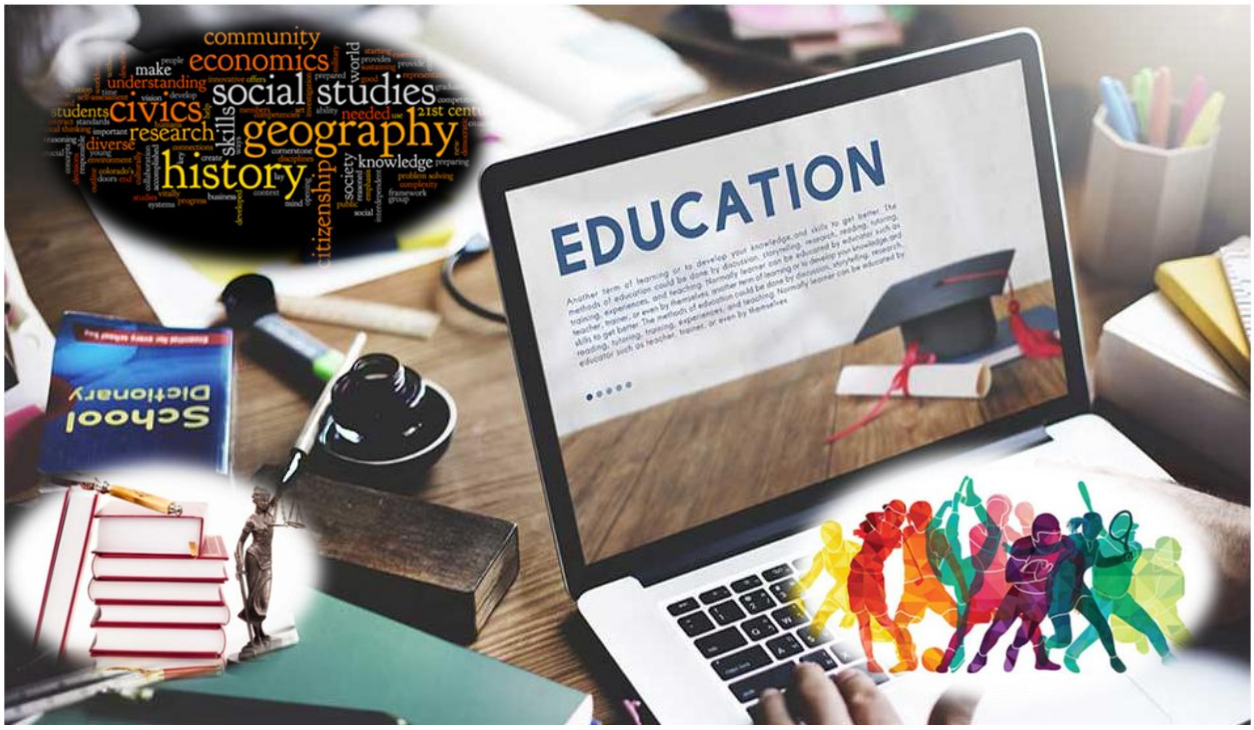

Email:editorijless@gmail.com Volume: 5, Issue2, 2018 (April-June)

INTERNATIONAL JOURNAL OF LAW, EDUCATION, SOCIAL AND SPORTS STUDIES (IJLESS)

http://www.ijless.kypublications.com/

ISSN:2455-0418 (Print), 2394-9724 (online)

www.kypublications.com

International Journal of Law, Education, Social and Sports Studies (IJLESS)
Volume: 5, Issue 2, 2018
ISSN: 2455-0418 (Print), 2394-9724 (online)
Review Article

DELEGATED LEGISLATION & ADMINISTRATIVE ADJUDICATION

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ABSTRACT
Delegation of authority an important role in the administrative skills of subordinates developments, especially in light of the growing role that became the play of the human resource in the success of organizational effectiveness, and therefore the authority encourages and helps individuals and groups to make decisions that affect their working environment. Regulatory and benefit-distribution schemes give rise to large numbers of individualized disputes between government agencies and private parties. Every country needs a system of administrative adjudication to resolve such disputes accurately, fairly, and efficiently. Generally such systems provide for three phases — initial decision, administrative reconsideration, and judicial review. However, the details of the various systems are bewilderingly diverse. This article proposes a methodology for classifying such systems. It identifies four key variables: combined function agencies or separate tribunals, adversarial or inquisitorial procedure, judicial review that is open or closed, and judicial review by generalized or specialized courts.

