Delegated Legislation

What is the issue?

- In upholding the Centre's 2016 decision on demonetisation, the Supreme Court upheld the validity of the excessive delegated legislation of the powers to the Centre by the Parliament to demonetise currency.
- But, the dissenting verdict of the Supreme court noted that excessive delegation of power is arbitrary.

What is delegated legislation?

- **Parliament routinely delegates certain functions** to authorities established by law since every aspect cannot be dealt with directly by the law makers themselves.
- This delegation of powers is **noted in statutes**, which are commonly referred to as delegated legislations.
- The delegated legislation would **specify operational details**, giving power to those executing the details.
- Classic examples of delegated legislation are regulations and by-laws under legislations.

How does the Supreme Court define this?

- A 1973 Supreme Court ruling explains delegated legislation as:
  - "The practice of empowering the Executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare State.
- Our Constitution-makers have entrusted the power of legislation to the representatives of the people, so that this power may be exercised in the name of the people, and also by the people through their representatives.
- The role against excessive delegation of legislative authority flows from and is a necessary postulate of the sovereignty of the people.

What was the delegation of power in the demonetisation case?

- The Section 26(2) of the **Reserve Bank of India Act, 1934** essentially gives powers to the Centre to notify that a particular denomination of currency ceases to be legal tender.
- Based on the recommendation of the Central Board, the declaration can be given by the Central Government, by a notification in the Gazette of India.
- With effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender.
- Here, Parliament, which enacted the RBI Act, is essentially delegating the power to alter the nature of legal tender to the central government.

- The Centre exercised that power by issuing a gazette notification, which is essentially the legislative basis for the demonetisation exercise.

Why was this challenged?

- The petitioner's challenge was this: "In the event that Section 26(2) is held to permit demonetization, does it suffer from excessive delegation of legislative power thereby rendering it ultra vires the Constitution?"
- The Constitution gives law-making powers to the Parliament.
- While operational aspects can be delegated to statutory bodies, essential powers cannot be delegated.
- Also, the delegation must be with sufficient guidelines on how the power can be used.
- The petitioners in the demonetisation case argued that since Section 26(2) contains no policy guidelines on how the Centre can exercise its powers, it is arbitrary and therefore, unconstitutional.

What happened in the demonetisation case?

- While deciding on this case, the Court applied the **"policy and guideline" test** to decide the constitutionality of the delegated legislation.
- The Attorney General for India argued that the RBI Act itself has guidance for exercise of delegated powers.
- He cited the Preamble and Section 3 of the Act as guidance on the purpose of the law and the Centre's role in "regulating" monetary policy.
- Section 3 deals with establishment and incorporation of Reserve Bank.
- **Decision** - The majority verdict held that since the delegation of power is to the Centre which is anyway answerable to the Parliament, the delegation power cannot be struck down.
- The dissenting opinion, however, disagreed with this view.
- It held that Centre could not have exercised its delegated powers because Section 26(2) of the RBI only gives powers to the Centre when the recommendation is "initiated" by the RBI Central Board.
- It held that the proposal originated from the Centre and so the Centre could not have drawn its powers to demonetise from Section 26(2).

Was there any previous case?

- A 1959 ruling in Hamdard Dawakhana vs. Union of India, the Supreme Court had struck down delegation of powers on the grounds that it was vague.
- This was done while the Supreme Court was considered the validity of certain provisions of the Drug and Magic Remedies (Objectionable Advertisements) Act.

Reference

[The Indian Express | SC demonetisation verdict: What is delegated legislation]



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