Subject :

Administrative Law

Paper : 3.2

10 YEARS CELEBRATION +

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1.1. DEFINITION OF DELEGATED LEGISLATION

Delegated legislation is also known as subordinate legislation. In India all forms of legislative activities recognised by law other than the power of parliament are basically subordinate legisla-tions. **Salmond** Defines it as "Subordinate Legislation is that which proceeds from any authority other than the sovereign power, and is therefore dependent for its continued existence and validity on some superior or supreme authority."

Sir Cecil Carr defines "Delegated Legislation is a growing child called upon to relieve the parent of the strain of overwork, and capable of attending to minor matters, while the parent manages the main business. The delegated legislation is so multitudinous that the statute book would not only be incomplete but misleading unless it be read along with the delegated legislation which amplifies and amends it." Plainly speaking, delegated legislation is legislation by the au-thorities other than the legislature. The administrative bodies although have legislative functions of their own but they still exercise certain legislative powers on behalf of and on the authority given by the legislature in discharge of its legislative functions. They acts as delegates of the legislature and exercise only the delegated function.

Justice P.B. Mukerji says that "Delegated Legislation is an expression which covers a mul-titude of confusion. It is an excuse for the legislators, a shield for the administrators and a provo-cation to constitutional jurists. It is praised as a necessity and felt as inevitable in a world where social, economic, technological, and administrative speed outstrips the spacious and traditional legislative ideals and processes.

1.2. REASONS FOR THE GROWTH OF DELEGATED LEGISLATION

There are many factors for the growing popularity of the concept of delegated legislation. Since the beginning of the twentieth century the executive has begun to play a very important role. The previous concept of the governing rule 'Police State' has been changed into a new concept 'Wel-fare State'. Hence it is becoming ever necessary to delegate the legislative powers to subordinate authorities.

The essential factors for the Growth of Delegated Legislation are as Follows :—

i) **Pressure upon Parliamentary Time —** the parliament is mostly busy in solving the social and political problems of the country which may be very big like India. Moreover the affairs of the modern state are increasing day by day. The parliament is finding it difficult to discuss in detail on all the matters. Therefore for better administration, delegated legis-lation has become important.

ii) **Technicality —** the members of the parliament who are the legislatures may sometime lack the technical knowhow required for a particular administrative exigencies. Therefore the legislative power may be conferred on experts to deal with the technical problems.

iii) **Flexibility —** the legislature works in a certain pattern and their procedures and amend-ments are very slow. Hence through delegated legislation the executive can meet the situ-ations effectively and in a timely manner.

iv) **Experiment —** on the contrary to supreme legislation which is very rigid the delegated legislation is very flexible.

v) **Emergency —** during the period of emergency the nation requires immediate steps to prevent the disturbances. Therefore under such circumstances, the executives are empow-ered to meet them.

vi. **Speediness —** the speediness is one of the primary reasons for the growth of delegated Legislation. It does not require time, voting etc. for bringing the legislative action into force.

1.3. DEMERITS OF DELEGATED LEGISLATION

The following are the defects of delegated legislation and they are as follows :—

i) **Codification** — Codification is a very difficult task in case of delegated legislation. Sev-eral rules, notifications, bye-laws etc. are being formulated on a regular basis. Hence it is very difficult to get the copies of those delegated legislative activities.

ii) **Coordination** — supreme legislation is the product of the work of the parliament whereas delegated legislation is the product of several departments. Therefore sometimes there is lack of coordination between all these bodies and then the problem arises.

iii) **Rigid Bureaucracy** — Not only in India but also in all democratic countries, rigid bu-reaucracy is a vice of administration. The delegated legislation is useful but at the same time it should be kept in mind that it is prepared by bureaucrats. They may incorporate certain clauses intentionally, or negligently which would harm the interest of the general public.

iv) **Debate** — the Supreme legislation is the result of the debate between the ruling party and opposite party members. It is always the result of the majority decision. The defects if any shall be rectified during the discussion, debate and voting process. In case of delegated legislation there are no such chances.

v) The delegated legislation **cannot declare an act as Ultra Vires**.

