CHAPTER VII

CONCLUDING REMARKS

This study reveals that in India parliamentary supervision of delegated legislation has influenced the control exercised by the courts on such legislation. Before Independence, there was hardly any legislative control worth the name on administrative law-making. There was no regular practice of laying statutory rules before the legislature; nor was there any committee to examine them on behalf of the Houses. Even the executive was not responsible to the legislature from which it derived its powers to make laws. Moreover, the legislature did not represent the general masses of the country. Under such conditions it was quite reasonable for the Indian courts to take the view that the legislature could not delegate the legislative functions. This view was taken by the Calcutta High Court in *The Empress v. Burah*[1] as early as in 1877. Latter in 1943, the Federal Court of India also held in *Emperor v. Benori Lall* [2] that the legislature could not confer legislative power on the executive without laying down the policy with reference to which the power was to be exercised. In both these cases the judgments were reversed by the Privy Council which was constituted of judges trained under the British constitutional notions of parliamentary supremacy and cabinet responsibility. On India's attaining independence in 1947 the executive became fully responsible to the legislature, but the position of parliamentary control of delegated legislation continued for some time to be the same as it was before. In 1951 therefore the Supreme Court of India found justification for adopting in *In re Delhi Laws Act*[3] case the American rule of non-delegation which by implication required Parliament to control delegated legislation by stating the limits or policy within which the delegate should function.

1. (1877) I.L.R. 3 C. 63.
2. (1943) F.L.J. 79.
3. 1951 S.C.J. 527.

With the adoption of the American rule of non-delegation, the court's control on delegated legislation in India has become two-fold. The courts can invalidate a parliamentary delegation of legislative power if it is not accompanied by a legislative policy for the guidance of the delegate, and the laws framed by the delegate can be declared void if they are found to be *ultra vires*. In the chapter on 'Judicial Control' it was seen that the doctrine of *ultra vires* is widely applied to all subordinate laws. The reason for this is to be found partly in the Constitution of India and the Fundamental rights guaranteed by it, and partly in the somewhat strict judicial attitude towards administrative actions including delegated legislation.

But after the decision of the *In re Delhi Laws Act* case the position as to parliamentary control of delegated legislation has considerably improved. Now there is provision for parliamentary supervision of subordinate legislation at two stages. Every bill proposing to delegate legislative power has, by means of an explanatory memorandum, to inform the Houses about the nature and scope of the proposed delegation. Almost every such bill contains a requirement that rules made under the delegation shall be laid before Parliament and shall be so laid subject to annulment or amendment by the Houses. Since 1953 a committee of the Lok Sabha exists to examine bills and to see whether the above requirements are fulfilled. On being asked by the Speaker, the committee can also report whether in its opinion a proposal to delegate legislative power should be amended or dropped. Again, the committee examines all statutory rules whether laid before Parliament or not and whether certain principles are observed.

The above parliamentary changes have had effect on the judicial mind also. The courts' attitude towards delegated legislation has begun showing signs of liberality. In chapter III have been discussed the cases in which after the *In re Delhi Laws Act* case the Supreme Court has upheld broad delegations. There has been only one decision in which a provision of a parliamentary enactment was invalidated on the ground that it violated the rule against delegation of essential legislative function. It is, therefore, reasonable to infer that the rule is not a real judicial check on delegation of legislative power, though the courts may use it as a weapon to strike down a delegation in extreme cases. Further, the judiciary also takes notice of the 'laying' requirement. For instance, in

Grewal v. State of Punjab,[1] and in *In re Kerala Education Bill*[2] such requirements were relied upon. The court had a view that the legislature did not in those cases abdicate its function but kept control over the delegation.

At present the Committee on Subordinate Legislation has no expert guidance in the discharge of its technical and onerous duty of scrutinizing delegated legislation. The committee's existence would prove more useful if it is, like foreign counterparts, provided with the assistance of a legal expert. The important drawback with the Committee on Subordinate Legislation is that it is excluded from the consideration of 'policy' behind the 'orders' except insofar as such consideration may be indirectly involved in its work. The policy question can be discussed only in the Houses. But it has been found that the members of the Houses have so far failed to take sufficient interest in subordinate legislation. They seem to be indifferent to, and even unaware of, the dangers involved in giving legislative powers to the executive without keeping a watch on the way in which those powers have been exercised. There has been little demand for introducing parliamentary safeguards against delegated legislation and all the existing measures have been taken only on the initiative of the government. The factor responsible for the absence of sufficient discussion of delegated legislation in Parliament is the absence of a strong opposition and lack political training and knowledge about the ways of government. The government has an overwhelming majority in both the Houses which may often dissuade willing members from raising a discussion on an objectionable policy behind certain 'orders'.

What deserves immediate attention of Parliament is the desirability of laying down certain statutory procedure requirements to ensure participation by affected interests in the process of ruline-making. At present there is no general practice of prior consultation with outside interests, nor do any advisory committees exist to consider draft rules. Antecedent publicity is also not stipulated for all subordinate law-making. Consequently, the affected interests are not adequately safeguarded. A minimum procedural safeguard of previous publicity generally of all subordinate laws together with an opportunity being given to the interested persons to submit their representations against such laws, appears necessary. Suitable amendment to S. 23 of the General Clauses Act. 1897, making it applicable to all kinds

1. 1959 S.C.J. 399.
2. 1959 S.C.J. 321.

of delegated legislation except those whose previous disclosure may not be in the public interest, might will serve the purpose. Further, a uniform expression, preferably "Statutory Instrument", should be adopted for describing any document by which power of delegated legislation is exercised by the government or its subordinate agency.

At the present time system of publication of subordinate legislation involves endless research to discover statutory rules. It is, therefore, very much desirable that there should be a separate publication for subordinate legislation, annual compilations of all statutory instruments of general interest, periodic guides to Statutory Instruments and the publicaton of "Instrument Issue List" from time to time.