



Delegated Legislation

For Prelims: SC Judgement of Demonetisation, RBI Act 1934, Ordinances, Doctrine of Separation of Power

For Mains: Delegated Legislation - Significance and Criticism, Doctrine of Separation of Powers and Delegated Legislation

Why in News?

In the [Supreme Court judgement on the Central Government's decision of demonetisation](#), the majority ruling **upheld the validity of the delegated legislation** while the dissenting verdict noted that excessive delegation of power is arbitrary.

What is Delegated Legislation?

▪ About:

- Since the Parliament cannot deal with every aspect of the governance system by themselves, they **delegate these functions to the authorities established by law**. This delegation is noted in statutes, commonly called **delegated legislations**.
- E.g. - **Regulations** and **by-laws (law made by a local authority which applies only in its area)** under legislations.

▪ SC's View on Delegated Legislation:

- The SC in ***Hamdard Dawakhana v Union of India (1959)*** case struck down **delegation of powers** on the grounds that it was vague.
 - It held that the Centre's power of specifying diseases and conditions under **Drug and Magic Remedies (Objectionable Advertisements) Act 1954** is **'uncanalised', 'uncontrolled'**, and going beyond the permissible boundaries of valid delegation. Hence, the same was **deemed unconstitutional**.
- The **Supreme Court in a 1973** ruling held that the concept of delegated legislation has evolved out of **practical necessity and pragmatic needs** of a modern welfare State.

▪ Delegated Legislation in Demonetisation Case:

- As per the [RBI Act, 1934](#) (Section 26(2)) the **Central govt. is empowered to notify ceasing a particular denomination of currency as legal tender**.
 - Parliament, here, has delegated the power to alter the nature of legal tender to the central govt. which the latter exercised by issuing a **gazette notification** (legislative basis).
- This delegation of power to the Centre was challenged on the basis that Section 26(2) contains **no policy guidelines on how the Centre can exercise its powers**, thus it is arbitrary (and unconstitutional).

What is the Significance and Criticism of Delegated Legislation?

▪ Significance:

- It **allows flexibility and adaptability** in the law-making process. By delegating certain powers, the **legislature can respond more quickly and efficiently to changing**

circumstances and emerging issues.

- **Delegated authorities with extra skills**, experience, and knowledge (in fields like technology, environment etc. **where the Parliament may not always have an expertise**) are more suitable for making law.
- **Criticism:**
 - It can lead to a **lack of accountability/transparency** in the law-making process as **laws made by executive agencies/administrative bodies are not subjected to the same level of public scrutiny** and debate as laws made by legislature.
 - Additionally, it can also lead to a **concentration of power in the executive** and administrative branches of government, which may **undermine the [principle of separation of powers](#)**.
 - However, certain types of delegated legislation, such as [ordinances](#) **must be approved by the legislature**.

Way Forward

- Parliamentary control over delegated legislation in India is not as effective, there are **no statutory provisions regarding 'laying' of delegated legislation**.
 - It is necessary to strengthen the committees of the Parliament and a **separate law providing for uniform rules for delegating powers** be enacted.
- Moreover, the **citizens can ensure accountability and transparency in delegated legislation by staying informed** about the laws and regulations being proposed and implemented by executive agencies and administrative bodies.
 - They can also **participate in public consultations** and comment periods and **hold the government accountable** through their elected representatives.
- Additionally, the **media can play a vital role in bringing attention** to any issues with delegated legislation and providing a platform for public discourse.

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