



Admin Law Part 2 - Law notes

Bachelor of Law (Government Law College Ernakulam)



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RED LIGHT THEORY AND GREEN LIGHT THEORY

Introduction

The role of law in a modern state is a complex one. The legal thought on the administrative law is primarily shaped by the role of law generally and the role of administrative law in public administration specifically. The traditional view of administrative law is that it should aim to bolster the rule of law and ensure the accountability of the executive to the will of parliament and finally to the people. Harlow and Rowling present the two contrasting models of the administrative law as “Red light and Green light” theories.

Red light theory: -

The Red light theory is more conservative and control-oriented. It is based on the assumption that every kind of power tends to corrupt. This theory emerged from a fear of state absolutism since state regulates and controls various activities of its subjects, there is every possibility of misuse of power by the state. The Red light theory seeks to protect privacy rights and individual rights and interest. It aims to keep governmental agencies and administrative authorities within the scope of law through judicial control. This approach advocates a vital role for the courts to review the administrative decision. It considers that the function of law is to control the excess power of the state. It encompasses a deep-rooted suspicion of Governmental power and desire to minimize the encroachment of the state on the rights of the individuals. According to this theory, the best government is the one that governs the least. The theory has an intuition in itself that broader power means danger to the rights and liberty of the citizens. The concerning aspect of the theory is that it gives much attention to the control of governmental power, and on the other hand, it lays emphasis on the role of judicial review as a controlling mechanism. Red light theory of administrative law aims at curbing the state abuse of power through judicial review. Advocates of this theory favour a more interventionist approach by the courts to the review of administrative decisions. Under Dicey model of the balanced constitution accommodating the judicial control of executive power, which are capable of arbitrary encroachment of the rights of individual citizens are controlled through the common law by the courts. The illegality of action includes simple ultra vires, excess jurisdiction, a wrongful delegation of power, abuse of power, irrationality and procedural impropriety that could be regarded as the grounds for judicial review of administrative action. Due to the evolving concept of public interest litigation, rights should include both individual and group rights. The red light theory fails to inculcate in itself, the concept of Public Trust Doctrine as it focuses mainly on individual rights.

Green light theory:-

Unlike Red light, the Greenlight is more utilitarian and facilitative. Under this theory, the state is expected to provide the minimum standards of provision including housing, education, health and social security. The theory also emphasis on providing maximum satisfaction of livelihood of the people. As suggested by the social contract theory, the green light theory of administrative law expounds the idea of control and accountability through the democratic political process rather than through investing the judges with this role. That is, the function of administrative law is to facilitate the operation of the state simplifying the procedures and enhancing efficiency. Green lighters advocate the use of law to promote “efficient” rulemaking and are committed to a “model of government” approach to the

administrative process. The law is considered as an enabling and facilitative tool rather than a controlling mechanism. It acts as a weapon to the administrative bodies. This theory provides for an in-built mechanism of state intervention in the purpose of public interest. The controlling mechanism of the green light theory expounds on democracy. Accordingly, the advocates of this theory favour the collective goals of the society being carried out by the administrative bodies through the democratic mechanism. Therefore, the role of the law is primarily seen to sanction the process of achieving public goals by the executive. The public goals mainly include social welfare elements such as health, housing, social security and education. Hence, it could be argued that the theory does not wish to derogate the rights of the people or to deny the values and aspirations of the democratic society. It is expected in this theory to accommodate the broader concept of social welfare through the policy framework of the country in the light of utilitarianism. Matters of public policy are for determination by the executive and not the judiciary, and any purported attempt to control the decision will be regarded as a violation of the separation of powers and an intrusion into the proper decision making the sphere of the executive. The discussion on which theory is useful is pointless. Each theory has its merits and demerits. The applicability of the theory mainly depends on the Constitutional principles of a particular country. Hence uniforming the merits of both the lights, Amber light theory has been propagated.

GLOBAL ADMINISTRATIVE LAW

Introduction

In an atmosphere of globalization, the convergent ideology of administrative law has received a palate of opportunities to represent as a global mechanism to regulate governance globally. A more personalized approach towards governance, global administrative law is responsible for changing the concept of both domestic and international laws and associated politics for the people in general. The three concepts that globalization brings along with it are privatization of the nation, deregulation, and disinvestment. While the first concept involves reshaping the existing ownership of state, deregulation, as the name suggests, involves a change in the existing rules and regulations of the nation followed by disinvestment which signifies clearing of the public sector completely to mend ways for private sectors. This change initiates the growth of both victims as well as beneficiaries. Therefore, this calls for a well-built regime of administrative law which will amalgamate economic development along with human growth. Global administrative law has opened gates for transparency, public participation, accountability, socio-economic development for the governance system. A developing field, global administrative law is introducing a new world set to govern on the basis of comprehensiveness and equity.

Global administrative law

It is only in the 21st century that the concept of global administrative law gained its importance. The unique trait this branch of law possesses is replacing the term world with that of the globe. This, in turn, removes the misleading nature of idealising the branch of law as an international perspective only and provides enough space to include divergent thinking on the branch of administrative law. Increase in the development of the global administrative law has been enough to reach out to a prototype transgovernmental form of administration that has been outlined to address the results of interdependence at a global level in spheres ranging from security, economic assistance, migration of population across borders, trade

practices and many more. These repercussions cannot be dealt with the help of domestic regulations and administrative assessment only. As an outcome to this loophole, the birth of several multinational systems to carry out regulations and the regulatory procedure has been initiated through international agreements, the formation of informal governmental networks among nations to uplift the decision-making activity from domestic to a global level altogether. The regulations and norms referred here are not bound by any nation and therefore they expand in all corners of the globe.

Broadly, there exist two approaches that can be used in construction purposes of global administrative law namely,

1. One of the two approaches refers to the switching of provincial administrative law into the global directive. This approach is used to ensure activeness, legality and adherence in regulation globally.
2. Another approach is switching the global directive into the room of domestic administration. This approach aims to bring about divergent ideologies, participation from individuals and adherence in global regulation.

These approaches can be used in bringing solutions to problems ranging from law-making activity, adjudication issues to that of accountability and administrative mismanagement, all at a global level.

