



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

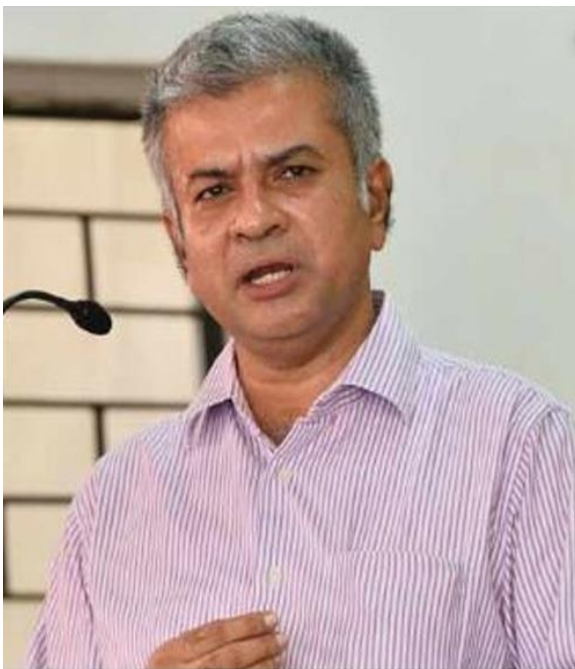
DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



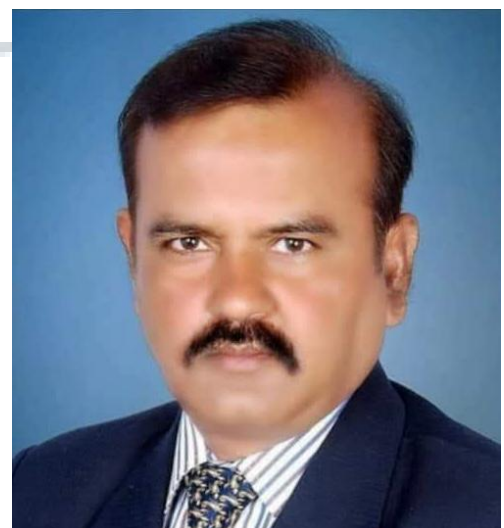
Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

