

Despite its overall superiority, the French administrative law cannot be characterized with perfection. Its glories have been marked by the persistent slowness in the judicial reviews at the administrative courts and by the difficulties of ensuring the execution of its last judgment. Moreover, judicial control is the only one method of controlling administrative action in French administrative law, whereas, in England, a vigilant public opinion, a watchful Parliament, a self-disciplined civil service and the **jurisdiction of administrative process** serve as the additional modes of control over administrative action. By contrast, it has to be conceded that the French system still excels its counterpart in the common law countries of the world.

CLASSIFICATION OF ADMINISTRATIVE ACTION

Administrative action is a comprehensive term and defies exact definition. In modern times the administrative process is a by-product of intensive form of government and cuts across the traditional classification of governmental powers and combines into one all the powers, which were traditionally exercised by three different organs of the State. Therefore, there is general agreement among the writers on administrative law that any attempt of classifying administrative functions or any conceptual basis is not only impossible but also futile. Even then a student of administrative law is compelled to delve into field of classification because the present-day law especially relating to judicial review freely employs conceptual classification of administrative action. Thus, speaking generally, an administrative action can be classified into four categories:

- i) **Rule-making action or quasi-legislative action.**
- ii) **Rule-decision action or quasi-judicial action.**
- iii) **Rule-application action or administrative action.**
- iv) **Ministerial action**

i) **Rule-making action or quasi-legislative action** – Legislature is the law-making organ of any state. In some written constitutions, like the American and Australian Constitutions, the law making power is expressly vested in the legislature. However, in the Indian Constitution though this power is not so expressly vested in the legislature, yet the combined effect of Articles 107 to 113 and 196 to 201 is that the law making power can be exercised for the Union by Parliament and for the States by the respective State legislatures. It is the intention of the Constitution-makers that those bodies alone must exercise this law-making power in which this power is vested. But in the twentieth Century today these legislative bodies cannot give that quality and quantity of laws, which are required for the efficient functioning of a modern intensive form of government. Therefore, the

delegation of law-making power to the administration is a compulsive necessity. When any administrative authority exercises the law-making power delegated to it by the legislature, it is known as the rule-making power delegated to it by the legislature, it is known as the rule-making action of the administration or quasi-legislative action and commonly known as delegated legislation.

Rule-making action of the administration partakes all the characteristics, which a normal legislative action possesses. Such characteristics may be generality, prospectivity and a behaviour that bases action on policy consideration and gives a right or a disability. These characteristics are not without exception. In some cases, administrative rule-making action may be particularised, retroactive and based on evidence.

(ii) Rule-decision action or quasi-judicial action – Today the bulk of the decisions which affect a private individual come not from courts but from administrative agencies exercising ad judicatory powers. The reason seems to be that since administrative decision-making is also a by-product of the intensive form of government, the traditional judicial system cannot give to the people that quantity of justice, which is required in a welfare State.

Administrative decision-making may be defined, as a power to perform acts administrative in character, but requiring incidentally some characteristics of judicial traditions. On the basis of this definition, the following functions of the administration have been held to be quasi-judicial functions:

1. Disciplinary proceedings against students.
2. Disciplinary proceedings against an employee for misconduct.
3. Confiscation of goods under the sea Customs Act, 1878.
4. Cancellation, suspension, revocation or refusal to renew license or permit by licensing authority.
5. Determination of citizenship.
6. Determination of statutory disputes.
7. Power to continue the detention or seizure of goods beyond a particular period.
8. Refusal to grant 'no objection certificate' under the Bombay Cinemas (Regulations) Act, 1953.
9. Forfeiture of pensions and gratuity.
10. Authority granting or refusing permission for retrenchment.

11. Grant of permit by Regional Transport Authority.

Attributes of administrative decision-making action or quasi-judicial action and the distinction between judicial, quasi-judicial and administrative action.

(iii) Rule-application action or administrative action – Though the distinction between quasi-judicial and administrative action has become blurred, yet it does not mean that there is no distinction between the two. If two persons are wearing a similar coat, it does not mean that there is no difference between them. The difference between quasi-judicial and administrative action may not be of much practical consequence today but it may still be relevant in determining the measure of natural justice applicable in a given situation.