Development

Although the efforts involved in developing global administrative law began in the mid 19th century, the entire concept of global administrative law came about just a few years ago. It came under the spotlight during the 1920s and the 1930s. This branch is in a developing stage at present and has already found a reference in the work of several social reformers which eventually disappeared. The coming of this field of law has in one way brought back the golden history. Breaking down traditional views of the administration, global administrative law is in the process of being successful in achieving welfare and efficiency in a global administrative system. Regulation in fields of environment, health, finance, economy, the action task force is all adapting governance at a global level. Some of the major players in the sphere of global governance include,

1. An international organization with a formal nature like the World Trade Organisation (WTO), International Monetary Fund (IMF), World Health Organization (WHO), United Nations Organisation (UNO), UNICEF
2. Natural regulators carrying out administration
3. Private organisations with a function that is regulatory by nature
4. Multinational networks of joint arrangements

A reduction in the control of domestic administrative agencies can be viewed as a reflection of the development of global administrative law. What remains is the complete remodelling of the face of administration by adequate use of the elements of clarity, just and fair procedure, review of rules and decisions made and enforcement of these elements as per necessity.

Scope

Global administrative law can be referred to as the study of several principles, frameworks and execution which intend to support understanding with a social perspective that in one way stands responsible for affecting the obedience of global administrative organs. This is to keep a check upon the limits of clarity, reasoned decision and legality while executive the rule-making authority. In one way global administrative law accumulates variable fields of law which concerns rule-making activity or has administrative colours in it, which were till now treated individually and specifically. A combination of international administrative law and public law with an international approach is what global administrative law actually signifies.

This field of law has provided a sociological perspective to legal practice thereby hinting that the practice is all about to include within its methods of conservation of several laws with the aim to form a transnational governance system which will somewhat be similar to what administrative bodies execute domestically. The focus of global administrative law, therefore, is a combination of both substantive as well as a procedural set of law for an efficient mechanism of governance at a global platform.

Sources

The norms which have been referred above has its roots from three distinguished branches of law namely,

1. International law
2. Administrative law
3. Public law

The reason why international law is one of the sources for the origin of the global administrative law is that when there comes the scenario of formation of rules, regulations and policies, they are made taking into concern ideologies from the regions that are specialized in the same and have been traditionally inclined to the field. The global administrative law also aims to offer responses to the accepted turmoil in the branch of international law. With legitimacy and accountability being the indispensable ground of decision-making activity, there arises a need for reviewing the administrative actions taken by international bodies. This remains an important activity to be carried out by the global administrative law.

Administrative law is one such field of law that involves practicality and application of the textbook rules and law. It deals with the procedure of implementation of already existing norms. The role of this field in global administrative law is immense for the base on which the branch of global administrative law stands is that of administrative law itself. This field required a global perspective in order to have an efficient regulation system of governance.

The branch of public law is the third and the most required branch in the framing of the global administrative law. Public law does not only include public policies and welfare but also principles of natural justice, human rights, customs, distribution of available resources equally, productivity are few others to include within the ambit of public law.

These elements are essential to be included when global administrative law is adopted. Therefore, these are the three fields of law that can collectively be regarded as global administrative law.

Features

What can be inferred from the sources of global administrative law is that this field aims to follow the footsteps of public law subject to review of the same before the framing of final guidelines. Therefore, it can be said that global administrative law has some distinctive features namely;

1. **A sector-based legal field:** Global administrative law being a sector-based law signifies the absence of uniformity of legal application the field has in distinctive domains of framing of policies. This trait of global administrative law is in favour of having a case study approach which is used or can be used across universities as a medium to profess and practice and in the process adopt this field as a field of study and research.
2. **An interdependency of homogeneity and heterogeneity:** Global administrative law is a product of the interplay of both public as well as private laws which further initiates the birth of regulatory regimes that are meant to have its application globally. Participation of both public as well as private elements is necessary for the efficient working of these regulations. This gives a hybrid nature to the global administrative law which is necessary for dealing with fields like that of public health.
3. **A product of interconnection between two conflicting sectors:** Global administrative law acts as a platform of the meeting of different sectors in order to exchange rules, regulation, policies, procedures for carrying out these to bring in variability which helps in framing the outline of global legal policies. Thus out of discussions, debates and conflicts among various administrative bodies arise creation and evolution of laws and policies which can be applied globally for a betterment.
4. **State influence:** Any state in the globe plays an important ingredient for initiating the growth of the field of global administrative law. But a state cannot help in the process of formation of global administrative law alone and therefore self mechanism by global administrative law itself can complete the procedure. The state acts as an experimental device for global administrative law to be implemented and subsequently the consequence of the same help in bringing about changes in the framed rules and regulations if and when required.

Thus, these features lay down the constitution of global administrative law. The list of features are open to experiment and addition for this is an evolving field of law.

Strategies for development

Global administrative law comes with a positive motive, divergent thought, a strong and complex structure. Each day brings about growth and development in the field. But development needs to take shape properly and with the concern to the consequences of such development globally. This introduces the strategies required for the development of global administrative law. A few strategies that must be taken into consideration for a better tomorrow for this field of law is provided below:

1. The procedural due process law-making feature of global administrative law should engulf itself with the principles of natural justice, lucidity, consensus resulting from dispute resolution mechanism in order to successfully carry out adjudication procedure in a global platform.
2. When it comes to substantive due process law-making, special concerns for worldly developments must be taken which includes public administration of available goods and services, environment concerns, cultivation, standards of labour, human rights, trade of pharmaceutical elements, materialistic developments and others needs.
3. The regions beyond the above two where global administrative law should focus on include the aspect of being responsible and accountable in light to administrative grounds necessary to bring in efficiency and fairness.
4. The element of accountability must be enforced at various levels of administrative efficacy. The six levels of infusing accountability are as follows:
 - a. Scrutiny of concepts, rules, regulations or policies at both external and internal levels.
 - b. Checking of the relationship the policies possess with the states
 - c. Scrutiny of preventive necessities being taken and adopted
 - d. Substitution of losses or harm caused to the people for the above steps
 - e. Taking into concern humanitarian rights at a global level
 - f. Laying down of state's responsibility and the matters for which state can be held accountable.

It is not easy to lay down strategies for development of something completely new to the globe. Past incidents and circumstances have brought into concern prevailing inequalities in the globe. Thus, to remove the same above strategies can be adapted but one must not forget that it is only through implications and experience one can learn the apt solution or rather the best ways of global administrative law taking its shape in this world.