Introduction

The Modern State has since long ceased to regard itself as merely a 'glorified policeman'. It is assuming more and more responsibilities for promoting the welfare of its citizens, supervising industry. The police state has now turned into a social welfare state which has led to a wider range of state activities. "Within the last century particularly, governments have taken up new types of obligations. It provides the working plant for the community; express and feeder highways; water, gas, electricity and other utilities; airfields and beacons; dams and irrigation works; establishments for the production of fissionable material. It seeks to protect against the hazards of disease, accident, dependency, unemployment, and old age. It facilitates the business of the people by providing the market news, opening up foreign markets, stabilizing production, educating producers, maintain employment services and conciliating industrial disputes. It intervenes to protect relatively weak groups in the economic struggle; workers versus large employers, consumers versus monopolies; shippers versus railroads; investors versus brokers. It carries on research both for itself and its citizens.

Definition of Delegated Legislation

As an ineviable consequence of the extension of the activities of the State is the sizable increase in legislation. Normally, it is the function of the Legislature to legislate but it has found itself obliged to delegate a good deal of its delegation of legislative functions to the executive branch of the Government. This delegation of legislative authority to the executive or administrative authority to

make rules, regulations , bye-laws, schemes, orders, notifications etc. is known as 'delegated legislation' executive legislation' or subordinate legislation'.

Reasons for the Growth of Delegated Legislations: Delegated legislation has become indispensable in modern times. Legislation, to-day, is not the sole privilege of the Parliament and to ignore this fact is just to be blind to the realities. The circumstances favoring the growth of delegated legislation are as follows :

Parliament is too busy a body. If it devotes its time in entering into minor details and attempts to lay down all the rules itself, all its time will be consumed by only a few Acts and most of the law-making work shall remain pending.

Many matters which the modern Parliament has to deal with are of technical nature and require the consultation of experts. "The need of amplifying the main provisions f social legislation, to meet unforeseen contingencies.

Classification of Delegated Legislation

Delegated legislation has been classified into three classes, namely (1) contingent, (2) supplementary or subordinate, and (3) interpretative.

Delegated Legislation is subordinate legislation. It may be mentioned here that the delegated legislation is essentially a subordinate legislation. There are two-fold reasons for it. Firstly, the power of rule-making of an administrative agency is derived from the delegation made by the legislature through its enactments and is strictly limited by the terms and conditions mentioned in that delegation. Secondly the powers so derived are not original in nature and hence subject to judicial review. The courts shall declare any rule made under this derivative power void if it contravenes any of the provisions of the law under which it is made.

Delegated Legislation in India : India took to the Practice of delegation legislation as early as the beginning of the 20th century o the lines of the British law-making procedure with the dawn of independence, India. Established its own sovereign Parliament on the 26th day of January, 1950. The Indian Parliament also felt that is was physically impossible for it to lay down all the details of every bill passed by it into law. So several laws empowered the executive to frame rule and regulations under the Acts.

Constitutionality of delegated legislation: In discussing the subject of delegated legislation in India, we have first to examine the legality of delegating legislative powers to the executive in the light of the provisions of our Constitution. In other words, how far it is constitutional for the Indian Parliament to delegate its legislative powers to an outside administrative authority.

Essential Powers cannot be delegated: It is now settled by the majority judgment of the Supreme Court, in re Delhi Laws Act, etc., 1 & 12 that the essential powers of legislation cannot be delegated.

Advantages of Delegated Legislation. The advantages of delegated legislation are substantial which may be summarized as follows :

Delegated legislation saves time of the Parliament. Delegated legislation makes for flexibility. Statues create rigidity in administration. Thirdly, delegated legislation can be easily done in consultation with the interests affected.

Disadvantages of Delegated Legislation: Against the above advantages must be balanced potential and at the same time real dangers. The charge against the delegated legislation is that so wide a discretion given to the official may lead to despotism and jeopardize the rights and liberty of the individuals and association.

Secondly, the advantage of flexibility in law may bring about instability and chaos by too frequent changes in rules.

Thirdly, the arrangement for the publication of these rules may be inadequate and unsatisfactory with the result that average man may be ignorant of them etc.

Delegated Legislation - A necessity: Whatever its dangers, the fact remains that "the easy talk of 'conspiracy' and the 'bureaucracy triumphant' in which Lord Hewart and Mr. K.C. Allen have

indulged, not only shrank to nothing the first serious analysis, but revealed the more important fact that administrative law is well settled in the general respect of the public," It is directly related to acts of Parliament, related as child to parent, a growing child called upon to relieve the parent of the strain of over-work and capable of attending to minor matters while the parent manages the main of attending to minor matters while the parent manages the main business.

According to available literature on the basic concept and principle of delegation, delegation may be complete or partial. Delegation is full when complete powers are granted to the delegated to take fines decisions and actions while it is partial when the delegate has to consult the delegator on important aspects of the job assigned to him. Normally, delegation is partial and full delegation is rarely found when a diplomatic representative is sent abroad with full powers to negotiate. Full delegation is known as alter ego.

Meaning of Administrative Adjudication: Administrative adjudication means the determination of questions of a judicial nature by administrate departments or agency. According to Dr. White it means "the investigation and settling of a dispute involving a private party on the basis of law and facts by an administrative agency. Prof. Dimock defines it as " the process by which administrative agencies, settle issue arising in the course of their work, when legal rights are in question.

