THE ALTIORA
An International Quarterly Peer-Reviewed / Refereed Journal of Multidisciplinary Research

SUBDELEGATED LEGISLATION AND THE RULE AGAINST DELEGATUS NON POTEST DELEGARE: DOCTRINAL RIGIDITY, JUDICIAL PRAGMATISM, AND THE LIMITS OF ADMINISTRATIVE EMPOWERMENT

Dr. Rang Nath Singh
Ph.D. (Law), Legal Scholar, India

Article Info

ISSN: 3140-0515
Volume: 01
Issue: 02
July-September 2026
Received: 03-09-2026
Accepted: 06-09-2026
Page No: 28-41

Abstract
The inexorable expansion of the contemporary administrative state has transformed the nature of executive governance from a passive enforcement agency into a prolific rulemaking apparatus. Subordinated legislation—once considered an ancillary mechanism designed to fill technical details in parent statutes—has evolved into multi-tiered normative hierarchies known as subdelegated legislation. At the center of this administrative expansion lies the classical maxim 'delegatus non potest delegare' (a delegate cannot further delegate), a principle rooted in Roman agency law and constitutional theory which dictates that a power conferred under a special trust cannot be re-assigned without express authorization. This paper undertakes an exhaustive, critical analysis of the doctrinal tension between the rule against subdelegation and the operational necessities of modern public governance across Anglo-American and Indian administrative jurisprudence. Commencing with an ontological and constitutional examination of the maxim, the study explores the foundational rationale of parliamentary trust, constitutional accountability, and the separation of powers. It critically investigates the analytical boundary separating primary delegated legislation from subdelegated rulemaking, scrutinizing the legal mechanics through which the primary delegate purports to transfer quasi-legislative authority to inferior administrative instrumentalities. The paper provides an in-depth doctrinal synthesis of judicial approaches across India, the United Kingdom, and the United States, evaluating landmark decisions such as In re Delhi Laws Act (1951), Harishankar Bagla v. State of Madhya Pradesh (1954), Barium Chemicals Ltd. v. Company Law Board (1967), Carltona Ltd. v. Commissioners of Works (1943), and Hampton v. United States (1928). Furthermore, the study evaluates the limits of statutory permissibility, interrogating

whether express statutory empowerment permits infinite regress of delegation or remains tethered to constitutional doctrines of essential legislative functions and non-arbitrariness under Article 14. Finally, it addresses the pervasive contemporary hazards of subdelegated legislation—including statutory opacity, lack of publication, evasion of parliamentary laying procedures, and the dilution of democratic accountability. The paper concludes by formulating a robust normative framework of structural safeguards, procedural transparency, and enhanced judicial review necessary to reconcile administrative efficiency with the enduring supremacy of the Rule of Law.

Keywords: ***Delegatus Non Potest Delegare, Subdelegated Legislation, Administrative Law, Essential Legislative Functions, Rule of Law, Ultra Vires, Separation of Powers, Judicial Review, Parliamentary Control, Article 14.***

1. INTRODUCTION: THE RISE OF THE ADMINISTRATIVE STATE AND THE PROBLEM OF SUBDELEGATION

The evolution of the modern democratic state from a 19th-century laissez-faire framework—characterized by negative police functions and minimal intervention—to a 20th- and 21st-century affirmative welfare state has completely transformed the institutional landscape of public governance. In fulfilling expansive obligations encompassing socio-economic justice, environmental regulation, complex financial markets, public health, and technological surveillance, legislative assemblies face profound structural limitations. Parliaments and legislatures lack the specialized technical expertise, continuous operational availability, temporal endurance, and procedural agility demanded by the accelerating pace of modern societal complexities. Consequently, the delegation of legislative power from the sovereign parliament to the executive branch has shifted from an exceptional constitutional anomaly into an indispensable necessity of modern governance.

However, the institutional appetite for delegated authority rarely terminates at the primary executive level. Once primary legislative authority is delegated by the supreme legislature to an executive authority—typically the Central Government, a State Government, a Minister, or an apex statutory board—operational administrators immediately encounter identical constraints of scale and technical specialization. To ensure bureaucratic decentralization, enforce local compliance, and manage daily administration, the primary executive delegate routinely seeks to subdelegate this rulemaking mandate down the administrative hierarchy: to subordinate directors, district magistrates, municipal authorities, specialized inspectors, or statutory committees. This multi-tiered phenomenon of secondary and tertiary administrative lawmaking is termed 'subdelegated legislation' or subordinate rulemaking in cascade.