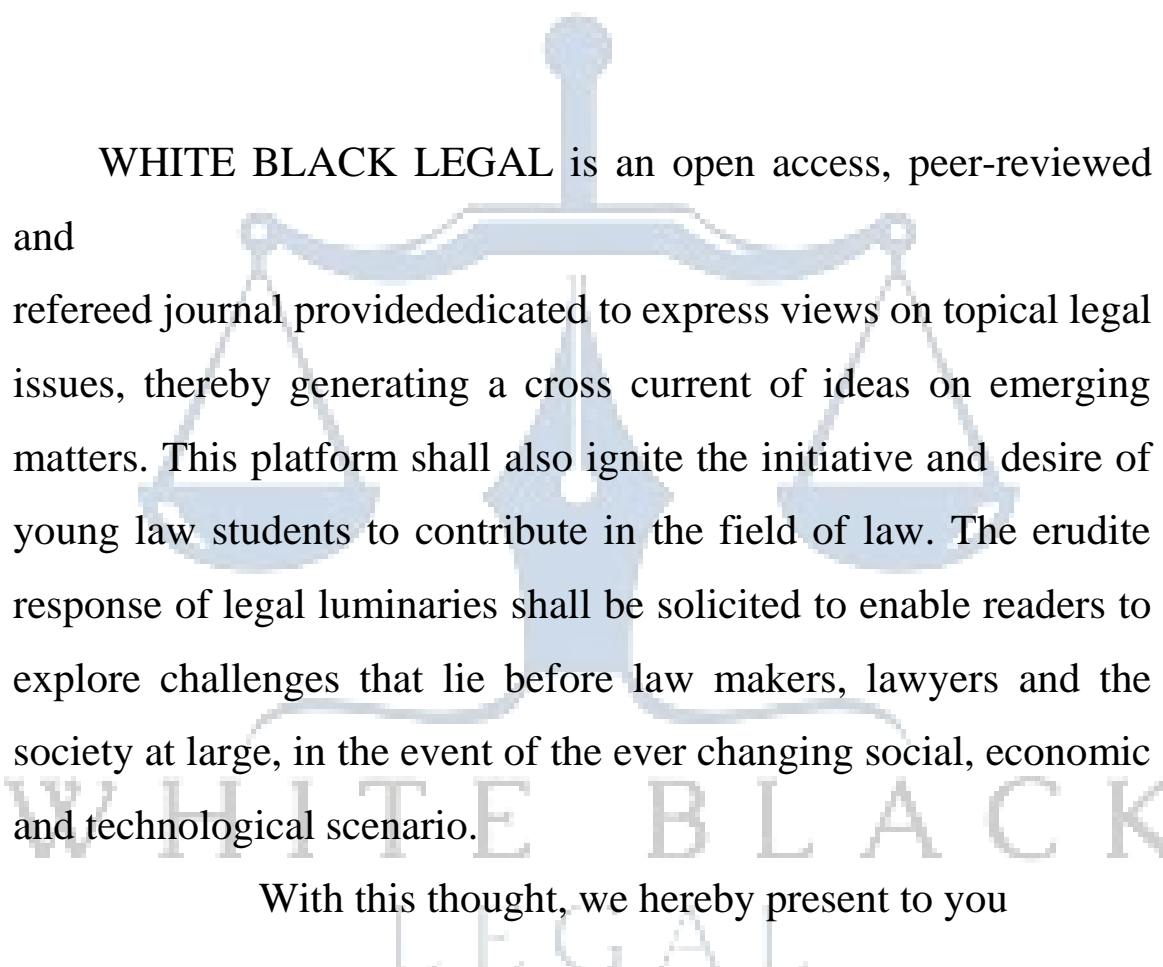


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SIGNIFICANCE OF SUBORDINATE LEGISLATION IN INDIA: EVOLUTION, CHALLENGES, AND ITS ROLE IN MODERN GOVERNANCE

AUTHORED BY - AGREEMA DOODRAJ

INTRODUCTION

- Subordinate legislation, commonly known as delegated legislation, is an integral part of modern governance. “This basically entails that Parliament and state legislatures have powers to delegate powers of legislation upon the executive to the extent of making rules within the ambit of specific and technical provisions prescribed under primary legislation.”¹
- “For society reeling under rapid socio-economic transformations, subordinate legislation provides much-needed flexibility, keeping governance not only relevant and inclusive but also effective.”²
- The article goes on to analyse in detail the importance, development mechanisms, regulatory framework, and challenges of subordinate legislation in India. It also analyses leading case laws that interpret how the concept of subordinate legislation has been interpreted and challenged within courts.

Emergence of Subordinate Legislation in India

Subordinate legislation has evolved in India through many changes, which have been induced by historical, constitutional, and pragmatic reasons.

- **Colonial Influences and Post-Colonialism**

- “Subordinate legislation emerged right from the very period of British colonial administration. During this phase, it became clear that direct legislation by the British Parliament was not sufficient to take care of the diversity and complexity of issues in different parts of India. Subordinate bodies were then vested with authorities such as governors or local administrators.”³

¹ V. N. Shukla, Constitutional Law of India (14th ed. 2022).

² M.P. Jain, Indian Constitutional Law (8th ed. 2018).

³ 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, 3 Int'l J.L. Mgmt. & Human. (2020).

- “When India gained independence, the framers of the Constitution recognized that this practice needed to be continued to effectively govern a large and complex country. The need for detailed rules on matters such as finance, defence, health, and public welfare”,⁴ among others, was realized, which thus made subordinate legislation an integral part of the India governance system.

-The framers of the Indian Constitution realized the need to carry on this tradition for properly ruling a country as large and complex as India. There was a need for detailed rules and regulations regarding finance, defence, health, and public utility services, making subordinate legislation an integral part of the governing structure in India.

- “Governance in British India, especially on issues of governance such as revenue collection, land administration, and infrastructural development, often rested on powers of subordinate legislation.”⁵

- **Increased Complexity after Independence**

- “Since independence, India has faced several socio-economic problems that have required elaborate policies in governance. Vast amounts of legislation that were needed to govern a country as large as India could not be formulated and implemented by Parliament in every aspect of legislation.”⁶ Subordinate legislation was thus a means for the executive to elaborate rules and regulations in detail within the general frame of guidelines illustrated by Parliament.

- “Establishment of Committees on Subordinate Legislation in the Lok Sabha in 1953 and in the Rajya Sabha in 1964 in essence regularized this exercise laying down a procedure to review the exercise of the power of sub-delegation.”⁷

- **Constitutional Provisions on Delegation**

-In fact, the Constitution of India thus envisages delegation of powers under various articles, viz., “Article 53 and 73 enabling delegation of executive powers”⁸ and “under Article 309, the delegation by the President or the Governor for making rules relating to the public services.”⁹

-The subordinate legislation thus gets a constitutional foundation. Yet the principles underlying is that primary legislative power, the function of policy making cannot be

⁴ Paikar Mustafa, Judicial Control of Delegated Legislation vis-à-vis Separation of Power, 6 Int'l J. Res. & Analytical Revs. (IJRAR) (Mar. 2019).

