti & YP Rama Subbaiah, A comparative study of delegated legislation: with special reference to united states of America and United Kingdom, I.J.L. 70, 73 (May 2017); <http://www.lawjournals.org/download/121/3-3-14-949.pdf>

like one of **P.B. Mukharji** where he has observed, “Delegated Legislation is an expression which covers a multitude of confusions. It is an excuse for the legislators, a shield for the administrators and a provocation for the Constitutional purists.”¹⁸

- ❖ A Delhi based Advocate; **Arvind Kurian Abraham**¹⁹ in his online article has interpreted the process of Delegated Legislation and highlighted the inefficiency of the Parliament to control the misuse. The reasons observed by him were Ministries being unresponsive, no detailed debates on delegated laws, no or less room emendation of the rules so made, no mandatory constitutional obligation for scrutiny of laws and many other.

4. Practice of Delegated Legislation in India

In the Constitution of India there is no express mention for the provision of Delegated Legislation but as the judiciary has interpreted, it may be understood by studying **Article 312**²⁰ of the Indian Constitution. In the case of *D. S. Grewal v. State of Punjab*²¹, Justice K.N. Wanchoo held that the power of delegation ordinarily lies within the legislature, meaning it cannot be taken away by the virtue of **Article 312** in any case possible. Further interpreting the phrase “*Parliament may by law provide*” in **Article 312** it was observed that, “it shall not mean that there is no scope for delegation in law made under the Article 312.” Comparing the laws of England, America and India, the court was of the opinion that unlike England & like America, India permits for delegation but in a controlled and elaborative defined manner with the imposition of certain restrictions.

However the above interpretation came years after the *Re Delhi Laws Act Case*²², wherein for the first time after a prolonged discussion on the recommendation of the President of the India was held by seven judge bench of the Supreme Court considering the validity of Delegated Legislation, the court concluded that:-

¹⁸ P.B. Mukharji, *Delegated Legislation*, I.L.I. 465, 465 (July, 1959); <http://www.jstor.com/stable/43949623>

¹⁹ Arvind Kurian Abraham, *Delegated Legislation: The Blindspot of the Parliament*, (May 16th, 2019); <https://thewire.in/government/delegated-legislation-parliament-executive>

²⁰ **Article 312** of the Constitution of India, 1949 – *All-India Services(I)* “ *Notwithstanding anything in [Chapter VI of Part VI or Part XI], if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all India services 2[(including an all-India judicial service)] common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.* ”

²¹ AIR 1959 SC 512

²² Chhavi Agarwal, *In Re Delhi Laws Act Case: Landmark in Concept of Delegated Legislation in India*; <http://www.manupatra.com/roundup/333/Articles/In%20re%20Delhi%20Laws%20Act%20Case.pdf>

- ❖ It shall not be the case where Parliament finds this as an opportunity to absolve itself from all the duties and responsibilities by the creation of a parallel authority.
- ❖ The Indian Parliament being an authority itself, the court proposed the idea of *delegate's non potest delegare*, which means that “a power that has been delegated cannot be sub-delegated any further.”
- ❖ Only ancillary functions were to be delegated by the Parliament.
- ❖ Further it was clarified that functions involving formation of policies and their guidelines for implementation shall not be delegated.

The principal holdings in this landmark judgment got changed and improved in later decisions by the Supreme Court in order to ease out the complexity and difficulties in the growing Parliament. But it became the inception point for the Delegated Legislation in India.

4.1. Standard & Abdication Test (Aftermath of Re Delhi Case)

The two kinds of tests were developed in the case of Rayon Silk Manufacturing Co. v. Assistant Commissioner of Income Tax,²³ the question of excessive delegation came before the court contending that no policy was there in the parent Act related to levy of tax as per the rates applicable in different states. The court in its analysis laid down two tests to examine the validity of delegated legislation. 1) Standard test laid down by J. Khanna which said that legislature must mention a principal or standard for the delegate authority and it may withdraw such delegation in case of violation or non-adherence. 2) Abdication test laid down by J. Mathews which said that the Delegated law cannot be repeal unless and until the parent Act is repealed by the legislature. The latter was objected to in majority.