Landmark Judgments

The field of global administrative law is evolving in nature and therefore judgements passed on these grounds are extremely rare. Nevertheless, the field is based on the elements of natural justice, fair procedure, human rights and transparency which itself was born of judgments passed by the court of law. In the case of *Department of Transportation v. Public Citizen*, the Supreme Court of the United States decided that the extent of judicial review cannot be the same as that in case of international negotiation for it undermines the integrity of the same. This case further showcased that any administrative agency must be aligned to the promises it has made in an international forum.

In, *United Mexican State v. Metalclad Corporation*, the relationship between a domestic court and an international court was led down. The questions that arose was whether it is legitimate for any national court to review the judgement delivered by a global court and whether such review is an obstruction or a scope for development in the arena of global law. The above case laws are two of the landmark cases that show the conflict between laws on grounds of

one being global while the other being domestic by nature. This says that the path for global administrative law is long and filled with hurdles for it is not easy to set one adjudicating authority for the entire globe.

Conclusion

The introduction of a globe without impartiality, frauds, anarchy is always welcoming. The emergence of global administrative law is, therefore, a ray of light for a world that is divided. The evolving nature of this field brings in solutions as well as interrogations which are essential for any administrative system to function. The concepts of diversity, equality, fairness are taking birth once again and this time the effectiveness is much more efficient for the functioning of administrative bodies globally.

PARLIAMENTARY SOVEREIGNTY

Parliamentary sovereignty means supremacy of the legislative body i.e parliament over all other government institutions including executive and judicial bodies. Sovereign legislature may change or repeal any previous legislation and is not bound by any written law like constitution. In India there is no parliament sovereignty rather there is constitutional sovereignty.

Check to parliamentary sovereignty by various provisions of constitution: Various check on parliament are:

1. **Written Constitution:** In India Constitution is written which put limitations on all organs of the state. Although parliament can amend constitution but it cannot supersede the written document. In UK, as there is no written constitution, the Parliament possesses legislative sovereignty. So any law passed by it cannot be questioned before any court on such grounds.
2. **Independent judiciary and Judicial review:** Judiciary is independent and the guardian of the Constitution. It can declare any law or ordinance passed by the legislature void, if any of its provisions violate one or more of the constitutional provisions.
3. **Federal structure:** Although constitution says India as a union of states, India is a federal polity. Various federal provisions especially some special powers for schedule area limit parliament powers where many parliamentary laws are applicable only on presidential and governor consent.
4. **Limited amendment power:** Parliament can amend most of the part of constitution but it cannot amend the 'basic features of the constitution'. Further some amendments need special majority and states' legislature resolution.
5. **Division of powers:** Schedule 7 divide law making power between centre and state. Parliament cannot make laws on state list. Any law in state subject would require state's consent through majority.
6. **Limit by Presidential vetoes:** A bill cannot become law without presidential assent. President can practice various veto powers like pocket veto that act as limitation on parliament sovereignty.

7. **Limited Doctrine of ‘Separation of Powers’:** In India there is no strict application of doctrine of separation of powers. So if the legislature encroaches into the functions of the other organs, judiciary can prevent it to do so.
8. **Bar on discussion of conduct of judges:** Article 121 and 211 of Indian Constitution states that no discussion shall take place in the Legislature of a state or in the Parliament with respect to the conduct of any judge of the Supreme Court or of the High court in the discharge of his duties. Thus legislature have no power to discuss judges conduct.

Thus Constitution being sovereign has balanced powers of parliament through sufficient checks and balance, needed to ensure democracy. It is successful in striving a balance between legislative, executive and judicial body.

TYPES OF DELEGATED LEGISLATIONS

Delegated legislation means giving power or authority to someone lower than his rank to make laws. So there can be many ways in which this excess of power can be given to subsidiary rank people or an Executive. These types are as follows:

- **Orders in Councils:** This type of Delegated legislation can be given by Queens or the Privy Councils. This Delegated legislation allows the Parliament to make laws without going through the Parliamentary proceedings. Today, its main use is that it gives legal effect to European directives. When the order issued under the privilege of the Queen or the Crown such order is subject to review by the courts. But order issued by the Parliament may or may not be subject to review by the courts as it is made within the prescribed limits Act of Parliament. In both the case the question can arises that if this legislation is the same as the Executive legislative. The answer to this question is yes, it is equivalent to executive legislative. There is no major difference between these orders and Executive legislative almost they both are same. The meeting of Privy council in such case could simply means a meeting of some Privy Councillors which includes three or four ministers, President, Councils and Clerk of Privy Councils. This shows that this order is issued by the Executive who exercises powers of the Council.
- **Rules of the Supreme Court and the County Courts:** The Parliament by statutes bestow some persons or authority with the power to make laws for a specific purpose. But it is different in England where a Court has been given wide power to make laws. This task of making law has been entrusted upon the Rules Committee of the Supreme Court and the County Courts. Entrusting Judicial branch to control its Procedural law to a great extent has an advantage as it is given to that authority who knows better about it than any person. Procedure and cost that are drawn by Rules Committee of County Courts deals by the County Courts itself. Such rules are not subject to the control of Parliament. When these rules used to come into force? It comes into force when the Lord Chancellors with the consent of the Rules Committee of the Supreme Court confirms it.
- **Departmental or Executive instructions or regulations:** When the power of legislature directly delegated to the administration such as a Board, Ministers or a Committee,

then the exercise of that given power results in delegation through Departmental or Executorial Instructions or Regulations. Sometimes very wide powers are given to the administration or the delegated person. But this wide delegation of legislation is not accepted by the judiciary as it is difficult for them to control administrative action. There is extensive use of this delegated legislation in today's world. Nowadays only the broad line of making legislation is in the hands of Parliament and the rest power is given to the Administrator.

1. Delegated legislation by laws: It can be given in two ways, firstly, it can be given by laws of autonomous bodies, e.g., Corporation and secondly, it can be given by-laws of a local authority.

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- *By-laws of autonomous bodies*: These autonomous bodies have got the power to pass by-laws on matters affecting them and other people in that locality or people residing in a particular area. For example, they can make laws as public utility authorities for light, water, etc. Usually, these authorities are given the power to make rules for regulating their working. Such by-laws are subject to judicial review. It can be reviewed to check that it must not be *ultra vires* the Parent Statute. These autonomous bodies have the power to frame rules for themselves. One more example of this autonomous body is an association of Employers. The rules of these association are termed as voluntary but this is not so in reality. It is fictitious as in its effect these rules are binding upon members like other rules such as rules of a professional association, industrial organisation, etc.