⁵ *ibid*

⁶ 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, 3 Int'l J.L. Mgmt. & Human. (2020).

⁷ *ibid*

⁸ India Const. arts. 53 & 73

⁹ India Const. art. 309

delegated, and therefore the delegation must be subject to Parliamentary control.

THE STATUS OF SUBORDINATE LEGISLATION IN MODERN INDIA

Dealing with issues that may be of complex and highly specialized nature in various areas, subordinate legislation goes forth to avail the necessity in modern governance: efficiency, flexibility, technical expertise, and effective implementation of legal statutes.

- **Flexibility and Responsiveness**

-Subordinate legislation allows for speedy amendment of regimes to address emergence. “This allows the executive to work on rules and regulations without necessarily having to go through long processes in parliament, in turn ensuring that governance responds to dynamic requirements.”¹⁰

- “The broad principles for environmental protections are given under the Environment Protection Act of 1986; simultaneous pollution, waste, and emissions control are brought under measurable standards and directives given by individual subordinate legislation.”¹¹ This makes the response quicker towards the new evolving environmental problems.

- **Speed and Efficiency**

-Legislation passed by Parliament involves a lot of debates, readings, and review committees—all time-consuming. Subordinate legislation enables the executive to act fast in certain urgent situations. “Recently, amidst COVID-19 pandemic the government invoked the powers given under the Disaster Management Act, 2005, to issue various orders and regulations in the form of lockdowns and travel restrictions”¹² without waiting for the assembling of Parliament.

-Subordinate legislation allows for timely responses toward public health emergencies, witnessed during the pandemic when regulations were put in place concerning quarantining procedures and movement restrictions.

- **Technical Expertise**

-Most aspects of governance require legislations, which embody some degree of technical expertise that the legislators themselves may not possess. Subordinate delegation to experts and technocrats ensures, through subordinate legislations, that the regulation is informed by technical competence.

- “The Securities and Exchange Board of India, under the SEBI Act, 1992, provides for extensive regulations with respect to the financial markets, including complex financial

¹⁰ Samridhi M, Judicial Control on Delegated Legislation, Lawctopus (July 8, 2023).

¹¹ The Environment (Protection) Act, No. 29 of 1986, India Code (1986).

¹² The Disaster Management Act, No. 53 of 2005, India Code (2005).

transactions, investor protection, market conduct, and drawing upon the experience of the financial community.”¹³

- **Detailed Implementation of Broad Laws**

-Although it is the primary legislation that provides the general framework, subordinate legislation suggests how these laws will be implemented. This division allows government to concentrate more on providing the direction for the policies of various sectors whereas the administration takes care of the rest of the specifics.

-Labour legislation, including “The Code on Wages, 2019, outlines principles regarding remuneration and rights of labour. Secondary legislation that arises under the Code gives detailed regulations pertaining to standards for minimum wage, bonuses, and different aspects of daily application.”¹⁴

- **Administrative Flexibility and Experimentation**

- “Subordinate legislation provides a leeway for trial and error of policies. Governments may apply and test new regulations on a small scale, change, and update the rules without going through a full legislative amendment.”¹⁵

-In the financial regulatory domain, “RBI issues circulars and guidelines for regulating banking practices. These amendments are carried out as and when required as soon as new economic conditions or suddenly unforeseen event takes place.”¹⁶

- **Strengthening Democratic Governance**

-Although subordinate legislation is carried by the executives, many modern regulations require consultation with stakeholders before being finalized. In that way, democratic government is furthered by allowing input from the public and civil society in rule making.

-For example, "IBC (The Insolvency and Bankruptcy) 2016 requires that all draft regulations must be published for public comments and views before finalization. This will ensure that the stakeholders like creditors, financial institutions, and companies, can participate in the regulatory process and their views are taken into consideration in the development of regulations.”¹⁷

- **Coping with Emergencies:**

- In times of national emergencies, subordinate legislation empowers the executive to promulgate regulations speedily that would enable crisis to be averted without the usual delays

¹³ The Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

¹⁴ The Code on Wages, 2019, No. 29, Acts of Parliament, 2019 (India).

¹⁵ C.K. Takwani, Lectures on Administrative Law (8th ed. 2024).

¹⁶ The Reserve Bank of India Act, 1934, No. 2, Acts of Parliament, 1934 (India).

