ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW

VOLUME 3 AND ISSUE I OF 2025

APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2

Published by

Institute of Legal Education

https://iledu.in

DELEGATED LEGISLATION IN INDIA: CONSTITUTIONAL BASIS, JUDICIAL TRENDS, AND DEMOCRATIC SAFEGUARDS

AUTHOR - MUSKAN KUMARI* & ARRYAN MOHANTY**

* AMITY LAW SCHOOL, PATNA

** SYMBIOSIS LAW SCHOOL, NAGPUR

BEST CITATION - MUSKAN KUMARI & ARRYAN MOHANTY, DELEGATED LEGISLATION IN INDIA: CONSTITUTIONAL BASIS, JUDICIAL TRENDS, AND DEMOCRATIC SAFEGUARDS, *ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW (ILE JALR),* 3 (1) of 2025, Pg.01-16, APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2.

Abstract

Delegated legislation has become crucial to India's legal and governance system. It helps connect legislative goals with how they are carried out. While the Constitution gives the main law-making power to Parliament and state legislatures, the complexity of today's governance requires some legislative functions to shift to the executive. This approach ensures efficiency, flexibility, and specific expertise in taxation, financial regulation, environmental protection, and public health. Judicial interpretation, starting with the Delhi Laws Act case, has clarified that while key legislative functions should stay with the legislature, minor details can be delegated. This creates a balance between necessity and constitutional integrity. However, despite its usefulness, delegated legislation faces considerable criticism. Concerns about excessive delegation, weak oversight from Parliament, a lack of transparency, and the risk of regulatory capture raise questions about its democratic validity. Parliamentary committees and procedural rules, like presenting regulations before the House, often fail due to the heavy workload and many subordinate rules. Judicial review, primarily through the doctrine of ultra vires and scrutiny under Articles 13, 14, and 19, is an essential protection against arbitrary actions. Looking at examples from the United Kingdom and the United States shows India's balanced approach. It allows for broad delegation while keeping judicial checks in place. Ultimately, delegated legislation should be seen as a supportive tool rather than a parliamentary authority. Improving parliamentary oversight, increasing transparency, and fostering public involvement are vital to maintaining the democratic balance between legislative power and administrative ease.

Introduction to Delegated Legislation

Law-making is usually seen as the legislature's responsibility, which should create laws reflecting the people's will. However, as government functions have expanded and modern administration has become more complex, legislatures worldwide, including India, struggle to pass comprehensive laws for every aspect of governance. This challenge has led to the rise of delegated legislation, a key part of administrative law in today's societies.[1] Delegated legislation is generally defined as the transfer of legislative power from the legislature to a subordinate authority, usually the executive, to create detailed rules, regulations, notifications, or bye-laws within the scope of an enabling statute. The legislature sets out the broad policy and framework through what is known as the parent Act or enabling Act. At the

[1] Lawoctopus, Delegated Legislation in Administrative Law (Last visited on 19 August 2025, 08:26 P.M.) https://lawctopus.com/clatalogue/clat-ug/delegated-legislation-in-administrative-law/

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW

VOLUME 3 AND ISSUE I OF 2025

APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2

Published by

Institute of Legal Education

https://iledu.in

same time, the delegate provides the necessary details to carry out the legislative intent. In this context, delegated legislation is sometimes called subordinate, secondary, or ancillary.[2]

The Indian Constitution establishes a separation of powers among the legislature, executive, and judiciary, but does not prohibit delegating legislative powers. Instead, it acknowledges that delegation is necessary in a complex, welfare-oriented democracy. Articles like 245 and 246 grant legislative authority, while court rulings have clarified that essential legislative functions, such as setting policy, cannot be delegated. However, details and technical matters can be assigned to other authorities. From a legal standpoint, "delegated legislation" has multiple meanings. Black's Law Dictionary defines "delegation" as empowering another to act for someone else. Sir John Salmond described subordinate legislation as "that which proceeds from any authority other than the sovereign power" and derives its validity from the superior authority. Justice P.B. Mukherjee warned that the phrase "delegated legislation" can cause "multiplicity and confusion." It sometimes justifies legislative convenience, shields administrators, and poses challenges for constitutional judges. The growth of delegated legislation in India is closely tied to developing a welfare state and increasing government responsibilities after independence. Legislatures quickly realised they could not draft comprehensive laws for every situation within their limited time. They focused on policy questions and granted the executive the authority to implement and adjust those policies through rules and regulations. This system became a necessary supplement to parliamentary law-making.

Scholars note that today in India, more delegated legislation is produced yearly than primary legislation. This imbalance highlights its importance. For example, in modern regulatory areas like environment, taxation, or financial markets, Parliament sets a basic framework while ministries, departments, or statutory bodies create the actual working rules. During emergencies, such as the COVID-19 pandemic, delegated legislation through executive guidelines under the Disaster Management Act, 2005, allowed the state to impose lockdowns, issue safety protocols, and manage movement without a new parliamentary statute.[3] Several reasons explain the rise and necessity of delegated legislation in India. First, legislatures are overwhelmed with national policy issues and cannot spend enough time on detailed law-making. Delegation allows them to focus on broader topics while leaving specifics to the executive. Second, modern challenges like nuclear energy, telecommunications, or biotechnology require specialised input, which legislators may not have. Delegating rule-making power allows experts to create suitable regulations. Third, delegated legislation is flexible and adaptable. Unlike statutes, which require lengthy processes to amend, it can be quickly adjusted to respond to changing circumstances. Fourth, delegated legislation enables prompt executive action during emergencies such as natural disasters, health crises, or security threats. Finally, delegated legislation allows for trial-and-error governance, where temporary rules can be assessed and modified based on their results.

Comparative legal analysis supports India's reliance on delegated legislation. Parliament often enacts statutory instruments to delegate rule-making authority to ministers in the United Kingdom, where parliamentary sovereignty is strong. In the United States, however, Congress faces stricter limits due to the non-delegation doctrine outlined in Panama Refining Co. v. Ryan, in which the U.S. Supreme Court ruled that Congress cannot delegate its essential legislative functions, though it may allow the executive to make rules within defined criteria.

