

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

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Analysis of Delegated Legislation in the era of COVID 19 pandemic

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ABSTRACT

The world is amidst the greatest global emergency since the past one and half years due to advent and emergence of COVID-19 virus. This is the greatest global emergency and crisis that has brought the entire world to a state of shutdown or in other words have turned it into the new era of virtual work arena. All the countries around the globe has come to a standstill but the process and functions of governments across the globe shall be kept on for the proper functioning of the countries. The Indian Constitution has always been a source of question leading to multiple answers and analysis. Amidst such scenario when the entire world is in such a traumatised state, there exists yet now, various ways of delegation of power. In Indian subcontinent, speaking widely, the delegation of power is seen to be at the highest level and is one of the most crucial methods of administrating the country. This paper is keen to analyse the delegation of power that was witnessed in the subcontinent during the era of COVID-19 and to analyse whether the delegated power is within the complete framework of a valid delegation. This paper is also keen to identify the fact whether a delegation, just theoretical in nature shall be held valid without the practical application of the same even in this practical world. This paper also shall try to identify the lacunae in the delegated legislation during this era by analysing the scenario from various facets.

Keywords: COVID-19, Delegation of Power, Legislation, Constitution, Administration.

I. INTRODUCTION

The concept of delegated legislation is one of the widely discussed matter in the Indian Administrative Law. We know there exists 3 organs of the government- Judiciary, the executive and the legislature. Each of these organs of the government has been assigned with separate set of powers and there exists a “division of power” which separate each branch of the government with the other. To quote precisely, the Legislature makes the law, the judiciary interprets the law and the executive executes the law.

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II. RULE OF LAW AND DOCTRINE OF SEPARATION OF POWER

In any democratic society, the common thinking of the mass is to be ruled by hierarchy of authorities within the concept perimeters of law and not by a dictator who would be above all the laws. The term “Rule of Law” comes is derived from the French Phrase “*la principe de legalite*”² which highlights the conception of lawfully made hierarchy of government and not with men where absolute power is imbibed in them. It shall be made very clear that a country with “law” and a country with “rule of law” stands on two separate pedestals. A country might be one under ‘laws and procedure’ but merely this will not affirm the fact that the country follows ‘rule of law’. For example, during the time of world war II, Germany under Adolf Hitler might have a ‘law’ that was being followed. But at the same time it can be argued that the law structure that was being followed was a law that was created by a man or the leader with supreme power imbibed in him. The law although it existed but the amount of uphold of human rights of the citizen was not guaranteed in such state. Whereas on the other hand, the existence of rule of law may be witnessed in democratic states. The “rule of law” will make the government much more accountable and the division of power in the state or the power given to the government will be “just and fair”, in order to balance the societal needs with control of society. In simple words, “Rule of Law is possible only in democratic societies, where it puts restraint on majoritarian rule”³

The question arises on the grounds of power. A power that shall or shall not be vested in one body of the government. We know in a government of a democratic nation there are 3 primary pillars of government, each which are immuned with different ambits of power. Now if a particular government is immuned with all the powers then it is most likely or feasible to say that it will be biased and there would be greater degree of corruption in the entire setup.

But the question that will persist in the sphere can all laws be made by the legislature? As it is not unknown that the process of making a law is time consuming and is a rather far more complicated process. Also the necessity to delegate the rule making power arises because although the legislation is the rule making body of the society, but it might not always be possible to make rules by the legislature on the minute details of the society. The statement will be basically supported by two primary reasons. One, due to lack of experts in all the fields of the society and also a person sitting in the legislative catena will not be perfectly efficient to bring out the practical loops in the society, needless to be stated, the same can only be pointed out through practical handling of the society, The Executive. The Supreme Court coined the

² I P MASSEY, ADMINISTRATIVE LAW 24, (9TH ED. 2021).

³ *Id.* at 1

term of 'basic structure' in the landmark judgement of *Keshavananda Bharati V State of Kerala*⁴. In the case of *Indira Nehru Gandhi V Raj Narain*⁵ one of the prime ratio that was held by the court that division of power is a part of the basic structure doctrine but at the same time the then Hon'ble CJ AN Ray stated that the rigid doctrine of separation that is witnessed in countries of America and Australia is completely different and the same is not practiced in India, i.e., the doctrine of separation of power in India 'shall be' interpreted in a much broader sense.

