

Doctrine of Colourable Legislation | 23 Feb 2024

Introduction

The doctrine of colourable legislation is a legal principle that aims to prevent the excessive unconstitutional use of the legislative authority of the government. This doctrine is also termed as the '**Fraud on the Constitution**'.

What is the Origin of Doctrine of Colourable Legislation?

- This doctrine originated from the Latin maxim "**quando aliquid prohibetur ex directo, prohibetur et per obliquum**" which means things that cannot be done directly should not be done indirectly either.
- The doctrine of colourable legislation was introduced in India by the **British administration** who adopted this doctrine from Canada and Australia.
- After independence, the doctrine of colourable legislation remained to be an integral part of the **Constitution of India, 1950 (COI)**.
- The judiciary further developed the doctrine of colourable legislation through its judgements to regulate the legislative authority of the government bodies.

What is the Doctrine of Colourable Legislation?

- This doctrine **tests the competence of the legislature** against an enacted law.
- It 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.
- It **restricts the overstretching** of the constituted power of the legislature in a disguised, covert or indirect manner.
- This doctrine is usually applied to **Article 246 of the COI** which has demarcated the Legislative Competence of the Parliament and the State Legislative Assemblies by outlining the different subjects.

What is Article 246 of the COI?

- This Article deals with the **subject-matter of laws made by Parliament and by the Legislatures of States**. It states that—
 - (1) Notwithstanding anything in clauses (2) and (3), **Parliament has exclusive power to make laws** with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
 - (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the **Legislature of any State also, have power to make laws** with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
 - (3) Subject to clauses (1) and (2), the Legislature of any State has **exclusive power to make laws for such State** or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
 - (4) Parliament has power to make laws with respect to **any matter for any part of the territory of India not included in a State** notwithstanding that such matter is a matter enumerated in the State List.

What is the Applicability Doctrine of Colourable Legislation?

- The Court applies this doctrine to **determine the competency of the enactment** of such impugned legislation and examines its true and latent nature.
- If the Court finds any transgression of authority by the legislature in making such law, it **declares such law as void**.

What are the Limitations of Doctrine of Colourable Legislation?

- Subordinate legislation is **exempt from the doctrine**. It is based only on the question of a legislative body's competence to adopt certain legislation.
- It has **no application** when there is **no constitutional limit** and where the powers of a legislature are not restricted by any limitation.
- It is unconcerned about whether the legislation is **relevant or irrelevant**.
- The notion is unrelated to the legislature's good or bad intentions. It merely considers whether the **adopted law falls within the jurisdiction** of the legislature.

What is the Landmark Case of Doctrine of Colourable Legislation?

- **R.S Joshi v. Ajit Mills (1977):**
 - The **Supreme Court** observed that in the statute of force, the colourable exercise of or extortion on administrative force or misrepresentation on the constitution, are articulations which **only imply that the assembly is clumsy to authorize a specific law**, albeit the mark of competency is struck on it, and **afterwards it is colourable enactment**.