¹⁷ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

that parliamentary procedures may entail.

-E.g. The legislative measures on lockdowns, health advisories, and social distancing protocols during the COVID-19 outbreak were brought into force through subordinate legislation. The government invoked “The Epidemic Diseases Act, 1897,”¹⁸ and “The Disaster Management Act, 2005¹⁹,” to issue comprehensive regulations along with the public health and safety measures.

SUBORDINATE LEGISLATURE TYPES IN INDIA

In India, subordinate legislation takes several forms, each designed to fulfil a specific need for the country's governance. The different categories of delegated legislation need to be understood for the adaptability and breadth of it.

- **Rules**

- The most common forms of subordinate legislation are rules. “They are made by the executive or statutory authorities under the Act of Parliament or state legislature. Rules are generally procedural guidelines and specifics necessary for the statute's implementation.”²⁰

- **Legislation**

- “The framing of regulations is usually done by statutory bodies such as SEBI, RBI, or IRDAI (Insurance Regulatory and Development Authority of India). They provide detailed internal rules regarding how these bodies shall function and the concerned sectors falling within their purview.”²¹

-Example: “SEBI, routinely creates regulations to the stock market and practices insider trading as well as corporate governance. Securities and Exchange Board of India (SEBI) Act, 1992 is where these regulations are under. It also makes efforts to ensure that India's financial markets are working smoothly and transparently through all of its activities.”²²

- **Bye-Laws**

-By-laws normally are municipal, regional, or district assembly laws made by local authorities under their respective statutes. They attend local matters such as zoning, sanitation, waste management, and management of public spaces etc.

¹⁸ The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897 (India).

¹⁹ The Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005 (India).

²⁰ V. N. Shukla, Constitutional Law of India (14th ed. 2022).

²¹ Understanding Delegated Legislation - History, Need, Reasons & More, Testbook (Dec. 24, 2024).

²² The Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

- “Municipal by laws govern wide range of issues that they govern, such as the regulation of street vendors, construction permits, and waste management at the local level.”²³

- **Notices and Orders**

-Often, the government will notify and issue orders to ensure that the specific provisions of the act are in force or to define the terms and conditions for the full implementation of the law. These are a more flexible and time-sensitive form of subordinate legislation.

-Example: “The notifications issued under The Customs Act, 1962, are the ones that control the imposition of import duties on some specific goods and can be updated quickly in response to changing trade trends”²⁴

CONTROL AND SAFEGUARDS FOR SUBORDINATE LEGISLATION

While subordinate legislation is an important necessity for effective governance, it must be controlled and kept under check so that it does not misuse or overreach; there various safeguards provided to ensure this subordinate legislation stays within constitutional and legal bounds.

- **Parliamentary Control**

-The major necessity in maintaining a balance between the powers of the legislature and the executives is parliamentary control over subordinate legislation. "The Committees on Subordinate Legislation in the Lok Sabha and the Rajya Sabha scrutinize the rules and regulations framed by the executive with a view to evaluate whether they conform with the parent statute.”²⁵

-Laying before Parliament: Most of the delegated legislations must be laid before the Parliament for scrutiny. “The Parliament in such processes could scrutinize and amend the regulations or even reject them. The regulations will not apply unless they are approved by Parliament.”²⁶

-Example: Parliamentary control allows the executive to stay within the limits of its power, which in turn guards against the sanction of rules that would infringe or violate the primary legislation

²³ S.P. Sathe, Administrative Law (7th ed. 2004).

²⁴ The Customs Act, 1962, No. 52, Acts of Parliament, 1962 (India).

²⁵ Understanding Delegated Legislation - History, Need, Reasons & More, Testbook (Dec. 24, 2024).

²⁶ *ibid*

- **Judicial Review**

-The judiciary serves an important purpose as a reviewing body for reviewing the legality of subordinate legislation. “The courts have power to declare any rule or regulation which exceeds powers under statute law declared by the parent or one that violates constitutionally is to be null and void.”²⁷

-Ultra Vires Doctrine: “If the subordinate legislation is ultra vires-i.e., beyond the powers conferred by the parent act, the same would be struck down.”²⁸ The Courts ensure that no type of uncontrolled power might be exercised by the executive through delegated authority.

-Example: “The Supreme Court in Gwalior Rayon Mills Manufacturing Co. Ltd. v. Assistant Commissioner of Sales Tax, held that the rules which were inconsistent with the parent statute were repealed.”²⁹

- **Publication Requirement**

- “Subordinate legislation must be published in the official gazette at all times before it comes into effect to ensure transparency.³⁰” This requirement makes sure that the public is informed about the new laws and any person can challenge the new law.