While primary delegated legislation has acquired robust constitutional legitimacy through decades of judicial reconciliation, subdelegated legislation stands on fundamentally precarious constitutional and jurisprudential footing. At the heart of this jurisprudential unease lies the ancient legal maxim: delegatus non potest delegare—a delegate cannot further delegate. This maxim asserts a fundamental principle of institutional integrity: when a sovereign legislature selects a specific

executive body to exercise subordinate legislative powers, that selection represents a fiduciary grant of legislative trust based on the presumed expertise, accountability, and institutional competence of the chosen delegate. When that delegate, without legislative sanction, divests itself of that rulemaking authority and re-assigns it to an inferior officer, it ruptures the constitutional chain of democratic accountability.

Subdelegated legislation introduces a critical governance dilemma. If the prohibition against subdelegation is enforced with absolute doctrinal rigidity, the operational machinery of modern administration risks paralysis under bureaucratic bottlenecks. Conversely, if administrative bodies are granted unbridled latitude to subdelegate rulemaking authority ad infinitum, democratic governance risks degeneration into bureaucratic autocracy—where coercive legal norms are promulgated by faceless, unelected sub-delegates devoid of legislative scrutiny, public consultation, or institutional transparency. This paper conducts a rigorous doctrinal and critical analysis of this tension, tracing the historical, theoretical, and practical trajectories of subdelegation across comparative legal systems, with a specialized focus on Indian administrative and constitutional jurisprudence.

2. THE MAXIM DELEGATUS NON POTEST DELEGARE:ORIGINS, JURISPRUDENTIAL FOUNDATIONS, AND SCOPE

A. Etymological and Historical Foundations in Roman and Common Law

The maxim delegatus non potest delegare (alternatively formulated as vicarius non habet vicarium—a vicar has no vicar) traces its conceptual lineage to the Roman Law of agency and mandate (mandatum). In classical Roman jurisprudence, an agent (mandatarius) who undertook a personal commission founded upon mutual trust and personal esteem (fides) was prohibited from transferring the execution of the mandate to an unknown third party without the explicit consent of the principal (mandator). The relationship between the principal and the delegate was rooted in intuitus personae—the specific consideration of the individual's personal integrity, competence, and reliability.

The maxim was subsequently transplanted into English Common Law through the scholastic treatises of Henry de Bracton and the judicial pronouncements of Sir Edward Coke. Early common law courts rigidly applied the doctrine across private law, particularly within the law of agency, trusts, and arbitral authority. In the seminal case of De Bussche v. Alt (1878) 8 Ch D 369, Thesiger, L.J., authoritatively stated the underlying principle: 'The general rule of law is, that a deputy cannot appoint a deputy—delegatus non potest delegare—a principal employing an agent to do any act, for doing which it requires him to exercise discretion, is presumed to trust to his personal capacity and discretion, and not to the capacity and discretion of another.' Thus, where a power involves personal judgment, skill, or discretion, the law presumes that the delegation is personal and non-transferable.

B. Transplantation into Public and Constitutional Law

The transition of delegatus non potest delegare from a private law doctrine of contract and agency into a cornerstone of public and constitutional law represents a critical development in legal history. In public law, the maxim underwent a profound conceptual transformation. It ceased to be merely an equitable rule governing private commercial agents and became a foundational pillar of the Rule of Law and the doctrine of separation of powers.

In the constitutional sphere, the 'principal' is the sovereign people or the democratic Parliament acting on their behalf, while the 'agent' is the designated public authority. John Locke, in his Second Treatise of Civil Government (1689), articulated the democratic rationale underlying the

constitutional prohibition against unauthorized legislative transfer:

"The legislative cannot transfer the power of making laws to any other hands; for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the commonwealth, which is by constituting the legislative, and appointing in whose hands that shall be... The power of the legislative, being derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make laws, and not to make legislators, the legislative can have no power to transfer their authority of making laws and place it in other hands."

Locke's conceptual formulation demonstrates that the rule against delegation is fundamentally about democratic legitimacy and institutional competence. In administrative law, the application of the maxim prevents the dilution of statutory safeguards. When the sovereign Parliament enacts a statute and entrusts discretionary rulemaking power to a high-ranking authority—such as a Central Cabinet Minister or a State Government—the parliamentary conferment reflects deliberate legislative confidence. The legislature assumes that high constitutional officers will exercise rulemaking powers with a heightened sense of public accountability, maturity, and administrative balance. To permit that high-ranking authority to casually divest itself of this power and confer it upon subordinate executive functionaries constitutes an impermissible subversion of legislative intent.

C. Presumption of Non-Delegation vs. Rule of Statutory Construction

It is critical to appreciate that within modern administrative law, delegatus non potest delegare does not operate as an immutable constitutional absolute of universal application, but rather as a robust canon of statutory interpretation. As observed by leading administrative jurists such as S.A. de Smith and H.W.R. Wade, the maxim does not proclaim that a delegate can never delegate under any conceivable circumstances; rather, it establishes a formidable rebuttable presumption: in the absence of express statutory language or inevitable legislative implication, a statutory delegate lacks the power to further delegate its legislative or discretionary functions.