[2] Keshav Garg and Vanshika Khandelwal, The Rise of Delegated Legislation within the Indian Legal System, Vol 6 Issue 1, IJLLR, 2603-2611 (2024) https://www.ijllr.com/post/the-rise-of-delegated-legislation-within-the-indian-legal-system

[3] Edgar K, Administrative Law-The Guardian Angel of Ideal Governance, Vol 3, IJLPA, 1-15 (2022) https://www.ijlpa.com/_files/ugd/006c7e_8bdf6fb60a374bbcadd26c1c4a5c6c62.pdf?index=true

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW

VOLUME 3 AND ISSUE I OF 2025

APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2

Published by

Institute of Legal Education

https://iledu.in

Drawing from both traditions, India recognises broad delegation powers but subjects them to judicial review.[4] The Indian judiciary has consistently upheld that while delegation is allowed, essential legislative functions, such as policy formulation, must remain with the legislature. In D.S. Grewal v. State of Punjab, the Supreme Court clarified that Article 312 does not limit the normal authority of the legislature to delegate powers.[5] Similarly, in Raj Narain Singh v. Chairman, Patna Administration Committee, the Court invalidated excessive delegation when it meant the legislature was giving up its essential role. These rulings show a balance between necessity and constitutional boundaries.[6]

Delegated legislation has thus become a crucial part of the Indian legal system. It bridges the gap between legislative intent and administrative execution, ensuring that governance remains responsive, flexible, and informed. While its necessity in modern administration is apparent, it also raises concerns about accountability, democratic legitimacy, and the risk of excessive delegation. Therefore, it should be viewed not as a substitute for legislative authority but as a complementary tool rooted in legislative policy, implemented by the executive, and safeguarded by judicial oversight.

Constitutional & Legal Framework

The constitutional basis for delegated legislation in India comes from Articles 245 and 246.[7] These articles divide law-making powers between Parliament and state legislatures. They give full powers to the legislature but do not forbid delegating those powers. Due to the complexities of modern governance, legislatures cannot be expected to develop every detailed rule. Delegated legislation gets its legitimacy from enabling statutes, which allow subordinate authorities to create laws, regulations, and orders needed to implement legislative policies.[8] Judicial interpretation has been crucial in clarifying the limits of delegation. The advisory opinion in the Delhi Laws Act case established that delegation is constitutionally valid if the legislature does not give up its essential legislative function.[9] Basic functions, particularly setting legislative policy, must stay with the legislature. However, it can assign ancillary and procedural matters to subordinate authorities. Later cases supported this view. In Raj Narain Singh, the Court invalidated provisions that allowed the executive to extend and modify primary legislation, ruling that such broad powers exceeded the permissible limits of delegation. Similarly, in Harakchand, the Court invalidated parts of the Gold Control Act for giving unchecked discretion to the executive.[10] These decisions highlight the balance the Constitution seeks: delegation is allowed, but not to the extent that it leads to abandonment of essential functions.

The doctrine of excessive delegation has emerged as the primary constitutional safeguard against overreach. It states that the legislature must not delegate its essential functions, the parent statute must provide clear guidance and standards, and there must be safeguards against misuse of power.[11] The delegated provisions might be deemed unconstitutional if these conditions are not met. While the separation of powers is not strictly enforced in India, it limits delegation. In Jatindra Nath, the Federal Court distinguished between conditional legislation, which allows the executive to implement a law based on specific criteria, and excessive delegation, which lets the executive set policy.[12] This interpretation shows

[4] 293 U.S. 388
[5] AIR 1959 SUPREME COURT 512
[6] AIR 1954 SUPREME COURT 569
[7] The Constitution of India, 1949, Arts 245 & 246

[8] Dr Shridevi S Suvarnakhandi, Delegated Legislation under Indian Constitution, Vol 2 Issue 1, IJAEM, 864-871 (2020) https://ijaem.net/issue_dcp/Delegated%20Legislation%20under%20Indian%20Constitution.pdf
[9] In Re The Delhi Laws Act, 1912, The Ajmer-Merwara v. The Part C States (Laws) Act, 1950, 1951 AIR 332
[10] Harakchand Ratanchand Banthia and Ors Etc v. Union of India and Ors., AIR 1970 SUPREME COURT 1453
[11] Girisha Meena, An Insight into the Enigma of Excessive Delegation: An Indian Perspective, Vol 3 Issue 2, CLR, 18-32 (2022) https://cnlu.ac.in/storage/2025/04/An-Insight-into-the-Enigma-of-Excessive-Delegation-An-Indian-Perspective-by-Girisha-Meena.pdf
[12] Jatindra Nath Gupta v. Province of Bihar, AIR 1949 FC 175

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW
VOLUME 3 AND ISSUE I OF 2025
APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2
Published by
Institute of Legal Education
https://iledu.in

that while the Constitution supports cooperation among government branches, the legislature's supremacy in policy-making must be upheld. The Constitution includes mechanisms for various forms of delegation. Article 123 permits the President to issue ordinances when Parliament is not in session, giving temporary legislative power to the executive.[13] Article 312 allows Parliament to empower the executive to form All-India Services.[14] Articles 309 and 310 will enable the executive to create rules regarding service conditions.[15] These examples indicate that the Constitution's framers recognised the practical need for delegation and incorporated it into the constitutional framework.

The rise of delegated legislation has closely followed the expanding responsibilities of the welfare state. With legislatures unable to cover every technical detail in areas like taxation, the environment, or public health, delegation has provided flexibility and specialisation.[16] Over time, delegated legislation has significantly increased, often outnumbering primary statutes. This trend reflects practical necessity and acknowledges that specialised agencies are better suited to develop detailed rules in fast-changing sectors. Comparative perspectives illuminate the Indian position further. In the United Kingdom, parliamentary sovereignty allows extensive use of statutory instruments, though concerns about "Henry VIII clauses" give the executive power to change primary legislation.[17] In contrast, the United States has generally adhered to a stricter non-delegation doctrine, as seen in Panama Refining and Schechter Poultry, where statutes were invalidated for granting unchecked powers to the executive. India has taken a middle path: while allowing broad delegation to address governance needs, the courts have consistently invalidated excessive or uncontrolled delegation cases. Judicial review has become the final safeguard in this system. Courts can strike down provisions that give arbitrary or excessive power to the executive, ensuring accountability. Parliamentary control through committees helps provide oversight, though judicial checks tend to be more effective. India's constitutional and legal framework on delegated legislation reflects a practical compromise. It accepts delegation as a necessary part of modern governance while ensuring it remains under constitutional safeguards. By allowing necessary delegation but rejecting excessive or uncontrolled provisions, the judiciary upholds legislative supremacy and strengthens democratic accountability. This balance of necessity tempered by safeguards is at the heart of the Indian approach to delegated legislation.

Types and Forms of Delegated Legislation

Delegated legislation in India appears in various forms, reflecting the diverse needs of governance. This variety allows the executive and other statutory authorities to effectively implement legislative policies while considering practical, local, and technical issues.

