

Whether respective
spheres marked out
by specific



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Whether a statute is constitutional or not is thus always a question of power. If the constitution of a State distributes the legislative power amount different bodies which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental right, questions do arise whether the legislative 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 powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to the latter class of cases that the expression ‘colourable legislation’ has been applied. The idea conveyed by this expression is that although apparently a legislature in passing a statute purported to act within the limits of its power, yet in the substance and reality, it transgressed these powers.

The legal position, therefore, is that the legislature can only make law within its legislative competency. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights by the constitution. The legislature cannot overstep the field of its competency, directly or indirectly. The court will scrutinize the law to ascertain whether the legislature by device purports to make a law which though in form appears to be within its sphere,, in effect and substance reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant.

The doctrine of colourable legislation is relevant only in connection with the question of legislative competency.