-Most significantly, not publishing the subordinate legislation in the official gazette may invalidate it because “one has to provide fair notice to the public about the promulgation of any statute or regulation.”³¹

RELEVANT JUDICIAL PRECEDENTS RELATING TO DELEGATED LEGISLATION

- Several landmark judgments have clarified the scope, limitations, and implications of delegated legislation in India. In these judgments, certain core principles that define the exercise of delegated power and judicial constraints on an executive overreach have emerged.

²⁷ Darshit B. Jain, A Study on Delegated Legislation with Reference to Indian Judiciary, 10 Int'l J. Res. Eng'g & Sci. 632, 632–636 (Oct. 2022).

²⁸ 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, 3 Int'l J.L. Mgmt. & Human. (2020).

²⁹ AIR 1974 SC 1660.

³⁰ Paikar Mustafa, Judicial Control of Delegated Legislation vis-à-vis Separation of Power, 6 Int'l J. Res. & Analytical Revs. (IJRAR) (Mar. 2019).

³¹ *ibid*

- **“Gwalior Rayon Mills Manufacturing (Wvg.) Co. Ltd. v. Assistant Commissioner of Sales Tax (1974)”³²**

- “Gwalior Rayon Mills challenged certain rules framed under the sales tax act, on the ground that they were exceeding the rule-making authority vested by the parent act.”³³

- “Judgement: The Supreme Court held that though the legislature has competence to delegate authority to the executive, those functions of the legislature which are essential in nature cannot be delegated. It also submitted that even subordinate legislations should not go beyond what is provided by the parent act.”³⁴

-Significance: This is the case that laid down that subordinate legislation cannot replace or amend primary legislation, and the regulations must work within the legal framework provided by Parliament.

- **“Vasu Dev Singh and Ors v. Union of India (2006)”³⁵**

- “The case challenged the validity of certain rules framed under the Drug Price Control Order, DPCO, which were alleged to be beyond the powers conferred by the statute.”³⁶

-Judgement: “The Supreme Court held that the subordinate legislation must conform not only to the Constitution but also to the parent statute. The Court held that even though the judicial review over the subordinate legislation is limited, it can be exercised when such delegated legislation violates constitutional rights or is beyond the authority conferred by the statute.”³⁷

- Significance: This case emphasised on the critical role that the judiciary undertakes in ensuring not only that subordinate legislation conforms with fundamental rights but also does not contravene statutory provisions.

- **“St. Johns Teachers Training Institute v National Council for Teacher Education (2003)”³⁸**

- “The validity of some of the regulations framed by the NCTE (National Council for Teacher Education) was questioned on the ground that it was beyond the powers vested with it by the NCTE Act.”³⁹

³² AIR 1974 SC 1660.

³³ *ibid*

³⁴ *ibid*

³⁵ AIR 2006 SC 2833.

³⁶ *ibid*

³⁷ *ibid*

³⁸ AIR 2003 SC 1533.

³⁹ *ibid*

-Judgement: “The Supreme Court ruled that in any event that exceeded the powers conferred by the parent statute would then be ultra vires and, therefore, void. The Court explained that ‘the subordinate legislation must strictly conform to the terms of the parent statute’.”⁴⁰

-Significance: This case provided that subordinate legislation must align with the intent and scope articulated by the Parent Act, hence strictly applying the principle of limited delegation.

- **“Additional. District Magistrate (Rev.) Delhi Administration v. Siri Ram (2000):”⁴¹**

- “The case challenged the legality of some rules framed by the executive, claiming that they exceeded the powers granted by the parent statute.”⁴²

- “It was held by the Supreme Court that the subordinate legislation must conform to the provisions in the parent act, and any rule or regulation that was contradictory to the substantive law or even beyond the limits it would be declared ultra-vires.”⁴³

-Significance: This case established clearly the fact that subordinate must continually operate within the boundaries set by Parliament and ensure that executive authority did not assume legislative powers.

- **“Municipal Corporation of Delhi v. Birla Cotton, Spinning & Weaving Mills (1968)”⁴⁴**

- “The case concerned the delegation of power to the Municipal Corporation of Delhi to impose taxes, which was challenged on the grounds that essential legislative functions were being delegated.”⁴⁵

-Judgement: “When the Supreme Court ruled that essential legislative functions cannot be delegated unless otherwise, the parent statute explicitly authorizes for it. Since it is mandatory that powers of taxation should have express legislative authority, authorities with delegated powers should not assume such powers.”⁴⁶

-Significance: This case set the basic principle that fiscal powers such as taxation cannot be delegated without express statutory authority. This decision set out the limits on scope of subordinate legislation.

