

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Colourable Legislation

Lecture Notes by- INDRA BHUSHAN SINGH

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Introduction

Doctrine of Colorable Legislation like any other constitutional law doctrine is a tool devised and applied by the Supreme Court of India to interpret various Constitutional Provisions. It is a guiding principle of immense utility while construing provisions relating to legislative competence.

Before knowing what this doctrine is and how it is applied in India, let us first understand the genesis of Doctrine of Colorable Legislation.

Doctrine of **Colorable Legislation** is built upon the founding stones of the Doctrine of **Separation of Power**. **Separation of Power** mandates that a balance of power is to be struck between the different components of the State i.e. between the Legislature, the Executive and the Judiciary. The Primary Function of the legislature is to make laws. **Whenever, Legislature tries to shift this balance of power towards itself then the Doctrine of Colorable Legislation is attracted to take care of Legislative Accountability.**

Definition

Black's Law Dictionary defines 'Colorable' as:

1. Appearing to be true, valid or right.
2. Intended to deceive; counterfeit.
3. 'Color' has been defined to mean '**Appearance, guise or semblance**'.

The literal meaning of Colorable Legislation is that under the '**color**' or '**guise**' of power conferred for one particular purpose, the legislature cannot seek to achieve some other purpose which it is otherwise not competent to legislate on.

This Doctrine also traces its origin to a Latin Maxim:

“Quando aliquid prohibetur ex directo, prohibetur et per obliquum”

This maxim implies that “**when anything is prohibited directly, it is also prohibited indirectly**”. In common parlance, it is meant to be understood as “**Whatever legislature can't do directly, it can't do indirectly**”.

In our Constitution, this doctrine is usually applied to Article 246 which has demarcated the **Legislative Competence** of the Parliament and the State Legislative Assemblies by outlining the different subjects under List I for the **Union**, List II for the **States** and List III for **both**, as mentioned in the Seventh Schedule.

This doctrine comes into play when a Legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one. By applying this principle the fate of the Impugned Legislation is decided.

Supreme Court on Colorable Legislation

One of the most cogent and lucid explanations relating to this doctrine was given in the case of ***K.C. Gajapati Narayana Deo And Other v. The State Of Orissa***

“If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers.

*Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression ‘**Colorable Legislation**’ has been applied in certain judicial pronouncements. **The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise.**”*

This Doctrine is also called as “**Fraud on the Constitution**”. The failure to comply with a Constitutional condition for the exercise of legislative power may be overt or it may be covert. When it is overt, we say the law is obviously bad for non-compliance with the requirements of the Constitution, that is to say, the law is *ultra vires*. **When, however, the non-compliance is covert, we say that it is a ‘fraud on the Constitution’, the fraud complained of being that the Legislature pretends to act within its power while in fact it is not so doing.** Therefore, the charge of ‘fraud on the Constitution’ is, on ultimate analysis, nothing but a **picturesque and epigrammatic way of expressing the idea of non-compliance with the terms of the Constitution.**

Limitations on the Application of Doctrine of Colorable Legislation

1. The doctrine has no application where the powers of a Legislature are not fettered by any Constitutional limitation.
2. The doctrine is also not applicable to Subordinate Legislation.
3. The doctrine of colourable legislation does not involve any question of *bona fides* or *mala fides* on the part of the legislature. The whole doctrine resolves itself into the, question of competency of a particular legislature to enact a particular law.

If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. **Whether a statute is constitutional or not is thus always a question of power.**

4. A logical corollary of the above-mentioned point is that the Legislature does not act on **Extraneous Considerations**. There is always a Presumption of Constitutionality in favour of the Statute. The principle of Presumption of Constitutionality was succinctly enunciated by a Constitutional Bench in *Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors.*:

“That there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.”

There is a very famous rule of interpretation as well that explains why the courts strongly lean against a construction which reduces the statute to a futility. The Latin Maxim *“construction ut res magis valeat quam pereat”* implies that a statute or any enacting provision therein must be so construed as to make it effective and operative. The courts prefer construction which keeps the statute within the competence of the legislature.

5. When a Legislature has the Power to make Law with respect to a particular subject, it also has all the ancillary and incidental power to make that law an effective one.

6. As already discussed above that the transgression of Constitutional Power by Legislature may be **patent, manifest or direct**, but may also be **disguised, covert and indirect** and it is **only** to this latter class of cases that the expression “Colorable Legislation” is being applied.