The burden of establishing that subdelegation is lawful rests squarely upon the administrative authority asserting the validity of the subdelegated norm. To survive judicial scrutiny, the delegate must establish either: (1) express statutory authorization within the parent Act enabling subdelegation; or (2) a necessary statutory implication arising from the overarching scheme, subject matter, and operational scope of the legislation. Where neither condition is satisfied, any exercise of subdelegated legislative authority is null, void, and ultra vires.

3. THE ANATOMY OF SUBDELEGATED LEGISLATION: TAXONOMY, TYPOLOGY, AND ADMINISTRATIVE REALITY

To rigorously analyze the jurisprudence surrounding subdelegation, it is necessary to establish an analytical taxonomy of legislative delegation. In modern public law, administrative rulemaking operates across three distinct structural tiers:

1. Primary Legislation (Statutes/Acts): Norms enacted directly by the sovereign Parliament or State Legislative Assemblies in accordance with constitutional procedures (Articles 107–111 and 196–201 of the Constitution of India). Primary legislation establishes the core policy, legal framework, sovereign intent, penalties, and essential rights and obligations.

2. Primary Delegated Legislation (Rules, Regulations, Orders): Norms promulgated by the primary administrative delegate specifically designated by the parent statute (e.g., Central

Government, State Government, or Statutory Commission). These instruments operate pursuant to an express statutory empowerment (such as 'The Central Government may, by notification, make rules to carry out the provisions of this Act').

3. Subdelegated Legislation (Secondary/Tertiary Rules, Bye-laws, Notifications, Orders): Norms promulgated not by the direct statutory delegate named in the Act, but by an inferior administrative officer or agency deriving rulemaking authority from an intermediate administrative order or an enabling subdelegation clause. Examples include notifications issued by a District Collector under an order passed by a State Government, which was itself framed under a parent Parliamentary Act.

A. The Degrees and Tiers of Subdelegation

Subdelegated legislation can extend through multiple administrative echelons, creating serious constitutional challenges regarding its proximity to legislative authority. Public law recognizes several operational modalities of subdelegation:

(i) Simple Direct Subdelegation (Two-Tier Model): The parent Act authorizes Authority A to make rules, and authorizes Authority A to empower Authority B to make subsidiary orders. Here, the line of delegation extends: Legislature -> Authority A -> Authority B.

(ii) Cascading/Compound Subdelegation (Multi-Tier Model): The parent Act empowers Authority A; Authority A issues an order empowering Authority B; Authority B subsequently issues a regulation authorizing Officer C to pass binding directives affecting public rights. This represents a tertiary or quaternary delegation (Legislature -> A -> B -> C -> D). Indian jurisprudence during wartime and economic crises—such as the Defense of India Acts and the Essential Commodities Act, 1955—reveals dramatic examples of compound subdelegation where legislative power cascaded through four administrative tiers.

(iii) Subdelegation via Executive Discretion and Subjective Satisfaction: The primary delegate does not enact comprehensive rules, but frames a broad rule providing that a subordinate official may regulate an activity 'if the officer is satisfied that it is expedient to do so.' Here, the rule effectively abdicates legislative definition and subdelegates unguided subjective discretion to the subordinate administrator.

B. Distinguishing Subdelegation of Legislative Power from Administrative/Quasi-Judicial Subdelegation

A fundamental doctrinal distinction must be drawn between the subdelegation of legislative power and the subdelegation of administrative or quasi-judicial functions. While administrative actions involve the application of existing norms to individual cases, legislative power entails the creation of binding general norms governing the future conduct of indeterminate persons.

Common law courts have traditionally maintained a strict posture against the unauthorized subdelegation of legislative and judicial powers, while adopting a more permissive stance toward purely ministerial or administrative tasks. In quasi-judicial proceedings, the rule against subdelegation is reinforced by the principles of natural justice: 'he who decides must hear' (audi alteram partem). As affirmed in Gullapalli Nageswara Rao v. APSRTC (AIR 1959 SC 308), where a minister hears objections but the final order is prepared by a secretary, the divide between hearing and deciding invalidates the quasi-judicial determination. In legislative subdelegation, the harm is broader: an unauthorized sub-delegate exercises coercive, normative state power over

the public without democratic authorization.

4.COMPARATIVE JURISPRUDENTIAL PERSPECTIVES ON SUBDELEGATION

A. The English Common Law Experience: From Radical Nullity to the Carltona Principle

In the United Kingdom, where the doctrine of Parliamentary Sovereignty reigns supreme, the courts have consistently maintained that subdelegation of legislative power is impermissible unless authorized by the parent statute either expressly or by inescapable implication. In King v. Burah (1878) 3 App Cas 889 and subsequent cases, the Privy Council clarified that while a legislature is not an agent of parliament, an executive delegate is strictly confined to the statutory terms of empowerment.