III. THE CONCEPT OF DELEGATED LEGISLATION IN ADMINISTRATIVE LAW

The doctrine of separation of power in India, as stated above is not followed in the strictest terms and procedure. It is subject to broader interpretation. This interpretation is based on a number of categories and situations that the pillars of the government will be dwelling with. At the same time the catena of interpretation shall also be based on the way the matter is delegated for fulfilling the purpose, in order to state the same in layman statement. The concept of Delegated legislation is one of the most debatable ambit in the arena of Administrative law. The concept is not debated in the manner of why delegated legislation shall be done but rather on the fact of putting the same in within a single definition. Salmond defines delegated legislation as the legislation "that 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"⁶. In simpler terms a delegated legislation is when some other authority apart from the legislature makes something of 'legislative nature' which is performed in respect of the power that is being conferred to it by the legislature is said to be delegated legislature. It is already known what a delegated legislation is or what is the history of delegated legislation as the same matter has been dealt time and again in not only a number of precedents but also by number of other authors. The intention of this paper is not dwell further with the history of the delegated legislation in India or the position of delegated legislation but rather to use the basic principles that have been set for delegated legislation in a number of cases to analyse the constitutionality of the delegated legislation in the current pandemic scenario.

IV. COVID 19 AND DELEGATED LEGISLATION

In our day to day life, we often find huge amount of delegated legislation or delegation of power. Some of which we often fail to discuss or analyse by our naked eye. In the current

⁴ (1973) 4 SCC 225

⁵ 1975 Supp SCC 1

⁶ I P MASSEY, ADMINISTRATIVE LAW 79, (9TH ED. 2021).

scenario, the world is under the ambit of COVID-19 Pandemic. The SARS-COV 2 (also commonly known as COVID-19 or Corona Virus) was first witnessed in the City of Wuhan in December 2019. The virus was declared as a matter of “Public Health Emergency of International Concern” dated 30th January 2020 and a global pandemic dated 11th March 2020.⁷ When the WHO declared the virus as a global pandemic, most of the countries across the world declared nation-wise lockdown. As a result, India also declared Lockdown but the order of lockdown was subjected to certain circulars that were passed by the Indian Ministry of Home Affairs.

The Ministry of Home Affairs is immuned with multiple powers and functions which includes ‘internal security, border management, Centre-State relations, administration of Union Territories, management of Central Armed Police Forces, disaster management, etc.’⁸ The ministry of home affairs is an executive body of the government but is often empowered or delegated with the power to make certain rule under certain acts, in the departments that it is concerned with. This power of making “Rules” by the Ministry of Home Affairs will fall under the ambit of delegated legislation.

During this Covid-19 pandemic, there were certain circulars that were passed by the government which included orders and guidelines. The power that is administered by the MHA will fall under the ambit of delegated legislation. But the concept of delegated legislation as observed in different precedents time and again is subjected to limits, restrictions or boundaries. The prime question that I shall answer in this paper, has the MHA executed the orders within the limits and boundaries, is the same constitutional or has it breached the periphery of delegated legislation, shall technicality of the rules of the delegated legislation shall be kept over the supreme good of the sovereign or vice versa?

With the advent of the Novel Covid-19 cases Lockdown was imposed in the territory of India on 24th March, 2020 by the Government of India⁹. The National Disaster Management Authority that is headed by the Prime Minister of India is immuned with certain powers that are provided to it by the statute or the codified law, the National Disaster Management Act, 2005. The legislature while drafting the act has immuned certain powers to the Executive Branches to make, formulate or to propose guidelines, orders or directions for the ‘sole

⁷ *Timeline: WHO's Covid-19 response*, WORLD HEALTH ORGANISATION [Internet][cited on 2021 September 30] Available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline>

⁸ *About the Ministry*, MINISTRY OF HOME AFFAIRS [Internet][cited on 2021 September 30] Available at <https://www.mha.gov.in/about-us/about-the-ministry>

⁹ *Government of India issues Orders prescribing lockdown for containment of COVID19 Epidemic in the country*, [Internet] [cited on 2021 October 11] Available at: https://www.mha.gov.in/sites/default/files/PR_NationalLockdown_26032020_0.pdf

objective' of solving the problem related to that act incidental thereto.

In order to prevent the spread of COVID-19 pandemic in India, the National Disaster Management Authority exercised its power under Section 6(2)(a) of the Disaster Management Act, 2005¹⁰.

