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ANALYZING THE CONSTITUTIONAL DOCTRINE OF COLORABLE LEGISLATION

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ABSTRACT

We had made an attempt to explain the doctrine of colorable legislation and legislative accountability. We are in a deep dilemma by the fact that is colorable legislation is actually required in India to fix legislative accountability and is it being implemented and protected in the right manner. If it's needed for India then there cannot be any misconception then this as we look upon the organization of governance and anticipation of the constitutional creators this was never intentional. We need this doctrine because the legislature is running and deviating apart from its rightful code of conduct and playing with citizens trust for which legislature is unable to give any accountability. "ACCOUNTABILITY CAN BE ACQUIRED BUT CANNOT BE TAKEN OUT". We feel, • Abused and corruption of legislature causes annoyance and anger among the public which needs to be checked. • Increasing misconduct and misdemeanour of public trust has caused great disappointment which needs to be looked after. • There must be quick and electronic real-time on the screen of legislative policies and bills for quick evaluation and implementation.

INTRODUCTION

Doctrine of Colourable Legislation in simple words means "What cannot be done directly cannot also be done indirectly". Doctrine of Colourable Legislation and Legislative Accountability in a deliberative law-making body, unlike the Presidential systems, highlights upon accountability[1]. According to the plan of action of our constitution there exists Separation of Powers which is meant to keep up and nurture an equilibrium between individuals and constituting elements of government that is Judiciary, Executive and Legislature. The primary purpose of the Legislature is to enact and create laws. However, when Legislature tries to moves this equilibrium of power in its favour then the Doctrine of Colourable Legislation is put into action to take account of the same. Though the different constituting elements of government are supreme in itself but their actions are always liable to proper inspection and scrutinization. By applying this principle, the destiny of disputed and challenged legislation is pronounced. Legislative Accountability is nowhere observed in the constitution but can be concluded from the conduct and behaviour, we

[1] www.wikipedia.com

are following since years. Legislative Accountability means imprudent, secrecy, and unbolted ill-treatment of the public's belief and confidence. There can be 2 types of Legislative Accountability: Legal and Moral. The legislature is given such a potentiality it is morally accountable, however, when we say the legislature is legally accountable more than morally accountable, the Doctrine of Colourable Legislation comes into action. While having such a long and garrulous constitution the public has miserably flunked to check the lucidity and responsibility along with the liability of governmental agencies. Checks and balances are of a very important nature. This is where consequential and significant public ministrations reforms in the design and operation of bureaucracy, and suitable judicial resolution in the manner in which it is long-running, and justice been served. Emphasis is on citizens on one hand and legislature on the other hand. The public/citizens accord law framing capacities to Legislature. They invest it with authority and control for crucial verdicts to be taken about the application and execution of public policies and public accounts in return citizens want to safeguard these powers against the misconduct and abuse by Legislature.

EVOLUTION OF DOCTRINE

Doctrine of Colourable Legislation is evolved through and based upon "Separation of Powers". Separation of Powers instructs that an equilibrium of powers should exist among all three organs of government. [2] The doctrine of Colourable Legislation is constructed on a based meaning "Things which are disqualified to be done directly are also disqualified to be done indirectly." This doctrine comes into light when something agreed and settled by Legislature in an indirect manner when it cannot be done directly. Generally, in a coalition of federalism, there are two stages of government. One is the existence and power of each stage of government have been pledged by the constitution. Indian system is very much impacted to the colonial reigning system of the Britishers for many reasons. One of the effects of this must be the resolution which embarked 3 pillars of democracy i.e. Is Judiciary, Legislative and Executive. In India, a direct distinction of potential powers exists by which equilibrium has been fed between the different organs of

[2] www.desikanoon.com

administering government among these the Legislature is invested with the formation of laws. This doctrine is traced to a Latin aphorism "***Quam Do Aliquid Prohibeteur Ex Director, Prohibeteur Et Per Obliqium."*** In Indian Constitution, this doctrine is generally bid upon Article 246 which has differentiated the law-making capacity of Indians Parliament and State Lawmaking assemblies by outlining different heads under List 1(Union), List 2 (State) and List 3 (Both) under Schedule 7. In plain and straightforward words this doctrine comes into action when Legislature is not entitled to enact a law on a particular subject but nevertheless indirectly does the same.

STRIKING ASPECTS

Doctrine of Colourable Legislation cites to the capacity of the legislature to sanction a particular statute of law. If the challenged legislation falls within the competence of the law-making body, the question of doing something indirectly which cannot be done directly does not arise. Federalism is one of the basic attributes or features of the Indian Constitution. By the righteousness of this power, the constitution anticipates distinction of governmental functions and powers between various elemental units of the nation.

The doctrine of Colourable Legislation acts as a restriction of the law-making powers of Legislation. It comes into picture when the legislature professes to act within its capacities, but in actuality, it has lapsed those powers. So, the doctrine becomes pertinent whenever the legislature seeks to do something in an unintended manner when it cannot be done in an intended manner. If the disputed law falls within the proficiency of Legislature, the question of Colourable Legislation does not arise.

The basic function of Legislature is to enact laws whenever the legislature tries to move this equilibrium in favour of itself then the Doctrine of Colourable Legislation is enticed to take safe custody of Legislative Accountability.

LANDMARK CASE RULINGS

- **KC GAJAPATI NARAYAN DEO Vs STATE OF ORRISA [3].**

  "The Doctrine of Colourable Legislation does not include any questions of authentic and unworthy acts on part of the law-making body". If no mala fides could be accredited to the legislature by a settled law, and this agreement that the change has been passed only with a view to penalize the first respondent is not available to the first respondent. The law-making body cannot be charged with for enacting and passing a legal statute for an irrelevant purpose. Therefore, no mala fide could be assigned to the Legislature. A law-making body cannot take actions on irrelevant and immaterial consideration. But a legislative action cannot be banged upon on grounds of been mala fide because of the lack of legislative capacities.

