

The Limitations on the Law

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Abstract--- Every legal system consists of the concepts of rights, duties, powers, liability etc. Even if this is true these concepts do not prevail in absolute terms and are subjected to limitations. These limitations are imposed by law itself, and these legal limitations are very essential for the doctrine of rule of law and the principles of justice to prevail. But the doctrine rule of law and the principle of justice also demand that the law should also be subjected to limitations. There are many limitations upon the law itself, such as no law can prevail in violation to the constitutional provisions. Another limitation on the law is that the law should be made according to the legal prescribe procedure. So, the most appropriate limitation upon the law is the law itself.

Keywords--- Supreme legislation, delegated legislation, basic structure doctrine, the doctrine rule of law, precedent, parent statute, the doctrine of ultra vires, subordinate legislation, constitutional law, principles of natural justice

I. INTRODUCTION

The law is the most crucial ingredient of the state because without the law it is difficult for the state to exist. The different branches of the state that is, the legislature, the executive and the judiciary are created with the help of the law. All the state officials derive their powers from the law and so also, they have to perform the functions which are bestowed by the law. Hence it is stated that law is the back bone of the legal state. Generally, a fundamental law is created which deals with which organs would constitute the state and hence such a fundamental law is called as the “constitution of the state”. Apart from the basic organs of the state, all the other state organizations are created by the law, not only this but even the private organizations are created by the law. All the private or public companies or firms or associations are created by the law. In fact, the legal economic or the legal political institutions are created by law. Even the social institutions need the legal validity, for instance the social institution of marriage requires the legal recognition for its constitution as well as its dissolutions. So, it is the law which constitutes, confers the powers, and places limits on the various organization and officers. The question over here is who will limit the law or what are the limitations on the law? To answer this question, we have to first identify the types of laws because the specific limitations depend upon the type of law.

- Types of laws.
 - i. The supreme legislation.
 - ii. The subordinate legislation.

- i. The supreme legislation: - The State organ

legislature is created to make legislation and hence this organ is empowered with legislative powers. The legislation made by the legislature is called as the supreme legislation.

- ii. The subordinate legislation: - The legislature some times empowers the other organs to make the law, and such a law made by the other organs is called as subordinate legislation. Basically, there are two types of subordinate legislations.

- a. The judicial law making – That is the precedent.

The Constitution of India by virtue of Article 141, empowers the judiciary to make the law through interpretation of a legal provision during adjudication. Such a law is called as precedent. The authority of the judiciary to make a law is subordinate to the law-making authority of the legislature. This implies that the judiciary cannot make a law which violates a statute made by the legislature.

- b. The delegated legislation made by the executive. Sometimes the legislature transfers its legislative authority to the executive and based on such authority the executive makes the law. To transfer the legislative authority to the executive; the legislature has to first enact a statute or an Act and incorporate a provision in a particular section of that Act which empowers the executive to make the law, and such a statute is called as a parent statute. The law made by the executive under the parent statute is called as the delegated legislation. The form in which the delegated legislation prevails is order, directives, rules bye-laws etc. It is important to note that the executive has to make the law according to the powers incorporated in the parent

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statute.

- The limitation on the law.
 - i. The constitutional limitations. Every law under the Indian legal system is subject to the limitation of the constitutional law. The supreme legislation made by the legislative organ of the state is subject to the constitutional provision. The legislature can not make any statute or an Act which violates any provision of the constitution. If a law made by the legislature violates any provision of the constitution then the judiciary can strike down such a law. The constitution has empowered the judiciary to declare any law which violates the constitution as “ultra-vires to the constitution”. However, the legislature can make a law against the decision of the courts, and in such a situation the decision of court is regarded as not valid.

The legislature enjoys connotational powers to amend the constitution. Now the constitution is regarded as the basic law of the land because it contains the basic features of the Indian legal system, but it still needs to be amended to keep pace with the changing pace of the society, which is of dynamic nature and keeps on changing. The limitation of the legislative power of amending is the doctrine of the basic structure. It means that the legislature cannot amend the basic structure of the constitution.

Apart from the above limitations the legislature is bridled with the procedural limits while making the supreme legislation or while amending the constitution. It is absolutely mandatory for the legislature to follow the constitutional procedure of conducting three Readings in both the houses of the parliament separately. To amend the constitution a special procedure for amending the constitution has to be followed.

The rule of law as limitation on the law. The doctrine of rule of law as propounded by A. V. Dicey is an important limitation on the law. According to the doctrine of rule of law no arbitrary law or an unequal law can prevail in the legal system.

