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Doctrine of Colourable Legislation

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ABSTRACT: ***If the constitution of a State distributes the constitutional realms specified by unique statutory entries or whether there are limitations on the legislative power in the sense of fundamental rights, questions arise as to whether the legislature does not have the subject-matter of the law or the activation mechanism in a particular situation. If the government is properly competent to enact a particular statute, so it is useless to do whatever reason impels it to act. Colourful law, i.e. implicitly doing something that cannot be achieved specifically. It is necessary to assume that the judiciary (usually affiliated with the state legislature) does not have the authority to make laws on a specific aspect, but makes it tacit. The principle of colourable laws states, "Whatever the government is unable to do directly, it cannot do indirectly." By following this theory, the fate of the disputed statute is decided. This was provided for in Article 246, which demarcated the constitutional power of parliamentary and state assemblies by defining the different subjects in Schedule I for the Union, Schedule II for the State, and Schedule III for both, as provided for in the seventh schedule of the Constitution of India.***

KEYWORDS: Constitution of India; Colourable Legislation; Doctrine.

INTRODUCTION

The theory of colourable legislation applies to the issue of authority of the government when enacting a provision of law. There are two different sections of my project, part one of my thesis deals with the colourful law doctrine and part two deals with parliamentary responsibility. It is worth noting that my whole research thesis is fundamentally doctrinal.

A federal state's government is responsible to the citizens, and the statute has distinct authority vested in the constitution. Therefore, in the light of the theory of vibrant law in the Indian case, the question is what will be the degree and context of statutory responsibility with respect to the authority bestowed upon it.

One of the main aspects of the Indian constitution is federalism. The Constitution allows for the demarcation of legislative roles and powers within separate constituent units of the country by means of this power. There are usually two tiers of government in a federation. The presence or control of each level of government is ensured by the Constitution[1].

The Indian system is, for several reasons, very much influenced by the English colonial rule system. The strategy that established the three foundations of democracy, i.e. the executive, legislature and judiciary, must be one of the factors of this. A direct division of authority prevails in the Indian constitutional pattern under which a balance between the various organs of the government has been maintained. The rule making power vests mainly on the legislature between these[1].

"The colourable law doctrine is based on the principle that "what cannot be achieved specifically cannot be done implicitly as well. When a legislature tries to do something in an indirect fashion when it does not do it directly, the doctrine becomes true. Thus, it applies to the authority of the government to pass a statutory statute. The question of doing things

indirectly that cannot be accomplished explicitly would not exist if the challenged law comes under the authority of the legislature[2].

In India,' the colourful law doctrine' means only a limitation of the legislature's law making power. It comes into view as the legislature claims to function within its authority, but it has in fact transgressed certain rights. The doctrine thus becomes true if any statute tries to do something it does not do explicitly in an indirect way. The question of doing things indirectly that cannot be accomplished explicitly would not exist if the challenged law comes under the authority of the legislature[3].

Legislative powers of the Parliament and State Assemblies in India shall be granted by Art. 246 and allocated in the seventh schedule of the Constitution by Lists I, II and III. Parliament has the sole right to make laws with regard to any of the matters in List II. All Parliament and State Legislatures have the power to make laws in List III, which is also known as the concurrent list, with respect to matters. By virtue of Article 248 and List I, Entry 97, the residual power of law is vested in Parliament. The rights of the State Governments to make laws shall be subject to the powers of Parliament to make laws in relation to List I and List III matters[4].

When reviewing Parliament's legal competence to make a statute, all that needs to be seen is whether the subject matter comes under List II into which Parliament can not join in view of the remaining authority vesting in Parliament, such issues are not beyond Parliament's legislative competence. Legislative competency is a problem that applies to how the center and states must divide legislative authority. It just reflects on the friendship between the two[4].

DISCUSSION

I have made an attempt in this above debate to explain colorful legislation and legislative responsibility separately in the Indian Constitution as well as comparatively in the Canadian Constitution and it has culminated in legislative accountability being a process that lies at the center of the people and accountability to the people by the legislature. The colorful statute has raised a doubt about the legislature's authority to pass a specific rule. But is there any need for this colourful law in a country like India and is the legislature constitutionally obliged to be responsible for this?[5]

It was never meant by the framers for this in the Indian constitution, but now the legislature is running out of its duties for a few days and performing some unnecessarily unethical procedure. It is thus appropriate to change the statutory framework. India should have an effective, corruption-free legislative structure. Previous reforms should be made side-by-side in order to allow for public oversight and to expand the authority of the State Auditor General. Finally, it is noted that a movement to build statutory transparency could be the doctrine of colourable law[5].

There is a lack of provision in federal countries like Canada with respect to parliamentary responsibility in the constitution, but separate enactments are eventually made when there is a legislative accountability issue. Therefore, to correct legislative transparency in regard to any improvements in the legislative framework, colorful legislation is required[6].

