

## CONCEPTUAL COMPREHENSION OF DOCTRINE OF REPUGNANCY AND IT'S EMPIRICAL ENACTMENT

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*“Another doctrine repugnant to civil society, is that whatsoever a man does against his conscience, is sin; and it dependent on the presumption of making himself judge of good and evil. For a man's conscience and his judgement are the same thing, and as the judgement, so also the conscience may be erroneous.”*

*- Thomas Hobbes, Leviathan*

Repugnancy means the conflict between two pieces of legislation which when applied to the same facts produce different results. Repugnancy arises when the provisions of two laws are so inconsistent and irreconcilable that it is impossible to do one without disobeying the other.

An investigation of the Indian Constitution is significant for any individual endeavoring to examine and comprehend the law of the nation. The constitution is the preeminent tradition that must be adhered to. It has the qualification of being the longest composed constitution on the planet. This is on the grounds that the creators of our constitution would not like to bar any subject which would later prompt an irreconcilable situation. With the authorization of laws by various authoritative bodies everywhere on the world, clash of law is an unavoidable issue. The tenet of repugnancy manages the contention of laws between the State and the Center.

Part XI of the Indian Constitution describes the legislative relations between the Centre and the States. The legislative fields of the Parliament and the State Legislatures have been specified in Article 246 of the Constitution whereas Article 254 of the Indian Constitution describes the mechanism of the resolution of the conflict between the Central and the State Legislation enacted with respect to any matter enumerated in List III of the Seventh Schedule.

Black's law dictionary characterizes *“repugnancy as an irregularity or logical inconsistency between at least two pieces of a lawful instrument. Repugnancy implies the contention between two gatherings of enactment which when applied to a similar reality produce various outcomes.*

*Repugnancy emerges when the arrangements of the two laws are so conflicting and beyond reconciliation that it is difficult to do one without ignoring the other.”*

Repugnancy emerges when the arrangement of two laws are so conflicting and beyond reconciliation that it is difficult to do one without ignoring the other. In the Indian setting, in the event that such a contention emerges between a focal and state enactment, at that point the focal law will win. This has been expressed in Article 254 of the Indian Constitution and furthermore been additionally explained by the Supreme Court in different cases like

The region of exploration falls inside the ambit of the relations between the Center and the States, as accommodated in the Constitution. The paper depicts in detail, what Article 254 implies to depend on, alongside the arrangements and the exemptions expressed in the Article. It clarifies the significance of the Article under the setting of Indian Federalism, just as the importance of the Article in making the Constitution lean more towards the government side.

The paper poses the inquiry of how far the significance of the Article has been perceived and maintained by the Courts and investigates the legal points of reference set comparable to the Article. It additionally looks at when does repugnancy emerge and how it tends to be tackled, by referring to points of reference. *J.T.C Ltd. v. Agricultural Produce Market Committee.*<sup>1</sup>

The Supreme Law of Democratic India i.e. Constitution of India, vests the law-making power between the Union Parliament and State Legislatures in terms of various Articles read with Schedule VII. It further provides List I being the fields allocated for the Parliament, List II being those within the exclusive domain of the State Legislatures and List III represents those areas where both carry concurrent powers to make laws. The Indian Constitution through Article 254 provides that a law on a subject-matter prescribed in List III enacted by the State Legislature would be valid only in case, where it is not in contravention to a law made by the Parliament on the same subject-matter. Thus in order to put more light and certainty the Doctrine of Repugnancy came in to picture as a principle, which is employed so as to ascertain when and where a State law turns repugnant to the Parliamentary legislation.<sup>2</sup>

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<sup>1</sup> Appeal (civil) 6453 of 2001.

<sup>2</sup> Sevta, Pankaj, Doctrine of Repugnancy (April 5, 2013). Available at SSRN: <https://ssrn.com/abstract=2245805> .

