

Doctrine of Ultra Vires

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What is Doctrine of Ultra Vires?

Delegated legislation is a bureaucratic legislation.

There are different types of control over delegated legislation.

1) Judicial Control

2) Legislative Control

3) Procedural controls like publication and consultation with affected interests.

Doctrine of Ultra Vires is a means of judicial control over delegated legislation.

Grounds of Judicial control over delegated legislation.

The Courts review delegated legislation on a number of grounds such as –

- 1) Violation of the Constitution either by the parent Act or the delegated legislation;
- 2) Violation of the substantive provisions of the Constitution;
- 3) Violation of the mandatory procedural provisions;
- 4) non-conformity with other statutory provisions;
- 5) bad faith in making it;
- 6) arbitrariness.

(1) Constitutionality of the parent Act

In the scheme of judicial control of delegated legislation, the first question which may arise is whether the parent statute under which legislative powers have been delegated to the Administration is constitutional or not for I

f the delegating statute is itself unconstitutional, then the delegated legislation emanating thereunder will also be invalid.

The parent Act may be unconstitutional on several grounds such as -

- (1) excessive delegation;
- (2) breach of a fundamental right;
- (3) on any other ground such as distribution of powers between the Centre and the States.

(2) Constitutionality of delegated legislation

There is a presumption in favour of constitutionality of statutes as well as delegated legislation .

It is only when there is a clear violation of constitutional provision (or of the parent statute, in the case of delegated legislation) beyond reasonable doubt that the Court should declare it to be unconstitutional.

The Court may be asked to consider the question of constitutionality of delegated legislation itself.

It is quite possible that while the parent statute may be constitutional, the emanating delegated legislation may be in conflict with some provisions of the Constitution.

For examples – delegated legislation may be in conflict with a fundamental right guaranteed by the Constitution.

Rules are covered by Article 13(3) of the Constitution.

Dwarka Prasad Laxmi Narain v State of U P AIR 1954 SC 224.

The petitioners were a firm of traders carrying on the business of supplying coal in a coal depot in the city of Kanpur. The respondents – the District Magistrate, Kanpur and the District Supply Officer, Kanpur had imposed various restrictions on the sale of coal , soft coke etc.

These restrictions were under the UP Coal Control Order, 1953 . The UP Coal Control Order, 1953 is a delegated legislation made under the Essential Commodities Supply Act.

The petitioners contended that the respondents had reduced the selling price of the coal so much that it violated their fundamental rights guaranteed under Article 14, 19 (1) (g) of the Constitution.

The issue was whether the Control Order of 1953 was constitutionally valid?

Summary of the above judgment.

Delivered by the Supreme Court of India on January 11, 1954, the judgment scrutinized the *Uttar Pradesh Coal Control Order, 1953*, focusing primarily on clause 4(3).

This clause vested absolute and unchecked discretion in the licensing authorities to grant, refuse, renew, suspend, revoke, cancel, or modify business licenses without proper regulatory oversight.

The Court held that such arbitrary and uncontrolled powers were unconstitutional as they imposed unreasonable restrictions on the freedom of trade and business guaranteed under Article 19(1)(g).

Consequently, clause 4(3) of the Order was declared void for violating constitutional protections, thereby rendering the cancellation of the petitioner's license invalid.

Rashid Ahmed v Municipal Board, AIR 1950 SC 163.

In this case, certain byelaws made by a Municipality were held bad.

The petitioner was engaged in wholesale business of selling fruits and vegetables in the town of Kairana for two years before the enactment of the new byelaws.

The Municipal Board of Kairana made new byelaws which gave the right to sell fruits and vegetables to a single person through the auction.

As a result Rashid Ahmed was deprived of his right under Article 19 (1) (g) for which he filed a case against the Municipal Board.

The Court held that by giving monopoly to a single auctioneer to sell fruits and vegetables in the Municipal market of Kairana the Municipal Board has violated the fundamental right of the petitioner under Article 19 (1) (g).

Air India v. Nargeesh Meerza AIR 1981 SC 1829.

The Supreme Court declared certain regulations pertaining to the service conditions of Air India , an undertaking of the Central Government as discriminatory under Article 14 of the Constitution.

The Air India Regulations 46 and 47 were found discriminatory of Article 14 of the Constitution. Regulation 46 fixed the age of 35 years as age of retirement; on marriage within 4 four years of service or on first pregnancy. Regulation 47 gave arbitrary powers to the Managing Director of Air India to extend the service tenure of their employees on medical fitness ground. No guidelines were laid down to determine medical fitness.

Regulation was against the concept of Gender Equality and Gender Justice. Regulation 47 gave arbitrary and wide discretionary powers to the Executive.

Doctrine of Ultra Vires

Subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature.

Subordinate legislation may be questioned on the ground that it does not conform to the statute under which it is made.

It may be further questioned on the ground that it is inconsistent with the provisions of the Act.

It can be questioned that it is manifestly arbitrary and unjust.

It can be challenged on the ground that it violates Article 14 of the Constitution.

Types of Doctrine of UltraVires

The doctrine of Ultra Vires has two aspects

- (1) Substantive ultra vires, and
- (2) procedural ultra vires.

Substantive Ultravires

Substantive Ultravires means that the rule making authority has no substantive power under the empowering Act so as to make the rules in question

It refers to the scope, extent and range of power conferred by the parent Act to make the delegated legislation.

Briefly speaking the delegate cannot make a rule which is not authorized by the parent statute.