The authority headed by the Hon'ble PM issued an order which directed the *Department of government, all state and Union governments and Authorities* to take 'effective measures' to prevent the spread of COVID-19 in the Indian Subcontinent. In compliance with the order of 24th March, the Ministry of Home Affairs issued an order under Section 10(2)(1) of the Disaster Management Act which directs and empowers the departments of governments for taking measures and formulation of measures. These measures shall be taken for the sole cause of ensuring social distancing to prevent the spread of SARS COV 2 (hereby referred to as the novel corona virus) in the country of India.

Itself on this part, three factors shall be analysed from the basic. A. Constitutionality of Delegated Legislation B. The scenario of Delegatus Non Potest Delegare C. The limits and boundaries in this Delegated Legislation.

V. HISTORY OF CONSTITUTIONALITY OF DELEGATED LEGISLATION

The Constitutionality of Delegated Legislation in the Indian Judicial History can be divided primarily in to 3 parts backed by 3 primary precedents that is very essential to analyse in brief. In the precedent case of *R v Burrah*¹¹, was regarding the controversial position of the power by which the Lt. Governor was immuned with under the provisions of the Act of 1869. This position of power was held valid by the Privy Council stating the fact that the Governor's power was under the Conditional Legislation as Indian Legislature shall not be considered as delegate of the British Parliament. This judgement passed by the privy council was subjected to 2 different interpretations in the legal world. One which stated that the Indian Legislature since is a sole independent body of the government, there was no limit to the delegation of legislative function, i.e., legislative functions can be delegated without having any hindrance to the same. While on the other hand it was interpreted that delegated legislation was allowed till the extent of conditional legislation. Following which came the precedent of *Jatindranath Gupta V Province of Bihar*¹² it was held that extension falls within the purview of Essential Legislative function and the same cannot be delegated hence legislative powers cannot be delegated.

¹⁰ Section 6(2)(a) of Disaster Management Act, 2005- Powers and functions of National Authority. — Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may—
(a) lay down policies on disaster management.

¹¹ ILR 1879 4 Cal 172 :(1878) LR 3 AC 889

¹² AIR 1949 FC 175

Years later, when the position of delegated legislation was yet within the uncertain sphere the president approached the Supreme Court under the Advisory Jurisdiction regarding the constitutional validity of Section 7 of the Delhi Laws Act, 1912, Section 2 of Extension of Laws Act, 1947 and Section 2 of Part 'C' State Laws Act, 1950 in the landmark judgement of *In Re Delhi Case*¹³

The domains of argument were on two extreme positions where on one side it was taken that 'power of legislation carries with it carries with it the power to delegate' whereas on the other side the argument was based on the theory crafted from the Doctrine of 'Separation of power' and from the maxim of 'Delegatus non potest delegare' thereby stating the fact that delegated legislation is within itself prohibited in the Indian Constitutional framework. The 7 judge bench of the case headed by Hiralal Kania, CJ held the ratio that the doctrine of separation of power shall not be considered as a part of Indian Constitution. Indian Legislature is an independent body by itself and is not an agent of the British Organisation or the British Parliament, thereby the Hon'ble Court clearly stated that the maxim of *Delegatus non potest delegare* cannot be said to be applicable in this scenario. It shall be stated that delegated legislation shall always be ancillary to the power of legislation and a parallel body of law makers equivalent to that of the main legislative organ shall not be created. Thus it shall be interpreted that the concept of ancillary power, i.e., the delegated legislation is ancillary to the powers of legislation and brings the Hon'ble Court at the juncture to decide that the power of delegation of power shall not be immuned with the excessive power and shall be interpreted on a case by case basis.

Now this case, is considered as the basic framework of the delegated structure of legislation and shall be used to analyse and deduce the basic 'constitutionality' of the delegation legislation. In the same manner, the same shall be taken into account in this paper while dealing with the delegated legislation in the era of COVID 19 pandemic.

