BLOGS

Learn in a Minute: Doctrine of Colourable Legislation

Ruchika Mohapatra · 16 Feb 2025

Edit TABLE OF CONTENTS Introduction Background of Doctrine of Colourable Legislation Application of Doctrine of Colourable Legislation Landmark Cases Conclusion

Introduction

The doctrine of colourable legislation is a legal principle that addresses situations where a legislative body passes a law that, on the surface, appears to be within its constitutional powers but is, in reality, an attempt to achieve an objective beyond its jurisdiction. This doctrine, derived from the Latin maxim ***"quando aliquid prohibetur ex directo, prohibetur et per obliquum"*** is primarily based on the idea that legislative powers must be exercised within the limits set by the constitution, and any attempt to exceed those limits is considered colorable legislation. The doctrine of colourable legislation implies that whatever is prohibited directly is prohibited indirectly also.

Background of Doctrine of Colourable Legislation

Constitutions typically delineate the powers of different branches of government, including the legislative branch. These powers may be explicitly enumerated or implied, and any legislation passed must fall within these constitutional boundaries.

Article 246 of the Indian Constitution is a crucial provision that deals with the distribution of legislative powers between the Parliament of India and the State Legislatures. It outlines the subjects on which each of these legislative bodies has the authority to make laws.

A legitimate legislation is one that falls within the constitutional authority of the legislative body. On the other hand, colorable legislation is an attempt to do something indirectly that the constitution prohibits doing directly. In essence, it is a disguised or deceptive use of legislative power.

Courts, when evaluating legislation, look beyond the literal language of the law to assess its true purpose and effect. If the substance of the law goes beyond the powers granted by the constitution, it may be considered colourable, regardless of its formal language.

Application of Doctrine of Colourable Legislation

The doctrine requires an objective analysis of the legislation's purpose and effect. If the legislation's primary intent is to achieve an end that falls outside the constitutional authority of the legislative body, it may be deemed colourable.

Colourable legislation represents a subterfuge—an indirect attempt to achieve an objective beyond the constitutional purview, while maintaining formal adherence to constitutional norms.

Excessive application of the doctrine might lead to accusations of judicial overreach. The courts, in their attempt to scrutinize legislative intent, must strike a balance to avoid unduly interfering with the legitimate exercise of legislative powers.

Landmark Cases

R.S Joshi v. Ajit Mills: In this case the Supreme Court held that the entries in the list must be given a wide meaning implying all incidental and ancillary powers. The court held that punitive measures for enforcing social legislation is ancillary measures.

K.C.G. Narayana Deo v. State of Odisha: Colourable legislation means that though apparently the legislature passing the statute purported to act within the limit of their power, they transgressed these in substance either directly or indirectly.

The doctrine of colourable legislation is based on the maxim that “you cannot do indirectly what you cannot do directly”. The doctrine refers to the limits of powers and not the motive of the legislature.

Conclusion

The doctrine of colourable legislation serves as a safeguard to maintain the integrity of constitutional limits on legislative power. The doctrine recognizes exclusive and concurrent legislative powers. Exclusive powers are solely vested in one level of government, while concurrent powers can be exercised by both levels simultaneously. It reflects the principle that the form of legislation must align with its substance, and courts play a vital role in ensuring that legislative actions remain within constitutional bounds.