In **A.K. Kraipak v. Union of India**, the Court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or administrative, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences.

Therefore, administrative action is the residuary action which is neither legislative nor judicial. It is concerned with the treatment of a particular situation and is devoid of generality. It has no procedural obligations of collecting evidence and weighing argument. It is based on subjective satisfaction where decision is based on policy and expediency. It does not decide a right though it may affect a right. However, it does not mean that the principles of natural justice can be ignored completely when the authority is exercising “administrative powers”. Unless the statute provides otherwise, a minimum of the principles of natural justice must always be observed depending on the fact situation of each case.

No exhaustive list of such actions may be drawn; however, a few may be noted for the sake of clarity:

- 1) Making a reference to a tribunal for adjudication under the Industrial Disputes Act.
- 2) Functions of a selection committee.

Administrative action may be statutory, having the force of law, or non-statutory, devoid of such legal force. The bulk of the administrative action is statutory because a statute or the Constitution gives it a legal force but in some cases it may be non-statutory, such as issuing directions to subordinates not having the force of law, but its violation may be visited with disciplinary action. Though by and large administrative action is discretionary and is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonable.

Therefore, at this stage it becomes very important for us to know what exactly is the **difference between Administrative and quasi-judicial Acts**.

Thus broadly speaking, acts, which are required to be done on the subjective satisfaction of the administrative authority, are called 'administrative' acts, while acts, which are required to be done on objective satisfaction of the administrative authority, can be termed as quasi-judicial acts. Administrative decisions, which are founded on pre-determined standards, are called objective decisions whereas decisions which involve a choice as there is no fixed standard to be applied are so called subjective decisions. The former is quasi-judicial decision while the latter is administrative decision. In case of the administrative decision there is no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh, submissions and arguments or to collate any evidence. The grounds upon which he acts and the means, which he takes to inform himself before acting, are left entirely to his discretion. The Supreme Court observed, "It is well settled that the old distinction between a judicial act and administrative act has withered away and we have been liberated from the pestilent incantation of administrative action.

(iv) **Ministerial action** – A further distillate of administrative action is ministerial action. Ministerial action is that action of the administrative agency, which is taken as matter of duty imposed upon it by the law devoid of any discretion or judgment. Therefore, a ministerial action involves the performance of a definitive duty in respect of which there is no choice. Collection of revenue may be one such ministerial action.

1. Notes and administrative instruction issued in the absence of any
2. If administrative instructions are not referable to any statutory authority they cannot have the effect of taking away rights vested in the person governed by the Act.

DELEGATED LEGISLATION

One of the most significant developments of the present century is the growth in the legislative powers of the executives. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law. We know that there is no such general power granted to the executive to make law it only supplements the law under the authority of legislature. This type of activity namely, the power to supplement legislation been described as delegated legislation or subordinate legislation.

Why delegated legislation becomes inevitable The reasons as to why the Parliament alone cannot perform the jobs of legislation in this changed context are not far to seek. Apart from other considerations the inability of the Parliament to supply the necessary quantity and quality legislation to the society may be attributed to the following reasons :

- i) Certain emergency situations may arise which necessitate special measures. In such cases speedy and appropriate action is required. The Parliament cannot act quickly because of its political nature and because of the time required by the Parliament to enact the law.
- ii) The bulk of the business of the Parliament has increased and it has no time for the consideration of complicated and technical matters. The Parliament cannot provide the society with the requisite quality and quantity of legislation because of lack of time. Most of the time of the Parliament is devoted to political matters, matters of policy and particularly foreign affairs..
- iii) Certain matters covered by delegated legislation are of a technical nature which require handling by experts. In such cases it is inevitable that powers to deal with such matters is given to the appropriate administrative agencies to be exercised according to the requirements of the subject matter. "Parliaments" cannot obviously provide for such matters as the members are at best politicians and not experts in various spheres of life.
- iv) Parliament while deciding upon a certain course of action cannot foresee the difficulties, which may be encountered in its execution. Accordingly various statutes contain a 'removal of difficulty clause' empowering the administration to remove such difficulties by exercising the powers of making rules and regulations. These clauses are always so worded that very wide powers are given to the administration.
- iv) The practice of delegated legislation introduces flexibility in the law. The rules and regulations, if found to be defective, can be modified quickly. Experiments can be made and experience can be profitably utilized.