- *By-laws of the local authority*: Parliament has the power to make new local bodies or it can alter the existing body. It empowers such body with powers to make by-laws for themselves for specific purposes. These authority exercises excess power for public health, safety, and for good rule and governance. These by-laws incur a penalty on its breach.

DOCTRINE OF PLEASURE

Introduction

The doctrine of pleasure owes its origin to common law. The rule in England was that a civil servant can hold his office during the pleasure of the crown and the service will be terminated any time the crown wishes the same rule is applied in India.

Public servants have got a special relationship with their employer, viz. the Government which is in some aspects different from the relationship under the ordinary law, between the master and servant. It will, therefore, be appropriate to describe briefly the basic provisions of the Constitution pertaining to services. The Chief Vigilance Officers and officers handling vigilance cases will need to bear them in mind while processing disciplinary cases against Government servants. The member of Defence services or civil services of the union or All-India services hold their office during the pleasure of president. Similarly member of state services holds the office during the pleasure of governor.

Civil Servants are considered as the back bone of the administration. In order to ensure the progress of the country it is essential to strengthen the administration by protecting civil servants from political and personal influence. So provisions have been included in the Constitution of India to protect the interest of civil servants along with the protection of national security and public interest. The provisions related to services under Union and State is contained under part XIV of the Indian Constitution.

Doctrine Of Pleasure

Historical Context

The 'Pleasure Doctrine' is a principle of the common law, the origins of which may be traced back to the development of the concept in the United Kingdom. It is a historical rule of common law that a public servant under the British Crown had no fixed tenure, but held his/her position at the absolute discretion of the Crown. Such rule had its origin in the Latin phrase "*durante bene placito*" ("during good pleasure"), or "*durante bene placito regis*" ("during good pleasure of the King"). It was thus affirmed by the Court of Appeal in *Dunn v. R*:

"... I take it that persons employed as the petitioner was in the service of the Crown except in cases where there is some statutory provision for a higher tenure of office, are ordinarily engaged in the understanding that they hold their employment at the pleasure of the Crown. So I think that there must be imported into the contract for the employment of the petitioner, the term which is applicable to civil servants in general, namely that the Crown may put an end to the employment at its pleasure.

...It seems to me that it is the public interest, which has led to the term, which I have mentioned being imported into contracts for employment in service of the Crown. The cases cited show that, such employment should be capable of being determined at the pleasure of the Crown, except in certain exceptional cases where it has been deemed to be more for the public good that some restriction should be imposed on the power of the Crown to dismiss its servants."

The scope of the doctrine was further expanded upon in *Shenton v. Smith*, where the Privy Council went as far as observing that the pleasure doctrine was a 'necessity' because:

"The difficulty of dismissing servants whose continuance in office is detrimental to the State would, if it were necessary to prove some offence to the satisfaction of a jury, be such as to seriously impede the working of the public service."

It is thus not surprising that the doctrine was imported into the legal system of pre-partition Indian subcontinent, by virtue of the Government of India Act, 1935. Recognition of such may be found in pronouncements of the Apex Courts of both India and Pakistan, to that effect.

Rule In England

In England a civil servant holds his office during the pleasure of the Crown. His services can be terminated at any time by the Crown without giving any reasons.

In England, the normal rule is that a civil servant of the Crown holds his office during the pleasure of the Crown. This means that his services can be terminated at any time by the

Crown, without assigning any reason. Even if there is a contract of employment between the Crown, the Crown is not bound by it. In other words, if a civil servant is dismissed from service he cannot claim arrears of salary or damages for premature termination of his service. The doctrine of pleasure is based on the public policy.

Rule In India

In India, Part XIV of the Constitution of India deals with services under The Union and The State.

Article 310 of the Indian Constitution incorporates the Common law doctrine of pleasure. It expressly provides that all persons who are members of the Defence Services or the Civil Services of the Union or of All-India Services hold office during the pleasure of the President. Similarly, members of the State Services hold office during the pleasure of the Governor. But this rule of English law has not been fully adopted in this Article. A civil servant in India could always sue the Crown for arrears of salary. The rule is qualified by the words “except” or “expressly provided by the Constitution.” Thus Article 310 itself places restrictions and limitations on the exercise of the pleasure under Article 310 are limited by Article 311(2). The services of permanent Government servant cannot be terminated except in accordance with rules made under Article 309, subject to the procedure in Article 311(2) of the Constitution and the fundamental rights. The above doctrine of pleasure is invoked by the Government in the public interest after a Government servant attains the age of 50 years or has completed 25 years of service. This is constitutionally permissible as compulsory termination of service under F. R. 56 (b) [ministry of personnel, public grievances and pensions] does not amount to removal or dismissal by way of punishment. While the Government reserves its right under F. R. 56 (b) to compulsory retire a Government servant even against his wish, there is a corresponding right of the Government servant under F. R. 56 (c) to voluntarily retire from service by giving the Government three months’ notice. There is no question of acceptance of the request for voluntary retirement by the Government when the Government servant exercises his right under F. R. 56 (c). Similarly, under Article 310 the Government has power to abolish a post. However, such an action, whether executive or legislative, is always subject to judicial review. The question whether a person whose services are terminated as a result of the abolition of post should be rehabilitated by giving alternative employment is a matter of policy on which the Court has no voice.

Doctrine of pleasure as developed in England has not been accepted in full in India. It is subject to the provisions of Article 311 which lays down procedural safeguards for civil servants. Thus Article 311 becomes a proviso to Article 310. Therefore, services of any civil servants cannot be terminated at pleasure unless the mandatory provisions of Article 311 have been observed. Doctrine of pleasure is further restricted by the general law of the land which empowers any civil servant to file suit in a court of law for enforcing any condition of his service and for claiming arrears of pay. Power to dismiss at pleasure any civil servant is not a personal right of the President or the Governor as the case may be. It is an executive power which is to be exercised at the advice of council of ministers. The Doctrine of pleasure as contained in Article 310, being a constitutional provision, cannot be abrogated by any legislative or executive law; therefore Article 309 is to be read subject to Article 310. This is not the case in England where Constitution is unwritten and hence the common law doctrine of pleasure can be whittled down by any act of Parliament.

Constitutional Provisions

Article 309 empowers the Parliament and the State legislature regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State respectively.

Article 310 of the Constitution of India incorporates the English doctrine of pleasure by clearly stating that every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State . But this power of the Government is not absolute.