1.4. SCOPE AND LIMITS OF DELEGATED LEGISLATION

Regarding the scope of delegated legislation the following points are very important :—

a. **Commencement —** the entire act is made by the supreme authority, only it permits the delegated authority to bring it in force a fixed date.

b. **Ancillary Functions —** the supreme authority makes the law, which is full and final, but leaves some ancillary functions to the subordinate authorities.

c. **Inclusion —** here first an act is made by the parliament then it is extended to a certain are for operation then it delegates the power to extend to the executive, with a condition that the executive may extend to the remaining parts if it is pleased with the circumstances.

d. **Exclusion —** here first an act is made by the parliament then it is extended to a certain are for operation then it delegates the power to the executive and empowers it to remove some portion form the operation of the act.

e. **Suspension —** the parliament may empower the executive to suspend the operation of some or all of the provision of the concerned act.

f. **Application of existing laws —** the executive is empowered by the parliament to extend certain existing laws to new areas.

g. **Modification —** modification is complete change of provisions and it cannot be del-egated but it can be done by the parent act, if the circumstances are necessitated in rarest of rare cases only.

h. **Removal of difficulty clause —** sometimes the parent act empowers the executive to modify certain sections of the parent act, and they are called removal of finality clause.

i. **Punishments —** the parent act may delegate the administrators to legislate the punish-ment sections, or to decrease the punishment.

j. **Framing of rules —** sometimes the parliament asks the executive to frame rules for an act and to submit it in draft form, so that it can discuss vote and decide and bring it in the statute shape.

Regarding the limits of delegated legislation the following points is required to be remembered :—

i) The constitution does not impose any restrictions regarding the delegation of legislative powers but there are certain **essential legislative functions** that cannot be delegated. This principle is formed

by precedents and is now a well-settled principle. The case of ***In Re Delhi Laws Act*** case is an example of such a principle and its application under the Indian conditions.

ii) **Retrospective effect —** Parliament can make laws that may operate in the backward direction to the dates that predates the introduction of the concerned act. That is to say those acts have retrospective effect. This important legislative feature cannot be delegated.

iii) **Future acts —** to legislate the future acts is an essential feature of the legislature which cannot be delegated to the executive.

iv) **Taxing statutes —** imposition of taxes on the citizens is a very important feature and function of the legislature and this cannot be delegated to subordinate authorities.

v) **Offences and penalties —** imposition of penalties is such subordinate authorities.
deciding an act as an offence and fixing the liability and an activity of the legislature that cannot be delegated to

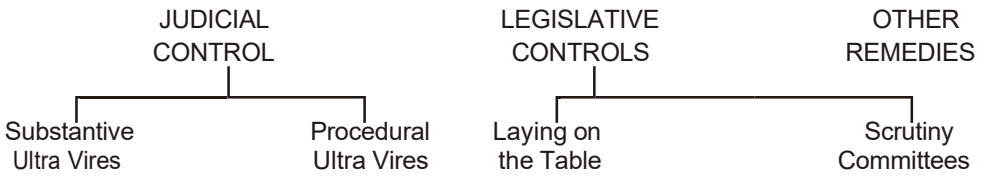
Exemption — Exemption of certain sections from the statute means a change from the parent act. Exemption is also an essential legislative feature of the parliament and it can-not be delegated to the executive.

VI) **Repeal of law —** Repeal of law is an essential legislative function which cannot be delegated to administrative authorities.
vii)

1.5. CONTROL OF DELEGATED LEGISLATION

The following table shows the control over delegated legislation.

CONTROL OF DELEGATED LEGISLATION



Substantive Ultra Vires

1. Where the Parent Act is unconstitutional
2. Inconsistency
3. Where delegated legislation is unconstitutional
4. Unreasonableness
5. Mala Fides
6. Sub-Delegation
7. Exclusion of Judicial review
8. Retrospective Effect

Procedural Ultra Vires

Publication

Consultation

Laying on the Table

1. Informal Laying
2. Laying linked with postponement
3. Negative Resolution procedure
4. Laying in draft
5. Positive Resolution Procedure
6. Laying with operation deferred until Approval
7. Affirmative Resolution
8. Memorandum

Scrutiny Committees

1. Lok Sabha Committee on Subordinate Legislation
2. Rajya Sabha Committee

Parliamentary control in India over delegation In India, the question of control on rule-making power engaged the attention of the Parliament. Under the Rule of Procedure and Conduct of Business of the House of the People provision has been made for a Committee which is called 'Committee on Subordinate Legislation'. The First Committee was constituted on IstDecember, 1953 for

1. Examining the delegated legislation, and
2. Pointing out whether it has-
3. Exceeded or departed from the original intentions of the Parliament, or
4. Effected any basic changes.