However the attitude of the jurists towards delegated legislation has not been unanimous. The practice of delegated legislation was considered a factor, which promoted centralization. Delegated Legislation was considered a danger to the liberties of the people and a device to place despotic powers in few hands. It was said that delegated legislation preserved the outward show of representative institutions while placing arbitrary and irresponsible power in new hands. But the tide of delegated legislation was high and these protests remained futile.

A very strong case was made out against the practice of Delegated Legislation by Lord Hewart who considered increased governmental interference in individual activity and considered this practice as usurpation of legislative power of the executive. He showed the dangers inherent in the practice and argued that wide powers of legislation entrusted to the executive lead to tyranny and absolute despotism. The criticism was so

strong and the picture painted was so shocking that a high power committee to inquire into matter was appointed by the Lord Chancellor. This committee thoroughly inquired into the problem and to the conclusion that delegated legislation was valuable and indeed inevitable. The committee observed that with reasonable vigilance and proper precautions there was nothing to be feared from this practice.

Nature and Scope of delegated legislation Delegated legislation means legislation by authorities other than the Legislature, the former acting on express delegated authority and power from the later.

Delegation is considered to be a sound basis for administrative efficiency and it does not by itself amount to abdication of power if restored to within proper limits. The delegation should not, in any case, be unguided and uncontrolled. Parliament and State Legislatures cannot abdicate the legislative power in its essential aspects which is to be exercised by them. It is only a nonessential legislative function that can be delegated and the moot point always lies in the line of demarcation between the essential and nonessential legislative functions.

The essential legislative functions consist in making a law. It is to the legislature to formulate the legislative policy and delegate the formulation of details in implementing that policy. Discretion as to the formulation of the legislative policy is prerogative and function the legislature and it cannot be delegated to the executive. Discretion to make notifications and alterations in an Act while extending it and to effect amendments or repeals in the existing laws is subject to the condition precedent that essential legislative functions cannot be delegated authority cannot be precisely defined and each case has to be considered in its setting.

In order to avoid the dangers, the scope of delegation is strictly circumscribed by the Legislature by providing for adequate safeguards, controls and appeals against the executive orders and decisions.

The power delegated to the Executive to modify any provisions of an Act by an order must be within the framework of the Act giving such power. The power to make such a modification no doubt, implies certain amount of discretion but it is a power to be exercised in aid of the legislative policy of the Act and cannot

- i) travel beyond it, or
- ii) run counter to it, or
- iii) certainly change the essential features, the identity, structure or the policy of the Act.

Under the constitution of India, articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The delegation of legislative power was conceived to be inevitable and therefore it was not prohibited in the constitution. Further, Articles 13(3)(a) of

the Constitution of India lays down that law includes any ordinances, order by-law, rule regulation, notification, etc. Which if found in violation of fundamental rights would be void. Besides, there are number of judicial pronouncements by the courts where they have justified delegated legislation. For e.g.

In re Delhi Laws Act case, AIR 1961 Supreme Court 332; Vasantlal Magan Bhaiv. State of Bombay, air 1961 SC 4; S. Avtar Singh v. State of Jammu and Kashmir, AIR 1977 J&K 4.

While commenting on indispensability of delegated legislation Justice Krishna Iyer has rightly observed in the case of Arvinder Singh v. State of Punjab, AIR 1979 SC 321, that the complexities of modern administration are so bafflingly intricate and bristle with details, urgencies, difficulties and need for flexibility that our massive legislature may not get off to a start if they must directly and comprehensively handle legislative business in their plentitude, proliferation and particularization. Delegation of some part of legislative power becomes a compulsive necessity for viability.