To analyse from the very basic ground level the Disaster Management Act is a statute created by the legislative department. The Disaster Management Act along with the Epidemic Act will be considered as the parent statute from which the administrative bodies will be immuned with the power to formulate, policies guidelines and orders. The primary boundary is created by the legislature through the Statute. This statute shall only come into play in those places which has satisfied and have qualified the condition that the area is an 'affected area' as stated under Section 2(a) of the Disaster Management Act, 2015¹⁴ and which is affected by any 'disaster'¹⁵

¹³ 1951 SCR 747: AIR 1951 SC 332

¹⁴ Section 2(a) of Disaster Management Act, 2005 defines "affected area" means an area or part of the country affected by a disaster;

¹⁵ Section 2(d) of Disaster Management Act, 2005 defines "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results

as per the definition of the statute. Simplifying it to a greater extent that the act shall only come into force with respect to the procedure as stated under Section 1 (3) of the Disaster Management Act, 2015¹⁶ through an ‘official gazette’ passed by the ‘Central Government’¹⁷. The National Disaster Management Authority that is set up by the Central Government will be delegated with the power and responsibility for formulation of policy, guidelines and plans or take such other measures for the sole and supreme purpose of the Disaster Management under Section 6 (1) of the Statute. Their power shall only be limited to the provisions of laying down policies plans and guidelines, limiting only to the powers conferred by the parent statute. In order to put a limit on the delegated power to legislate all these powers shall be exercised on the ‘ex post facto’ ratification by the National Authority¹⁸. These guidelines and plans that are formulated by the National Disaster Management Authority are to be implemented or executed by the National Executive Committee that shall be formed under Section 8 of the Disaster Management Act, 2015 by the Central Government¹⁹. This Executive Committee is further immuned with the power to create Sub Authorities who will help in proper implementation of the policies.²⁰

Thus to analyse the entire process in a single thread, it shall be stated that the legislature creates a statute which empowers the Central Government to formulate two different authorities. The power given to the Central Government is limited to the fact of creating and formulating the two authorities under the statute, after the prior conditions are fulfilled.

The authorities have the power delegated to them by the parent statute expressly. The powers delegated to the authorities by the parent statute doesn’t create a parallel body equivalent to that of the legislature rather provides them only with ancillary powers with guidelines for a particular purpose and hence stands in the catena of valid delegation. These authorities in the powers provided cannot change the ‘pith and substance’ of the Act itself, thereby further satisfying the criteria for a valid delegation.

in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area

¹⁶ Section 1(3) of Disaster Management Act, 2005 states that the statute “shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint; and different dates 1 may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State”

¹⁷ Section 2(c) of Disaster Management Act, 2005 defines “Central Government” means the Ministry or Department of the Government of India having administrative control of disaster management;

¹⁸ Section 7(1) of the Disaster Management Act

¹⁹ The Central government by the way of notification shall assign a National Executive Committee for the proper implementation and for assisting the Disaster Management Authority.

²⁰ The Disaster Management Act, 2005, § 9, No. 53, Acts of Parliament, 2005 (India).

VI. ANALYSING THE GUIDELINES OF NATIONAL DISASTER MANAGEMENT AUTHORITY (NDMA)

On 24th March the NDMA issued certain guidelines relating to the pandemic under Section 6 (2)(a) of the Act and the Ministry of Home Affairs by invoking its power provided under Section 10(2)(1) of the statute implemented the guidelines. Breach of these guidelines shall subject an individual to get prosecuted under Section 51 – 60 of the Disaster Management Act. The delegated Legislation doesn't stop only on the fact that if the matter delegated shall be termed as a valid delegation or not but also on the Action with regard to the delegated power, i.e., whether the actions are in at per with the Constitution of India.

The lockdown order and guidelines dated 24th March, 2021 restricted the major fundamental rights of an individual. Free movement along with trade commerce and education which one may argue was a violation of the provisions of the Golden Triangle of the Constitution of India. This issue cannot be answered through a straitjacket formula rather on the contention to the fact of holding both the sides of the same scenario.

As per the guideline of 24th March 2020 which took effect from 25th March 2020 stated inter alia – order to keep all the offices closed with a proviso to keep only the essential establishments open with minimum number of staff, closing of commercial, private and industrial establishments and lastly the source that connects the entire of India, the modes of transport- Rail, Air, Road and waterway were to be remain suspended²¹