One of the main characteristics of the Indian constitution is federalism. The Constitution allows for the demarcation of legislative roles and powers within separate constituent units of the country by means of this power. There are usually two tiers of government in a federation. The constitution ensures the life or jurisdiction of each level of government. For several factors, the Indian system is heavily influenced by the English colonial ruling system[6].

The strategy that established the three foundations of democracy, i.e. the executive, legislature and judiciary, must be one of the factors of this. A direct division of authority prevails in the Indian constitutional pattern under which a balance between the various organs of the government has been maintained. The rule making power vests mainly on the legislature between these[6].

The theory of colourable legislation applies to the issue of authority of the government when enacting a provision of law. There are two different sections of my project, part one of my thesis deals with the colourful law doctrine and part two deals with parliamentary responsibility. It is worth noting that my whole research thesis is fundamentally doctrinal[7].

In India,' the colourful law doctrine' implies just a restriction on the legislature's law making power. It comes into view as the legislature claims to function within its authority, but it has in fact transgressed certain rights. Thus, when a statute tries to do in an implied way what it does not do explicitly, the doctrine becomes applicable. The question of doing things indirectly that cannot be accomplished explicitly would not exist if the challenged law comes under the authority of the legislature[7].

The question of whether the Legislature has stayed within the authority given to it or has infringed a restricted area is defined by the true existence and nature or theory and content of the law. The key argument is that it is difficult for the legislature with restrictive authority to walk over the area of competency. This is regarded as the "fraud of the constitution"[8].

In the case of K.C Gajapti vs. Orissa, the Supreme Court, while defining the theory, held that "if the constitution of a state distributes the legislative spheres marked by specific legislative entries or if there are limitations on the legislative authority in the form of fundamental rights, questions arise as to whether in a particular case the legislature in relation to the subjugation arises." This transgression can be patent, evident and immediate, but may also be distinguished, protected and indirect, and in some judicial pronouncements the word "colorful legislation" has been used in the latter class of cases[8].

When an entity that has no authority to legislate builds laws that disguise them in such a way that it appears to be under its authority, laws may be considered colourable. The argument is that the legislature should not overstep the domain of its competence indirectly. A basic procedural crime is such a case. In other words, it is the substantive substance of the act and not only the form or surface presentation, and it is impossible to rescue it from scrutiny since, in reality, the subject matter is outside the legislature's ability to legislate about how the law is garbed. The government will not violate the constitutional restrictions by using indirect means[9].

This principle is often referred to as "Fraud on the Constitution" Failure to satisfy a constitutional obligation can be overt or disguised in order to exert legislative authority. When

it's overt, we say the rule is bad for failing to conform with the rules of the Constitution, that is, ultra vires is the legislation. When the non-compliance is secret, though, we contend that it is a 'judicial racket,' the charges of misconduct that the Senate pretends to act within its jurisdiction while it is not, in fact. Therefore, in the final conclusion, the allegation of 'judicial fraud' is nothing but a pictorial and epigrammatic means of presenting the notion of non-compliance with the Constitution's terms[9].

CONCLUSION & IMPLICATION

There is still a requirement that the legislature should not surpass its authority (ut res magis, valet quam parret) and the burden of determining that an act is not under the jurisdiction of the legislature or that, as is often the case for the individual questioning its constitutionality, it has violated such constitutional mandates.

So the overall analysis is that colorful legislation means that the government has transgressed the boundaries of its authority in creating the statute. The argument could be posed, however, that whether or not parliament should do anything indirectly, which it cannot do explicitly, depends on whether it cannot do it directly. There are too many examples of law and life where, while not directly, anything may be achieved indirectly. The real concept of colourable law, however, is "it is not permissible to do indirectly what is directly prohibited."

REFERENCES

[1] M. C. Dorf and C. F. Sabel, “A constitution of democratic experimentalism,” *Columbia Law Review*, 1998, doi: 10.2307/1123411.

[2] E. M. Parker, “The Law of the Constitution,” *American Political Science Review*, 1909, doi: 10.2307/1945682.

[3] P. S. Castellano, “The Rule of e-law,” 2012.

[4] F. A. Hayek and R. Hamowy, *The constitution of liberty: The definitive edition*. 2013.

[5] K. Karst, “Paths to Belonging: The Constitution and Cultural Identity,” *North Carolina Law Review*, 1986.

[6] R. H. Fallon, *The dynamic constitution: An introduction to American constitutional law*. 2004.

[7] H. Yaacob and Hisham Yaacob, “Waqf History and Legislation in Malaysia : a Contemporary Perspective,” *Journal of Islamic and Human Advanced Research*, 2013.

[8] D. Dyzenhaus, *The constitution of law: Legality in a time of emergency*. 2006.

[9] G. S. Alexander, “The Concept of Property in Private and Constitutional Law: The Ideology of the Scientific Turn in Legal Analysis,” *Columbia Law Review*, 1982, doi: 10.2307/1122295.