SYNOPSIS

Delegated Legislation

Forms of Delegated Legislation

Notifications and Circulars

Features of Delegated Legislation

Amendment and Revocation of Delegated Legislation

Interpretation of Delegated Legislation

Delegated legislation

Delegated legislation refers to laws created by an individual or institution under the authority granted by a parent statute, known as the enabling Act. This type of legislation is also called subordinate legislation. When validly made, a provision of delegated legislation carries the same legal weight as if it were enacted directly by the legislature itself.

Who Can Be a Delegate: Although most forms of delegated legislation are issued by ministers appointed by the President, Parliament holds the authority to confer legislative power on any person or body it deems fit. This delegate does not necessarily need to be a statutory authority or a public institution. Even private entities may, in principle, be empowered to create rules, though such instances are less common.

Distinction Between Delegated and Conditional Legislation

Delegated legislation differs fundamentally from conditional legislation due to the presence or absence of legislative power transfer. In delegated legislation, legislative power is expressly conferred upon a subordinate authority to frame rules or regulations. In contrast, conditional legislation involves no such delegation of law-making power. Instead, the law is complete in itself, and only the authority to determine when or how the law is to be brought into operation is given to an external agency.

Illustrations of Conditional Legislation: For example, if a statute provides that certain provisions shall become operative only upon the petition of a majority of electors, it does not mean the electors are legislating; they are merely triggering the enforcement of a law that is already fully formed.

Similarly, if a statute authorizes the executive to frame rules that override other laws, it is not necessarily a case of delegated legislative authority. Since the overriding clause is part of the parent statute, the authority exercised under it is viewed as administrative or executive in nature.

In such situations, the legislative policy is deemed to have been clearly settled by the legislature. The law is self-contained and complete, with only limited discretion given to the delegate for implementation, typically relating to operational details. Therefore, the power exercised in these contexts is considered non-legislative in character.

Forms of delegated legislation

Delegated legislation is most commonly issued in the form of *rules* and *orders*. However, the enabling Act may use a variety of terms to refer to such subordinate instruments, and there is no legal restriction on the nomenclature it chooses. Thus, delegated legislation may also take the form of *by-laws*, *regulations*, *instructions*, *clarifications*, *guidelines*, *schemes*, or *directions*, depending on the legislative framework.

Rules

Rules are often described as *minor laws* that provide the operational details necessary to implement the broader objectives of an Act. Their primary function is to elaborate on the legislative framework laid down by Parliament, enabling its effective execution. The authority to make such rules is typically conferred upon the executive by the enabling Act, empowering it to carry out the statute's intent.

Legal Characteristics and Publication: Like principal legislation, rules have a *continuing* and *dynamic* legal character, meaning they are considered to be 'always speaking'—capable of applying to new circumstances as they arise. Once drafted and approved, rules are published in the *Gazette of India* under the heading *G.S.R.* (General Statutory Rules), specifically in *Part II, Section 3(i)*, signifying their official status.

Guidance from the Parent Act: Most enabling Acts provide a list of subjects or areas in respect of which rules may be formulated. While these lists serve as a guide to the executive, they are usually *illustrative rather than exhaustive*. This flexibility allows the executive to respond to unforeseen administrative or regulatory needs within the general scope of the Act's purpose.

Orders

The term *order* is typically associated with delegated legislative instruments that effect a *one-time or specific change* in the legal framework. Unlike rules, which often have a general and ongoing application, orders are usually *limited in scope* and *targeted in effect*. They are designed to address particular situations or implement specific provisions of an Act.

Exceptionally wide orders: Although orders are generally narrow in their reach, there are notable exceptions where orders have been given *broad and quasi-legislative effect*, akin to primary legislation. For example, orders issued under statutes like the *Defence of India Act, 1971*, the *Essential Commodities Act, 1965*, and *Adaptation Orders* under the *Indian Independence Act, 1947* have had far-reaching implications and wide territorial or policy coverage.

Official Publication and Designation: In the *Gazette of India*, such instruments are published under the title *S.O.* (Statutory Orders) and appear in *Part II, Section 3(ii)*. This distinguishes them from General Statutory Rules (G.S.R.s), which are published in a different section and typically cover broader, ongoing regulatory frameworks.

Byelaws

Byelaws (sing. by-law) are a form of delegated legislation typically created by local authorities, public utilities, or similar institutions—whether public or private. Common examples include municipal building byelaws or the Articles of Association of a company. When properly enacted, byelaws carry the force of law within the scope of their legitimate authority. They usually have a limited territorial reach or are applicable specifically to the functioning of the body that enacted them.