If the subordinate legislative authority keeps within the scope and bounds of the power delegated then delegated legislation is valid. But if it falls outside the scope of the powers, the Courts will declare it invalid.

Delegated legislation to be valid must fall within the four corners of the powers conferred by the statute

All Kerala Online Lottery Dealers Association v. State of Kerala, (2016) 2 SCC

161.

In this case the Supreme Court considered the case of B R Enterprises v State of UP was required to consider whether the State Governments could use their delegated power to only ban online lotteries.

In B R Enterprise v State of UP (1999) 9 SCC 700, the Court had upheld the delegation power of banning lotteries to States by holding that no guidelines were required from the Union legislature when the State was creating a lottery free zone and was neither running lotteries itself nor allowing other states to do so.

Summary of the Judgment

The reason why the Constitution confers the power of regulating lotteries on the Centre is to ensure that there is no discrimination once the power is conferred on the States to impose such a non-discriminatory ban, no further guidelines were required.

This power could be used by the States for a particular kind of lotteries also.

Thus, the total ban of online lotteries by the State of Kerala was viewed as within the permissible criteria of delegation and hence upheld by the Supreme Court.

Conditions for validity of subordinate legislation.

The Supreme Court while dealing with challenge to the validity of subordinate legislation has held that there is a presumption in favour of its constitutionality or its validity.

Subordinate legislation can be challenged under the following grounds-

- A) Lack of legislative competence to make the subordinate legislation;
- B) Violation of fundamental rights guaranteed under the Constitution;
- C) Violation of any provision of the Constitution;
- D) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act;
- E) Repugnancy to the laws of the land; that is any enactment.
- F) Manifest arbitrariness/unreasonableness to an extent where the Court might well said that the legislature never intended to give authority to make such rules.

Procedural Ultra Vires

In the making of delegated legislation, the rule making authority may be required by the parent statute to follow certain procedures such as previous publication, consultation with effected interests, laying before the Legislature etc.

Previous publication of delegated legislation is necessary only when it is prescribed by the statute.

The requirement of previous publication does not give any right to the objections of being orally heard.

A question arises often whether the rules made in disregard of the prescribed procedure are to be regarded as valid or not?. The answer to this question depends on whether the specified procedural requirement is regarded as mandatory or directory.

Mandatory or Directory?

The Courts take the view that while directory procedural norms may be substantially complied with, the mandatory norms of procedure must be meticulously observed. Non-observance of a mandatory procedural norm would make the rules so made *ultravires* and this is known as procedural *ultravires*.

To apply the doctrine of procedural ultra vires, the first question for the Courts to decide is whether the provision in the Act prescribing the procedure for rule-making is directory or mandatory.

Whether a procedural norm is mandatory or directory it is ultimately for a court to decide depending on how much significance is attached by the Court to the prescribed procedure. For example, a provision requiring the rule-making authority to consult some specific body is usually regarded as mandatory.

Condt.

For example, Section 59(4) of the Mines Act, 1952 required that before the draft regulations are published, the draft shall be referred to every Mining Board who should have a reasonable opportunity of reporting on the suitability of the regulations and the expediency of making them.

This is the procedure by way of consulting the Mining Boards as regards the making of the rules under the Mines act.

The Supreme Court has characterized this procedural requirement as mandatory; reference of draft regulations to every Mining Board is a pre-requisite for the validity of the regulations. It is immaterial whether the Board makes a report or not, or sends individual opinion of the members, instead of collective report of the Board.

Case law

Sometimes statutes require certain decisions to be made only after consulting certain designated bodies because it is believed that inputs from those bodies were necessary to arrive in at an informed and just decision.

In *Rakesh K Agarwal v NLSUI*, (2021) 1 SCC 539, the Supreme Court was required to consider whether conducting a common law admission test instead of a separate test was binding on NLSIU?

The fact that this decision was taken without the approval of the Academic Council as required by the NLSUI Act was a major reason for the Supreme Court to hold that the separate test was illegal.

Similarly where the State Governments are directed to make rules with the concurrence of the Central Government, amendments made to the existing rules by a State Government without the concurrence of the Central Government would be bad.

Principle of Natural Justice

In *India Express Newspaper v Union of India*, (1985) 1 SCC 641, the Supreme Court held that subordinate legislation cannot be questioned on the ground of violation of principles of natural justice which is admissible against administrative action.

In *Pune Municipal Corporation v Promoters and Builders Association* (2004) 10 SCC 796, it was held by the Supreme Court that delegated legislation cannot be questioned for violating the principles of natural justice unless the statute itself provides for such a requirement.

Again in *Godawat Pan Masala Products IP Ltd v UOI* (2004) 7 SCC 68., it was held that principles of natural justice require that the effected persons ought to have been given an opportunity of meeting such facts. Accordingly the notification was held to be bad in law.

Exclusion of Judicial Review

At times legislative draftsmen seek to exclude judicial review of the rules made under the statute. For this purpose a law conferring legislative power on the Administration may also contain a provision to exclude judicial review of the rules made under that statute.

A number of formulae was used for the purpose of excluding judicial review of the rules but on the whole it may be correct to say that the Courts reaction to such formulae is not favourable and their endeavor has been to interpret them in such a manner that judicial review of the rules is not completely excluded.

No formula has been evolved as yet which may succeed in barring the Courts completely from reviewing delegated legislation. A formula at times used in the statutes is to say that the rules enacted under the Act would have effect “as if the rules were enacted or included in the Act itself.” This is known “as if enacted clause,”

The End

Thank you for a patient hearing.