Article 311 puts certain restriction on the absolute power of the President or Governor for dismissal, removal or reduction in rank of an officer.

Article 309

Article 309 of the Constitution reads as follows: –

“Recruitment and conditions of service of persons serving the Union or a State Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State;”

The above Article empowers the Parliament to make laws to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union. It also authorises the President to make rules for the above purposes until provision in that behalf is made by or under an Act of Parliament.

Parliament has not so far passed any law on the subject. Recruitment and the conditions of service of Central Government servants in general continue to be governed by rules made by the President under Article 309. The rules made under the Article which are relevant for the present purpose are:-

1. The C.C.S. (Conduct) Rules, 1964.
2. The C.C.S. (C.C.A.) Rules, 1965.
3. The Railway (D. & A.) Rules, 1968.
4. The C.C.S. (T.S.) Rules, 1965.

Relation of 309 with 246 read with VII schedule

The power to make rules conferred by Article 309 of the Constitution or by other statutes includes the power to add, amend or alter the rules by virtue of Article 367 of the Constitution and Section 21 of the General Clauses Act, 1897. Accordingly, so long as the Constitutional provision are not contravened, the rules governing the conditions of service of Government servants can be altered or amend by the Government from time to time according to the exigencies of the public service without the consent of a Government servant concerned who will be bound by such amendment or alteration in the rules. The Privy Council in Venkat's case observed that rules which are manifold in numbers and most minute in particularity are

all capable of change from time to time. The Supreme Court also in Grewal Rao's case observed that numerous rules relating to conditions of service may have to be changed from time to time if the exigencies of public service so require. There is no question of consent of the Government servant concerned at least by reason of the sheer impossibility of securing such consent from every one. It is also open to the Government to alter service rules retrospectively which may affect even the existing incumbents adversely. However, the existing incumbents are generally given protection with a view to avoiding hardship to them. The rights accruing to a Government servant under the conditions of service in force at the time of his retirement cannot be taken away after his retirement.

Article 310

Article 310 of the Constitution comprises of the basic rules laying down the tenure of office of persons serving the Union or a State except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

Now if such powers are given to president of India and the governor of states then it would be really difficult to exercise power on them so there are certain offices which are outside the purview of Article 310 and Article 311 was put as a restriction to doctrine of pleasure. With lot many cases coming with corruption of civil servants and other government official, it is interesting to know what procedure has been provided in the constitution of India to punish them.

Office during the Pleasure of the State

Clause (1) of Article 310 corresponds to the English rule that all service, civil, or military, under the Crown is held at the pleasure of the Crown, so that the public servant may be dismissed from the office at will, without any cause assigned.

The doctrine of pleasure appointment received constitutional sanction under Article 310, but unlike in United Kingdom, in India, it is not subject to any law made by the Parliament, but is subject to only whatever expressly provided by the Constitution. Therefore the distinction between doctrine of pleasure appointment as it existed in feudal setup and in a democratic setup has to be borne in mind.

The service being terminable at the pleasure of the State, there is no limitation as to the grounds upon which the services of a Government servant may be terminated. Once the procedure under Article 311(2) has been complied with, the Courts are not entitled to determine whether the ground or the charge under which Government has proceeded under a Government servant is sufficient to warrant a dismissal. But a rule, which provides for dismissal on a ground which unreasonably restricts the fundamental rights of a Government servant, may be challenged as unconstitutional.

The words "pleasure of the President or Governor" do not mean that the Article is applicable only when a Government servant is dismissed by the President or the Governor personally. Under Articles 53(I) and 154 (I), the executive power of the Union or a state may be

exercised by the President or Governor either directly or through officers subordinate to him. Hence Article 310 is attracted whenever a person is dismissed by an officer competent to dismiss such person serving under the Union of a State, as the case may be.

Whether the pleasure can be fettered by legislation?

In India, the doctrine of pleasure has been embodied in the Constitution itself, in Article 310(1). The Supreme Court has pointed out that, since the power of the State to dismiss a public servant at its pleasure has been provided in Article 310(1), “except as expressly provided by the Constitution”, it follows that its power cannot be fettered by any statute. In India, the power to dismiss a Government servant at pleasure is subject to only those exceptions which are specified in the Constitution itself. It cannot be taken away or curtailed by legislation, though the mode of its exercise may be.

Whether the pleasure of the Government can be fettered by contract?

Article 310(1) is not subject to the provisions of any contract. Hence, the pleasure of the President or the Governor to dismiss at pleasure cannot be fettered by any contract to the contrary. Any such contract would be bad as a ‘clog’ on the pleasure or for contravention of Article 310(1).

Where the pleasure of the Government is itself subject to an express provision of the Constitution, the constitutional provision cannot be overridden by the Government by entering into a contract. However, in the case of *Satis Anand v. Union of India*, The Supreme Court stated that the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into the contract are bound by them, even as the State is bound.

Whether the pleasure under Article 310(1) can be delegated?

Though the contrary opinion was expressed in some cases, it is now settled that the pleasure under Article 310(1) need not be exercised by the President or the Governor personally. Article 310 is not outside the scope of Article 154. The result is that the pleasure is to be exercised under Article 310(1) on the aid and advice of the Council of Ministers. Further, it being an executive power of the State within the meaning of Article 154, the exercise of pleasure may be delegated to subordinate officers in accordance with the laws or rules made under Article 309 which may prescribe the procedure by which and the authority by whom the pleasure may be exercised.

In short, the pleasure of the President to terminate the services of a Government servant can be exercised by such officers to whom the President or Governor delegates the power in accordance with relevant laws or rules made under Article 309.

2. Clause (2): Civil Post held during the Pleasure of President or Governor

Clause (2) of Article 310 states that though all service under the Government is terminable at any time, this clause provides for payment of compensation where service is held under a special contract which provides for payment of compensation and the service is terminated before the expiry of the contractual period.

This clause is, though, not applicable in the following cases:

- In the case of members of Defence Services.
- In the case of members of All India Services.
- In the case of members of a civil service of the Union or of a State.

The scope of this clause is very narrow and is limited to those cases where the post does not belong to any of the regular services and the Government is obliged to enter into a special contract for securing the services of a person having special qualifications. The compensation is payable only for premature termination of contractual service. This clause enables the President or Governor to enter into a contract with specially qualified persons providing for payment of compensation where no compensation is payable under the doctrine “service at the pleasure of the State”.