True to the fact that the measures taken by the National Disaster Management Authority was well in accordance with the provisions of Disaster Management Act, 2015 and Epidemic Act of 1897. In fact the powers executed through the official gazettes and orders are a valid delegation with limits and boundaries and well within the scope and permit of the parent statute. The same shall be supported with the precedent case of *Harishankar Bagla V State of Madhya Pradesh*²² where the Hon'ble Court holds that the clarity of the delegation plays a pivotal role in deciding the delegation of power valid or not by upholding validity of Section 6 of Essential Supplies Act of 1946. Similarly, the Disaster Management Act and the Epidemic Act lays down the legislative policy with a proper clarity in the same. The guidelines can also be well guarded from the curbs of being ultra vires to the provisions of Part III of the Constitution of India. It can be stated that these guidelines were imposed during a National Emergency for the welfare

²¹*Guidelines on the measures to be taken by the Ministries/ Departments of government of India, state Union territory governments and state/ union territory authorities for Containment of COVID-19 epidemic in the country* [Internet] [cited on 2021, October 16]
Available at: https://www.mha.gov.in/sites/default/files/Guidelines_0.pdf

²² AIR 1954 SC 465.

of the public which is supported by intelligible differentia and reasonable nexus. But on focussing on the other side we shall also focus on the manner the guidelines were implemented. India is a country with a statistics of 30.6% if Migration²³ which amounts to a figure of more than 3 crore citizen of the country migrate to different places away from their home in search of work. Among these people, a huge fraction of people belongs to a class of migrant workers with a below poverty level of life style. The question shall be raised on the fact that ‘what was the measure that was taken to maintain the ‘right to life’ of these migrant population? Was the restriction imposed by the mode of delegated legislation through the acts and statute by the Disaster Management Authorities was ‘practical’, ‘rational’ and ‘reasonable’?’ As one may rightly state, *“for a person who is a contractual laborer inhabiting temporarily at a place which is not his home, with a Pregnant wife with him or an ailing Parent/Child back at home, sustaining on daily wages, with minimal or no savings living with a fear that the Contractor won't assure him of Wage Security, this 4 hour was nothing but a preparation of Death Sentence for many”*²⁴

In the landmark precedent of Francis Coralie Mullin V The Administrator, Union Territory of Delhi and Ors.²⁵, Hon’ble Justice Bhagwati stated that Right to Life has been provided with highly magnitude after the case of Maneka Gandhi²⁶ and hence ‘embodies a constitutional value of supreme importance in a democratic society’²⁷. Thereby under no circumstances even during the time of Emergency fundamental right to life can be violated. It shall be taken into consideration that although the delegated legislation is intravires and is at per with the provision of the parent statute, but yet it shall be noted that the delegated legislation cannot be ‘presumed to authorise’ anything that will be unconstitutional or the same shall creep into the Fundamental Right to Life of a citizen, as the same under no means can be put to jeopardy. If even an intravires provision of a delegated legislation is at per with the parent statute but within its practical application it may lead to a violation of Right to Life of an Individual, then such legislation shall be stated to be ultravires²⁸

VII. DELEGATED LEGISLATION AND PM CARES FUND

Another major event during the era of COVID-19 was the launch of ‘public charitable trust’

²³ Number of migrants by place of Last Residence(Statistics) [Internet][cited on 2021, October 19] Available at: https://censusindia.gov.in/census_and_you/migrations.aspx

²⁴ Swati Mohapatra, Yogesh Mishra, Lipsa Dash, *COVID-19: Analysing the Legal Nuances of the Lockdown Order*, 14 Indian Journal of Forensic Medicine & Toxicology 5(2021).

²⁵ 1981 AIR 746, 1981 SCR (2) 516.

²⁶ Maneka Gandhi vs Union Of India ,1978 AIR 597, 1978 SCR (2) 621

²⁷ *Id.* at 25.

²⁸ Narendra Kumar And Others vs The Union Of India And Others, 1960 AIR 430, 1960 SCR (2) 375.

which was named as Prime Minister's Citizen Assistance and Relief in Emergency Situation Fund (hereby referred to as PM Cares Fund) was setup²⁹

The sole objective of the PM care fund was to provide any financial assistance for public health emergency or during any emergency. On 1st April Harsha Kandukuri filed a RTI application which seek for the information pertaining to the Constitution of PM Care Fund. This application was dismissed on May 29 by the Public Information officer of PMO stating that PM care not a public authority under Section 2(4) of the Right to Information Act and hence information regarding the same shall only be available at the website and not through RTI.

