

## ROLE OF PARLIAMENT AND DELEGATED LEGISLATION IN PAKISTAN

**Tahir Farooq**

*Draftsman, National Assembly of Pakistan,  
PhD (Scholar) International Islamic University, Islamabad*

Email: [tahirfarooq81@hotmail.com](mailto:tahirfarooq81@hotmail.com)

**Dr. Ambreen Abbasi**

*Assistant Professor (Law)  
Faculty of Shariah & Law  
International Islamic University, Islamabad.*

Email: [ambreen.abbasi@iiu.edu.pk](mailto:ambreen.abbasi@iiu.edu.pk)

### **Abstract**

*Delegated legislation refers to law made by an authority other than the primary legislature, under powers conferred by an enabling or parent Act. Its necessity stems from the increasing complexity of governance, where legislatures often lack the time, technical knowledge, or procedural flexibility to address every detail of modern administrative regulation. Delegated legislation thus offers a pragmatic solution, allowing the executive or administrative agencies to fill in the legislative gaps while maintaining overall parliamentary oversight.*

*Parliament plays a fundamental role in this process, not only by granting legislative authority through enabling provisions but also by supervising how such powers are exercised. The mechanisms for scrutiny, such as legislative committees and affirmative or negative resolution procedures, are discussed in light of their effectiveness in preserving legislative intent and public interest.*

*This study aims to provide a clear and comprehensive understanding of delegated legislation, focusing on its purpose, complexity, and the safeguards that ensure its proper use within democratic systems. The first part examines the concept and legal basis of delegated legislation, while the second part analyzes the role of parliament in overseeing and controlling its use. The study concludes by underscoring the need for a careful balance between administrative flexibility and democratic accountability to ensure the rule of law is upheld.*

**Key Words:** *Arbitrary, Delegated Legislation, Discretion, Parliament.*

### **1. Introduction**

Delegated legislation forms an essential component of administrative law. In its broadest sense, legislation refers to the formulation, enactment, amendment, or repeal of legal rules by a competent authority. In a constitutional democracy, this function is ordinarily vested in the legislative branch of the state, which serves as the primary law-making authority. The legislature enacts laws that govern matters affecting the general public and is regarded as the principal source of legal norms within the legal system. Statutes passed by the parliament are commonly referred to as primary or principal legislation.<sup>1</sup>

However, the growing complexity of modern governance has necessitated the delegation of certain legislative functions to subordinate authorities. Delegated legislation, also known as subordinate or secondary legislation, refers to rules,

regulations, by-laws, or orders made by an authority other than the legislature, but under powers conferred by an Act of Parliament. It represents an exercise of legislative power by entities that operate under the supervision and within the framework defined by primary legislation. These subordinate bodies, which may include government departments, ministers, or local authorities, derive their authority from enabling statutes that outline the scope and limits of the delegated power.<sup>2</sup>

Thus, delegated legislation exists as a legally sanctioned and functionally essential extension of the legislative process, enabling more detailed and flexible regulation while preserving the supremacy of Parliament.

While the Constitution of a state vests the legislature with the authority to enact laws on matters enumerated within its framework, it concurrently imposes limits to prevent arbitrary or excessive use of such powers. The exercise of legislative authority must therefore be carried out with due diligence, restraint, and under constitutional principles. In a similar vein, when an enabling Act confers rule-making powers upon the executive or subordinate bodies, such delegation must operate strictly within the boundaries prescribed by the parent legislation.

In well-established democracies, there exist institutional mechanisms to scrutinize the validity and propriety of delegated legislation. These mechanisms ensure that subordinate legislation does not exceed the scope of authority granted by the legislature and remains consistent with the intent and purpose of the enabling statute.

This study further explores the critical role played by the judiciary in the interpretation and oversight of delegated legislation. Courts serve as constitutional guardians by reviewing whether delegated legislation is *intra vires*, within the lawful scope of the delegated authority, or *ultra vires*, beyond it. Through judicial interpretation, the courts uphold legal certainty, prevent executive overreach, and safeguard fundamental rights, thereby reinforcing the principle of separation of powers in a constitutional democracy.

## **2. Need and development of the Delegated Legislation**

The concept of delegated legislation has witnessed increasing relevance in recent decades, largely due to the practical demands of modern governance. Several compelling factors contribute to the growing reliance on delegated legislative powers. Situations such as external aggression, internal disturbances, breakdowns in public order, industrial strikes, or other emergencies often require swift and immediate regulatory responses. In such circumstances, the Legislature, as a deliberative and collective body, may not be in a position to convene at short notice or pass detailed legislation within limited timeframes.