Difference between administrative adjudication and Judicial Process : Administrative Adjudication is quasi-judicial and thus is distinct from the purely judicial process. In the first place, justice in courts is administered according to the formal rules of law, e.g. evidence is to be taken in a prescribed way, legal Counsels are to be heard according to a set procedure. Administrative adjudication is not guided by definite legal principles but by certain statutory standards of 'common good', 'public interest' and 'public convenience'. Legal counsel is not necessary in many of the humbler matters. The judge applies the law and is bound by it while the administrative agency applies 'policy' and has sufficient discretion in doing so. Reasons for rise of administrative adjudication are broadly speaking the same as for the growth of delegated legislation. Briefly described they are as under.

The first main reason was the industrialization and urbanization of society. Secondly, judges, preoccupied with the individualistic concepts of the old time law as they are, are unwilling to follow the new spirit of the modern legislation.

Advantages and Disadvantages of administrative Adjudication: The advantages of administrative adjudication are : It is much cheaper and speedier than justice by courts. The second advantage of administrative tribunals is that they can be manned by officials possessed of special experience and training and therefore, can give better decisions on issues which require technicalities and specialized knowledge. Judges are mostly conservative and hostile to the new socio-economic policies of administration. Administrative tribunals give wide discretion. Finally, ordinary courts cannot go outside the evidence produced before them by the parties, but the administrative tribunals can make use of sources of information other than the evidence which has been produced before them and thus arrive at good decision.

So far as the disadvantages are concerned, firstly, it is said that administrative adjudication does not inspire public confidence if the rules of procedure of administrative tribunals do not provide for the publicity of proceedings. Finally, combination of power to make rules to investigate alleged violations thereof, to prosecute offenders, and to render decision. However, these defects are not such as may not be eliminated from the system of administrative adjudication.

Adjudicatory Procedure: There are two types of administrative adjudication. The first consists of adjudication of disputes arising between the administration and an individual or group of individuals.

There are four types of administrative tribunals which adjudicate in the above two types of cases; Regular Departmental Agencies. Fact-Finding Bodies with Some Adjudicative Powers. The Independent Regulatory Commission. Special Administrative Tribunals. Each of the administrative courts follows its own rules of procedure and arrives at decision in its own way.

The decisions & Warded by the administrative tribunals are terined as quasi-judicial. Employees of Bharat Bank. Justice mahajan said that the industrial tribunal was exercising a judicial function because it was applying law, not discretion. But because it did not belong to the ordinary judicial system, it might rightly be described as quasi judicial body.

Lord Atkins' test, as it is called, lays down four criteria for the 'quasi judicial' They are :

1) Whenever anybody of persons having legal authority.
2) To determine questions affecting rights of subjects, and
3) Having the duty to act judicially.
4) Act i.e. excess of their authority, their actions are appealable to law courts.

Its importance in administrative adjudication: It is very important to determine whether or not an administrative authority is exercising quasi-judicial powers. This is because of the fact that the law courts can issue a wrist of artionari only if the order impugned is of a judicial or quasi-judicial ebaracter and not otherwise.

Quasi-judicial powers means certain kinds of powers vested in the administrative authorities. But subject to a degree of judicial control as to the manner of exercise of these powers. In purely administrative exercise of powers, this writ cannot be issued.

The finality of decisions in administrative adjudication means that the decisions of the administrative Tribunals are not subject to appeal to the ordinary courts of law. And even if sometimes appeals are allowed, they are from the lower tribunal to the higher one and not to the public law courts. This is manifestly unfair as the practice does not create confidence and faith of the public in the working of these tribunals.

Even if judicial review is available against the decisions of these tribunals, it is so severely restricted that an ordinary citizen, wronged by the decision of the tribunal, finds it extremely difficult to steer clear of these restrictions.

of the Law Commission on administrative adjudication. In view of the increasing litigations between the government and the people and because of the haphazard growth of administrative agencies exercising powers of adjudication, there is a need for suitable remedial measures. The Law commission recommended:

(1) Decisions should be demarcated into :
   (a) Judicial and quasi-judicial, and
   (b) Administrative.
(2) In the Judicial and quasi-judicial decisions, an appeal on facts should lie to an independent tribunal presided over by a person qualified to be a judge of a High Court. He may be assisted by a person or persons with administrative or technical knowledge. The tribunal must function with oneness, fairness and impartiality as laid down by the Franks Committee.
(3) In the case of judicial or quasi-judicial decisions. An appeal or a revision on questions of law should lie to the High Court. Special machinery can, if necessary, be provided to assist the High Court Judge. The suggestions made by the Spens Committee may be adopted in this connection.
(4) In the case of administrative decisions, provisions should be made that they should be accompanied by reasons. The reasons will make it possible to test the validity of these decisions by the machinery of appropriate writs.

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