3. Restrictions On The Doctrine Of Pleasure – Article 311

Article 311 states that –

“Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State –

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply –

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

The pleasure of the President or Governor is controlled by provisions of Article 311, so the field covered by Article 311 is excluded from the operation of the doctrine of pleasure. The pleasure must be exercised in accordance with the procedural safeguards provided by Article

311. Under Indian Constitution several restrictions has been placed on Doctrine of Pleasure. They are as follows:

1. The service contract entered between the civil servant and government may be enforced.
2. The fundamental rights guaranteed under the constitution are restrictions on the pleasure doctrine and therefore this doctrine cannot be resorted too freely and unfairly, Articles 14, 15 and 16 of the Constitution imposed limitations on free exercise of Pleasure Doctrine. Article 14 embodies the principle of reasonableness the principle of reasonableness is anti-thesis of arbitrariness. In this way, Article 14 prohibits arbitrary exercise of power under pleasure doctrine. In addition to article 14 of the constitution Article 15 also restricts arbitrary exercise of power in matters of services. Article 15 prohibits termination of service on grounds of religion, race, caste, sex or place of birth or any of them. Another limitation is under Article 16(1) which obligates equal treatment and bars arbitrary discrimination.
3. Further the doctrine of pleasure is subject to many more limitations and a number of posts have been kept outside the scope of pleasure doctrine. Under the constitution the tenure of the Judges of the High Courts and Supreme court, of the comptroller and Auditor-General of India, of the Chief Election Commissioner and the Chairman and Members of Public service commission is not at the pleasure of the Government. Thus, the general principle relating to civil services has been laid down under Article 310 of the Constitution to the effect that government servants hold office during the pleasure of the government and Article 311 imposes restrictions on the privilege of dismissal at the pleasure in the form of safeguards.

CONTROL OF DELEGATED LEGISLATION

Control of Delegated Legislation

There are three kinds of Control given under Delegated Legislation:

1. Parliamentary or Legislative Control
2. Judicial Control
3. Executive or Administrative Control

Parliamentary or Legislative Control

Under parliamentary democracy it is a function of the legislature to legislate, and it's not only the right but the duty of the legislature to look upon its agent, how they are working.

It is a fact that due to a delegation of power and general standards of control, the judicial control has diminished and shrunk its area.

In India "Parliamentary control" is an inherent constitutional function because the executive is responsible to the legislature at two stages of control.

1. Initial stage
2. Direct and Indirect stage

In the Initial stage, it is to decide how much power is required to be delegated for completing the particular task, and it also observed that delegation of power is valid or not.

Now, the second stage consists of two different parts.

1. Direct control
2. Indirect control

Direct control

Laying is an important and essential aspect under direct control and it is laid down as per the requirement which means that after making the rule it should be placed before the Parliament. It includes three important part as per the degree of control needs to be exercised.

1. Simple Laying
2. Negative Laying
3. Affirmative Laying

And “test of Mandatory” & “Test of Directory” are two main test.

Test of Mandatory – Where the laying demand is a condition pattern to guide the rule into impact then in such a case laying need is mandatory.

Where the provision is mentioned that the rules should be drafted in a particular format then it becomes mandatory to follow the format.

Test of Directory – Where the laying need is next to enforce the rule into operation then it will be directory in nature.

Indirect control

This is a control exercised by Parliament and its committees. Another name for such type of committee is Subordinate legislation. The main work of the committee is to examine

1. Whether rule are according to general object of the act.
2. It bars the jurisdiction of the court in direct or indirect ways.
3. Whether it has retrospective effect or not.
4. Whether it safeguard or destroy the Principle of Natural Justice.
5. Expenditure involved in it is from Consolidated fund.

Procedural and Executive Control

There is no particular procedure for it until the legislature makes it mandatory for the executive to follow certain rules or procedure.

To follow a particular format it may take a long time which will definitely defeat the actual objective of the act. Hence, procedural control means that under Parent act certain guidelines are given which need to be followed while whether it is mandatory or directory to follow it or not. It includes three components:

1. Pre publication and consultation with an expert authority,
2. Publication of delegated legislation.
3. Laying of rules.

It can be either Mandatory or Directory, to know, certain specified parameters are given:

1. Scheme of the Act.
2. Intention of Legislature.
3. Language used for drafting purpose.
4. Inconvenience caused to the public at large scale.

And these four parameters were given in the case **Raza Buland Sugar Co. vs. Rampur Municipal Council**.

Judicial Control

Judicial review upgraded the rule of law. The court has to see that the power delegated is within the ambit of the constitution as prescribed. Judicial review is more effective because court do not recommend but it clearly strikes down the rule which is ultra vires in nature. As per [Section 13\(3\)\(a\) “Law” is defined under the Constitution of India](#) which clearly indicate that State should not make any law which abridge the right given in Part iii of the Constitution. It is dependent on two basic grounds:

1. It is ultra vires to the Constitution of India, and
2. It is ultra vires to the enabling Act.

Conclusion

If in India, Parliamentary control overlaps the delegated legislation then it is mandatory that the committee of parliament need to be strong enough and separate laws should be made and passed which give a uniform rule for laying down and publication purposes. A committee must contain a special body to look on the delegated work whether it's going in the right direction and effectively or not. All the three organs should focus on their work and do not interrupt unnecessarily to prevent chaos in the system.

DOCTRINE OF ULTRA VIRES

Introduction

Intra-vires means “within the powers” and Ultra-vires means “beyond the powers”. The power to make laws, rules, and regulations and to legislate; are conferred with the legislative body. Over the years, the state functions have undergone many changes in the aspects of quantity and quality. So some of the legislative (law-making) functions are performed; by the executive body also. This type of legislation function by the executive body; is known as “delegated legislation”. The judicial review of such delegated legislation can be done at two stages; conferment stage and exercise stage.

In case, the discretionary power is exceeded then it will be considered as ultra vires. If the subordinate legislation falls outside the purview of the power conferred, then it is ultra vires

to the constitution. If the action of the delegated legislation body affects the fundamental rights guaranteed to the people, then it is said to be ultra vires to the constitution. Ultra vires is an error apparent on the face of the record. The lack of jurisdiction of any delegated body forms the error on record. Some of the elements which are present in an ultra vires act:

- Error or excess of Initial jurisdiction
- Error or loss of jurisdiction on the way of proceedings or in the pending proceedings
- [Mala fide intention](#) or improper motive
- Mixed consideration or irrelevant considerations
- An error apparent on the face of the record

The doctrine of ultra vires is frequently used; in the constitutional law, administrative law, and corporate law. It is applied in cases where the government bodies exceed their limit; or when the subordinate legislation crosses their legal authority. Also, in companies when legal persons go beyond their legal capacity, then the doctrine of ultra vires comes into play. In this article, the author deals with the role played by doctrine of ultra vires in the [Administrative law](#) and the Constitutional law.