The most common and essential form is rules and regulations established under statutory authority. When Parliament or a state legislature passes a law, it usually outlines the general principles or policy, then grants the executive the power to create detailed rules. These rules have the force of law if they align with the parent statute. They are especially crucial in corporate law, taxation, environmental law, and public health, where quick adjustments are needed. Regulations from statutory regulators like the Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), and Telecom Regulatory Authority of India (TRAI) are key examples, as these bodies have the technical

[13] The Constitution of India, 1949, Art 123
[14] The Constitution of India, 1949, Art 312
[15] The Constitution of India, 1949, Arts 309 & 310
[16] Manav Puri, Growth of Delegated Legislation in India, Legal Service India (20 August 2025, 07:11 A.M.) https://www.legalserviceindia.com/legal/article-8066-growth-of-delegated-legislation-in-india.html
[17] Aishwarya Agarwal, Constitutionality of Delegated Legislation, LawBhoomi (20 August 2025, 07:14 A.M.) https://lawbhoomi.com/constitutionality-of-delegated-legislation/

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW

VOLUME 3 AND ISSUE I OF 2025

APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2

Published by

Institute of Legal Education

https://iledu.in

knowledge required to oversee complex economic sectors.[18]

Another key category is bye-laws, which local authorities or statutory corporations typically create. Bylaws apply to specific areas and address issues like sanitation, drainage, water supply, building codes, and traffic control. Their importance lies in decentralisation, allowing decisions to be made closer to the people affected. Municipal corporations and local bodies, empowered by statutes like the Municipalities Act, can enact bylaws that meet local needs. Courts acknowledge the value of bye-laws but also ensure they stay within the limits set by the enabling statute. Orders, notifications, and directions represent another type of delegated legislation. Orders are usually issued to address specific situations under the authority of laws. Notifications can activate provisions of a statute, exempt groups from statutory requirements, or change how laws apply in particular situations. Administrative agencies or regulators often issue directions to enforce compliance and clarify standards. For instance, the central government issues notifications under the Environment (Protection) Act, 1986, which sets standards for emissions and effluents.

A unique form of delegation is conditional legislation, where the legislature enacts a law but makes its application dependent on certain conditions the executive meets. The legislature sets the policy while allowing the executive to decide when and where the law should take effect. This approach was recognised in Queen v. Burah and reaffirmed in India as constitutionally acceptable.[19] Conditional legislation often appears in tax or regulatory legislation where flexibility is necessary to respond to different circumstances. Sub-delegation is closely related, occurring when the authority given legislative power delegates it further to another authority. Though the principle *delegatus non potest delegare* usually prevents this transfer, sub-delegation is allowed if the parent statute explicitly permits it. Courts have consistently examined sub-delegation, rejecting it when it lacks statutory approval or results in excessive and uncontrolled power transfer.[20]

Another developing form is legislation by incorporation and reference. In this method, the parent statute includes provisions from another law or allows the executive to apply parts of one statute to another area with changes. While this technique can be efficient, it has raised concerns over transparency and accountability, especially when granting broad modification powers. These varied forms of delegated legislation serve different practical purposes. Rules and regulations allow for detailed law-making in specialised areas, bylaws decentralise authority to local bodies, orders, notifications, and directions enable quick responses to emergencies, conditional legislation offers flexibility in application, sub-delegation supports practical execution in large administrative structures. Incorporation by reference enhances efficiency in law-making.

While the range of forms highlights the flexibility of delegated legislation, it also carries risks of misuse. Indian courts stress that all forms of delegated legislation must align with the parent statute and remain within constitutional limits. Parliamentary committees, especially the Committee on Subordinate Legislation, also review how these powers are exercised, though judicial review remains the most effective safeguard. Thus, the types and forms of delegated legislation in India illustrate a constitutional balance between the need for administrative flexibility and the necessity of legislative control. This variety ensures that the executive can adjust laws to meet governance needs while maintaining legislative authority through judicial and parliamentary oversight.

[18] Ahel Choudhury, Delegated Legislation: An Overview of its Types, Need, Criticism, and Constitutional Validity in India, Vol 7 Issue 3, IJLMH, 3959-3970 (2024) https://ijlmh.com/paper/delegated-legislation-an-overview-of-its-types-need-criticism-and-constitutional-validity-in-india/

[19] Akshat Mittal, Interpretation of Delegated Legislation in the light of Reserve Bank of India v. Peerless General Finance, Vol 3, IJLPA, 1-16 (2022) https://www.ijlpa.com/_files/ugd/006c7e_af9e09e834cf466ea48d3397dcc58752.pdf?index=true

[20] (1878) ILR 3 CAL 64

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW

VOLUME 3 AND ISSUE I OF 2025

APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2

Published by

Institute of Legal Education

https://iledu.in

Justifications for Delegated Legislation

Delegated legislation has become a key part of modern law-making in India and elsewhere. Initially, some viewed it with scepticism, fearing it might undermine parliamentary authority. However, its growth has been justified by various constitutional, practical, and democratic reasons. These justifications show why delegation is necessary and why courts, legislatures, and administrative bodies have widely accepted it. The most convincing explanation is the growing complexity of governance. Modern states handle more than just fundamental law and order; they address welfare, economic regulation, environmental protection, social justice, and technology. Legislatures cannot anticipate or define every detail needed to regulate these diverse and technical areas. Delegated legislation fills this gap by allowing experts to create rules suited to complex topics.[21] For example, financial regulation by the Reserve Bank of India, securities regulation by SEBI, and environmental standards under the Environment (Protection) Act, 1986 require specialised knowledge. Legislatures, lacking the time or expertise to tackle such complexities, give rule-making powers to specialised agencies. Thus, the rise of administrative agencies in India is not seen as an encroachment on legislative authority but rather as a necessary function to meet the complicated demands of a modern welfare state.

Another important reason is the need for flexibility. Once enacted, parliamentary legislation is often rigid and takes a long time to amend. Delegated legislation can be changed or repealed quickly in response to emergencies or shifting social conditions.[22] The COVID-19 pandemic exemplified this need. The executive issued numerous notifications, guidelines, and orders under the Disaster Management Act, 2005, to impose lockdowns, regulate travel, and provide health advisories. Such quick responses would have been impossible if each measure required legislative approval. A similar need for flexibility exists in fiscal policy, where notifications under the Customs Act or the Goods and Services Tax (GST) system allow the government to adjust tariff rates quickly in response to global economic changes.