Section 2(h) of the Right to Information Act puts together authorities that shall within the meaning of 'public authority'³⁰ PM care fund is created by a government body and is directly qualifying the strata. The same is controlled by the government under the domain of Public Charitable Trust. The purpose of right to information Act is directly connected to the fundamental right of Freedom of Expression which within itself includes, Right to knowledge³¹

The fundamental spirit of a valid delegated legislation lies in the fact that legislature is the Supreme law making body and there can be no body that can be made parallel or equivalent to this organ of government. Therefore, the power of delegation is always ancillary to the power of legislation. This adds to the fact that there cannot be excessive delegation and also limitation on the power of a body or organ. It also further implies of providing the amount of power to an organ or a body. The question lies in the fact that, 'can a body that falls so well within the provisions of a statute, which is directly related to the Fundamental Right of an Individual be exempted from the same? It shall be answered that on the sole reason of 'voluntary donations made by individuals it cannot be exempted from the domain of public authority when it is itself controlled by a government body? It shall be stated that Prime Minister's National Relief fund is a similar body as that of the mentioned PM care fund, and the same very well falls within the ambit of 'public authority' under Right to Information Act. The basic facet of delegation states that, no delegation can ever provide any immunity to a body which shall allow it to evade

²⁹ *About PM Cares Fund*, PM CARES [Internet] [cited on 2021, October 20] https://www.pmcared.gov.in/en/web/page/about_us

³⁰ Section 2(h) of the Right to Information Act defines- "public authority" means any authority or body or institution of self-government established or constituted,— (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government; (i) "record" includes— (i) any document, manuscript and file; (ii) any microfilm, microfiche and facsimile copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (iv) any other material produced by a computer or any other device;

³¹ *Government of India V Cricket Association of Bengal*, 1995 AIR 1236, 1995 SCC (2) 161

from the due process established by the law. The same shall lead to arbitrariness within the working of the body as Justice Bhagwati states “wherever there is arbitrariness, there is denial of rule of law”³²

The power to delegate power also includes the power to cause restriction to the provided power to set a limit to the same. The primary nature of delegated legislation lies in the fact that the power delegated is ancillary to the power of legislature. Nobody or organisation can at all create any body which will be immuned with excessive power that would lead to arbitrariness and unreasonable action of the same, i.e., which may eventually be capable to change the basic policy of the law.

In this scenario it is not only the mere statute of RTI is being violated without any valid reasonable cause but at the same time it shall be stated that it has crept into the position of violating with the provisions of the Golden Triangle of the Constitution of India. This action further implies that the body created is supreme in nature and shall in future be capable of changing not only the policy of the parent statute but also of the grund norm. The PM Care fund, denying it to be a part of RTI have infringed the scope of Constitutionalism within the very facets of the Constitution of India. Constitutionalism is not merely when a country is catered with a Constitution but when there is a balance and structure that is maintained in the society and the government shall be responsible for the causes of its action.

There is no law within the scope of Indian perimeter than can at all grant the power to any organ to create a parallel organ as that of the 3 primary organs of the government- the Judiciary, the legislature and the Executive, which will be free from the curbs of making a government accountable for its own action. The Indian Constitution although doesn't rigidly follows the Doctrine of Division of Power but at the same time separation of power, as stated by Beg J. is a part very of the basic structure doctrine³³. The organ when provided with such enormous power will creep into the fettered powers of all the organs of the government leading to the turmoil in the system of Basic Structure of the Constitution of India, which shall not be violated under any circumstances.

VIII. CONCLUSION

To conclude, it shall be analysed that the concept of delegated legislation although is one of the most vital administrative concept in today's era, but a delegated legislation cannot be made supreme or beyond the purview of checks and balance. This will make the delegation violative

³² Bachan Singh vs State Of Punjab, AIR 1980 SC 898, 1980 CriLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145

³³ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; AIR 1973 SC 1461

of the basic structure doctrine. The concept of valid delegation shall not be limited to the scope and authority of the theoretical nature of the delegation, but at the same time what shall be taken into consideration is the practical and the ground application and execution of the delegated powers. This shall be kept in mind that this delegation while executed, shall not, without any reasonable nexus supported by an intelligible differentia contradict the provisions of the Constitution of India, most primarily and effectively the fundamental rights of life, liberty, dignity and equality shall be provided without the supreme utmost importance while execution of the same. A delegation that is well within the framework or is *intra vires* *prima facie* be held *ultra vires* if found to be a contradiction, violation to the basic framework of the Constitution of India and the primary policy of the parent statute.