The classic English statement regarding subdelegated legislation was articulated by Scott, L.J., in Blackpool Corporation v. Locker [1948] 1 K.B. 349. In that case, the Minister of Health possessed statutory powers under emergency defense regulations to requisition houses. The Minister issued circulars to local municipal authorities subdelegating this requisitioning power subject to specific procedural conditions. The Blackpool Corporation requisitioned a dwelling house in direct defiance of the conditions contained in the circulars. The English Court of Appeal declared the corporation's action wholly ultra vires. Scott, L.J., delivered an impassioned critique of subdelegated legislation:

"The ministerial circulars were in truth subdelegated legislation... The danger to the liberty of the subject inherent in subdelegated legislation of this character is aggravated by the fact that these circulars are not published in the Statutory Instruments series, are not laid before Parliament, and remain accessible only to privileged officials. The public has no practical means of knowing the law by which their private property is seized."

However, to prevent administrative deadlock in central government ministries, English courts devised a profound functional exception known as the 'Carltona Principle.' In Carltona Ltd. v. Commissioners of Works [1943] 2 All E.R. 560, the English Court of Appeal held that the devolution of functions from a Minister of the Crown to departmental civil servants does not constitute subdelegation in the eyes of the law. Lord Greene, M.R., reasoned:

"In the administration of government in this country the functions which are given to ministers are functions so multifarious that no minister could ever personally attend to them... The duties imposed upon ministers and the powers granted to them are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the act of the official is the act of the minister."

The Carltona principle establishes that an act performed by an authorized departmental officer is legally the alter ego of the Minister. Therefore, it does not involve the transfer of power to an external delegate (subdelegation), but rather the internal bureaucratic execution of ministerial power. However, both English and Commonwealth courts have consistently held that the Carltona alter ego doctrine applies exclusively to administrative decisions and executive actions; it cannot be invoked to validate the subdelegation of legislative rulemaking powers to departmental officials.

B. The United States Constitutional Experience: Non-Delegation and Subdelegation under the APA

In the United States, the constitutional prohibition against delegation is anchored directly in the text of Article I, Section 1 of the United States Constitution, which commands that 'All legislative Powers herein granted shall be vested in a

Congress of the United States.' Under the classical non-delegation doctrine articulated in Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935) and Panama Refining Co. v. Ryan, 293 U.S. 388 (1935), Congress is constitutionally forbidden from abdicating or transferring its essential legislative functions.

To accommodate modern administrative regulation, the U.S. Supreme Court relaxed this doctrine through the 'intelligible principle' test enunciated by Chief Justice Taft in J.W. Hampton, Jr. & Co. v. United States, 276 U.S. 394 (1928): so long as Congress lays down an intelligible principle to which the administrative agency must conform, the delegation is constitutionally valid. When it comes to subdelegation, American federal courts have maintained that an administrative agency cannot redelegate its delegated rulemaking authority to outside entities, private parties, or subordinate officers without congressional sanction.

In Cudahy Packing Co. v. Holland, 315 U.S. 357 (1942), the U.S. Supreme Court held that the Administrator of the Wage and Hour Division lacked statutory authority to subdelegate the power to issue subpoenas duces tecum to regional directors. The Court ruled that because the power to issue coercive process was significant, the authority could not be subdelegated without express statutory language. In response to administrative demands, the U.S. Congress enacted the Reorganization Act of 1949 and statutory amendments granting explicit subdelegation powers to agency heads. However, under the Federal Administrative Procedure Act (APA) of 1946 (5 U.S.C. § 551 et seq.), any subdelegated rulemaking remains subject to strict notice-and-comment requirements under Section 553, preventing the secret subdelegation that troubled English courts.

5. THE INDIAN CONSTITUTIONAL FRAMEWORK: DOCTRINAL RIGIDITY AND JUDICIAL EVOLUTION

A. The Constitutional Foundation: In re Delhi Laws Act (1951)

In Indian constitutional jurisprudence, the foundational baseline governing delegated legislation was established by the Supreme Court of India in the historic reference In re Delhi Laws Act, 1912, AIR 1951 SC 332. In this seven-judge bench decision—which produced seven separate opinions—the Supreme Court definitively addressed whether the Indian Parliament, created by a written Constitution, possessed unrestricted powers of delegation analogous to the British Parliament or restricted powers bounded by constitutional limitations.

The Supreme Court settled two fundamental propositions:

1. The Indian Legislature is not a mere delegate of the people or of the British Parliament, and therefore the maxim delegatus non potest delegare does not apply to the Parliament itself to prohibit delegation of subsidiary legislative powers. Parliament possesses plenary power within its assigned constitutional fields.