Delegated legislation also helps reduce the legislative workload. Legislatures face many responsibilities, from debating policies to passing budgets. They often lack the time to discuss every detailed technical issue thoroughly. Delegation lets Parliament and state legislatures concentrate on essential law-making, policy decisions, and oversight, while administrative bodies manage the details. Without delegation, legislatures would either become overwhelmed by minutiae or pass vague laws that fail to address practical needs. Legislatures ensure effective and comprehensive laws by delegating the responsibility of detailed law-making to lower authorities. Additionally, the expertise available in administrative agencies justifies delegated legislation. Regulatory agencies comprise professionals with subject-specific knowledge, unlike legislatures, which are mainly political entities. For instance, aviation safety standards under the Directorate General of Civil Aviation, pharmaceutical regulations under the Drugs Controller, and monetary policy guidelines from the RBI rely on expert knowledge for effective governance. Courts often recognise this point. The Supreme Court has noted that it is appropriate for Parliament to set broad policies in highly technical areas while leaving the details to agencies with the required expertise.

Another justification lies in administrative efficiency and quasi-judicial functions. Delegated legislation often includes institutions such as tribunals and quasi-judicial bodies, which combine rule-making and adjudicatory

[21] Abhijit B & M Vamsi Mohana, Delegated Legislation: A Study of Its History, Evolution, and Contemporary Position in India, United States of America and United Kingdom, Vol 3 Issue 5, IJLMH, 690-706 (2020) https://www.ijlmh.com/wp-content/uploads/Delegated-Legislation-A-Study-of-Its-History-Evolution-and-Contemporary-Position-in-India-United-States-of-America-and-United-Kingdom.pdf

[22] Saad Abdullbaqi Sabti & YP Rama Subbaiah, A Comparative Study of Delegated Legislation: With special reference to the United States of America and United Kingdom, Vol 3 Issue 3, IJL, 70-74 (2017) https://www.lawjournals.org/assets/archives/2017/vol3issue3/3-3-14-949.pdf

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW
VOLUME 3 AND ISSUE I OF 2025
APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2
Published by
Institute of Legal Education
https://iledu.in

roles. This setup leads to faster dispute resolution and improves the administration of justice.[23] Specialised tribunals like the Central Administrative Tribunal (CAT), National Green Tribunal (NGT), and Securities Appellate Tribunal (SAT) operate under delegated powers. By giving rule-making and adjudicatory authority to these entities, the state reduces the load on regular courts while ensuring disputes are managed by experts in the relevant fields. This dual role of delegated legislation promotes efficiency and enhances access to justice by providing quick and affordable remedies. Contrary to the belief that delegated legislation weakens parliamentary sovereignty, it is justified by democratic accountability. The parent statute typically outlines the framework, policy, and safeguards the executive must follow. Furthermore, delegated legislation remains subject to several controls: parliamentary oversight through committees like the Committee on Subordinate Legislation; judicial review to ensure compliance with constitutional standards and limits; and public accountability, as many delegated rules require publication and prior consultation. These mechanisms ensure that delegation bolsters democracy by balancing efficiency with oversight.

Delegated legislation also promotes uniformity at the national level while allowing for decentralisation at the local level. For example, central ministries issue national standardised regulations, ensuring consistent policy implementation. Simultaneously, local authorities can create bylaws addressing sanitation, traffic, housing, and urban governance. This duality ensures that governance is both consistent and responsive to local needs. Comparative experiences further support these justifications. In the United Kingdom, most laws operate through statutory instruments based on parliamentary authority and administrative necessity. Though the non-delegation doctrine theoretically limits delegation in the United States, administrative rule-making has thrived under the rationale of complexity and expertise. Indian practice represents a middle ground: broad delegation is justified by necessity, yet courts remain vigilant against excessive or unregulated powers. The justifications for delegated legislation complexity, flexibility, legislative efficiency, expertise, administrative convenience, accountability, and decentralisation collectively establish it as a crucial part of modern governance. While concerns about excessive delegation exist, constitutional safeguards and judicial oversight help maintain delegation as a support to legislative power instead of a substitute. The strength of these justifications lies in their ability to blend democratic principles with the practical needs of governance in a rapidly changing world.

Challenges and Criticisms

Despite its wide acceptance and practical use, delegated legislation has faced significant criticism in India and internationally. Supporters view it as a necessary part of modern governance. Still, critics see it as a constitutional oddity that raises issues about democratic legitimacy, accountability, and the potential for executive overreach. The main criticism focuses on excessive delegation. Legislatures, rather than keeping their essential law-making duties, often hand over too much power to the executive, weakening the principle of separation of powers.[24] One of the most persistent challenges is the threat of excessive delegation. When legislatures create vague laws and give the executive broad discretion, they risk shifting policy decisions traditionally made by elected officials into the hands of unelected administrators. This power transfer undermines democracy by allowing the executive to operate as a quasi-legislative body without the

[23] Virat Singh, Need for Devolution of Adjudicatory Authority on Administration, Legal Vidhiya (21 August 2025, 08:52 A.M.) https://legalvidhiya.com/need-for-devolution-of-adjudicatory-authority-on-administration/

[24] Smruti Poola, Delegated Legislation: A Necessary Evil? Analysis of St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education Judgement, Vol 2 Issue 1, IJIRL, 375-388 (2022) https://ijirl.com/delegated-legislation-a-necessary-evil/

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW

VOLUME 3 AND ISSUE I OF 2025

APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2

Published by

Institute of Legal Education

https://iledu.in

same level of political accountability.[25] Although the Indian Supreme Court recognised in the Delhi Laws Act case that delegation is acceptable if "essential legislative functions" are retained, the line between acceptable delegation and giving away legislative power is often unclear.[26] Another concern is that delegated legislation weakens parliamentary control. Committees like the Committee on Subordinate Legislation are supposed to review rules and regulations for alignment with parent statutes. However, parliamentary oversight is often superficial. The sheer number of delegated instruments makes thorough examination impractical. As a result, delegated legislation usually takes effect without meaningful democratic discussion, raising worries about a democratic deficit. Unlike statutes debated in Parliament, delegated instruments are frequently created and passed without consultation, placing binding obligations on citizens without input from elected representatives.

Critics also point out the risk of arbitrary decisions and abuse of power. Delegated powers are frequently written in broad terms, giving agencies significant leeway to decide the scope and enforcement of rules. This discretion can be exploited, especially when rule-making impacts economic conditions or civil liberties. For instance, trade, taxes, or property regulations can profoundly affect individual freedoms and business interests. Yet, they are often set through executive notifications or circulars instead of careful parliamentary discussions. This system heightens the chance of arbitrary decisions and undermines the constitutional requirement that limitations on fundamental rights must come from laws passed by elected bodies. Another major criticism is the lack of transparency in the delegated legislation process. Unlike the process for creating parliamentary laws, which includes debates, committee discussions, and public records, delegated legislation is generally drafted by bureaucrats out of public view. Citizens often remain unaware of new rules until they are published, and even then, there are few chances for public input.[27] This lack of transparency goes against democratic ideals of openness and discussion, leading to doubts about the legitimacy of delegated instruments.