- **MOHAN LAL TRIPATHI Vs DISTRICT MAGISTRATE, RAI BARELI & ORS[4].**

  Court ruled that irrelevant and immaterial considerations cannot be acted upon by the legislature. An ordinance issued in 1990 was restored by Act 19 of 1990. The act came into power on 24 July 1990 but it was applied ex post facto from 15 Feb 1990, the date was ordinance was published and proclaimed but any legislative action cannot be pounced upon for being erratic.

- **STATE OF HIMACHAL PRADESH Vs KAILASH CHAND MAHAJAN [5]**

  Certainly, there exists an assumption in consideration to constitutionality of a legal statute. Rule of Assumption in favour of constitutionality, but only moves the substance of proof and bounds the person who pounces it. It's for that person to show that there has been a felony of constitutional principles.

[3] AIR 1953 Ori 185
[4] 1993 AIR 2042, 1992 SER (3) 338.
[5] 1992 AIR 1277,1992 SCR (1) 917

- **CHARAN JIT CHAUDARY Vs UNION OF INDIA & ORS[6]**
  Court ruled that Colourable Legislation is subject to the constraints that it is applicable and is in operation till the time it does something clear and beyond relevant doubts that the law-making body has intersected its limits. This rule in its operation as the principle of establishment means that if two meaning is possible, then the court will reject the unconstitutional one and accept the validity of the challenged law.

- **STATE OF BIHAR & ORS Vs HARIHAR PRASAD DEBUKA[7]**
  The notification shows the goal, is namely to avoid dodging and enable assessment of sales tax. The permits will incidentally allow assessment by discovering whether the tax would be payable or not. The permit would also allow the carrier to pass by the State territory and would thus encourage rather than hindering interstate trade. Thus, the disputed notification is an action in exercise of capacities incidental to the demand of sales tax and it could not be said to have been a colourable exercise of power to barricade or constrain interstate trade in regards to which Bihar lawmaking body has no potential to legislate upon.

CRITICAL ANALYSIS

If the constitution of the state disperses the law enacting powers amongst different bodies which have to function within their specific spheres struck out by respective legislative constraints in the shape of fundamental privileges, doubts do arise as to whether the legislature in a specific case has or has not, in regards to the context of the statute or in techniques of validating it, degenerating the restrictions of its constitutional powers. Such degeneration may obviously be evident or noticeably perceptible and it is to this, latter group of cases that the expression Colourable legislation has been serviced upon in Judiciary. The idea conveyed is even though it would evidently seem a legislature in passing a law professes to act within the restrictions of its capacities, yet in materiality it trespasses and disobeys these powers, the breach being covered up by what appears on proper examination to be a mere existence or concealment. This doctrine is also termed as ***"FRAUD ON CONSTITUTION".*** The failure to observe and obey constitutional circumstances for the

[6] 1951 AIR41, 1950 SCR 869
[7] 1989 AIR 1119, 1989 SCR (1) 796

utilization of legislative power to be overt or covert. When its overt, we say the legal statute is evidently bad for disobedience with the requirements of the constitution that is to specifically term as the law is ultra-virus.

However, when the noncompliance is covert then it's a fraud on the constitution, the fraud criticised of being that the legislature bluffs to at within its powers while, as a matter of fact, it isn't being the same. Therefore, the accusation of fraud on the constitution is eventual inspection, noting but an attractive and monosyllabic way of communicating the proposition of insubordination with the keys of the constitution.

LIMITATIONS ON APPLCATION OF COLOURABLE LEGISLATION IN RELATION TO ARTICLE 246

- The doctrine has no applicability whether the potential capacities or powers of a law-making body aren't restricted and confined by any constitutional limitations.
- The doctrine isn't also material to subordinate legislation.
- The doctrine of colourable legislation does not involve any queries of any authenticity or mala fide intention on part of the legislature. [8]The whole doctrine sorts out itself into the question of competency of a particular legislature to make a particular law.
- Rational corollary of the above-mentioned points is that the legislature doesn't behave on irrelevant and immaterial considerations.
- There is always temerity of constitutionality in favour of legal provisions. The principle of the temerity of constitutionality was summarily pronounced by a constitutional bench in RAMA KRISHNA DALNIA V s SHREE JUSTICE SR TENDOLKAR & ORS [9]that there is always an assumption in for the constitutionality of an enactment and the workload is upon the person who strikes it to show that there has been a crystal-clear offence of violation of constitutional principles.

[8] www.quora.com
[9] 1958 AIR538, 1959 SCR 279

- When the legislature has powers to enact a law, it also has auxiliary and incidental powers to make that law a proficient one.
- The misdemeanour of the wrongdoing of constitutional powers may be patent on the face but might also be covert and an only latter group of cases that colourable legislation is audited upon

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CONCLUSION

We had made an attempt to explain the doctrine of colourable legislation and legislative accountability. We are in a deep dilemma by the fact that is colourable legislation is actually required in India to fix legislative accountability and is it being implemented and protected in the right manner. If it's needed for India then there cannot be any misconception then this as we look upon the organization of governance and anticipation of the constitutional creators this was never intentional. We need this doctrine because the legislature is running and deviating apart from its rightful code of conduct and playing with citizens trust for which legislature is unable to give any accountability. "ACCOUNTABILITY CAN BE ACQUIRED BUT CANNOT BE TAKEN OUT".

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