Regulations

Regulations, except those made by the President, are typically considered slightly subordinate to rules. They are usually framed by statutory bodies or boards functioning under an enabling Act. According to Section 3(50) of the General Clauses Act, a "regulation" refers specifically to one issued by the President under Article 240 of the Constitution for governing Union Territories without a legislature. However, the term is also widely used to describe rules made by statutory bodies. Section 3(51) of the same Act defines a "rule" to include a regulation framed as a rule under any enactment—for instance, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or the Cost Accountants Regulations, 1959.

In practice, the Indian legislative framework often grants rulemaking powers to the Government. When a particular statutory authority is empowered to regulate certain affairs, the delegated legislation takes the form of regulations. These regulations may apply only to the members of that body or have broader implications. In contrast, rules usually carry more extensive applicability across a wider field.

Schemes

A "scheme" can serve as a form of subordinate legislation when it includes a set of binding rules that apply to specific individuals or classes. If such a scheme is framed by an authority empowered by statute, the rules it contains are legally enforceable—either through courts or other competent authorities—and carry the force of law. Alternatively, a scheme may be purely administrative or executive in nature, intended to guide internal operations or policy implementation, without prescribing any binding rules of conduct for external parties.

Proclamation

A *proclamation* refers to an official public declaration—either oral, such as through town criers, or written, issued by a government or departmental authority—regarding an act already done by the State or one required to be done by the people. This traditional form is seen in statutes like Section 26 of the Police Act, 1861, which mandates a proclamation before the disposal of unclaimed property.

In addition to this administrative usage, a proclamation can also serve a legislative function when issued under constitutional authority. For example, under Article 356 of the Constitution of India, the President may issue a Proclamation upon the failure of constitutional machinery in a State, thereby assuming the functions of the State legislature and making necessary provisions to implement such an action. Similarly, Article 352 empowers the President to proclaim a state of emergency, which carries the force of law upon issuance.

Resolution

A *resolution* is a formal decision or expression of opinion adopted by a legislative body. While generally not equivalent to a statute, a resolution may serve as a precursor to further executive or legislative action. In bicameral legislatures, it usually requires the concurrence of both Houses, whereas in unicameral systems, a single House may pass it independently without requiring executive assent.

Resolutions under Article 249 or Article 252 of the Constitution of India illustrate their enabling nature. They do not themselves constitute law but authorize the Parliament or State Legislature to undertake subsequent legislative action. Moreover, legislatures often direct the executive to act through such resolutions, and implementing them may necessitate the enactment of new laws—for instance, through statutes like the *Commissions of Inquiry Act, 1952* or the *Indian Rubber Control Act, 1934*.

Notifications and Circulars

When a delegated legislation is officially published in the *Official Gazette*, it is referred to as a *notification*. On the other hand, if the instrument is not formally published but is instead circulated internally within a government department or among functionaries for administrative guidance, it is commonly known as a *circular*. These different labels reflect the formality and intended reach of the delegated legislative instrument, but they do not inherently affect its legal status if properly issued under the enabling provision.

Legal force of Notifications

Notifications, when issued by a competent authority empowered under a statute, possess the *force of law*. Such notifications are legislative in character when they lay down *rules of conduct* or impose *obligations* on members of the public. Their publication in the *Official Gazette* serves as formal notice, ensuring that the public is deemed to have constructive knowledge of their contents. Consequently, these legislative notifications are binding on the public and must be *laid before Parliament* if the enabling Act so requires.

Non-Legislative Notifications: Not all gazetted notifications carry legal force. For instance, notifications concerning *appointments*, *postings*, or *transfers* of government officers are administrative in nature and do not impose legal obligations on the public. While they are published for transparency and public record, they do not constitute legislative action.

Legal Effect of Circulars

In contrast to notifications, *circulars* are *non-legislative* and primarily *clarificatory* in nature. Issued within government departments, circulars serve to guide departmental officers on the interpretation or implementation of laws or policies. They are presumed to be known only within the administrative framework and are *not binding on the general public*. As they do not create legal obligations for citizens, they are not subject to parliamentary oversight and need not be laid before the legislature.

Features of Delegated Legislation

Enabling powers

For delegated legislation to be valid, there must be clear statutory provisions specifying the enabling power and its scope. Statutory instruments include all orders, rules, regulations, or other legislative measures issued by a minister or the President under authority granted in the enabling Act. These instruments generally follow a standardized format and often cite the statutory powers under which they are made, though such citation is not mandatory for their validity.

The interpretation of enabling powers follows established principles of statutory construction. If the legislature intends to grant exceptional powers—such as creating offences, imposing taxes, amending the parent Act or other laws, enacting retrospective provisions, affecting fundamental rights, or allowing sub-delegation—it must usually do so through explicit language. Without such express provisions, courts are generally hesitant to infer the existence of these powers.