To address these contingencies effectively, it becomes necessary to confer upon the executive certain legislative powers in advance. Through delegated legislation, the Government is legally empowered to formulate appropriate rules, regulations, or orders that can be promptly enforced in response to emergent situations. This arrangement ensures administrative flexibility while maintaining legal continuity and constitutional oversight. It also reflects the functional necessity of enabling laws that strike a balance between legislative control and executive efficiency in times of urgency.<sup>3</sup>

Although numerous jurists have advanced various theoretical justifications for the necessity and constitutional validity of delegated legislation, certain grounds have

received formal recognition by the superior judiciary of Pakistan. The Supreme Court of Pakistan, in its landmark judgment in *Taraqiati Bank Limited v. Said Rehman* (PLD 2010 SC 695), articulated the principal considerations that justify the delegation of legislative powers to the executive and subordinate authorities.

In this case, the Court acknowledged that the complexities of modern governance, coupled with the increasing volume and technicality of legislative matters, make it impractical for the Legislature to enact exhaustive laws on every subject. The Court further recognized the need for administrative flexibility, especially in situations that demand prompt regulatory intervention, such as emergencies or sector-specific matters requiring technical expertise.

Accordingly, the Supreme Court upheld the view that delegated legislation is not only constitutionally permissible but functionally essential, provided it remains within the scope of the enabling statute and does not violate the principles of constitutionalism, legality, and judicial oversight. This judicial endorsement reinforces the legitimacy of delegated legislation within Pakistan's constitutional framework while ensuring that it remains subject to legal checks and balances. The court further observed that the following are the main factors for the delegation of legislative functions,

- i. Pressure on Parliamentary time,
- ii. The technicality of the subject matter necessitates prior consultation and expert advice on the interests concerned,
- iii. Need for flexibility is a fact, because it is not possible to foresee every administrative difficulty that may arise to make adjustments that may be called for after the statute has begun to operate.

While adjudicating questions concerning the delegation of legislative functions, courts have consistently emphasized three key considerations.

First, there exists a consensus in constitutional jurisprudence that the core legislative power, particularly the essential function of determining legislative policy, cannot be delegated by the legislature. This principle is rooted in the doctrine of separation of powers and the requirement that elected representatives retain ultimate control over law-making.<sup>4</sup>

Second, although judicial decisions often cite precedents from other jurisdictions, they sometimes do so without thoroughly examining the precise terminology or legal reasoning employed. Despite this, courts have generally upheld delegated legislation, particularly when it pertains to procedural or administrative matters.<sup>5</sup>

Third, there is an observable judicial trend toward justifying delegated legislation on grounds of necessity. Even where such delegation appears inconsistent with the express language, or at least the spirit of the Constitution, courts have, at times, validated it given practical exigencies and governance realities. This evolving judicial approach reflects a pragmatic balancing between constitutional principles and the functional demands of modern state administration.<sup>6</sup>

### 3. Control of Parliament Over Delegated Legislation

The question of control over delegated legislation has generated divergent views within legal and academic circles. One widely accepted perspective holds that where Parliament delegates a portion of its legislative authority, it must also establish effective checks and balances to regulate the exercise of that delegated power. Such oversight is essential to uphold democratic accountability and prevent executive overreach.<sup>7</sup>

In Pakistan, as in many other jurisdictions, delegated legislation has become a practical necessity due to the increasing complexity of governance and the need for timely administrative responses. While the constitutional authority to make laws rests primarily with Parliament, the framework of governance permits the Executive to enact rules, regulations, and bylaws under enabling statutes. This allows the Government to respond to emerging situations without undergoing the often lengthy and deliberative process of primary legislation.<sup>8</sup>

Thus, while the delegation of legislative powers is justified by the need for administrative efficiency and practical governance, it equally requires strong parliamentary and judicial oversight to ensure that these powers are exercised within constitutional limits. Recently, the Supreme Court of Pakistan, in a landmark judgment, affirmed that delegated legislation holds equal legal importance to laws enacted directly by Parliament. The Court clarified that delegated legislation, when made under a valid enabling statute, carries the full force of law, provided it remains within the boundaries set by the parent Act and respects constitutional principles. This ruling highlights the delicate balance between effective lawmaking and the preservation of constitutional supremacy.