Scholars and legal experts have also raised concerns about the constitutional implications of excessive delegation. The Supreme Court has upheld the validity of delegation with some limits, but its decisions have not always been consistent. Sometimes, the Court invalidates excessive delegation, as in Harakchand v. Union of India, while at other times, it permits wide-ranging discretion for the executive. This inconsistency creates uncertainty and raises worries that judicial oversight might not be enough to prevent executive overreach. Another ongoing critique is the erosion of federalism. Central laws often give extensive rule-making authority to the Union executive, limiting states' involvement in matters that can affect local governance. Delegated legislation from the Union government, especially in areas like the environment and taxes, has sometimes overshadowed state autonomy, raising questions about the balance of power within India's federal system.

Comparative analysis shows similar issues in other countries. In the United Kingdom, delegated legislation faces criticism for overwhelming parliamentary scrutiny mechanisms, with thousands of statutory instruments passed yearly, many without debate. In the United States, although the non-delegation doctrine limits excessive delegation theoretically, the growth of the administrative state has led to similar critiques of an

[25] Lawoctopus, Excessive Delegation under Administrative Law (21 August 2025, 09:53 A.M.) https://lawctopus.com/clatalogue/clat-pg/excessive-legislation-under-administrative-law/

[26] Arindam Shit & Gayatri Prasad Birabara, Interpretation of Delegated Legislation: A Much Needed Judicial Role, Research Gate (21 August 2025, 09:56 A.M.) https://www.researchgate.net/publication/360008415_INTERPRETATION_OF_DELEGATED_LEGISLATION_A_MUCH-NEEDED_JUDICIAL_ROLE

[27] Megha Mahesh, Excessive Delegation, Vol 5 Issue 1, IJLMH, 2043-2062 (2022) https://www.ijlmh.com/wp-content/uploads/Excessive-Delegation.pdf

"unelected bureaucracy" holding too much power. India, facing comparable issues, risks replicating these problems unless strict safeguards are implemented. Lastly, a broader philosophical critique sees delegated legislation as a "necessary evil." While it may be practical, it compromises democratic values by shifting the responsibility for law-making from elected officials to appointed ones. Critics argue that this compromise needs strict controls. Without oversight, unchecked delegation can shift parliamentary democracy toward executive rule, undermining constitutional principles of accountability and separation of powers. The challenges and criticisms of delegated legislation highlight both practical issues and deeper constitutional worries. The risks of excessive delegation, weak parliamentary control, arbitrariness, lack of transparency, inconsistent judicial oversight, and federal imbalances all raise questions about the legitimacy of this mechanism. Although delegation may be unavoidable in a modern welfare state, these criticisms underscore the importance of vigilance in keeping it as a support to legislation rather than a replacement.

Judicial Control over Delegated Legislation

Delegated legislation is an essential tool for governance, but it is approached with caution. It involves transferring law-making power from elected legislatures to the executive or other lower authorities. If this transfer is not checked, it can weaken the principle of separation of powers and harm the democratic accountability of law-making. For this reason, the judiciary in India plays a key role in overseeing delegated legislation, ensuring this power is used within the limits set by the Constitution and the enabling statute. Judicial control shows the courts' role as protectors of the Constitution and helps prevent arbitrary or excessive delegation.[28] The foundation of judicial power is the doctrine of ultra vires, which allows courts to determine if delegated legislation has gone beyond the authority granted by the parent Act. Ultra vires works at two levels: substantive and procedural. Substantive ultra vires happens when delegated legislation exceeds the powers of Parliament, either by conflicting with the parent statute or addressing issues beyond its intent. Procedural ultra vires occurs when required procedures in the enabling Act, such as publication, consultation, or submission to the legislature, are ignored.[29] Using this dual standard, the judiciary ensures that executive rule-making stays aligned with legislative intent and follows proper procedures.

A consistent principle established by the courts is that essential legislative functions cannot be delegated. This was notably articulated in the Re Delhi Laws Act case, where the Supreme Court recognised that while delegation is generally allowed, essential roles like setting legislative policy and defining its key aspects must remain with the legislature. Delegated authorities can only be responsible for filling in details, implementing policies, or addressing administrative needs. This case set the constitutional limits between valid delegation and giving up legislative responsibility. The judiciary has also stepped in when delegated legislation has restricted fundamental rights. Rules that excessively limit freedoms guaranteed under Part III of the Constitution undergo strict judicial review. In Harakchand v. Union of India, the Supreme Court struck down provisions from the Gold Control Act, stating that the powers given to the executive were too broad and imposed unreasonable limitations on the right to trade under Article 19(1)(g).[30] Similarly, in Indian Express Newspapers v. Union of India,[31] the Court emphasised that subordinate legislation is considered "law" under Article 13 and is therefore subject to constitutional constraints, including

[28] Paikar Mustafa, Judicial Control of Delegated Legislation vis-à-vis Separation of Power, Vol 6 Issue 1, IJRAR, 1416-1428 (2019) https://ijrar.org/papers/IJRAR19J3105.pdf

[29] Adv Akshay Bhambri, Control Mechanism of the Delegated Legislation in India, Vol 2 Issue 4, JLSR, 1-10 (2021) https://www.jlsrjournal.in/control-mechanism-of-the-delegated-legislation-in-india-by-akshay-bhambri/

[30] The Constitution of India, 1949, Art 19(1)(g)

[31] AIR 1986 SUPREME COURT 515

fundamental rights review.[32] These cases have underscored that delegation cannot be used to sidestep constitutional protections.

Judicial control also involves enforcing the principle of reasonableness and fairness. Article 14 of the Constitution bans arbitrary state action, so delegated legislation that is irrational, grossly unfair, or disproportionate can be invalidated.[33] The Supreme Court has repeatedly stated that the rule of law requires fairness in all government actions, including delegated law-making. This focus on rationality and proportion reflects the judiciary's commitment to constitutional principles, ensuring that delegated legislation does not become a tool for unchecked executive power.[34] An essential aspect of judicial control is requiring the parent statute to provide clear guidelines for how delegated power is used. The judiciary has frequently invalidated delegations that granted vague or unfettered discretion to the executive. In Ajoy Kumar Banerjee v. Union of India,[35] the Supreme Court nullified provisions that gave broad discretionary powers to the government without adequate policy guidelines, arguing that this uncontrolled delegation amounted to abandoning legislative responsibility. By insisting on clear legislative policies, the judiciary ensures that delegation boosts, rather than replaces, parliamentary authority. The courts have also stated that delegated legislation cannot contradict or override the parent statute. If rules or regulations are inconsistent with the enabling Act, they are declared invalid. This principle reinforces the hierarchy of norms, ensuring that subordinate legislation functions strictly within the framework set by Parliament. Additionally, subordinate legislation cannot expand or limit constitutional rights or duties, as these fall outside the delegate's powers. Apart from reviewing the substance of delegated legislation, the judiciary also checks whether procedural rules in the exercise of delegated powers have been followed. Many enabling statutes require that delegated legislation be published in the Official Gazette or presented to Parliament within a specific timeframe to ensure accountability and transparency. When these requirements are not met, courts have invalidated the delegated rules. This procedural oversight guarantees that delegated legislation does not bypass essential publicity and parliamentary awareness safeguards.