⁴⁰ *ibid*

⁴¹ AIR 2000 SC 2143.

⁴² *ibid*

⁴³ *ibid*

⁴⁴ AIR 1968 SC 1232.

⁴⁵ *ibid*

⁴⁶ *ibid*

Challenges in Modern Subordinate Legislation

Subordinate legislation is an essential element of governance that faces several challenges in modern society.

- **Excessive Delegation**

- The risk of excessive delegation is one of the most severe challenges due to the fact that a significant amount of legislative power is being transferred to the executive. Such a move, on one hand, contradicts the principle of the separation of powers. and, on the other hand, contradicts the principle of democratic accountability.

- Example: In cases where fiscal powers, such as taxation, are improperly delegated, it can lead to arbitrary taxation without proper legislative oversight. “**Municipal Corporation of Delhi v. Birla Cotton, Spinning & Weaving Mills (1968)** is a landmark case that clarified that essential legislative functions like taxation cannot be delegated unless expressly provided by the statute.”⁴⁷

- **Inadequate Search**

-The substantial amount of subordinate legislation poses significant challenges for Parliament or state legislatures in examining each individual rule or regulation. This absence of meticulous scrutiny may lead to the enactment of rules that are unjust or unconstitutional, accompanied by inadequate oversight mechanisms to inhibit possible executive overreach.

-Proposed solution: Strengthening the role of the subordinate legislation committees and improving the transparency can help ensure better scrutiny of the laws.

- **Lack of transparency and public consultation**

-Though public consultation is mandated by many statutes, many others remain silent on the issue. “This can result in subordinate legislation being formulated without adequate stakeholder participation or public scrutiny, which can in turn lead to potential issues of fairness or lack of representativeness.”⁴⁸

-For instance, “laws like the Insolvency and Bankruptcy (IBC) 2016 have provisions that requires to undertake public consultation or draft regulations”⁴⁹, while many others lack this element.

⁴⁷ AIR 1968 SC 1232.

⁴⁸ Samridhi M, Judicial Control on Delegated Legislation, Lawctopus (July 8, 2023).

⁴⁹ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India)

- **Complexity of the Legal Framework**

-Subordinate Legislation creates layers of complex subordination of the legal framework in India. Going over rules, notifications, and bye-laws always proves challenging to the general public. Complexity may lead to increased litigation and confusion about the applicability and interpretation of the law from misunderstandings over applicability and interpretation of the legal provisions.

- Constant changes and amendments made in the statutes, like “The Income Tax Act 1961⁵⁰”, are difficult to keep updated by an organization or individual on their compliance. This might further lead to misunderstandings or legal disputes.

IMPORTANCE OF SUBORDINATE LEGISLATION IN PRESENT-DAY INDIA

- **Dealing with the Ever-Expanding Regulatory Domains**

-Subordinate legislation empowers the executive to make rules on the growing complexity of the new areas of regulation like cybersecurity, environment, and financial markets without constantly amending the parent laws.

-Example: “The Information Technology Act, 2000 gives a broad framework; the subordinate rules are on cybercrime, data privacy, and electronic transactions.”⁵¹

-Significance It ensures India’s legal system remains responsive to new technological, economic challenges and with the global emerging trends and challenges.

- **Facilitating Decentralized Governance**

- “Provisions of subordinate legislation enable local self-governance to make rules for addressing specific regional problems, thus facilitating localized governance.”⁵²

-Example: “Various local municipalities in different regions can frame subordinate rules on sanitation, zoning, and pollution control.”⁵³

-Significance: It provides better governance at the grassroots level since region-specific laws are responsive to the needs of the local people.

⁵⁰ The Income Tax Act, 1961, No. 43, Acts of Parliament, 1961 (India).

⁵¹ The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

⁵² S.P. Sathe, Administrative Law (7th ed. 2004).

⁵³ *ibid*

- **Improve Transparency and Accountability**

-By embedding mechanisms for public consultations, subordinate legislation offers stakeholders a venue to contribute to the rule-making process, expressing transparency in their work.

-Example: Public hearings for environmental clearances as specified by EIA (Environmental Impact Assessment) guidelines.

-Significance: Ensuring that regulations reflect public concerns and accountability in governance.

- **Adapting to Global Trends and International Treaties**

-Subordinate legislation allows India to swiftly align laws domestically with global emerging norms and obligations under various treaties.

