

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Doctrine of colourable legislation

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Date:- 21/07/2020

Doctrine of Colorable Legislation like any other constitutional law 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.

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

COLOURABLE LEGISLATION IN INDIA:-

In India 'Doctrine of Colorable Legislation' signifies only a limitation of the law-making power of the legislature. It comes to know while the legislature purporting to act within its power but in reality, it has transgressed those powers.

The doctrine of Colorable Legislation becomes applicable whenever legislation seeks to do in an indirect manner what it cannot do directly.

In India, legislative powers of parliament and the state legislatures are conferred by [Article 246](#) and distributed by List I, II, and III, in the seventh schedule of the Indian Constitution. The parliament have the power to make laws respect to any of the matters of the List II and the parliament and the state legislatures both have the power to make laws with respect to any of the matters of the List III and the residuary power of legislation is vested in the Parliament by virtue of Article 248, and List I.

For making any law or of that law's validity legislative competency is an issue that relates to how legislative powers must be shared between the centre and the state or it focuses only on the relationships between both of them. The main point is that the legislature having restrictive power cannot step over the field of competency. It is termed as the "fraud on the Constitution".

The whole Doctrine is based upon the maxim that "you cannot do what you cannot do directly". "Colorable legislation" is thus bound up with incompetency and not tainted with bad faith or evil motive. A thing is colorable which in appearance only and not only in reality, what it purports to be.

The Supreme Court of India in different judicial pronouncement has laid down the certain tests in order to determine the true nature of the legislation impeached as colorable:-

The court must look to the substance of the impugned law, as distinguished from its form or the label which the legislature has given it. For the purpose of determining the substance of the impugned law, the court will examine two things, i.e. effect of the legislature and the object and purpose of the act.

The Doctrine of Colorable Legislation has nothing to do with the motive of the legislation, it is in the essence a question of vires or power of the legislature to enact the law in question.

The doctrine does not involve any question of bona fides or mala fides intention on the part of legislature. If the legislature is competent enough to enact a particular law, then whatever motive which impelled it to act are irrelevant.

LIMITATIONS ON THE APPLICATION OF DOCTRINE OF COLORABLE LEGISLATION:-

The Doctrine has no application where the powers of a legislature are not fettered by any Constitutional limitation.

The Doctrine is also not applicable to Subordinate Legislation.

The Doctrine does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine revolves itself into the, question of competency of a particular legislature to enact a particular law.

A logical corollary of the above-mentioned point is that the legislature does not act on Extraneous Considerations. There are always a presumption of constitutionality in favor of the statute. The principle of presumption of constitutionality was succinctly enunciated by constitutional bench in *Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors.*

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.

The transgression of constitutional power by legislature may be patent, manifest or direct, but may also disguised, covert and indirect and it is only to this latter class of cases that the expression “colorable Legislation” is being applied.

Case laws relating to Doctrine of Colorable Legislation:-

In *K.G. Gajapati Narayan Dev v. State of Orissa*, the Supreme court explained the meaning and scope of the doctrine of colorable legislation. In this case Supreme Court said that “If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their 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 power. Such transgressions may be patent, manifest or direct, but it may also be disguised, covert and indirect and is to this latter class of cases that the expression ‘Colorable Legislation’ applied in certain judicial pronouncement.”

State of Bihar v. Kameshwar Singh is the only case where a law has been declared invalid on the ground of Colorable Legislation. In this case, the Bihar Land Reforms Act, 1950, was held void on the ground that though apparently, it purported to lay down a principle for determining compensation yet, in reality, it did not lay down any such principle and thus indirectly sought to deprive the petitioner of any compensation.