The judiciary's role goes beyond merely striking down delegated legislation; it has also influenced the overall culture of delegation in India. Courts have impacted how laws are drafted by insisting that statutes include proper safeguards and only upholding those delegations that respect legislative authority. Legislatures now commonly incorporate detailed objective clauses, guiding principles, and controls on executive discretion in their enabling statutes. This shows the judiciary's constructive role in defining the limits of delegation. The courts have recognised the need to balance control with practicality. Judicial review of delegated legislation does not mean managing administrative duties on a micro-level. Courts are careful to intervene only when there is clear evidence of excess, arbitrariness, or violation of rights. In this way, judicial control maintains a balance between respecting the practical need for delegation and being alert to its misuse. Compared to other jurisdictions, judicial control in India is stronger due to clear constitutional limits and the guarantee of fundamental rights. In the United Kingdom, while delegated legislation is theoretically under parliamentary authority, courts mainly intervene on ultra vires grounds. In the United States, the non-delegation doctrine has been rarely applied, with courts focusing instead on whether Congress has provided an "intelligible principle" for agency discretion. India's approach, which includes substantive, procedural, and constitutional reviews, represents a middle path that

[32] The Constitution of India, 1949, Art 13
[33] The Constitution of India, 1949, Art 14
[34] Pankhuri Swarnim, Judicial, Legislative and Other Controls over Delegated Legislation in India, Vol 3 Issue 3, IJLMH, 1362—1380 (2020) https://ijlmh.com/judicial-legislative-and-other-controls-over-delegated-legislation-in-india/
[35] AIR 1984 SUPREME COURT 1130

acknowledges the need for delegation while imposing strong constitutional protections. Judicial control over delegated legislation in India represents a dynamic balance. Courts recognise the practical and constitutional need for delegation in a modern welfare state while also serving as guardians of legislative authority, constitutional rights, and the rule of law. The judiciary has created a structure that legitimises delegation while preventing misuse through principles like ultra vires, non-arbitrariness, and the demand for legislative guidelines. This balance ensures that delegated legislation supports parliamentary law-making rather than replacing it, protecting the integrity of India's constitutional democracy.

Parliamentary & Procedural Control

Parliament's oversight of delegated legislation is one of the most critical safeguards for democracy in India. While legislative power can be given to the executive for efficiency or technical reasons, this delegation does not mean the legislature can ignore its responsibilities. The central concept is that every delegate operates under the principal's authority; therefore, Parliament must supervise how the executive uses its delegated powers. However, this control has often shifted between theoretically strong and practically weak. Scholars argue that parliamentary control should be seen as a dynamic process rather than a formality. It is a constitutional measure aimed at preventing the misuse of legislative power by unelected officials who derive their authority from legislative grants.[36] In India, parliamentary control over delegated legislation occurs both directly and indirectly. When an enabling Act is passed, the legislature discusses the necessity, extent, and authority regarding the delegation of power. Members of Parliament can ask questions, issue notices, or propose motions under Rule 59 of the Lok Sabha Rules to review executive actions. In theory, these methods allow for thorough oversight. Yet, parliamentary time is primarily spent on political discussions and urgent policy matters, leaving little opportunity to assess the detailed aspects of statutory rules or regulations. As a result, this oversight often becomes more symbolic than substantive, giving the executive broad freedom in using delegated powers.

A critical mechanism for maintaining legislative oversight is the practice of "laying" delegated legislation before the House. This process, which comes from the British experience under the Statutory Instruments Act of 1946, aims to inform the legislature of the executive's law-making and allows for the annulment, modification, or approval of rules. In India, several enabling laws, such as the Companies Act of 2013, the SEBI Act of 1992, and the Foreign Exchange Management Act of 1999, require that subordinate legislation be presented to both Houses of Parliament. In theory, this gives legislators the power to veto or change rules that exceed the authority of the parent Act or conflict with constitutional standards. However, in practice, this requirement often becomes a formality. Since annulment or modification needs agreement from both Houses, and Parliament rarely allocates enough time for this review, few pieces of delegated legislation are properly examined. The high volume of subordinate legislation makes effective review nearly impossible, leading to what scholars call "theoretical rather than practical" control in India.

The scrutiny committees established in both Houses of Parliament, known as the Committees on Subordinate Legislation, are meant to conduct specialised reviews of executive law-making. Their role, as outlined in the Rules of Procedure, is to ensure that delegated legislation meets constitutional limits, stays within the delegated authority's scope, and adheres to principles of natural justice. Despite this purpose, these committees face significant challenges. The sheer amount of delegated legislation makes a thorough review unfeasible. For instance, since the Companies Act of 2013

[36] Shreaa Nath & Bharat Kumar Singh, Effectiveness of Parliamentary Control over Delegated Legislation, Legal Service India (21 August 2025, 11:06 A.M.) https://www.legalservicesindia.com/article/1894/Effectiveness-of-Parliamentary-Control-over-Delegated-Legislation.html

was enacted, the Ministry of Corporate Affairs has published 56 separate Rules, 181 circulars, and over 225 amendments, while the Securities and Exchange Board of India has introduced nearly 80 regulatory amendments and 170 circulars in just one year.[37] This constant flow of law-making turns subordinate legislation into a tool for the executive, allowing significant regulatory changes to be made simply by notification and bypassing the lengthy legislative process of debate and enactment. Consequently, limited by a lack of expertise in complex areas like securities regulation, corporate restructuring, or digital technology, the committees cannot provide the detailed scrutiny that such complicated delegated legislation needs.

A comparison with other countries highlights India's shortcomings. In the United Kingdom, parliamentary sovereignty ensures strong oversight. The laying procedure is obligatory, and the Select Committee on Statutory Instruments conducts systematic reviews of administrative rules in a non-political environment. In the United States, congressional control over delegated legislation is more limited, focusing instead on judicial review. India sits in the middle, where parliamentary control is constitutionally expected as part of the executive's accountability to Parliament, yet political priorities, lack of expertise, and legislative overload weaken it.