A provision in a statute which gives an express power to the Executive to amend or repeal any existing law is described in England as **Henry VIII Clause** because the King came to exercise power to repeal Parliamentary laws. The said clause has fallen into disuse in England, but in India some traces of it are found here and there, for example, Article 372 of the Constitution authorizes the president of India to adopt pro Constitutional laws, and if necessary, to make such adaptations and modifications, (whether by way of repeal or amendment) so as to bring them in accord with the provisions of the Constitution. The State Reorganization Act, 1956 and some other Acts similar thereto also contain such a provision. So long as the modification of a provision of statute by the Executive is innocuous and immaterial and does not effect any essential change in the matter.

Types of delegation of legislative power in India There are various types of delegation of legislative power.

1. Skeleton delegation In this type of delegation of legislative power, the enabling statutes set out broad principles and empowers the executive authority to make rules for carrying out the purposes of the Act.

A typical example of this kind is the Mines and Minerals (Regulation and Development) Act, 1948.

2. Machinery type This is the most common type of delegation of legislative power, in which the Act is supplemented by machinery provisions, that is, the power is conferred on the concerned department of the Government to prescribe –

- i) **The kind of forms**
- ii) **The method of publication**

- iii) **The manner of making returns, and**
- v) **Such other administrative details**

In the case of this normal type of delegated legislation, the limits of the delegated power are clearly defined in the enabling statute and they do not include such exceptional powers as the power to legislate on matters of principle or to impose taxation or to amend an act of legislature. The exceptional type covers cases where –

- i) the powers mentioned above are given , or
- ii) the power given is so vast that its limits are almost impossible of definition, or
- iii) while limits are imposed, the control of the courts is ousted.

Such type of delegation is commonly known as the Henry VIII Clause.

An outstanding example of this kind is Section 7 of the Delhi Laws Act of 1912 by which the Provincial Government was authorized to extend, with restrictions and modifications as it thought fit any enactment in force in any part of India to the Province of Delhi. This is the most extreme type of delegation, which was impugned in the Supreme Court in the Delhi Laws Act case. A.I.R. 1951 S.C.332. It was held that the delegation of this type was invalid if the administrative authorities materially interfered with the policy of the Act, by the powers of amendment or restriction but the delegation was valid if it did not effect any essential change in the body or the policy of the Act.

That takes us to a term "**bye-law**" whether it can be declared ultra vires ? if so when ? Generally under local laws and regulations the term bye-law is used such as

- i) public bodies of municipal kind
- ii) public bodies concerned with government, or
- iii) corporations, or
- iv) societies formed for commercial or other purposes.

The bodies are empowered under the Act to frame bye-laws and regulations for carrying on their administration.

There are five main grounds on which any bye-law may be struck down as ultra vires. They are :

- a) That is not made and published in the manner specified by the Act, which authorises the making thereof;
- b) That is repugnant of the laws of the land;
- c) That is repugnant to the Act under which it is framed;

- d) That it is uncertain ; and
- e) That it is unreasonable.

Modes of control over delegated legislation The practice of conferring legislative powers upon administrative authorities though beneficial and necessary is also dangerous because of the possibility of abuse of powers and other attendant evils. There is consensus of opinion that proper precautions must be taken for ensuring proper exercise of such powers. Wider discretion is most likely to result in arbitrariness. The exercise of delegated legislative powers must be properly circumscribed and vigilantly scrutinized by the Court and Legislature is not by itself enough to ensure the advantage of the practice or to avoid the danger of its misuse. For the reason, there are certain other methods of control emerging in this field.