Abuse of Powers by the Authority

The courts have developed effective ways to control the abuse of administrative functions. If a law crosses the discretionary power then it is held ultra vires and unconstitutional as per Article 14, Article 19, and other relevant provisions. Then the control mechanism can be at the initial stage of delegation or during the exercise of discretion. An act can become ultra vires when there is mala fide intention or improper purpose.

Mala fide

When an authority exceeds the power conferred due to the mala fide intention, that is to have a dishonest or corrupt intention, then such an act is considered as ultra vires. It is difficult to point out the motive, so the courts generally term them in a broad sense as the abuse or improper exercise of power. Mala fide intention does not imply only moral turpitude as a matter of law, in other words, it is said that the power conferred is used for indirect purpose without any nexus to the objective to be achieved and is completely foreign to the stated law.

[\[1\]](#)

In *C.S. Rowjee v. Andhra Pradesh State Road Transport Corporation*[\[2\]](#), schemes to nationalize certain transport routes were initiated by the corporation. The Chief Minister gave directions only to specific routes and other routes were not selected because of the vengeance towards his political opponents. In the absence of an affidavit from the minister, it was held by the court that there was mala fide intention present in the part of the act done by the Chief Minister.

Improper purpose/consideration:

When the power conferred is exercised with a different purpose deviating from the actual purpose, then it is considered invalid. The improper purpose is wider than mala fide. The question of good or bad intention is not questioned here, only the purpose of the action is

questioned. In *Lal Kamal Das v. State of West Bengal*^[3], it was held that the power of ordering prevention detention cannot be used for simple theft of railway property. There should be a proper purpose to prosecute such a person in the criminal court.

If an administrative power is exercised by improper/irrelevant or extraneous consideration then such action is ultra vires and it will be quashed. The general terms and conditions of the statute decide that the considerations are relevant or irrelevant. The court struck down the impugned order and held that the “law and order” concept is not the same as the “public order” concept.^[4] Sometimes there can be mixed considerations, so the court should apply the principle clearly.

Judicial Control

In administrative law, the doctrine of ultra vires forms the base. It questions the authority exercised by the various authorities. The court has to decide whether the actions are within the limit or exceeds the limit. The first step in the control mechanism of power is [judicial control](#). Various questions have to be answered before applying judicial control:

Questions

1. Whether there is any violation of fundamental rights or any procedural provision?
2. Whether; the provisions of the parent Act are satisfied or the parent act has been violated?
3. Whether the power of delegated legislation has been exceeded?
4. Where the action conforms with the said procedural provisions?
5. Whether the test of reasonableness is satisfied?
6. Whether the action by the authority is arbitrary?

Once, these questions are answered then the control can be applied in places where there is an excess of power. If a parent act or legislation is declared as void and unconstitutional, then the delegated legislation is also considered as void and unconstitutional. It is the court’s decision about the scope of powers given to the delegated legislation.

If it goes beyond the scope of the parent act, then it is ultra vires. Also, the sub-ordinate legislation can be questioned for their action based on unreasonableness.^[5] The court fails to apply judicial control in cases where the powers of delegated authority are not clear. If there is no precise limit imposed for the authority and the power given is in a broad sense^[6], then it becomes difficult to apply the doctrine of ultra vires as they turn into an uncontrolled authority.

Parent Act and Delegation.

Article 13(2) of the Indian Constitution states that a law made by the state is held void if it abridges or takes away the fundamental rights conferred under Part III of the constitution. This Article makes it clear that law includes order, ordinance, bye-law or any regulation or notification, etc. Article 245 limits the extent of powers conferred by Parliament and legislatures of states to make laws.

The laws made under Article 245 are subject to other constitutional provisions. In *Chintaman Rao v. State of Madhya Pradesh*^[7], it was held that the parent act was unconstitutional as it allowed the Deputy Commissioner to prohibit the manufacture of bidis in few areas, which was a violation of Article 19(1) (g) of the constitution. Therefore, the order was held to be ultra vires and it was struck down.

The Parent act cannot delegate the essential functions to the subordinated delegated legislation. The subordinate delegated legislation should not be inconsistent with the parent act. There should be no conflict between the delegated legislation and the enabling legislation. A rule made by the parent act for ensuring the safety of passengers in ferry does not confer the subordinate delegated legislation to frame a rule to prohibit all private ferries. Therefore the court held that the rule was out of the scope of powers conferred by applying the doctrine ultra vires and hence void.^[8]

In *Tahir Hussain v. District Board Muzzaffar Nagar*^[9], the parent law allowed the District Board to frame bye-laws for public health and safety. The board framed a bye-law prohibiting the cattle market. The court held there was reasonable nexus and applying the ultra vires principle the scope of the delegation authority was exceeding the parent act.

The court held that the rule which imposed a bar on the people for enrollment in bar council of age 45 years as invalid and ultra vires.^[10] A delegated body cannot sub-delegate further his power to another body as per the maxim “potestas non potest delegari”. Another important aspect is that a delegated legislation can be given a retrospective effect also. However, such power cannot be used in the cases of sovereign legislature^[11], unless it is expressed by the State.

Case study on the Doctrine of Ultra Vires: Misuse of Section 144 of the Criminal Procedure Code

Many states are imposing Section 144 of the Criminal Procedure Code in the year 2020. Section 144 provides wide powers to the magistrate in issuing urgent emergency orders for restricting public gatherings. During the Delhi riots, the use of the provision was easily found.

The Delhi police have imposed orders under Section 144 without any powers conferred by law, they have misused the power beyond their limits. Most of the orders were issued by the Assistant Commissioner of Police (ACP) and Deputy Superintendent of Police (DCP). Under the Delhi police Act or the Criminal Procedure Code, no power is vested on the ACP or DCP to pass such orders. The orders under 144 can be issued only by Magistrate or Commissioner under few circumstances.