4.2. Policy & Guideline Test

In the case of Registrar of Co-operative Societies v. K Kanjambu²⁴, the bench observed that, “legislature inherited the powers to delegate. But, too much of delegation could lead to potential despotism and thus the legislature must exercise some caution and restraint.” Meaning thereby, the legislature shall by any explicit provision delegate its power which may forms the guidelines for the delegate. In simpler words, an enabling

²³ (1974) 4 SCC 98

²⁴ (1980) 1 SCC 492

clause to be there in the parent Act was recommended. Further the delegation was encouraged in the matters of welfare legislations and Directive Principles of State Policy.

4.3. Role of Express Provision

The level of delegation was made subject to the express provision as instituted by the legislature in the parent Act. In the case of *Ganapati Singh v. State of Ajmer*,²⁵ it was held that, “any sub-delegation without there being corresponding provisions in the parent Act could be termed as *ultra vires* and thus invalid.” There may be other types of restrictions as well which may be imposed by the legislature via express provision:-

- ❖ Rank Specific Restriction – In the case of *Ram Chandra Vyas v. State of Uttar Pradesh*,²⁶ it was observed by the court that, “Where the law specifies that certain actions are to be performed in a specified manner or by certain persons, their execution is implicitly prohibited in any manner other than that specified or by any person other than one of those mentioned.” Meaning thereby, that specifications made in the parent statute such as only officials of certain rank are permitted to take action under such specific powers while exercising their delegated authority, shall be strictly followed. In case of non-compliance to the measures it shall be considered to be express violation of principals of delegation.
- ❖ Conditional Restriction – In the case of *Radhakrishnan v. State*,²⁷ it was required by the parent statute that a sub-delegate should take prior approval of the main delegate in order to be eligible to take action under the authority delegated by the Act which otherwise would be *ultra vires*. Meaning thereby, if and so the parent Act expressly mentions of some condition, situation or requirement to be met before the delegated authority can be exercised, then it shall be strictly adhered to so as to respect the principals of delegated legislation.

In the case of *Ashok Lanka v. Rishi Dixit*,²⁸ the Supreme Court held that, “the delegated legislation has to find and maintain a balance that does not hurt the intent behind the primary legislation and the parent act. This is essential to ensure legitimacy of the delegated legislation.”

5. Advantages & Reasons for Growth of Delegated Legislation in India

²⁵ AIR 1955 SC 188

²⁶ AIR 1969 All 480

²⁷ AIR 1952 Nag 387

²⁸ (2005) 5 SCC 598

The fundamental change of the country shifting from a “political state” to “welfare state”, the desire for delegated legislation has amplified. However the reasons for rapid growth and advantages drawn out through the practice of delegated legislation are quite the same. Such factors are necessary for the smooth functioning of the administration and are explained as follows:

❖ Burden-free Parliament

The purpose has always been the reducing the increasing workload of parliament. Per term Parliament is under the responsibility of enacting abundant of laws for the welfare of its people, and it cannot indulge in working on the every minute detail of an enactment as it would be time consuming and would deteriorate the whole trend of increasing need of more and more laws. Therefore, to cover up all these shortcomings of the Parliament, it is considered that Delegated Authorities are much better option as it would save the time and cost of the Parliament but also it would be motivating for the experts to work as law makers for their country.

❖ Quick Resolution of Emergencies

It is seen many a times that plenty of issues remain pending in the parliamentary proceedings due to non-cooperation or distinguished opinions of the members. And in case of an emergency, a session is required to be called for Parliament to debate and decide upon the issue, the time in which there may be gross violation of rights of the public. Therefore, in such emergent times parliament may not be having a sufficient amount to enact a law and it may have to pass an incomplete Act just to safeguard its citizens in such war-like times. In such cases the Delegation of Authority becomes very useful as it can ensure that passed Act may not be misused and with time may become more efficient.