There is a pressing need for reform in today's digital and global environment. Experts point out that the lack of clarity surrounding delegated legislation and the absence of transparency and public involvement in its creation undermine democratic accountability and legitimacy. Many rules are crafted in secrecy, often influenced by specific interests or regulatory capture, with minimal consultation with stakeholders or the public. This decreases public trust in government institutions and produces regulatory frameworks that may favour groups. Additionally, globalisation and technological advancement often force regulators to act quickly, resulting in fragmented and inconsistent rules that Parliament lacks adequate expertise or time to review.

Reform proposals, therefore, emphasise strengthening parliamentary oversight and increasing democratic participation. Suggestions include making public consultations a regular part of the process before finalising delegated legislation, setting up independent oversight boards to complement parliamentary committee work, improving judicial reviews to ensure constitutional compliance, and requiring periodic reports from executive bodies on their use of delegated powers. Scholars believe that without these reforms, parliamentary control will remain largely insubstantial, allowing excessive delegation to go unchecked and undermining the constitutional principle that law-making, as a key legislative function, belongs to the people's representatives.[38]

Parliamentary and procedural control over delegated legislation in India tends to be more of a theoretical concept than a solid safeguard. While the Constitution states that Parliament has the final responsibility for law-making, legislative pressure, political priorities, and technical limitations have created a scenario where the executive enjoys significant discretion with little real oversight. This situation has turned delegated legislation from a necessary exception into a routine governance tool. Unless procedural safeguards like the laying requirement and committee reviews are revitalised and Parliament embraces transparency and public involvement, the promise of democratic control over delegated legislation will remain unfulfilled. The challenge is maintaining the constitutional balance between the legislature and the executive and

[37] Bharat Vasani & Varun Kannan, The Rise & Rise of Delegated Legislation – Do we need more Safeguards? Cyril Amarchand Mangaldas (21 August 2025, 11:09 A.M.) https://corporate.cyrilamarchandblogs.com/2022/01/the-rise-rise-of-delegated-legislation-do-we-need-more-safeguards/

[38] Rishi Pal Jainer & Dr Mohammad Haroon, Delegated Legislation in Digital and Globalised Era- A Way Forward, Vol 11 Issue 12, IJCRT, 352-359 (2023) https://ijcrt.org/papers/IJCRT2312715.pdf

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW
VOLUME 3 AND ISSUE I OF 2025
APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2
Published by
Institute of Legal Education
https://iledu.in

restoring the legitimacy and accountability central to representative law-making.

Impact on Governance & Citizens

Delegated legislation has significantly affected governance and citizens positively and in controversial ways. In modern India, it has become a key tool for administration, connecting the broad framework established by Parliament with the real needs of governance. It allows the executive to respond quickly to changing economic, social, and technological conditions, preventing governance from being bogged down by parliamentary procedures. However, this convenience comes with a downside: while it improves administrative efficiency, it also threatens the democratic accountability of law-making. This shift undermines the constitutional promise that citizens should mainly be governed by laws created by their elected representatives.[39] From a governance perspective, delegated legislation allows the state to handle highly technical areas like securities regulation, environmental standards, telecommunications, and digital economy frameworks, where legislative debates might not have the necessary expertise. It enables government departments and regulatory agencies to create specialised rules that meet new demands. For example, tax laws often include detailed notifications and circulars defining exemptions, compliance standards, and procedures, significantly impacting businesses and individuals. Similarly, rules under the Drugs and Cosmetics Act and regulations from health authorities highlight the essential role of delegated legislation in managing urgent public health issues, especially during pandemics or medical emergencies. These examples show how delegated law-making equips governance with a level of responsiveness that traditional legislative processes can't guarantee.[40] However, this advantage comes at a democratic cost for citizens. The sheer number of rules, orders, and notifications often exceeds that of primary statutes, shifting the real power of law-making away from Parliament. Citizens frequently find themselves governed by rules they had no chance to discuss or foresee, raising concerns about transparency and accessibility. Subordinate legislation is usually published in official gazettes or on regulatory websites, but such information is often not easy to find or adequately publicised for the average citizen. This situation creates a democratic deficit, where laws that determine rights, responsibilities, and freedoms are made without enough public involvement or legislative review.

For citizens, the impact is most vividly felt regarding legal certainty and fairness. Rules are often changed, sometimes retroactively, leaving individuals and businesses struggling to meet evolving compliance demands. Regulatory uncertainty drives up compliance costs and breeds distrust in government agencies. Furthermore, the lack of proper consultation before rule-making leads people to believe that delegated legislation serves administrative convenience more than citizen well-being. This situation is made worse by the possibility of regulatory capture, where powerful private interests shape delegated rules to benefit a select few, sidelining the wider public interest. Another aspect of the impact is the decline of parliamentary accountability. Citizens expect their representatives to oversee law-making, a crucial legislative role. Unfortunately, Parliament's review of delegated legislation often lacks depth. Submitting rules to the House has become a formality, with annulments being rare. Committees on Subordinate Legislation, although tasked with reviewing these instruments, frequently lack the resources and technical know-how to engage effectively with complex regulations. As a result, citizens live

[39] Arpita Tripathy & Satabdi Gupta, Delegated Legislation and its Impact on Future Prospect, Vol 2 Issue 1, IJALR, 1-7 (2021) https://ijalr.in/wp-content/uploads/2022/09/DELEGATED-LEGISLATION-AND-ITS-IMPACT-ON-FUTURE-PROSPECTS.pdf

[40] Mishika Bhargava, A Comparative Study on Parliamentary Control over Delegated Legislation, Vol 4 Issue 3, IJLDAI, 409-425 (2018) https://thelawbrigade.com/wp-content/uploads/2019/05/Mishika.pdf

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW

VOLUME 3 AND ISSUE I OF 2025

APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2

Published by

Institute of Legal Education

https://iledu.in

under a system of rules whose democratic legitimacy is often questionable and whose accountability structures are weak.