Additionally, while any list of powers in the enabling Act may not be exhaustive, it influences how broadly or narrowly the scope of authority is construed. Both express and implied ancillary powers are considered when determining the true extent of the delegated power.

Mandatory or Discretionary nature

When an Act grants the authority to make delegated legislation, that authority may be either *mandatory*—requiring the delegate to act—or *discretionary*—allowing the delegate to act as needed. Even in cases of discretion, the delegate is under a legal obligation to exercise that discretion fairly, reasonably, and within the bounds of the enabling Act.

Unless a contrary intention is evident in the statute, the power to make delegated legislation may be exercised from time to time, allowing flexibility to address evolving circumstances. Moreover, there is no universal legal procedure prescribed for the making of delegated legislation; the method and manner depend on the provisions of the enabling Act or the nature of the power conferred.

Limits on Sub-Delegation

As a general rule, when an Act authorizes a person or body to make delegated legislation, that authority cannot be further transferred to another person or body unless the enabling statute expressly allows it. In other words, *delegatus non potest delegare*—a delegate cannot further delegate—applies unless a contrary intention is clearly indicated in the parent Act.

However, this principle does not prevent the delegate from executing the delegated functions through officials or agents under their direct supervision and control. Such administrative assistance is permissible as long as the delegate remains responsible and retains the power to direct and supervise the exercise of the function.

Limits of Legislative Power (Doctrine of Ultra Vires)

A provision within a delegated legislation instrument becomes invalid if it exceeds the scope of legislative authority expressly or impliedly granted by the enabling Act. Such a provision is termed *ultra vires*—meaning beyond the legal power of the delegate. This remains true even if the instrument has received formal confirmation from a higher authority; confirmation does not cure the defect of excessive delegation.

However, delegated legislation is not automatically void for being ultra vires. It remains effective unless and until it is declared invalid by a court of competent jurisdiction. Where possible, courts may modify the offending part of the instrument to bring it within the bounds of lawful authority (*intra vires*), provided that such modification does not substantially alter the instrument's intended effect or produce an outcome the delegate could not have reasonably approved.

Legislative Control over Delegated Legislation

When delegating legislative power, the legislature typically retains certain supervisory mechanisms to ensure accountability in its exercise. A common method is the *laying procedure*, where statutory instruments made under the enabling Act must be presented before the legislature. This allows Parliament to review the content and legality of the delegated legislation.

Two primary forms of control may apply:

- **Affirmative procedure**, where the delegated legislation requires express approval by the legislature before it can take effect.

- **Negative procedure**, where the legislation comes into force automatically unless annulled by the legislature within a specified period.

These procedures help maintain a balance between administrative flexibility and democratic oversight.

Amendment and Revocation of delegated legislation

Amendment

Delegated legislation can be altered or annulled either through a subsequent Act of the legislature or by fresh delegated legislation, and this can occur expressly or by necessary implication. This principle is supported by Section 21 of the *General Clauses Act, 1897*, which provides that the power to make rules includes the power to amend, vary, or rescind them.

Revocation

When the enabling statute itself is repealed, the delegated legislation made under it is also revoked—unless a saving clause exists. However, under Section 24 of the same Act, if an enactment is repealed and then re-enacted with or without modifications, the subordinate instruments such as rules, bye-laws, notifications, orders, or forms created under the old law may continue to remain in force, provided they are not inconsistent with the new enactment.

Interpretation of delegated legislation

Delegated legislation is to be construed in the same way as an Act. It is interpreted using the *same principles of construction* as those applied to Acts of Parliament. However, certain interpretive considerations are specific to its subordinate nature.

Guidance from the Enabling Act: The primary guide to interpreting delegated legislation is the *intention of the legislature* as expressed in the enabling Act. Since delegated legislation derives its authority from this parent statute, its provisions must be read in harmony with the statutory purpose and framework laid down by the legislature.

Presumption of Consistent Meaning: Unless there is a clear contrary intention, the *expressions used in delegated legislation are presumed to bear the same meaning* as they do in the enabling Act. This ensures consistency and coherence across the legislative scheme, avoiding contradictory interpretations between the principal and subordinate laws.

Commencement and Legal Recognition

Delegated legislation generally comes into force at the *beginning of the day* on which it is made, unless a different date is expressly stated. If a specific date is provided, the legislation takes effect from the *start of that specified day*. In rare cases where no commencement date is mentioned, the default presumption is that the legislation becomes effective from the *beginning of the day it was made*, subject to any contrary indication in the text or context of the law.

Judicial Notice: In the Indian legal system, delegated legislation is treated as part of the *law of the land*. Consequently, courts are bound to take *judicial notice* of such legislation without requiring formal proof of its existence or validity. This affirms the legal force and official status of properly enacted subordinate legislation.