The control of delegated legislation may be one or more of the following types: -

- 1) **Procedural;**
- 2) **Parliamentary; and**
- 3) **Judicial**

Judicial control can be divided into the following two classes: -

- i) **Doctrine of ultra vires and**
- vi) **Use of prerogative writs.**

Procedural Control over Delegated Legislation

(A Prior consultation of interests likely to be affected by proposed delegated Legislation: From the citizen's post of view the must beneficial safeguard against the dangers of the misuse of delegated Legislation is the development of a procedure to be followed by the delegates while formulating rules and regulations. In England as in America the Legislature while delegating powers abstains from laying down elaborate procedure to be followed by the delegates. But certain acts do however provide for the consultation of interested bodies. and sometimes of certain Advisory Committees which must be consulted before the formulation and application of rules and regulations. This method has largely been developed by the administration independent of statute or requirements. The object is to ensure the participation of affected interests so as to avoid various possible hardships. The method of consultation has the dual merits of providing as opportunity to the affected interests to present their own case and to enable the administration to have a first-hand idea of the problems and conditions of the field in which delegated legislation is being contemplated.

(B) Prior publicity of proposed rules and regulations: Another method is antecedent publicity of statutory rules to inform those likely to be affected by the proposed rules and regulations so as to enable them to make representation for consideration of the rule-making authority. The rules of

Publication Act, 1893, S.I. provided for the use of this method. The Act provided that notice of proposed 'statutory rules' is given and the representations of suggestions by interested bodies be considered and acted upon if proper. But the Statutory Instruments Act, 1946 omitted this practice in spite of the omission, the Committee on Ministers Powers 1932, emphasized the advantages of such a practice.

(c) Publication of Delegated Legislation - Adequate publicity of delegated legislation is absolutely necessary to ensure that law may be ascertained with reasonable certainty by the affected persons. Further the rules and regulations should not come as a surprise and should not consequently bring hardships which would naturally result from such practice. If the law is not known a person cannot regulate his affairs to avoid a conflict with them and to avoid losses. The importance of these laws is realised in all countries and legislative enactments provide for adequate publicity.

(d) Parliamentary control in India over delegation In India, the question of control on rule-making power engaged the attention of the Parliament. Under the Rule of Procedure and Conduct of Business of the House of the People provision has been made for a Committee which is called 'Committee on Subordinate Legislation'.

The First Committee was constituted on 1st December, 1953 for

- i) Examining the delegated legislation, and
- ii) Pointing out whether it has-
 - a) Exceeded or departed from the original intentions of the Parliament, or
 - b) Effected any basic changes.

Originally, the committee consisted to 10 members of the House and its strength was later raise to 13 members. It is usually presided over by a member of the Opposition. The Committee

- i) scrutinizes the statutory rules, orders. Bye-laws, etc. made by any-making authority, and
- ii) report to the House whether the delegated power is being properly exercised within the limits of the delegated authority, whether under the Constitution or an Act of Parliament.
It further examines whether
 - i) The Subordinate legislation is in accord with the general objects of the Constitution or the Act pursuant to which it is made;
 - ii) it contains matter which should more properly be dealt within an Act of Parliament;
 - iii) it contains imposition of any tax;

- iv)** it, directly or indirectly, ousts the jurisdiction of the courts of law;
- v)** it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly confer any such power;
- vi)** It is constitutional and valid;
- vii)** it involves expenditure from the Consolidated Fund of India or the Public Revenues;
- viii)** its form or purpose requires any elucidation for any reason;
- ix)** it appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made; and
- x)** there appears to have been unjustifiable delay in its publication on its laying before the Parliament.

The Committee of the first House of the People submitted a number of reports and continues to do useful work. The Committee considered the question of bringing about uniformity in the provisions of the Acts delegating legislative powers. It made certain recommendations in its First report (March, 1954) which it later modified in its Third Report (May, 1955) after noting the existing divergent legislation in India. The following are the modified recommendations

- 1.** That, in future, the Acts containing provisions for making rules, etc., shall lay down that such rules shall be laid on the Table as soon as possible.
- 2.** That all these rules shall be laid on the Table for a uniform and total period of 30 days before the date of their final publication.

But it is not deemed expedient to lay any rule on the Table before the date of publication; such rule may be laid as soon as possible after publication. An Explanatory Note should, however, accompany such rules at the time they are so laid, explaining why it was not deemed expedient to lay these rules on the Table of the House before they were published.