2. However, the Parliament cannot abdicate its essential legislative function. The essential legislative function consists of determining the legislative policy and formulating it into a binding rule of conduct. Once the essential policy is declared and standards are laid down by the legislature, the task of executing the policy and working out technical details can be validly delegated to the executive.

Crucially, In re Delhi Laws Act established that while Parliament can delegate subordinate power to the executive, the executive delegate—being a pure statutory creature—remains strictly bound by

the maxim delegatus non potest delegare. The executive delegate cannot redelegate its delegated powers to another authority unless the parent statute enacted by Parliament expressly confers the power of subdelegation.

B. Statutory Authorization as a Condition Precedent: Harishankar Bagla

The operational reality of subdelegation under Indian law was authoritatively examined by the Supreme Court in the landmark case of Harishankar Bagla v. State of Madhya Pradesh, AIR 1954 SC 465. The constitutional validity of Section 3 and Section 4 of the Essential Supplies (Temporary Powers) Act, 1946 was challenged. Section 3 empowered the Central Government to issue orders regulating or prohibiting the production, supply, and distribution of essential commodities. Section 4 expressly authorized the Central Government to direct that its ordermaking power under Section 3 shall be exercisable also by such officer or authority subordinate to the Central Government or by a State Government or officer subordinate to a State Government.

The appellant argued that Section 4 sanctioned compound subdelegation, amounting to an unconstitutional abdication of legislative function in violation of the maxim delegatus non potest delegare. The Constitution Bench of the Supreme Court, speaking through Mahajan, C.J., rejected the challenge and laid down the foundational rule governing subdelegation in India:

"Section 4 of the Act enumerates the classes of persons to whom the power could be subdelegated or delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the Legislature itself. The Legislature has specified the person or class of persons to whom the power could be subdelegated... Section 4 cannot therefore be held to be an abdication of the legislative function."

The ratio of Harishankar Bagla establishes that subdelegated legislation is constitutionally permissible in India if, and only if, the parent statute enacted by the legislature contains an express enabling provision authorizing such subdelegation, and the legislature identifies the broad categories of officials or instrumentalities to whom such power can be devolved. Where the parent statute is silent, the executive delegate has no inherent authority to subdelegate.

C. The Strict Doctrinal Barrier: Barium Chemicals and Express Authorization

Where the parent statute does not confer express authority to subdelegate, the Supreme Court of India has consistently enforced delegatus non potest delegare with uncompromising doctrinal rigor. In the landmark case of Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295, the Supreme Court dealt with the subdelegation of statutory powers under Section 637 of the Companies Act, 1956. The Central Government had delegated its statutory powers under Section 237(b) to the Company Law Board. The Chairman of the Company Law Board subsequently passed an order on his own individual authority ordering an investigation into the affairs of Barium Chemicals Ltd.

The Supreme Court invalidated the investigation order, holding that the Chairman possessed no lawful authority to act on behalf of the Board in the absence of a legally valid rule authorizing such individual subdelegation. Shelat, J., delivered a masterly treatise on the scope of the maxim in Indian public law:

"The maxim delegatus non potest delegare indicates that a discretion conferred by a statute on a specified authority must be exercised by that authority alone and none other. But this maxim is not a rule of law; it is merely a rule of construction... Where the statute requires that the power shall be exercised by a designated authority because of its special competence, status, or collective wisdom, that power cannot be further delegated to an individual member unless the statute permits such subdelegation either

expressly or by inescapable implication."

The principle enunciated in Barium Chemicals was reinforced in a continuous line of Supreme Court decisions. In State of Rajasthan v. Hari Ram Nathwani, (1975) 2 SCC 359, the Court reiterated that statutory powers conferred on a State Government cannot be exercised by a subordinate executive officer unless a statutory rule or order expressly authorizes such devolution. Similarly, in District Collector, Chittoor v. Chittoor District Groundnut Traders Association, AIR 1989 SC 1234, the Supreme Court held that where the Essential Commodities Act authorized the State Government to issue regulatory orders, the District Collector could not circularize independent export restrictions without formal statutory subdelegation from the State Government.

D. The Subdelegation Cascade in Essential Commodities and Wartime Jurisprudence

The practical challenges of subdelegation are most vividly illustrated in the administration of the Essential Commodities Act, 1955. Section 3 of the Act empowers the Central Government to issue regulatory orders. Section 5 of the Act provides explicit statutory authorization for subdelegation:

"Section 5: Delegation of powers. — The Central Government may, by notified order, direct that the power to make orders or issue notifications under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by— (a) such officer or authority subordinate to the Central Government; or (b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction."

