

WEEK 8 and 9

DELEGATION LEGISLATION

Meaning of delegated legislation:

Delegated legislation means the exercise of legislative power by an agency that is subordinate to the legislature. This subordinate body acquires the power from the act of the legislature. Power is transferred from the principal lawmaker to the lower body, which may be the executive, cabinet, council of minister, or a specific administrative agency, by the mechanism of delegation.

Types of Delegated Legislation

There are different types of delegated legislation:

1. Statutory Instruments
2. byelaws
3. Orders in Council
4. Court Rule committees
5. Professional regulations.

Reasons for Delegated Legislation

1. Despite the ever-increasing volume of primary legislation, the complexities of governing a sophisticated society (and even a developing society) demands the delegation of some legislative functions to inferior bodies such as ministers and administrative agencies. Parliament does not have the time or resources to enact every single piece of legislation that is needed in the form of primary legislation, which can be fully debated and scrutinized under legislative procedures. The result is delegated legislation- legislation produced by an 'inferior body' which nevertheless has the force of law.
2. Tackling the complexities of modern administration efficiently and efficiently demands an atmosphere of complexity. Parliament has to follow strict legislative procedures to make a single law. Hence, it will be far from being flexible without delegating some of its powers to the executive.

Merits of Delegated Legislation

1. Allow rapid change;
2. Lack of detailed or technical knowledge. E.g. Specific details in Abortion Act, Road Traffic detail
3. Quick response to new developments, e.g. Foot and Mouth outbreaks. The Prevention of Terrorism (Temporary Provisions) Act allows the quick addition of new prohibited groups.
4. Enables minor changes to statutes, e.g. Variations in sentences, approval of motor vehicle changes.
5. Withdrawal or amendment easy.

Demerits of Delegated Legislation

1. Implies that Parliament has insufficient time to scrutinize it. Parliament is not reviewing legislation properly.
2. Sub-delegation of powers a further problem (although not for EU statutory instruments), which causes complexity and confusion.
3. Sheer volume causes complexity – no one can keep abreast of all delegated legislation.
4. Lack of publicity, not known about by the public (and often lawyers).
5. It is undemocratic as most regulations are made by a civil servant or other unelected people, except for local authority bylaws made by elected Councilors.

Control of Delegated Legislation

Delegated legislation is controlled by the Parliament and the judiciary. Overall, the Parliament has control along with statutory committees who take into account the delegated powers made by a Bill. Using the negative resolution procedure statutory instruments can become legislation in either two ways. One of the ways it commences is when after the statutory instruments are written, it is shown to Parliament.

However, if after forty days there are no counter-arguments it instantly becomes law, if there is some concern then it is debated upon. The other procedure is more oppressive as the Parliament does not amend any statutory instruments only one out of ten instruments is passed under this procedure.

REPRESENTATIVE GOVERNMENT

A Representative Government is the type of government in which the citizens or electorate are allowed to elect their leaders i.e. representatives. It is an indirect form of democracy.

Features of representative government

1. **Political equality** (influence)
2. **Majority rule:** The candidate, who gets 50% of the votes plus at least 1, wins. if the election is between more than 2 candidates, then it is narrowed down to the 2 with the highest percentage of votes and then the people vote between them.
3. **Political competition and choice:** voters must have more than one candidate to choose from
4. **Transparency in government**
5. **Political accountability:** the masses have a right to remove an incumbent from office if they are not abiding by the law and/or correctly doing their job.

Conditions for Its Establishment

1. First, the assembly must be freely representative as it is possible to make it.
2. Second, members must be free to discuss issues with complete frankness and to reach a decision without hindrance
3. Third, the assembly's decision must be binding and enforceable.

A truly representative parliament according to J.H. Price involves the following requirements: free elections, a proper register of electors, proper constituencies and real choice of candidates and programs, a politically educated electorate, frequent elections.

For free elections, the voters should have the opportunity of choosing the people they wish to represent them. They must, therefore, have genuine freedom of choice. Any eligible candidate should be allowed to stand for election without hindrance and the voter must feel free to vote for him with no fear of unpleasant consequences. Voting must, therefore, be by secret ballot, in order that the individual voter's decision may never be known to anybody else.

Merits of Representative Government

1. Citizen representation:

With this form of government, the people have the say in who is elected into any form of the government office. These elected officials then make decisions based on what the people want, and in the best interest of the majority of people. They represent the citizens in ways that they could not do for themselves.

2. A Place to turn to:

By having elected officials in all areas of the country, if someone has an issue that they think should be addressed or something that they feel should change, they can easily access their local official. These officials can then help them with their problems and guide them through the steps they need to take to get it to the next level of government.

3. High participation:

Knowing that they have a voice in the government urges people to be more educated and up to date on issues that are happening in the country as well as the world. Each year we see an increase in the number of people showing up to vote for their officials.

Demerits of Representative Government

1. Misplaced trust:

Once the election process is over, the people's voice in government is virtually done. They have to put their faith and trust in the person that they elect to communicate and do things that they've promised to do. This is rarely the case. Many times these elected officials have ulterior agendas that are not in the best interest of the citizens.

2. The majority rules:

The election process of representative government focuses solely on the majority. The minority groups, no matter how significant their issues may be, are rarely represented simply because they do not have the majority of the votes to get an official into office. This causes a feeling of separation with these groups as well as feeling like their issues are not as important.

3. No accountability:

Once elected, officials can do whatever they please, and this often includes breaking campaign promises that they made to be elected in the first place. When things go wrong, or not in favor of the people, there is no repercussion for these officials. The only possible consequence that could come is that they would not be reelected.

ASSIGNMENT

1. What is a delegated legislation and how is it authorized?
2. Outline the different types of delegated legislation.
3. Why is representative government indirect form of democracy?
4. Highlight five (5) features of a representative government.