❖ Decentralisation

In a country like India having great levels of Government and Democracy, it is often observed that different political parties head different states and different party may head the Central Government. In such cases it is better to grant the local authorities power to make laws for their local public as they will know their needs much better as compared to the government at central level. A law is made to cater to the needs of the public. Thereby it becomes necessary to delegate, Parliament makes laws upon common principals and leave the details and implementation upon the State Governments or other local authorities as may be relevant or required.

❖ Flexible Law Making

Today's society is one which keeps on changing with every upcoming day, be it in respect of technology, social advancements, political and economic sectors. Thus the law also needs constant evolution so as to respect the environment in which it is being implemented. Delegation of laws makes this easier, making the laws more flexible and apt to the present times.

❖ Expert Technical Support

Exponential growth in the field of Information Technology has its benefits as well as complexities. It is expected from a Member of Parliament to have knowledge of each and every study field but it is quite obvious that one cannot be an expert in all of them. A law maker is expected to have expertise of every aspect of the subject, so that a law with no or less loopholes can be prepared. Considering that the Parliament is more into social issues, it is better that at the time of making a law that Parliament may debate upon it as a whole but the technical details shall be delegated to the authorities having relevant expertise knowledge, skills, and experience. It is for the better implementation of law.

6. Misuse of Delegated Legislation

It is a settled law that the Executive cannot act beyond what is permitted by the Legislature through the Parent Act which means that the majority of the power lies with the Parliament only. But the question here comes is Parliament effective in controlling the misuse of the delegated powers? In the case of *Avinder Singh v. State of Punjab*²⁹, Justice Krishna Iyer with deep regrets noted that in countries like India the consistency in parliamentary command or supervision is more like a hypothetical phenomenon rather being a practical possibility. He emphasized on the fact that parliamentary authority once delegated, the responsibility begins there to supervise it and keep a system of checks and balances but unfortunately not much effective it has proved to be. Since, it is the legislature who in the first place desired to delegate its duties and powers to the executive, it becomes primary duty of the legislature to manage control over the power so delegated.³⁰ On an interesting note, if this duty is to be left upon the judiciary, the results are nevertheless same. It has been observed that courts in very rare cases have struck down a delegated legislation. The working of court is

²⁹ AIR 1979 SC 321

³⁰ Jain, M.P. & Jain, S.N.; (2007) Principles of Administrative Law, 6th Ed., Vol. II, Wadhwa Nagpur.

hindered by the belief that the Parliament maintains a constant check over its delegated legislations by following the mechanism of “strict vigilance and control over its delegate.”³¹

6.1. Flaws in the Indian Parliamentary Supervision

- ❖ It is not mandatory that each and every delegated law is to be placed before the Parliament for its execution. If and so it is mentioned expressly in the Parent Act that the rules must be placed before the houses of Parliament, then only it is required that within six months rules shall be placed for further discussions. But in 1971, it was made a general practice to specify in the Act that subordinate legislation shall be placed for 30 days before the Parliament³² but the flaw in this is that it is still a practice and not an obligation which makes scrutiny of delegated legislations completely necessary.
- ❖ Also such practice is followed by a general system of negative resolution. Meaning thereby, these rules if not modified, nullified or annulled by the Parliament, they will have the power of law as soon as the 30 days are complete. However, the system of affirmative resolution is also available but is rarely used as in such system express vote of members of parliament is necessary.³³ Again a big flaw, unless and until there will no obligation no systems of check will prove to be effective.
- ❖ Even in case, a motion for modification or nullification is moved, then also there is no such obligation on the Speaker of House to determine the date of discussion, it may be at the discretion of the concerned MP. This is so because there is no incentive for the government in allowing a specific debate over a rule. And gradually with all the delays, the motion ultimately lapses and draft becomes law.³⁴
- ❖ Another method of scrutiny is through the Standing Committees to which these delegated laws are referred and they are required to seek expert opinions and study the rules in respect to