Pursuant to Section 5, the Central Government routinely issues general delegation orders delegating rulemaking power to State Governments. The State Governments, invoking these delegated powers, enact state-level licensing and control orders (e.g., The Uttar Pradesh Foodgrains Dealers Licensing Order). Frequently, these state-level orders contain clauses authorizing District Magistrates, Licensing Authorities, or Food Controllers to fix grain quotas, prescribe storage conditions, or cancel licenses upon subjective satisfaction. This creates a multi-layered regulatory structure: Parliament -> Central Government -> State Government -> District Magistrate -> Sub-Divisional Inspector.

In a series of landmark judgments, including State of Bombay v. F.N. Balsara, AIR 1951 SC 318, and K.S.E. Board v. Indian Aluminium Co., AIR 1976 SC 1031, the Supreme Court scrutinized these regulatory cascades. The Court formulated the strict principle that even where subdelegation is authorized by statute, the sub-delegate cannot travel beyond the precise jurisdictional boundaries defined by the primary delegate. If the Central Government delegates the power to regulate 'storage and transport,' the State Government cannot subdelegate to the Collector the power to confiscate or impose criminal penalties absent specific legislative sanction.

6. STATUTORY LIMITS AND GROUNDS FOR JUDICIAL REVIEW OF SUBDELEGATED LEGISLATION

When a court reviews the legal validity of subdelegated legislation, it subjects the subordinate norm to rigorous scrutiny. Subdelegated legislation must overcome a multi-tiered legal gauntlet to survive judicial review. It is not enough that the subdelegated norm is reasonable; it must trace its ancestry through an unbroken chain of statutory legitimacy. The established grounds upon which courts strike down subdelegated legislation are analyzed below:

A. Substantive Ultra Vires: Exceeding the Scope of the Enabling Authority

The doctrine of ultra vires operates with double force against subdelegated legislation. A subdelegated order must not only conform strictly to the parent statute enacted by Parliament; it must

also conform with absolute fidelity to the primary delegated order from which it directly springs. If the primary delegate confers power on a subordinate official to regulate 'wholesale distribution,' and the subordinate official issues an order regulating 'retail street vendors,' the subdelegated order is ultra vires and void.

In Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India, (1985) 1 SCC 641, the Supreme Court laid down that subordinate legislation does not carry the same presumption of constitutionality that attaches to primary Parliamentary enactments. Venkataramiah, J., observed that subordinate legislation may be struck down if it is manifestly arbitrary, contrary to the policy of the parent Act, or outside the statutory purpose for which the power was conferred. In the context of subdelegation, this vulnerability is heightened: any variance between the scope of the sub-delegate's rule and the intermediate delegating notification results in immediate invalidity.

B. Absence of Express Statutory Sanction (The Strict Negative Rule)

As established in Barium Chemicals and reiterated in Sahni Silk Mills (P) Ltd. v. ESI Corp., (1994) 5 SCC 346, subdelegation without statutory authorization is void per se. In Sahni Silk Mills, the Supreme Court held that where Section 85-B of the Employees' State Insurance Act, 1948 empowered the 'Corporation' to recover damages from defaulting employers, the Director General could not authorize an administrative sub-delegate to exercise that quasi-judicial power in the absence of explicit statutory empowerment. The Court ruled that where Parliament intends to permit subdelegation, it employs explicit statutory phraseology; the absence of such language creates an absolute bar.

C. Impermissible Delegation of 'Essential Legislative Functions'

Even where a parent Act contains an express clause authorizing subdelegation (such as Section 5 of the Essential Commodities Act), that enabling clause does not grant a blank check. The primary delegate cannot subdelegate an 'essential legislative function.' In Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997) 5 SCC 51, the Supreme Court struck down a subordinate rule that attempted to create a legal fiction regarding the point of sale for market cess. The Court affirmed that creating legal fictions, imposing taxation, prescribing criminal offenses, or altering statutory definitions are non-delegable essential legislative functions that cannot be transferred to a delegate, much less a sub-delegate.

D. Violation of Fundamental Rights and the Test of Non-Arbitrariness (Article 14)

Subdelegated legislation must satisfy the overarching demands of Part III of the Constitution, particularly the guarantee of equality and non-arbitrariness under Article 14. Subdelegated orders that confer uncanalized, unguided, or absolute discretionary powers upon lower-level executive officials are routinely struck down as unconstitutional.

In State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75, and subsequently in E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3, the Supreme Court firmly established that arbitrariness is antithetical to equality under Article 14. When a subdelegated notification authorizes an executive officer to grant or deny business licenses, seize goods, or regulate prices based solely upon the officer's unguided 'subjective satisfaction'—without laying down objective criteria, statutory guidelines, or procedural safeguards—the subdelegated rule is void as manifest arbitrariness.