Still, delegated legislation offers benefits for citizens. Allowing specialised agencies to handle rule-making can make governance more adaptable and participatory. This is contingent upon creating systems for public consultation and stakeholder involvement. In many places, including India, experts argue that the future of delegated legislation should focus on improving transparency and citizen engagement. This may include requiring the early release of draft rules, using online platforms for public feedback, and establishing clear reporting obligations to Parliament. Such changes would enhance legitimacy and align governance with the principles of participatory democracy. Looking at other countries provides additional insights. Parliamentary oversight through the Select Committee on Statutory Instruments is more organised in the United Kingdom. The separation of powers doctrine in the United States emphasises judicial control over administrative rule-making. Conversely, India combines both approaches in theory but fails in execution, resulting in neither strong parliamentary oversight nor reliable judicial supervision. For citizens, this creates a situation where delegated legislation is everywhere yet often lacks clarity, regulating daily life without an opportunity for open democratic discussion. The long-term effects of this situation are significant. If delegated legislation keeps expanding without proper oversight, citizens may be subject to what scholars describe as "a government by notifications" instead of "a government by law." This change weakens the constitutional aim of accountable governance and erodes public confidence in the legal system's legitimacy. The challenge is finding a balance: ensuring delegated legislation remains a vital tool for effective governance while ensuring safeguards that maintain parliamentary authority, transparency, and citizen involvement. Only through these reforms can the state uphold the constitutional balance and ensure that delegated legislation strengthens rather than diminishes the democratic connection between the rulers and the ruled.[41]

Prospects & Safeguards

The development of delegated legislation in India shows its necessity and challenges. As the government's roles expand into more complex areas, the reliance on delegated powers will continue to increase. However, the need for delegation makes it crucial to strengthen safeguards to maintain the balance between legislative authority and administrative efficiency in the future. The future of delegated legislation in India will depend on improving accountability, increasing democratic oversight, and creating more straightforward constitutional and statutory guidelines. One important safeguard is enhancing parliamentary control mechanisms. While committees like the Committee on Subordinate Legislation exist, they often face criticism for being ineffective due to the large number of delegated instruments produced each year. Providing these committees with more resources, technical expertise, and mandatory reporting requirements could lead to more thorough scrutiny. Parliament should also allocate time to systematically review significant rules, especially those affecting fundamental rights and economic freedoms, ensuring that delegated legislation does not bypass democratic discussion. Judicial review is another key safeguard, traditionally the final check against excessive or unconstitutional delegation. Courts have established that essential legislative functions cannot be delegated, and that rules must align with the parent statute and constitutional protections. The future of delegated legislation will rely on the judiciary's vigilance in striking down arbitrary, disproportionate, or ultra vires rules while recognising the need for administrative flexibility. Judicial principles emphasising

[41] Pallavi Bajpai & Mohit Vats, Separation of Power & Delegated Legislation: An Implicit Poise Created by Judicial Detour, Vol 6 Issue 2, IJCRT, 923-936 (2018) https://www.ijcrt.org/papers/IJCRT1812758.pdf

reasonableness, proportionality, and the need for legislative guidance will remain important in balancing delegation with constitutionalism.

Transparency and public participation also provide promising safeguards for the future. Currently, bureaucrats with insufficient public input often create delegated legislation, leaving citizens to discover new rules only when published. A more inclusive model, where draft rules are shared for stakeholder and civil society feedback, would boost democratic legitimacy and clarify the process. This approach aligns with global trends, as many jurisdictions require regulatory impact assessments and consultations before subordinate legislation takes effect. Another future safeguard calls for clarity in constitutional and statutory provisions. Courts have consistently urged that parent statutes establish clear guidelines to limit excessive discretion. Legislatures must draft enabling clauses carefully, specifying policy, goals, and limits on discretion. This prevents the abandonment of legislative responsibility and makes delegated legislation more predictable and consistent with democratic values.

From a comparative perspective, India can learn from the experiences of the United Kingdom and the United States, both of which have faced similar issues. In the UK, there have been proposals to categorise statutory instruments based on their importance, requiring significant ones to receive affirmative approval from Parliament. There has been a stronger focus in the US on judicially enforced standards, such as the "intelligible principle" test. India might also explore graded scrutiny mechanisms, subjecting rules of major constitutional or economic significance to stricter parliamentary and judicial oversight. Ultimately, the future of delegated legislation in India relies on fostering a constitutional culture that views delegation as a complement to legislation rather than a replacement. This approach requires multiple strategies: legislatures must carefully define the scope of delegated powers, the executive must exercise these powers responsibly and transparently, and the judiciary must uphold constitutional limits consistently. Such a balanced framework can ensure that delegated legislation enhances governance without compromising democratic accountability.

Conclusion

Delegated legislation in India has become an essential tool for governance. It meets the needs of a modern administrative state while addressing the ongoing concerns of constitutional democracy. Legislative bodies often face constraints like time, business volume, and limited technical expertise. As a result, the executive is usually better equipped to draft and implement the detailed regulations needed for effective governance. This practical need explains the growing reliance on subordinate legislation in economic regulation, environmental protection, taxation, health, and digital governance. Judicial decisions, starting with the critical ruling on the Delhi Laws Act, have acknowledged this situation. They allow the delegation of additional powers while ensuring that the primary legislative role of policy determination remains with Parliament and state legislatures. Thus, the Indian constitutional framework views delegation not as a departure from the constitution but as a natural extension of legislative will. However, this evolution has brought challenges. The rapid growth of delegated legislation has shifted rule-making away from elected representatives to unelected administrators and regulatory bodies. Citizens must navigate complex rules, notifications, and circulars that change frequently, sometimes retroactively, and rarely get discussed in open legislative sessions. This raises concerns about democratic accountability, accessibility, and fairness. Though intended to provide oversight, the laying procedure and the Committees on Subordinate Legislation have struggled to manage the volume and complexity of delegated rules. With parliamentary time already consumed by political and policy discussions, there is seldom an opportunity for meaningful examination of subordinate

ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW
VOLUME 3 AND ISSUE I OF 2025
APIS – 3920 – 0051 | ISBN - 978-81-964391-3-2
Published by
Institute of Legal Education
https://iledu.in

legislation. As a result, many rules that impact fundamental rights and liberties avoid the scrutiny that primary statutes receive.

A judicial review has somewhat addressed this issue by testing delegated legislation against ultra vires, arbitrariness, and constitutional compliance standards. Courts have consistently stated that the legislature cannot give up its core functions, and rules contradicting fundamental rights or parent laws are invalid. However, relying solely on judicial review is not enough. Courts only engage when specific challenges come forward, and ongoing oversight is lacking. The democratic gap continues, especially in areas where regulatory decisions affect citizens daily. Looking ahead, the legitimacy of delegated legislation relies on strengthening institutional safeguards. First, parliamentary committees need more resources, technical knowledge, and mandatory reporting systems for thorough scrutiny. Second, the rule-making process should include transparency measures like early publication of draft rules, digital access, and required consultation with impacted stakeholders. These changes would improve the quality of subordinate legislation and build citizen trust and involvement. Finally, judicial oversight must stay vigilant to ensure that the constitutional limits of delegation are respected, thus upholding the separation of powers and the legislature's authority.

In conclusion, delegated legislation should be seen not as a reduction of legislative power but as a practical extension, provided that strong safeguards are in place to ensure accountability and transparency. Its role in governance is necessary in a complex society, but its future must align with constitutional principles, democratic legitimacy, and the need to protect citizens' rights. Only then can delegated legislation act as a complementary tool for governance instead of a replacement for parliamentary power.