- 3.** On the recommendation of the Committee, the bills are generally accompanied with Memoranda of Delegated Legislation in which; -
 - i)** full purpose and effect of the delegation of power to the subordinate authorities,
 - ii)** the points which may be covered by the rules,
 - iii)** the particulars of the subordinate authorities or the persons who are to exercise the delegated power, and
 - iv)** the manner in which such power has to be exercised, are mentioned.
 They point out if the delegation is of normal type or unusual.

The usefulness of the Committee lies more in ensuring that the standards of legislative rule-making are observed than in merely formulating such standards. It should effectively point out the cases of any unusual or unexpected use of legislative power by the Executive.

Parliamentary control of delegated legislation is thus exercised by

- i)** taking the opportunity of examining the provisions providing for delegation in a Bill, and
- ii)** getting them scrutinized by parliamentary committee of the Rules, Regulations, Bye-laws and orders,
When the Bill is debated,----
 - i)** the issue of necessity of delegation, and
 - ii)** the contents of the provisions providing for delegation, can be taken up.

After delegation is sanctioned in an Act, the exercise of this power by the authority concerned should receive the attention of the House of the Parliament. Indeed, it is this later stage of parliamentary scrutiny of the delegated authority and the rules as framed in its exercise that is more important. In a formal sense, this is sought to be provided by making it necessary that the rules, etc., shall be laid on the Table of the House. The members are informed of such laying in the daily agenda of the House. The advantage of this procedure is that members of both the Houses have such chances as parliamentary procedure –

- i)** the modification or the repeal of the enactment under which obnoxious rules and orders are made, or
- ii)** revoking rules and orders themselves.

The matter may be discussed in the House during the debates or on special motions.

The provisions for laying the rule, etc., are being made now practically in every Act which contains a rule making provision. Such provisions are enacted in the following form: -

(1) The Government may by notification in the official Gazette, make rules for carrying out all or any of the purposes of this Act.

(2) Every rule made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament while it is in session for a total period of fourteen days which may be comprised in one session or in the successive session immediately following, both Houses agree in making any modification in the Rule or in the annulment of the rule. The rule thereafter have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall

be without prejudice to the validity of anything previously done under that rule."

If the Parliamentary control is not effective it becomes necessary to provide for certain procedural safeguards, which go to make the delegated legislation ascertainable and accessible.

Control of delegated legislation by procedure---- The following requirements are made necessary for the exercise of the delegated authority under different statutes so that procedural safeguards are ensured.

i) The Doctrine of ultra vires---- The chief instrument in the hands of the judiciary to control delegated legislation is the "Doctrine of ultra vires."

The doctrine of ultra vires may apply with regard to-

i) procedural provision; and

ii) substantive provisions.

i) Procedural defects The Acts of Parliament delegating legislative powers to other bodies or authorities often provide certain procedural requirements to be complied with by such authorities while making rules and regulations, etc. These formalities may consist of consultation with interested bodies, publication of draft rules and regulations, hearing of objections, considerations of representations etc. If these formal requirements are mandatory in nature and are disregarded by the said authorities then the rules etc. so made by these authorities would be invalidated by the Judiciary. In short subordinate legislation in contravention of mandatory procedural requirements would be invalidated by the court as being ultra vires the parent statute. Provision in the parent Statute for consulting the interested parties likely to be affected, may, in such cases, avoid all these inconveniences and the Railway authorities may not enact such rule after they consult these interests. A simple provision regarding consultation thus assumes importance. On the other hand, if the procedural requirements were merely of directory nature, then a disregard thereof would not affect the validity of subordinate legislation.

The fact that procedural requirements have far reaching effects, may be made clear by just one example. Suppose the Railway authorities want to relieve pressure of work of unloading goods during daytime at a station amidst a big and brisk business center. The public wants a reduction in the traffic jams due to heavy traffic because of unloading. The traffic authorities and Railway authorities decide to tackle the problem effectively by making the rule that the unloading be done during late hours of night. The railway authorities make an order to this effect, without consulting interested bodies. Such rule might cause many hardships e.g. –

i) The conditions of labour are such that unloading of goods during the night would adversely affect the profit margin as the workers would charge more if they work in night shifts.

ii) It may not be without risk to carry money from one place to another during late hours of night. If safety measures are employed, that in addition to the element of a greater risk, expenses would increase, adversely affecting the margin of profits.

iii) The banking facilities may not be available freely during night.

iv) Additional staff may be necessary in various concerns for night duty.

v) This business are loading and unloading during night may cause inconvenience and disturbance in the locality.