-Example: “Banking regulations under the RBI Act are often changed to conform to the international banking standards under Basel III.”⁵⁴

-Significance: It ensures compliance with international agreements and enhances the standing of the country internationally.

- **Securing Socio-Economic Equality**

-Subordinate legislation provides for the making of special rules and provisions regarding economically backward classes of society without altering the parent legislation.

-Example: “Rules framed under the National Food Security Act, 2013, provide mainly for the economically weaker sections in food supply.”⁵⁵

- Significance: Inclusion of Welfare Schemes and Target-oriented Interventions are ensured.

- **Minimizing Legislative Overload**

- “By delegating detailed rule-making to the executive, subordinate legislation alleviates Parliament’s burden of handling day-to-day regulations.”⁵⁶

-Example: “Traffic rules, vehicle registration, and emission standards, falling under the Motor Vehicle Act, 1988, are defined and managed through subordinate legislation.”⁵⁷

-Importance: Enhances legislative efficiency, allowing parliament to focus on broader policy

⁵⁴ The Reserve Bank of India Act, No. 2 of 1934, India Code (1934).

⁵⁵ The National Food Security Act, No. 20 of 2013, India Code (2013).

⁵⁶ C.K. Takwani, Lectures on Administrative Law (8th ed. 2024).

⁵⁷ The Motor Vehicles Act, 1988, No. 59, Acts of Parliament, 1988 (India)

matters.

- **Ensuring Continuity and Consistency in Governance**

- “Subordinate legislation allows for continuity in governance even during the legislature's recess and any governmental or political changes, and maintains regulation.”⁵⁸

-Example: Regulations under “The Essential Commodities Act, 1955, ensure the stability of the supply chain for essential goods during periods when Parliament is not in session.”⁵⁹

-Importance: Ensures stability and continuity of governance, especially during times of emergency.

- **Legal Flexibility for Sector-Specific Regulations**

-Different sectors, be it defence, agriculture, and energy, enjoy sector-specific subordinate legislation which could be updated regularly to suit emerging requirements.

-Example: The Defence Procurement Procedure is updated from time to time by subordinate legislation in respect of defence acquisition and technology upgrade.

-Significance: It keeps the regulations current and responsive to the peculiar challenges that different industries are facing.

- **Promoting Regulatory Innovation and Pilot Programs**

-Subordinate legislation provides an opportunity for governments to test innovative regulatory approaches through pilot programs prior to its full implementation.

-Example: Smart cities’ pilot projects are regulated by subordinate legislation that allows them to be innovative when developing plans for urban areas.

-Significance: Allows creative solutions to challenges and adaptability in governance at large and allows regulatory innovation.

- **Implementation of Sectoral Specificities**

- “Subordinate legislations may easily amend or update sector-specific regulations to and address each industry's particular needs.”⁶⁰

-Example: “Subordinate enactments under APMC (Agriculture Produce Market Committee)

⁵⁸ Understanding Delegated Legislation - History, Need, Reasons & More, Testbook (Dec. 24, 2024).

⁵⁹ The Essential Commodities Act, 1955, No. 10, Acts of Parliament, 1955 (India).

⁶⁰ Samridhi M, Judicial Control on Delegated Legislation, Lawctopus (July 8, 2023)

Act allow flexible adjustments in market conditions and trading practices.”⁶¹

-Significance: This also allows for tailored regulation, which develops and evolves with the sectoral development and hence gets smoothly translated into the implementation of law.

DOCTRINE OF EXCESSIVE DELEGATION

- “Excessive delegation is the delegation of the legislative powers to the executive to a considerable extent, whereby the subordinate legislation assumes a power that should belong to the legislature.”⁶²This doctrine addresses the balance between necessary delegation and preserving the core functions of the legislature.
- **Analysis:** Courts have held that although Parliament could delegate certain functions, it cannot abdicate its essential legislative role. Delegation must be limited and controlled so as not to be overrun by the executive.
- **Relevant Case Law:** “In Re Delhi Laws Act, 1951- The Supreme Court determined the limits of delegation by contending that delegation of essential legislative functions is unconstitutional.”⁶³

PRINCIPLES OF NATURAL JUSTICE IN SUBORDINATE LEGISLATION

- “Subordinate legislation has to comply with the principles of natural justice which ensures equality, transparency, and the opportunity for affected parties to be heard.”⁶⁴
- This is particularly important when subordinate rules affect individual rights or impose penalties.
- **Analysis:** It is the executives that draft subordinate legislation but the principles of natural justice safeguard individual rights. This requirement applies mainly in administrative law, tax, and public health.
- **Example:** Tax rules or regulations on environmental clearances are usually formulated through a hearing process where stakeholders can voice their concerns before final rules are implemented.