E. Failure to Comply with Procedural Mandates: Publication and Consultation

A pervasive defect of subdelegated legislation is procedural informality. Primary statutes often contain mandatory provisions requiring prior publication, public consultation, or notification in

the Official Gazette (e.g., Section 23 of the General Clauses Act, 1897). In Harla v. State of Rajasthan, AIR 1951 SC 467, Bose, J., memorably proclaimed:

"Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some mode of publication usual in them so that knowledge of the law can be acquired before their rights and liberties are jeopardised. The thought that a man can be punished under a law he did not know and could not have known is repulsive to modern jurisprudence."

Where a primary delegate subdelegates power to an inferior authority, that inferior authority frequently issues directives through administrative circulars, departmental letters, or internal memoranda. Indian courts have decisively held that an unpublished circular or an administrative guideline cannot have the force of law. If a subdelegated regulation affects the rights, property, or liberties of the subject, publication in the Official Gazette is an indispensable condition precedent to its legal enforceability.

7.CONTEMPORARY PATHOLOGIES: EROSION OF DEMOCRATIC CONTROLS AND ADMINISTRATIVE HAZARDS

The rapid expansion of subdelegated legislation in contemporary governance has generated serious structural hazards that threaten constitutional democracy and the Rule of Law. Four primary pathologies demand rigorous scrutiny:

A. The Subversion of Parliamentary Laying Procedures

Under modern constitutional practice, the primary mechanism of legislative oversight over delegated legislation is the 'laying procedure.' Parent statutes routinely incorporate provisions mandating that all rules framed by the Central Government shall be laid before each House of Parliament for a prescribed period (typically thirty days) while it is in session. If Parliament disapproves or modifies the rule, the rule ceases to have effect or takes effect only in the modified form (e.g., under the Committee on Subordinate Legislation established in both Lok Sabha and Rajya Sabha).

Subdelegated legislation effectively bypasses this crucial democratic safeguard. While the parent Act requires the primary rules framed by the Central Government to be laid before Parliament, subordinate notifications, regional orders, and executive guidelines issued by tertiary sub-delegates (such as municipal commissioners, state licensing directors, or police superintendents) are almost never laid before the legislature. Consequently, subdelegated legislation operates in a parliamentary vacuum—completely insulated from legislative scrutiny, parliamentary debate, or democratic correction.

B. Administrative Opacity and the Menace of 'Secret Law'

As Sir Cecil Carr and Lord Hewart warned in their classical critiques of the administrative state, subdelegated legislation breeds bureaucratic secrecy. Unlike primary Acts of Parliament and central statutory rules—which are publicly cataloged, assigned statutory instrument numbers, and accessible in official gazettes—subdelegated directives are often scattered across disparate bureaucratic circulars, local district notifications, and departmental websites.

This fragmentation creates what legal scholars call 'secret law.' Citizens, legal practitioners, and lower judiciary are often unable to ascertain the binding law in force on a given date. When penal sanctions, property forfeitures, or regulatory penalties are imposed based on obscure subdelegated circulars known only to internal bureaucratic officials, it violates the core tenets of

legal certainty and procedural fairness.

C. Dilution of Institutional Competence and Administrative Caprice

The doctrine of delegatus non potest delegare is anchored in the presumption of institutional competence. When Parliament delegates authority to the Central Government, it trusts the collective wisdom of the Union Cabinet and senior legal advisers in the Ministry of Law. However, as legislative power cascades through successive subdelegations to subordinate regional officers, that institutional competence and legal sophistication are diluted.

Subordinate officers—frequently lacking formal legal training and operating under intense local political pressures—are far more susceptible to exercising rulemaking powers arbitrarily, disproportionately, or in a manner that encroaches upon constitutional liberties. The proliferation of vague, ill-drafted, and draconian local executive orders issued under cascading subdelegation during public emergencies or market fluctuations demonstrates the grave risks of unchecked bureaucratic lawmaking.

8. RECONCILING OPERATIONAL EFFICIENCY WITH THE RULE OF LAW: NORMATIVE PROPOSALS

To prevent subdelegated legislation from degenerating into bureaucratic tyranny while maintaining the administrative flexibility required by modern governance, public law must construct a rigorous normative framework. The following structural reforms are imperative:

1. Express Statutory Delineation and Non-Delegation Clauses: The legislature must abandon the practice of enacting open-ended subdelegation clauses. Every parent Act that permits subdelegation must explicitly define: (a) the specific, exhaustive list of officers or institutions eligible to receive subdelegated authority; (b) the precise subject-matter scope of such subdelegation; and (c) explicit statutory prohibitions barring tertiary subdelegation (prohibiting a delegate of a delegate from further subdelegating).

2. Mandatory Codification of the Carltona Boundary: The distinction between internal departmental assistance (the Carltona principle) and external subdelegation must be formally codified in administrative statutes. Where an administrative official acts merely on behalf of the designated statutory authority within a department, that action must remain subject to direct ministerial oversight and accountability.