“The Rules of Business are binding on Government and any deviation would render the transaction of business illegal. Rules were framed to achieve a certain objective and to achieve this within the channels relating to the devolution and flow of statutory authority, in the absence of compelling reasons to the contrary, all rules were, and should be considered to be mandatory and mind.”<sup>9</sup>

In Pakistan, Parliament has been empowered to scrutinize delegated legislation to evaluate the validity of the same. Rule 201, sub-rule (4) of the National Assembly Rules of Procedure and Conduct of Business provides, “a committee may examine the expenditures, administration, delegated legislation, public petitions and policies of the ministry concerned...”<sup>10</sup>

Similar provision, empowering the standing Committees of Senate, was also provided in Rule 166(4)<sup>11</sup>, which provides empowerment of committees. The Senate of Pakistan has taken the lead and amended rules providing the constitution and functions of the Committee on delegated legislations, these are rules 172C and 172D respectively<sup>12</sup>, which are as under:

**“172C. Committee on Delegated Legislation. - There shall be a Committee on delegated legislation to scrutinize and report to the Senate of Pakistan that whether the powers to make rules, regulations, bye-laws, schemes or other statutory instruments conferred by the Constitution or delegated by the Parliament have been timely and properly exercised within such conferment or delegation, as the case may be.**

**172D. Functions.** - *The functions of the Committee on Delegated Legislation shall be the following or such other as may be assigned to it from time to time: -*

- (i) *The Committee shall propose legislation and formulate policy for laying of each rule, regulation, bye-law, scheme or other statutory instrument (hereinafter referred to as the „Rules“) framed in pursuance of the Constitution or the legislative functions delegated by the Parliament to a subordinate authority.*
- (ii) *When the rules are so laid, the Committee shall, in particular, consider: -*
  - (a) *Whether the Rules are in accordance with the provisions of the Constitution or the Act of Parliament pursuant to which these are made;*
  - (b) *Whether the Rules contain matter which, in the opinion of the Committee, should more properly be dealt with in an Act of Parliament;*
  - (c) *Whether the Rules contain the imposition of taxation;*
  - (d) *Whether the Rules directly or indirectly bar the jurisdiction of the Court;*
  - (e) *Whether the Rules give retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;*
  - (f) *Whether the Rules appear to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which these are made;*
  - (g) *Whether there appears to have been an unjustifiable delay in publication or laying the Rules; and*
  - (h) *Whether for any reason, the form or purport of the Rules requires any elucidation.”*

The Committee on Delegated Legislation was officially established in the Senate of Pakistan following amendments to the Rules of Business in 2015, notably with the introduction of Rule 172A.<sup>13</sup> The committee’s intended purpose is to act as a parliamentary watchdog, scrutinizing rules, regulations, and statutory instruments issued by various government departments and ministries. Its role is to ensure that these delegated legislations remain within the scope of the authority granted by their parent acts and conform to constitutional requirements.

Despite being formally constituted and active since 2015, the committee’s practical impact has been minimal. There has yet to be a landmark case or decision where it has exercised its powers decisively to declare any departmental rule or ministerial order unconstitutional, ultra vires, or inconsistent with the parent legislation. No reported instance shows that the committee has formally challenged or set aside any delegated legislation on these grounds. This lack of assertive action or precedent suggests that, in practice, the committee has struggled to assert its authority or influence over the executive’s delegated law-making.



A perusal of published reports further reveals that the committee has largely assumed a recommendatory role rather than one with binding authority.<sup>14</sup> Its recommendations, while noted, have seldom led to concrete changes or the withdrawal of questionable delegated legislation. This tendency to act mainly as an advisory body limits its effectiveness and raises questions about its capacity to serve as a genuine check on executive power.

The lack of significant enforcement actions underscores important concerns about the committee's effectiveness as an oversight body. Although a framework for parliamentary review exists, the committee has yet to prove it can serve as a strong check on executive overreach. This gap between the committee's formal mandate and its actual results may be caused by factors such as limited political will, procedural constraints, or insufficient resources. Ultimately, this situation emphasizes the need for stronger institutional support and commitment to enable the committee to better fulfill its constitutional role.

The legislature, as the supreme law-making body under the Constitution, holds the exclusive authority to determine the extent and manner in which it delegates its powers.<sup>15</sup> It may choose to codify the limits of such delegation through legislation or allow them to be addressed on a case-by-case basis. Legislative instruments enacted by Parliament embody the will of the people and enjoy constitutional supremacy. Therefore, judicially imposed guidelines on Parliament's delegation of powers lack justification and risk undermining the legislature's sovereign authority.

The proper role of the judiciary is to interpret laws within the framework of the Constitution's basic structure, not to dictate the legislature's internal functions. In this context, the court's attempt to establish binding rules for Parliament's use of delegated powers is legally unfounded and constitutes an overreach of judicial authority beyond the powers vested in it.