³¹ *Supra Note 19*

³² Jhalak Kakkar & Pallavi Bedi, Parliamentary Scrutiny of Executive Rule Making, PRS India (November 2012); https://www.prsindia.org/administrator/uploads/general/1370586704_Parliamentary%20Scrutiny%20of%20Executive%20Rule%20Making.pdf

³³ *Supra Note 19*

³⁴ *Ibid.*

public benefit.³⁵ However a report shows that only 101 pieces of delegated laws out big number of 6985 has been scrutinised by these committees during the period of 2008-12.³⁶

7. Reserve Bank of India v. Peerless General Finance Co. Limited

This appeal³⁷ was made against the judgement dated 03.05.1995 by Calcutta High Court. This appeal kicked off a third round consideration of the dispute between Peerless General Finance & Investment Co. Ltd. (hereinafter “the Company”) and Reserve Bank of India (hereinafter “the Bank”). For the purposes of the present study, the whole judgment will be analysed and discussed in the context of the concept of Delegated Legislation. The relevant questions before the court of law are as follows:

1. Whether the Bank is competent by the authority of **Section 45-K(3)** of the Reserve Bank of India Act, 1934 (hereinafter “the Act”) to issue the notification dated 19.04.1992 inserting 4-A para in the Residuary Non-Banking Companies (Reserve Bank) Directions, 1987 (hereinafter “the Directions”)?

Section 45-K(3) of the Act runs as follows:-

“The Bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally or to any nonbanking institution or group of non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received.”

7.1. Analysis by the Court

- ❖ The Supreme Court was of the opinion that while deciding the ambit of power of the said provision which is conferred upon the Bank, it becomes necessary to study the object and purpose for which **Section 45-K(3)**, Chapter III-B was inserted by Amendment Act of 1963. The Court observed that, “in the Statement of Objects and Reasons, hope was expressed that the Reserve Bank will R be able to prevent malpractices, if any, to stop unhealthy competition for deposits, and to prescribe and enforce reasonable conditions including realistic rates of interest, disclosure of any information or particulars in which the depositors may be interested, provision for returning of money to them in certain contingencies and other relevant matters.”

³⁵ *Supra Note 32*

³⁶ *Supra Note 19*

³⁷ (1996) 1 SCC 642

Therefore, **Section 45-K(3)** is to be construed as an enabling provision, the purpose of which is to empower the Bank to provide such regulations which may prescribe the conditions following which non-banking companies or institutions were required to receive deposits to prevent malpractices. The court was of the opinion that, “an enabling provision must be so construed as to sub-serve the purpose for which it has been enacted. The court should prefer a construction which advances this object rather than one which attempts to find some way of circumventing it.”

- ❖ The words “*in respect of any matters relating to or connected with the receipt of deposits*” in **Section 45-K(3)** was interpreted by relying upon the *Peerless II*³⁸ and distinguishing *Madhav Rao*³⁹. It was opined that the amplitude of the power conferred by the said phrase is not limited just by the use of an inclusive expression (“include”). The Court observed that it is the usual practice of the legislature to make use of inclusive phrases, this is done to include a specific matter highlighting its utmost importance. Therefore, it was held that, “the said phrase must be given its natural meaning as construed by this court in *Peerless II*.” Meaning thereby, the Bank has been duly authorised to issue directions in “*respect of any matter relating or connected with the receipt of deposits*.”

Para 4-A of the Directions “prohibits receipt by a non-banking company from any depositor/subscriber to any scheme run by the company, with or without his consent, any amount by way of processing/maintenance charges or any such charge, by whatever name called, for meeting its revenue expenditure.”