Now in face of these difficulties another alternative which appears to be desirable is better supervision of unloading and better regulation of traffic by posting more police officers and stricter enforcement of traffic laws.

Provisions in the parent statute for consulting the interested parties likely to be affected may, in such cases, avoid all these inconveniences, and the Railway authorities may not act such a rule after they consult these interests. A simple provision regarding consultation thus assumes importance.

The question of the effectiveness of the application of the doctrine of ultra vires, so far as procedure is concerned, would largely depend upon the words used in the particular statute. If the words are specific and clearly indicate the bodies to be consulted, then it would be possible to show noncompliance.

But in case where the minister is vested with the discretion to consult these bodies which he considers to be representative of the interests likely to be affected or where he is to consult such bodies, if any, it is very difficult to prove noncompliance with the procedural requirements.

(ii) Substantive Defects In case of delegated legislation, unlike an Act of the Parliament, the court can inquire into whether it is within the limits laid down by the present statute. If a piece of delegated legislation were found to be beyond such limits, court would declare it to be ultra vires and hence invalid. (R.V. Minister of Health, (1943), 2 ALL ER 591). The administrative authorities exercising legislative power under the authority of an Act of the Parliament must do so in accordance with the terms and objects of such statute. To find out whether administrative authorities have properly exercised the powers, the court have to construe the parent statute so as to find out the intention of the legislature. The existence and extent of the powers of administrative authorities is to be affixed in the light of the provisions of the parent Act.

Mandatory or directory procedural provision The question whether particular procedural requirements are mandatory or directory must be examined with care. In case the statute provided for the effect of noncompliance of such requirements, then it is to be followed by the courts without difficulty. But uncertainty creeps in where the statute is silent on the point and decision is to be made by the judiciary. The courts is determining whether the provisions to this effect in a particular Statute are mandatory or directory are guided by

various factors. They must take into consideration the whole scheme of legislation and particularly evaluate the position of such provisions in their relation with the object of legislation. The nature of the subject matter to be regulated, the object of legislation, and the provisions as placed in the body of the Act must all be considered carefully, so as to find out as to what was the intention of the legislature. Much would depend upon the terms and scheme of a particular legislation, and hence broad generalizations in this matter are out of place.

Judicial control over delegated legislature Judicial control over delegated legislature can be exercised at the following two levels :-

- 1) Delegation may be challenged as unconstitutional; or
- 2) That the Statutory power has been improperly exercised.

The delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary.

The scope of permissible delegation is fairly wide. Within the wide limits. Delegation is sustained it does not otherwise, infringe the provisions of the Constitution. The limitations imposed by the application of the rule of ultra vires are quite clear. If the Act of the Legislature under which power is delegated, is ultra vires, the power of the legislature in the delegation can never be good. No delegated legislation can be inconsistent with the provisions of the Fundamental Rights. If the Act violates any Fundamental Rights the rules, regulations and bye-laws framed there under cannot be better.

Where the Act is good, still the rules and regulations may contravene any Fundamental Right and have to be struck down.

The validity of the rules may be assailed as the stage in two ways :-

- i) That they run counter to the provisions of the Act; and
- ii) That they have been made in excess of the authority delegated by the Legislature.

The method under these sub-heads for the application of the rule of ultra vires is described as the method of substantive ultra vires. Here the substance of rules and regulations is gone into and not the procedural requirements of the rule making that may be prescribed in the statute. The latter is looked into under the procedural ultra vires rule.