Originally, the committee consisted to 10 members of the House and its strength was later raise to 13 members. It is usually presided over by a member of the Opposition. The Committee

1. Scrutinizes the statutory rules, orders. Bye-laws, etc. made by any-making authority, and
2. Report to the House whether the delegated power is being properly exercised within the limits of the delegated authority, whether under the Constitution or an Act of Parliament. It further examines whether

1. The Subordinate legislation is in accord with the general objects of the Constitution or the Act pursuant to which it is made;
2. It contains matter which should more properly be dealt with in an Act of Parliament;
3. It contains imposition of any tax
4. It, directly or indirectly, ousts the jurisdiction of the courts of law;
5. It gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly confer any such power

Parliamentary control of delegated legislation is thus exercised by :—

1. Taking the opportunity of examining the provisions providing for delegation in a Bill, and
2. Getting them scrutinized by parliamentary committee of the Rules, Regulations, Bye-laws and orders,

When the Bill is debated, the issue of necessity of delegation, and the contents of the provisions providing for delegation, can be taken up. After delegation is sanctioned in an Act, the exercise of this power by the authority concerned should receive the attention of the House of the Parliament. Indeed, it is this later stage of parliamentary scrutiny of the delegated authority and the rules as framed in its exercise that is more important. In a formal sense, this is sought to be provided by making it necessary that the rules, etc., shall be laid on the Table of the House. The members are informed of such laying in the daily agenda of the House. The advantage of this procedure is that members of both the Houses have such chances as parliamentary procedure.

1.6. DIFFERENCE BETWEEN DELEGATED & CONDITIONAL LEGISLATION

DELEGATED LEGISLATION	CONDITIONAL LEGISLATION
In this the subordinate authorities are delegated and empowered to legislate.	In this the subordinate authorities are not empowered to legislate.
There is no such condition or contingency.	It is contingent and conditional. Upon reaching a certain point of time the readymade act is put into force.
The subordinate authorities use their own discretion in making the legislation.	The subordinate authorities here cannot use their discretionary power. It is their duty to apply or stop the law after fact finding.
The apex court in the case of ***Hamdard Dawakhana vs. Union of India*** pointed out the distinction between the two as "Delegated legislation involves delegation of rule making which constitutionally may be exercised by the administrative agent ..... "	Here in the same case it was opined by the apex court that "Conditional Legislation delegates power is that of determining when a legislative declared rule of conduct shall become affective."
It is also called as Subordinate Legislation.	It is also called as "Contingent Legislation".

2.1. CLASSIFICATION OF ADMINISTRATIVE ACTION

Administrative action can be classified into the following heads which are as follows:-

I. Administrative
II. Judicial
III. Legislature
IV. Executive.

EXECUTIVE :

Executive is also known as administrator. The government departments and their officials or officers under the Ministers etc. are all part of the executive. The executive is charged with putting into effect the laws enacted by the legislature, subject to the judgements and orders of the judi-ciary. For example executive has the power to issue licences and permits. People like the Munici-pal Commissioner, the revenue Officer, the Labour Inspector are all part and parcel of the Execu-tive.

Under Article 53 (1) of the Constitution of India the executive power is vested in the president. However this is only in legal sense as in real practice the actual real executive is the prime minister as the president acts on the advice of the prime minister and his council.

In ***District Collector and Another vs. B. Suresh and others*** the A.P. state government took a policy decision to bifurcate fair price shops and reduce the number of ration cards each should hold under the A. P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. B. Suresh and other existing fair price shop dealers challenged it. The Supreme Court held that the decision taken by the A. P. state government was of a policy decision and was an administrative action.

QUASI-JUDICIAL FUNCTIONS :

Executive powers or functions which involve the exercise of a discretion and the making of a decision in a judicial manner as for example where a minister makes an order after consideration of the findings of an inquiry which involves the hearing of evidence and principles of natural justice. An illustration may be given in this connection that the Land Acquisition Officer acquires Land from the Land owners. It is an administrative action up to this stage. The Land owners apply to the Land Acquisition Officer to enhance the rates of the lands which has been fixed by him. He has to pay attention to their words and has to hear their objections, arguments, and then only he should come to proper decision. It is a quasi-judicial function.

In the case of ***A. K. Kraipak v. Union of India***. The Apex court held that the selection of candidates is an administrative action. The principles of natural justice shall also be applicable to the administrative action.