⁶¹ *Ibid*

⁶² V. N. Shukla, Constitutional Law of India (14th ed. 2022).

⁶³ AIR 1951 SC 332.

⁶⁴ C.K. Takwani, Lectures on Administrative Law (8th ed. 2024).

LAYING PROCEDURE AND PARLIAMENTARY SCRUTINY OF SUBORDINATE LEGISLATION

- This is one of the most essential safeguards of subordinate legislation by the executive. “This procedure ensures that all subordinate legislation shall be laid before Parliament so that MPs can annul, alter, or approve the rules.”⁶⁵
- **Analysis:** This system guarantees democratic accountability along with the possibility for Parliament to review executive excesses. Unless Parliament sanctions the enactment and does not object, the law could be nullified.
- **Relevant Case Law:** “Atlas Cycle Industries Ltd. v. State of Haryana (1979): The court stated that laying procedure is not a matter of choice and failure to lay the rule in front of the legislature will invalidate the subordinate legislation.”⁶⁶

RETROSPECTIVE OPERATION OF SUBORDINATE LEGISLATION

- “Subordinate legislation that takes effect retrospectively applies to acts or actions that took place prior to the enactment of the legislation. The courts exercise the maximum caution in confirming the validity of retrospective subordinate legislation when it imposes new obligations or penalties.”⁶⁷
- **Analysis:** Generally, retrospective legislation is valid only if it is specifically authorized by its parent statute. In the absence of clear authorization, it may be held unconstitutional. The courts observed that any such enactment cannot violate the fundamental rights or impose a reasonable burden on the individual.
- **Case Laws Relevant:** “**K. Narayanan v. State of Karnataka (1994):** The Supreme Court observed that although the subordinate legislation enacted retrospectively may be valid only if it falls within the purview of the parent statute and it does not violate any constitutional provisions.”⁶⁸

CONSTITUTIONAL VALIDITY OF SUBORDINATE LEGISLATION

- The subordinate legislation is challenged on constitutional grounds such as violation of fundamental rights, ultra vires, and in contravention of constitutional principles.

⁶⁵ Understanding Delegated Legislation - History, Need, Reasons & More, Testbook (Dec. 24, 2024).

⁶⁶ AIR 1979 SC 1149.

⁶⁷ V. N. Shukla, Constitutional Law of India (14th ed. 2022).

⁶⁸ AIR 1994 SC 55.

- **Case Law: “D.K. Trivedi v. State of Gujarat (1986):** The court held that subordinate legislation has to conform to the objectives of the parent statute, and any rule that transcends the delegation of authority is ultra vires and invalid.”⁶⁹

CONCLUSION

- Subordinate legislation forms an integral part of India's legal and governance machinery as it allows the executive to effectively and efficiently implement legislatively policies while retaining that flexibility needed for dealing with specific, and rapidly evolving regulatory needs. Its importance is underlined by the speed, adaptability, and technical expertise it lends to governance, especially in specialized fields such as technology, finance, and environmental protection. Subordinate legislation allows for decentralized governance, helps in public consultation, aligns India with international standards, and reduces the burden on Parliament.
- The delegation of legislative power is to be strictly regulated to prevent its misuse. An effective mechanism of review in parliamentary review, judicial review, and public hearing allows securing the continuing accountability, transparency, as well as conformity with the Constitution and enabling laws in the subordinate legislation.
- Landmark judicial cases such as “Gwalior Rayon Mills”,⁷⁰ “St. Johns Teachers Training Institute”⁷¹, and “Municipal Corporation of Delhi v. Birla Cotton”⁷², among others, have thus laid down significant guidance on the limits of subordinate legislation to keep the executive within the bounds of their delegated powers. While India proceeds on the path of democratic development, it would be highly imperative to facilitate a proper mechanism for controlling and scrutinizing the subordinate legislation to preserve the balance of power and the rights of the citizens.
- Despite its many advantages, the use of subordinate legislation has to be effectively controlled through parliamentary oversight and judicial review so that overreach by the executive does not occur. As India continues to evolve, subordinate legislation will remain essential in assuring efficiency and adaptability in the legal system that will be able to meet the diverse needs propounded from a rapidly changing nation.

⁶⁹ AIR 1986 SC 1323.

⁷⁰ AIR 1974 SC 1660.

⁷¹ AIR 2003 SC 1533.

⁷² AIR 1968 SC 1232.