- ❖ It is therefore interpreted to be a provision which contained directions “in respect of matters relating to or connected with the receipt of deposits by Non-banking Company.” In *Peerless II* as well, the Supreme Court upheld that if and so the Bank is competent to give directions contained in para 6 to 12 of 1987 Directions, then it shall also be competent to introduce **Para 4-A** by of Amendment as the sole purpose of such provision was to prevent and safeguard the interests of its companion directions and make sure their effective implementation. Therefore, referring to *Delhi Cloth & General Mills*⁴⁰ and *Peerless I*⁴¹ the court held that, “para 4-A, which has been inserted by notification dated 19.04.1993 in the 1987 Directions, falls within

³⁸ *Peerless General Finance & Investment Co. Ltd. v. Reserve Bank of India*, (1992) 2 SCC 343

³⁹ *Madhav Rao v. Union of India*, (1971) 1 SCC 85

⁴⁰ *Delhi Cloth and General Mills Co. Ltd. v. Union of India*, (1983) 4 SCC 166

⁴¹ *Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd.*, (1987) 1 SCC 424

the power conferred on the Reserve Bank to issue directions under **Section 45-K(3)** of the Act.”

- ❖ Lastly, the court relying upon *Sodhi Transport Co.*⁴² observed that, “The concept applicable in the construction of permitting laws is that if the Legislature permits anything to be done, it gives the authority, at the same time, to do anything that is necessary for the purpose of carrying out the purpose. All the ancillary and incidental powers to make the law effective and workable and to prevent evasion bring with it the power to make a law with respect to any subject.”

7.2. Personal Comment

The case at hand gave a very broad as regards to the interpretation of an “enabling clause” of the parent Act. The remarks of the Supreme Court of India are undoubtedly accurate and duly respected. However, there are many cases like these in which the court is burdened to draw out such interpretations which shall not be case if the legislature is effective in its job. Indian Legal System though supports the concept of Delegated Legislation and is highly dependent upon it in present modern times but still no such exact law is there which is to be followed. In the present case as well, it can be observed that the court agreed with the legislature purpose and reason of instituting such an enabling provision which has conferred wide amplitude of powers to the Reserve Bank of India. The judiciary is not faulted in trusting the legislature as legislature shall be trusted as a separate organ to be good enough in their job. A proper system is still required for the proper implementation of the delegated laws in the country.

8. Conclusion & Recommendations

“You can Delegate Authority, but you cannot Delegate Responsibility.” – Byron Dorgan.

Parliament's methods must be changed to require that any rule laid down by a vote be affirmed. This will then secure a vote slot, and if a Member of Parliament submits a prior notice as to why a specific rule must be revised or overturned, it will be addressed prior to the vote and the Minister concerned may be forced to respond to the MP's arguments. Under standing committees, parliament must consider forming additional working committees with legal and policy experts to help conduct a thorough review of all the rules imposed

⁴² *Sodhi Transport Co. v. State of U.P.*, (1986) 2 SCC 486

in parliament. In accordance with the current practise, if the government is unable to draught the rules within six months of the date of the beginning of the Act, it must request the Committee's extension. In the past, however, committees have alleged that extension requests do not include the reasons for the delay and that ministries are not open when there is a follow-up on delays in framing laws. Parliamentary procedure must state clearly that conduct of this kind constitutes a violation of parliamentary privilege for which disciplinary action can occur. A greater relationship between the committee and the MPs must be created. Parliament should consider a process whereby if, for particular purposes, a piece of subordinate legislation is referred to the committee by an MP for review, it must be compulsorily carried out and submitted to the house in a time-bound manner. In order to minimise the committee's burden, it can be mentioned that at least 20 MPs in the Lok Sabha must support a reference of this nature. It should not be left in the hands of the committee chairman to determine if, when political considerations should come into play, an assessment must be performed or not.

Failure to monitor delegation legislation will lead to abridgment and misuse of ruling making powers by the executive. Poor laws would eventually lead to lawsuits and raise the current amount of paperwork. It may be a far-fetched hope that the next central government will be able to reform the current parliamentary protocols in order to improve the supervision of delegated legislation, but such a measure is necessary in order to bring to life in our country the rule of parliamentary democracy. This blind spot of parliament will accelerate its rot, if left neglected.