JUDICIAL FUNCTIONS :

The essential characteristics of judicial Functions are as follows :—

a. There must be two parties
b. There must be a dispute pertaining to the question of fact or question of law or both.
c. Rules of procedure, viz. Indian Evidence Act, the Civil Procedure Code etc. are strictly followed in the courts.
d. The parties shall submit their evidences and arguments before the courts.
e. he courts perform their judicial functions within their territorial or other specified juris-dictions.
f. Advocates are permitted in judicial proceedings.
g. The evidence is taken on oath.

In certain cases minister, administrative tribunal etc. shall have to perform the judicial func-tions. In such circumstances they are not fully clothed with judicial authority but are clothed with quasi-judicial authority. Quasi-judicial authorities should perform their functions as far as pos-sible like judicial authorities. Except the rules of procedure, remaining all terms of judicial authori-ties are applicable to quasi-judicial authorities also.

2.2. DIFFERENCE BETWEEN JUDICIAL & QUASI-JUDICIAL FUNCTIONS

JUDICIAL FUNCTIONS	**QUASI-JUDICIAL FUNCTIONS**
As *lis inter parties* (a dispute between two parties) is an essential characteristics feature of judicial function.	As *lis inter parties* is not an essential characteris-tic feature of quasi-judicial functions.
The evidence shall be taken on oath.	The evidence is not taken on oath.
The rules of evidence shall be taken on oath. not strictly followed.	The rules of evidence, CP.C, C.R.P.C etc. are
The court fee, as per rules, is required to be paid.	The court fee is not required to be paid.
The doctrine of precedents, stare decisis etc. Shall strictly be followed.	These doctrines are not followed here strictly.
No man a judge in his own case. This maxim is strictly followed here as the court is the real forum of judicial proceedings.	It is only a trapping of a court, but in reality it is not a court.

2.3. DIFFERENCE BETWEEN ADMINISTRATIVE & LEGISLATIVE FUNCTION

ADMINISTRATIVE FUNCTION	**LEGISLATIVE FUNCTION**
1. The executive has only delegated legislative powers.	1. The parliament has the supreme legislative power.
2. The legislative power of executive is very flexible.	2. The legislative power of parliament is rigid.
3. The legislation made by executive supplement the supreme legislation, but it cannot supplant it.	3. The legislation made by parliament and state legislatures always superior than the administrative legislation.
4. Administrative powers can easily be delegated and also sub-delegated.	4. In rarest cases only sub-delegation of legislative powers can be made by parliament.
5. All administrative actions need not be published.	5. All legislations shall necessarily be published.

2.4. DIFFERENCE BETWEEN ADMINISTRATIVE FUNCTION & QUASI-JUDICIAL FUNCTION

ADMINISTRATIVE FUNCTION	**QUASI-JUDICIAL FUNCTION**
An administrative action ordinarily cannot be challenged before the court.	A quasi-judicial decision can be challenged before the court, and can be rectified by the writs of *Certiorari, Prohibition, Mandamus and Habeas Corpus.*
It decides the matter subjectively	It decides the matter objectively.
An ordinary administrative function does not require such duty to act judicially.	An administrative officer must have a duty to act judicially. Then only it becomes quasi-judicial function.
It is not mandatory to give recorded reasons for every administrative action.	A quasi-judicial decision should give reasons.

3.1. Remedy of Writ Jurisdiction

The basic definition of writ is that it is an order issued by a court requiring that something be done or giving authority to do a specified act. Hence forth the concept of writ states that writ is a written document under the seal of the court issued to a person or authority including Government in appropriate cases commanding them or any of them to do or forbear from some act. The usefulness of writs has been in UK for a long time. The term writ is derived from the Latin word "breve" which means a small letter and the German word "brief".

Writ is thus a kind of written command or formal order directed by the court hereby the court directs or enjoins a person or persons to whom it may be addressed to do or refrain from doing something specified therein. The constitution of India provides for the safeguard of the fundamen-tal rights of the citizens and in certain its non-citizens also wherein under article 13 if any law is violating fundamental rights then it will be struck down under article 13 by the Supreme Court and the High Court. However before article 13 could operate it is the right of the citizens and some-times non-citizens too that if their fundamental right is violated then they can approach the supreme court and high court under Articles 32 and 226 respectively to vindicate or correct the wrong done to their fundamental right. Article 32 is itself a fundamental right and its importance can be gauged from this fact alone. Article 32 and 226 provide for Writ jurisdiction.

Generally writs should be and can be issued against those bodies that are falling under the ambit of Article 12 of the constitution of India. But under certain circumstances writs can be issued against private individuals also like in the case of writ of habeas-corpus. Hence writs are issue against the government, any person or authority in India varying from case to case.