- ii. The limitations on the delegated legislation. There are many limitations on the delegated legislation which are as follow.
 - a. The delegated legislation should be in accordance with the constitutional provisions. The executive cannot make delegated legislation which violates the provisions of the constitution.
 - b. The parent statute is also a limitation on the delegated legislation. The executive cannot make any delegated legislation which violates the very

statute which empowers it to make delegated legislation.

- c. The executive is bound by the legislative policy of the parent statute. The executive has to make the delegated legislation in accordance with the legislative policy as laid down by the parent statute.
- d. The delegated legislation is bound by the frame work of the parent statute. The delegated legislation should be formulated within the frame work given by the parent statute.
- iii. The principles of natural justice. No law can be violative of the principles of natural justice. The principles of natural justice hold the paramount position in dispensing justice hence they are to be observed by every law making as well as law executing authority. The supreme legislation as well as the delegated legislation have to incorporate the principles of natural justice; and is they are violated then such a law is declared illegal.
- iv. Customs and traditions. The custom and traditions are considered to be very important for any society. The custom and traditions are related to the people’s feelings and sentiments, hence any law is very reluctant to infringe customs and traditions. In fact, Von Savigny is of the opinion that the law should be based upon the custom and traditions because the reflect the general spirit of the society.

However, if the customs and traditions are not in consonance with the human rights then a law can be made against the customs. For instance, the law enacted to prohibit the child marriage or the practice of sati or to abolish the practice of atrocities. One caution would like to be mentioned here is that in spite of what has been said above the customs and traditions are followed by the people even if the law prohibits that customs. For instance, the custom of taking and giving dowry; in spite of anti-dowry legislation still the people without heeding the law the people prefer to take and give dowry; hence customs and tradition are regarded as limitation on the law.

- v. Religion. Religion is another limitation on the law, and hence the law takes efforts to protect the religion. The personal laws incorporate the religion tenets, for instance The Hindu law, The Mohammedan law, The Christian law etc. The various religions are protected under the various respective laws. The forms, the methods and the procedure of marriage, divorce, successions, inheritance, adoption are based upon the religion tenets. The people like to follow their religious

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concepts regarding marriage divorce etc. and hence the law incorporates them.

Every concept in a legal system is subject to limitations as no concept can prevail in absolute terms. The concepts of individual rights, liberties, liabilities, the state's powers, privileges, immunities are all subject to limitation. Even the individuals basic right to life is subject to limitation that is the state can if it is necessary the state can take away the right to life. Again, the power of the state is subject to the limitation that the state can take away the right to life of an individual only according to procedure established by law. The point to be noted here is that not only the individuals, rights but also the state's power are subject to limitation by law. The law limits every right because the content of the rights and liberties and freedoms can be protected only within the frame work of legal limitation. That is, the law limits an individual's right in order that other individual's rights prevail, and unrestricted rights and liberties or freedoms will lead to anarchy and confusion regarding the extent of the said rights and liberties. So also, the law places limitation on the state's power to prohibit arbitrary rule which may result into in justice. So, imposition of legal limits is in consonance with the principles of justice. However, the law which place limitation should also be subject to limitations. The most interesting aspect is that, the best limitation upon law is law itself. When the law imposes limits on itself justice prevails because then no unjust or unreasonable law prevail. Not only this the doctrine of rule of law will prevail. The doctrine of rule of law mandates that every action of the ruler should be based upon law, and prohibits arbitrary rule. So, if the principle that no concept in a legal system should be without limitation then the law itself is no exception.

II. CONCLUSION

The limitation of law is a very interesting concept because generally it is seen that the law places limitation on the rights liberties, powers, immunities etc. But of course, it absolutely necessary that limitations are imposed because rights and liberties can be protected within the four corners of limitation. It must be remembered that even if the limitation restricts the rights still it is in furtherance of the preservation and protection of the rights. Can one imagine what will happen if no limitation is placed on the state's power? Limitless power will lead to despotism and concentration of powers and as it is well known that power corrupts and absolute power corrupts absolutely.

The legal limits are necessary but even the limits on the law are necessary. The limits on law are also placed by law

itself that is the law is subjected to legal limitation. For instance, the constitutional law places limitation on the legislature's as well as the executive's legislative power make supreme legislation or delegated legislation. Many other legal limitations have been elaborated in the above pages. It would like to be concluded that the best limitation upon the law is law itself.

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