The state of Delhi follows a commissionerate-system that identifies the police as a separate body, but the Criminal procedure code is not based on any such system. They are not under the supervision of a magistrate. Certain Magisterial Powers were conferred by the Delhi Police Act on the senior police officers. Section 20(5) and 70(1) confers the powers of the executive magistrate upon certain senior police officers.

The two main things to be noted are that the powers of the District Magistrate is conferred only upon the Commissioner of Police and not upon the ACP or DCP. The second thing to be

noted is that none of the provisions of the Delhi Police Act is about the appointment of the executive magistrate, therefore only the powers of the executive magistrate are conferred.

A person appointed as an executive magistrate and a person; empowered with the powers of an executive magistrate is different. ACP and DCP are not appointed as an executive magistrate. They cannot pass an order under Section 144 of the Criminal procedure code. If they pass any orders under Section 144 of the Criminal Procedure Code without the inherent powers; then it is considered as ultra vires and illegal.

Conclusion

It is observed that ultra vires have played a crucial role in the administrative and constitutional law of the country. It acts as a control mechanism when the subordinate authority goes beyond the limits of its powers or when it is in conflict with the parent act. Due to the mala fide or improper intention, a person tries to cross his limits and corrupts the power conferred upon him. With the help of judicial review and control, the basic features of the constitution are protected.

An aggrieved party can approach the court under Article 32, 136, and 226 of the constitution. The court may quash the impugned order which is ultra vires. The government enactments should comply with the rule of law, this should be under the supervision of a judicial body. The doctrine of ultra vires has helped the judicial body immensely in regulating the functioning of various authorities in our government.

EXCESSIVE DELEGATION

Why is Excessive Delegation Unconstitutional?

To talk about excessive delegated legislation, the factors which are required to be considered are as below:

- The exposition of the law at hand;
- Grounds of application of the statute along with its Preamble;
- Scheme of the law;
- The facts and circumstances serving as a background for the law to be enacted.

These grounds were decided in the case of *St. Johns Teachers Training Institute v. National Council for Teacher Education* [6] that helps to decide whether a particular legislation amounts to excessiveness or not. While the previous case laws and the facts clearly indicate that excessive delegation stands unconstitutional by nature itself, the fact that too much power on one hand invites danger cannot be ignored also. When a statute is under the challenge to prove the constitutionality of the same, it should not be arbitrary by nature and function and therefore should also not be violative with any provision of the constitution. The necessary requirement that needs to be abided by is the principle of reasonableness that is Article 14 and Article 19 of the Indian constitution. It is therefore settled that any rule-making function which acts as a prejudice for any person without the authority or rule of law is to be declared invalid by its nature itself.

Grounds to Determine Constitutionality of Administrative Rule-Making

The Supreme Court of India with its decision in several cases have set out norms of jurisprudence which now acts as a guideline for any delegation to fall under the category of either being constitutional or unconstitutional by nature. The inferences drawn from the cases decided by the apex court are as follows:

1. It was the case of *Indian oil Corporation v. Municipal corporation, Jullundhar* [7] where the court decided that any delegated legislation should be consistent with the parent act and therefore should not violate any legislative policies of the same. To be precise the court hinted in saying that a delegate is not supposed to possess more legislative power than that of a delegate.
2. It is solely on the legislature to determine the permissible limit of any administrative rule making. The limit is to be applied to any form of delegated legislation.
3. For the essential legislative functions which include laying the policy to govern a said act, is not subject to delegation by the legislature. The same statement can be inferred in a different way which would signify that delegation of non-essentials cannot take place, however significant they may be.
4. After debates, discussions and thoughts, the courts have decided to take any divergent statement as a suitable policy for the Act in concern which will be necessary for determination of the grounds of constitutionality.
5. Unreasonableness is one of the elements necessary for determination of validity of a delegated legislation. The check on abiding of any procedural safeguards if laid down in the main act also comes along with it.
6. The Apex court made it clear that the motive behind the delegated legislation is not a valid ground to determine the competence of the authority. Rather the court would take into concern the relevance and the importance of the context and the background in which the rule making power has been used.
7. A necessary view of the court regarding the violation of public interest was that it supported the adoption of the doctrine of proportionality for determining the constitutionality of the rule making power.
8. It was in *Bihar State Govt. Secondary School Teachers Assn. v. Ashok Kumar Sinha* [8], the court held that the decision produced by the court cannot be turned over by any administrative authority by bringing a change in its rules for it would directly amount to contempt of court. This decision hinted that the court would not leave any scope for the establishment of excessive delegated legislation.

The scope of delegated legislation is wide enough to involve several other grounds to determine its constitutionality but the grounds which are already mentioned are firm enough to understand the necessity of permissible limits for any delegated legislative function. Article 245 of the Indian Constitution lays down that the potential of delegation which is it being a constituent ingredient of the legislative power. Therefore the object of constitutionality is not to restrict the functioning and the aim of delegated legislation but to act as a filter to avoid unnecessary conflicts in the administrative mechanisms.

In the case of *Kerala Education Bill* [9], the court upheld delegation to government as not to be “unguided” and “unconstitutional” by nature by relying on two grounds which ensures protection:

- Laying down of the preferred rules before the legislature.
- Legislature is required to pass a resolution before the government takes an action which shall indicate that the legislature has not abdicated its role.

Necessity of Constitutional Check on Taxing Power

Taxing power is one of the inherent powers of the State. Determination of the constitutionality of the same power stands essential for the taxing power is one of the essential elements for the regulation of socio – economic and political framework of the entire country. The analysis that can be drawn from the common decisions taken by various courts across the country is that a taxing power being a necessary power of the legislature cannot be delegated further but the power to levy tax subject to the fact that the essential areas will be handled by the legislature itself. India, a democratic country, has an efficient hold in the field of taxation. Providing ways to delegation of this wide power can be seen as a direct instrument to weaken the parliament and therefore it is advisable that there remains a hold on this power supremely in the hands of the legislature.

Conclusion

What can be inferred from the above writings is that the judiciary prefers the mechanism of delegated legislation and therefore to avoid insurrection in the administrative process, the requirement of constitutionality of the rule-making power comes to play. It is true that be it the doctrine of separation of power or the rule of law, both aim at independence of the government organs and therefore delegated legislation becomes unfavorable. But the fact that both these doctrines cannot be implemented without effective mechanism of the rule-making power. In this modern world where there is a growing necessity of technicality, viability, experiments, delegated legislation requires introduction. A method that becomes essential must be implemented with safeguards that is delivered by determining the constitutionality of the same.