The writ jurisdiction of the Supreme Court can be broadly classified under the following heads:—

I. Territorial jurisdiction.

II. Subject-matter.

III. The power of supreme court to issue writs concurrent that of high court IV. Nature of the right of remedy under Article 32.

The writ jurisdiction of the high court can be broadly classified into four heads :—

a. Territorial jurisdiction

b. Subject-matter.

c. Discretionary nature of the remedy which means that the issuance of writs by the high court's solely depends upon its discretion.

d. Relief cannot be prohibited by the statute.

3.2. DIFFERENCE BETWEEN ARTICLE 226 & 32

ARTICLE 226	ARTICLE 32
Article 226 empowers every high court to issue writs.	Article 32 empowers the apex court or the supreme court to issue writs.
Article 226 is not a fundamental right.	Article 32 is a fundamental right.
The high courts can issue writs according to its discretionary power.	The applicant can approach the supreme court as a right, being it a fundamental right.
High court under Article 226 can issue writs for other purposes also.	Supreme Court under this article can issue Writs only for the enforcement of fundamental rights.
Its territorial jurisdiction is quiet limited.	Its territorial jurisdiction extends to the entire country.

3.3. Writ of Habeas Corpus

A writ of Habeas Corpus is in the nature of an order calling upon the person who has detained another, to produce the latter before the court in order to let the court know on what ground he/she has been confined and set him/her free if there is no legal justification for the imprisonment.

The words 'Habeas corpus' literally means "you may have the body". The writ may be addressed to any person whatever, an official or a private person who has another person in custody and non-adherence is met with punishment for the contempt of court. A general rule of filling the petition is that a person whose right has been infringed must file a petition. But Habeas corpus is an exception to that. This is because, a person detained may be severely handicapped. So any-body on behalf of the detainee can file a petition. In ***Sunil Batra v. Delhi Administration II*** the court initiated the proceedings on a letter by a co-convict, alleging inhuman torture to his fellow convict and herein the court treated the letter as a petition for habeas corpus. In ***Manubai Rati Patel v. State of Gujarat*** the apex court observed that, the writ of habeas corpus is a weapon for protection of individual liberty through judicial process.

3.4. WRIT OF MANDAMUS

It is a form of a command given to the inferior court, tribunal, board, corporation, or any administrative authority or a person for the performance of specific duty fixed by law. Mandamus is neither a writ of coursenei ther a writ of right in England it is provided whereby right is affected by failure of public dutyand no other remedy are available for the victim. It is therefore clear that the Writ of Mandamus will not be issued unless the applicant has a legal right for the performance of that particular legal duty of a public nature and the party against whom the writ is sought is bound to perform that duty.

Only the person whose legal right is violated may apply. In Charanjit Lal v. UOI, the supreme court held that in case of incorporated company, application must be initiated by company itself an individual shareholder may apply if infringement of company's rights creates violation of indi-vidual right also.

The grounds for the issuance of this Writ are :—

- The petitioner has a legal right.
- There is violation of that legal right.
- Violation due to non-performance of some public duty by authority.
- Petitioner demanded performance of the duty but the authority refused to act.
- That there is no effective legal remedy.
- When there is the case to force the authority to perform mandatory duty of deciding.
- Where the public authority exceeds its power then protection of human rights is necessary.
- Where the exercise of discretion is made unlawfully.
- Where there has been abuse of power.

3.5. WRIT OF QUO WARRANTO

The term quo-warranto means "by what authority". Whenever a private person illegally occu-pies a public office the writ of quo-warranto is applied. The essential conditions for writ of quo-warranto are —

1. The office against which the writ is to be issued must be a public office.
2. It must be created by statute or constitution.
3. It must be of a substantive character.
4. The holder of the office must not be legally qualified to hold the office in accordance with law.

The Writ of Quo-Warranto lies in the following scenarios :—

- A writ of quo-warranto can be issued by the courts that the holder of the office requires to show the legal capacity to hold the office and very carefully after getting fully satisfied the court may issue such writ of quo-warranto.
- If there is breach of oath of office then in that case the writ of quo-warranto cannot be issued.
- A writ of quo-warranto is never issued as a matter of course and the court has the discre-tion to decide on the issuance of the writ depending upon the case.
- It is to be noted that it is to be issued primarily in the interest of the public in general.
- The writ calls upon the person holding the office to show under what authority he holds the office.