Power of Parliament to repeal law Under the provision to clause (2) of Article 254, Parliament can enact at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State,

Ordinarily, the Parliament would not have the power to repeal a law passed by the State Legislature even though it is a law with respect to one of the matters enumerated in the Concurrent List. Section 107 of the Government of India Act, 1935 did not contain any such power. Art. 254 (2) of the Constitution of India is in substance a reproduction of section 107 of the

1935 Act, the concluding portion whereof being incorporated in a proviso with further additions.

Now, by the proviso to Art. 254 (2), the Indian Constitution has enlarged the powers of Parliament and, under that proviso, Parliament can do what the Central Legislature could not do under section 107 of the Government of India Act, and can enact a law adding to, amending, varying or repealing a law of the State when it relates to a matter mentioned in the concurrent List. Therefore the Parliament can, acting under the proviso to Art. 254 (2) repeal a State Law.

While the proviso does confer on Parliament a power to repeal a law passed by the State Legislature, this power is subject to certain limitations. It is limited to enacting a law with respect to the same matter adding to, amending, varying or repealing a law so made by the State Legislature. The law referred to here is the law mentioned in the body of Art. 254 (2), It is a law made by the State Legislature with reference to a matter in the Concurrent List containing provisions repugnant to an earlier law made by Parliament and with the consent to an earlier law made by Parliament and with the consent of the President. It is only such a law that can be altered, amended, repealed under the proviso.

The power of repeal conferred by the proviso can be exercised by Parliament alone and cannot be delegated to an executive authority.

The repeal of a statute means that the repealed statute must be regarded as if it had never been on the statute book. It is wiped out from the statute book.

In the case of Delhi Laws Act, 1951 S.C.R. 747, it was held that to repeal or abrogate an existing law is the exercise of an essential legislative power.

Parliament, being supreme, can certainly make a law abrogating or repealing by implication provisions of any preexisting law and no exception can be taken on the ground of excessive delegation to the Act of the Parliament itself.

(a) Limits of permissible delegation: When a legislature is given plenary power to legislate on a particular subject, there must also be an implied power to make laws incidental to the exercise of such power. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power. A legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law making has to be discharged by the legislature itself but delegation may be reported to as a subsidiary or ancillary measure. (Edward Mills Co. Ltd. v. State of Ajmer, (1955) 1. S.C.R. 735)

Mahajan C.J. in Hari Shankar Bagla v. State of Madhya Pradesh, A.I.R. 1954 S.C. 555 : (1955) 1.S.C.R. 380 at p. 388 observed :

"The Legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The

legislature must declare the policy of the law and the legal principles which are to control and given cases and must provide a standard to guide the officials of the body in power to execute the law".

Therefore the extent to which delegation is permissible is well settled. The legislature cannot delegate its essential legislative policy and principle and must afford guidance for carrying out the said policy before it delegates its delegates its subsidiary powers in that behalf. (Vasant Lal Maganbhai Sanjanwala v. State of Bombay, A.I.R. 1961 S.C. 4)

The guidance may be sufficient if the nature of things to be done and the purpose for which it is to be done are clearly indicated. The case of Hari Shankar Bagla v. State of Madhya Pradesh, A.I.R. 1954 S.C. 465: (1955) 1 S.C.R. 380 is an instance of such legislation.

The policy and purpose may be pointed out in the section conferring the powers and may even be indicated in the preamble or elsewhere in the Act.

(b) Excessive delegation as a ground for invalidity of statute In dealing with the challenge the vires of any State on the ground of Excessive delegation it is necessary to enquire whether - The impugned delegation involves the delegation of an essential legislative functions or power, and In Vasant lals case (A.I.R. 1961 S.C. 4). Subba Rao, J. observed as follows;

"The constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another.

But, in view of the multifarious activities of a welfare State, it (the legislature) cannot presumably work out all the details to sit the varying aspects of complex situations. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may-

- a) not lay down any policy at all;
- b) declare its policy in vague and general terms;
- c) not set down any standard for the guidance of the executive;
- d) confer and arbitrary power to the executive on change or

modified the policy laid down by it without reserving for itself any control over subordinate legislation.

The self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation.

It is for a Court to hold on a fair, generous and liberal construction of on impugned statute whether the legislature exceeded such limits.