3. Compulsory Centralized Publication and Gazette Notification: No subdelegated rule, order, or notification should have the force of law until it has been formally published in an easily accessible, searchable, and publicly available digital Gazette. Subdelegated norms published merely via administrative circulars or internal memoranda must be declared inadmissible in courts of law as a basis for adverse civil or penal actions.

4. Expansion of Parliamentary Scrutiny to Subdelegated Instruments: The terms of reference for Parliamentary Committees on Subordinate Legislation (such as those in the Lok Sabha and Rajya Sabha) should be statutory expanded to mandate the periodic review and auditing of subdelegated rules and orders issued under major regulatory enactments (e.g., Essential Commodities Act, Disaster Management Act, Information Technology Act).

5. Heightened Judicial Scrutiny and the Proportionality Test: Courts reviewing subdelegated legislation must discard the passive presumption of regularity. Subdelegated legislation should be subjected to rigorous proportionality review: the court must verify whether the subdelegated measure was strictly necessary, whether less restrictive alternatives were available, and whether the sub-delegate adhered to procedural fairness and non-

arbitrariness under Article 14.

9. CONCLUSION: THE ENDURING VITALITY OF DELEGATUS NON POTEST DELEGARE

Subdelegated legislation represents one of the most critical structural challenges in modern administrative law. As the contemporary welfare state expands its regulatory reach, the administrative demand for multi-tiered delegation will inevitably persist. However, administrative efficiency cannot be purchased at the expense of constitutional legitimacy.

The ancient maxim delegatus non potest delegare is far from an obsolete relic of medieval common law. Rather, it serves as an indispensable constitutional barrier against administrative overreach. It asserts that in a constitutional democracy governed by the Rule of Law, coercive state authority cannot be casually diffused through an endless bureaucratic chain. Every exercise of legislative rulemaking must trace its authority through an unbroken, legally authorized chain of democratic consent back to the sovereign legislature.

By enforcing the requirement of express statutory authorization, invalidating the transfer of essential legislative functions, striking down arbitrary unguided discretion under Article 14, and demanding procedural transparency through publication, the judiciary preserves the democratic integrity of the legal system. Subdelegation may be an operational necessity, but it must remain a strictly controlled exception—anchored in statutory boundaries, guided by intelligible principles, and subject to continuous constitutional review.

REFERENCES

1. Allen, C. K. (1965). Law and Orders: An Inquiry into the Nature and Scope of Delegated Legislation and Executive Powers in England (3rd ed.). Stevens & Sons.

2. Austin, G. (1999). Working a Democratic Constitution: A History of the Indian Experience. Oxford University Press.

3. Basu, D. D. (2018). Administrative Law (6th ed.). LexisNexis Butterworths Wadhwa.

4. Carr, C. T. (1921). Delegated Legislation: Three Lectures. Cambridge University Press.

5. Craig, P. P. (2018). Administrative Law (8th ed.). Sweet & Maxwell.

6. Davis, K. C. (1971). Discretionary Justice: A Preliminary Inquiry. Louisiana State University Press.

7. De Smith, S. A., Woolf, H., & Jowell, J. (2018). Judicial Review of Administrative Action (8th ed.). Sweet & Maxwell.

8. Dicey, A. V. (1915). Introduction to the Study of the Law of the Constitution (8th ed.). Macmillan.

9. Garner, J. F., & Jones, B. L. (1985). Garner's Administrative Law (6th ed.). Butterworths.

10. Hewart, Lord. (1929). The New Despotism. Ernest Benn Limited.

11. Jain, M. P., & Jain, S. N. (2017). Principles of Administrative Law (8th ed., Vols. 1–2). LexisNexis.

12. Kersell, J. E. (1960). Parliamentary Supervision of Delegated Legislation: The United Kingdom, Australia, New Zealand and Canada. Stevens & Sons.

13. Locke, J. (1689). Second Treatise of Civil Government (P. Laslett, Ed., 1988). Cambridge University Press.

14. Massey, I. P. (2020). Administrative Law

(10th ed.). Eastern Book Company.

15. Sathe, S. P. (2004). Administrative Law (7th ed.). LexisNexis Butterworths.

16. Schwartz, B. (1991). Administrative Law (3rd ed.). Little, Brown and Company.

17. Seervai, H. M. (2015). Constitutional Law of India: A Critical Commentary (4th ed., Vol. 2). Universal Law Publishing.

18. Takwani, C. K. (2021). Lectures on Administrative Law (7th ed.). Eastern Book Company.

19. Wade, H. W. R., & Forsyth, C. F. (2014). Administrative Law (11th ed.). Oxford University Press.

20. Willis, J. (1938). "Delegatus Non Potest Delegare