In ***P. L. Lakhanpal v. Ajit Nath Ray***, Chief Justice of India, SC held that the scope and power of the high court to issue writ of quo-warranto under article 226 of the constitution is not wider than it is in England. The courts in this country have followed the principles including limitations that have been there from England.

3.6. WRIT OF PROHIBITION

The writ of prohibition is writ issued by the Supreme Court or a high court to an inferior court forbidding the latter to continue proceedings therein in excess of its jurisdiction. It is a writ to primarily prevent an inferior court from exceeding its jurisdiction, or acting contrary to the rule of natural justice. The term inferior court here means any special tribunal, commissions, magistrates and officers who exercise judicial functions. The writ can be issued only when the proceedings are pending in a court if the proceeding has matured into decision, writ will not lie. The writ is prima-rily issue because :—

- ✧ Such inferior court is exceeding its jurisdiction.
- ✧ Such inferior court is acting in contravention of law.
- ✧ It is different from the writ of mandamus in the sense that while mandamus commands activity, prohibition commands inactivity. Further while mandamus is available not only against judicial authorities but also against administrative authorities, but this writ is is-sued only against judicial or quasi-judicial bodies.

3.7. WRIT OF Certiorari

It is a writ of a higher authority to a lower court to send all the documents in a case to it so the higher court can review the order of the lower court. Superior courts issue writs of certiorari to review decisions which inferior courts have already made. The writ of prohibition is the counter-part of the writ of certiorari which too is issued against the action of an inferior court. This writ is issued in the following grounds :—

✧ Want or excess of jurisdiction ✧ Fails to exercise its jurisdiction

✧ Violation of procedure required to be followed ✧ Violation of principle of natural justice.
✧ Error of law apparent on the face of record. ✧ Finding of fact based on no evidence.
In ***U.P. Sales Tax Service Assn. v. Taxation Bar Assn.*** (1995) 5 SCC 716, the apex court held that Writ of Certiorari can be issued when it proceeds to act in contravention of the Funda-mental Rights.

4.1. DROIT ADMINISTRATIF

French administrative Law is known as Driot Administratif which signifies a body of rules which determine the organization, powers and duties of public administration. And regulate the relation of the administration with the citizen of the country. Napoleon Bonaparte was the founder of Driot Administratif. The main features of Driot Administratif are as follows :—

◆ Those matters concerning the state and administrative litigations which fall within the jurisdiction of administrative courts and cannot be decided by ordinary courts.

◆ Those deciding matters concerning the state and administrative litigation, rules as devel-oped by the administrative courts are applied.

◆ If there is any conflict of jurisdiction between ordinary courts and administrative court, it is decided by the tribunal des conflicts.

◆ Council d' Etat is the highest administrative court.

Dicey however opposed Driot Administratif and that's the reason why we find the concept to be alien in English law.

4.2. SEPARATION OF POWERS

The doctrine of separation of powers is very old as its origin can be traced to British philoso-pher Locke who coined the term separation of powers. But it was French jurist, Montesquieu who for the first time gave it a systematic and scientific formulation in his work called "the spirit of the laws." According to his view if the executive and the legislature are the same person or body of person, there would be a danger of the legislature enacting oppressive laws for attainting its own end. The value of the doctrine lies in the fact that it seeks to preserve human dignity by avoiding the concentration of powers in one person or body of persons.

In the United States of America the doctrine of separation of power is a fundamental and valid component of their constitution. Its object being to preserve political safeguards against the capri-cious exercise of powers, and it also incidentallylays down the broad lines of an efficient division of functions.

In India this doctrine cannot claim any historical background. This doctrine is not specifically mentioned anywhere in the constitution but still by the words of article 50 one finds that the constitution has talked the need of the separation of powers wherein the judiciary has been told to be separate and independent from the executive. Nevertheless the functional separation of the three different agencies has not been ignored. The executive power is vested in the president of India who enjoys certain legislative powers also like the issuance of ordinances having the force of law under Article 123 of the Constitution of India. He can also make laws for the state when the emergency of Article 356 is in operation. Moreover the president although acts in the aid and advice of the council of ministers. Moreover personnel separation is also absent in India. No individual can be a member of the council of Ministers for more than six months unless he is also member of either House of Parliament under Article 75(5).

Raj Naraian vs. Indira Gandhi is a leading case regarding this doctrine. The Allahabad high court criticized the then Prime Minister Indira Gandhi for the misappropriation of her power as Prime Minister and quashed her election in Rai Berailly.

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