#### 4. Conclusion

In conclusion, the ever-expanding scope of administrative functions in Pakistan has inevitably led to an increased reliance on delegated legislation. This development, though often viewed critically, has become indispensable for the smooth and timely operation of modern governance. In a rapidly changing socio-political and economic environment, it is practically impossible for Parliament to legislate exhaustively on every detailed and technical matter. Delegated legislation thus fills this gap, enabling the executive and subordinate authorities to respond efficiently to emerging challenges. It serves as a necessary mechanism for promoting public interest, implementing welfare policies, and protecting fundamental rights through timely regulatory measures.

However, the growth of delegated legislation raises serious concerns regarding democratic accountability and the potential for excessive bureaucratic control. Ideally, parliamentary oversight should serve as the primary safeguard to ensure that delegated powers are exercised lawfully, transparently, and within the limits defined by enabling statutes. Unfortunately, in Pakistan, Parliament has not yet developed comprehensive procedures or institutional mechanisms to monitor and scrutinize delegated legislation effectively. Factors such as limited legislative capacity, lack of technical expertise, and

political constraints have weakened the legislature's ability to exercise meaningful control over subordinate law-making.<sup>16</sup>

As a result, the judiciary often becomes the last resort for individuals and groups aggrieved by excessive or unlawful use of delegated powers. Judicial review remains the only effective remedy to ensure that subordinate legislation does not contravene constitutional mandates or infringe upon fundamental rights. Nevertheless, while the courts play a vital role in maintaining the rule of law, their function must remain adjudicative rather than legislative. The judiciary is constitutionally empowered to interpret laws and test their validity, but not to prescribe legislative processes or issue binding guidelines to Parliament on how it should exercise its legislative powers. Any such judicial intervention, however well-intentioned, risks undermining the principle of separation of powers and may blur the boundaries between the legislative and judicial branches of the state.

Therefore, while delegated legislation remains a functional necessity in contemporary governance, its legitimacy and effectiveness must be anchored in strong institutional checks, primarily through improved parliamentary oversight and constitutionally bounded judicial review. Strengthening these institutional roles is essential to preserving democratic accountability, upholding constitutional supremacy, and maintaining a healthy balance between the various organs of the state.<sup>17</sup>

## References

- <sup>1</sup> Ian McLeod, *Legal Method*, 9th ed. (London: Palgrave Macmillan, 2014), 104–105.
- <sup>2</sup> Loveland, Ian. *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction*. 8th ed. Oxford: Oxford University Press, 20
- <sup>3</sup> MP Jain & SN Jain, *Principles of Administrative Law*
- 4A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10th ed. (London: Macmillan, 1959), 38–40.
- <sup>5</sup> Mark Elliott and Robert Thomas, *Public Law*, 4th ed. (Oxford: Oxford University Press, 2020), 609–612.
- <sup>6</sup> *Railroad Commission v. Central of Ga. Ry.* C.C.A. 130
- <sup>7</sup> Carol Harlow and Richard Rawlings, *Law and Administration*, 3rd ed. (Cambridge: Cambridge University Press, 2009), 98–101
- <sup>8</sup> Peter Leyland, *The Constitution of the United Kingdom: A Contextual Analysis*, 3rd ed. (Oxford: Hart Publishing, 2016), 173–176.
- <sup>9</sup> *Mustafa Impex, Karachi v The Government of Pakistan*, (PLD 2016 SC 808)
- <sup>10</sup> Rule 201, subrule (4), of the Rules of Procedure and Conduct of Business in the National Assembly, 2007.
- <sup>11</sup> Rule 166, subrule (4), of the Rules of Procedure & Conduct of Business in Senate 2012.
- <sup>12</sup> Added through S.R.O 1323, Dated 13-12-2015 in Rules of Procedure & Conduct of Business in Senate 2012.
- <sup>13</sup> Senate of Pakistan, *Rules of Procedure and Conduct of Business in the Senate*, amended 2015, Rule 172A, accessed July 2025, [https://www.senate.gov.pk/uploads/documents/1443776335\\_924.htm](https://www.senate.gov.pk/uploads/documents/1443776335_924.htm).
- <sup>14</sup> Senate Amends Rules of Business to Strengthen Oversight,” *Business Recorder*, April 17, 2015, <https://www.brecorder.com/news/238600>.
- <sup>15</sup> Bogdanovskaia, I. "The legislative bodies in the law-making process." *North Atlantic Treaty Organization*.
- <sup>16</sup> Ferejohn, John. "Judicializing politics, politicizing law." *Law and Contemporary Problems* 65, no. 3 (2002): 41–68.
- <sup>17</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10th ed. (London: Macmillan, 1959), 417–418.