## WHAT DOES DOCTRINE OF REPUGNANCY ENSHRINE

Repugnancy is defining as “*An inconsistency or opposition between two or more clauses of the same deed, contract, or statute, between two or more material allegations of the same Pleading or between any two writings.*”<sup>3</sup>

The laws made by the Centre have been given more priority than other laws. There are different clauses in the Articles giving superior power to the Centre or the Parliament. In circumstances of conflict between laws, the laws made by the Centre will triumph. Most of the times, the conflict occurs in the Concurrent list. For the matters in the Concurrent list, both the Centre and the State has the power to make laws. They both have equal authority to come up with legislation. But, the laws made by the Centre for the same matters as the State shall prevail. Article 254 of the Indian Constitution enumerates the concept of doctrine of repugnancy.

The concept of repugnancy arises when there is inconsistency of laws. In *ITC Ltd. v. Agricultural Produce Market Committee*<sup>4</sup> the Supreme Court found a direct inconsistency between an Act enumerated by the Centre and an Act enacted by the State. So, the Court held that there is no chance of allowing the functioning of both the laws. In the given instance, the law made by the Centre prevails over the law made by the State. The contradiction of such laws arises during the application of it. There will be a disagreement in the legal results when the statutes made regarding the same subject matters are applied.

If the situation of repugnancy arises, the Court tries to resolve the matter by application of various doctrines like colorable legislation, pith and substance etc., as mentioned under Article 254 of the Constitution, the State law is void only to an extent it is repugnant with the laws of the Centre.

*In Bhikaji v. State of Madhya Pradesh*<sup>5</sup> the Court mentioned that just because the legislature enacted is repugnant in nature, it does not make the entire part invalid and in case if the laws made by the Centre are repealed at any point of time, it would become operative at a later stage. If the Parliament tries to be overpowering and enacts law that covers the entire field, then it is called as the rule of occupied field.

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<sup>3</sup> Collins Dictionary of Law © W.J. Stewart, 2006.

<sup>4</sup> AIR 2002 SC 852.

<sup>5</sup> AIR 1955 SC 781.

In *M. Karunanidhi v. Union of India*<sup>6</sup> the Centre and the State made laws on the same subject matter were discovered to be complimentary but not conflicting. So the Hon'ble Supreme Court held in this case that the laws enacted by both the Centre and the State could co-exist by not colliding or overlapping with each other. But when there are different spheres of operation the question of repugnancy does not arise. The State usually make way for the Centre to enact laws when there are instances of repugnancy.

Among the three lists (i.e. Union list, state list, and concurrent list) as mentioned in the Article 246<sup>7</sup> of the Constitution, the Union list has a distinct domination over the other lists. This is due to the superiority as the subject matters in the Union list involve the matters of national importance. Such legislations are essential for the smooth functioning of the country. The framers of the Constitution analyzed the integrity of the functioning of the nation and established a strong Central governance.

There is no defined set of rules or procedure that is followed in the federal nations with regards to the distribution of powers. It is based on the simple application of ad hoc formula that is ascertained as to the *locus* of a country or capacity of the State to deal at the local level. The subject matters are not put into a pre-settled notion as it depends on the needs and demands of the matter with respect to the social political scenario. In India, there exists composite legislation that means there is more than one entry that may overlap to cover the subject matter of a single piece of legislature.

The non- obstante clause of Article 246<sup>8</sup> is the last resort available and it is utilized in circumstances of irreconcilable conflicts. The court shall consider all the possible attempts to interpret the entries so as to settle the repugnancy and overlapping. The application of liberal and harmonious construction requires conflicting entries and the intent of conflicting entries are kept by the Court to give a compatible solution for the concerned situation. In *Ujagar Prints v. Union of India*<sup>9</sup> the Hon'ble Supreme Court observed that in declining the validity of law questioned on the ground of legislative competence, the State can always show that the law was supportable under any other entry that is within the competency.

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<sup>6</sup> AIR 1979 SC 898.

<sup>7</sup> Article 246, the Indian constitution, 1950.

<sup>8</sup> Article 246, the Indian constitution, 1950.

<sup>9</sup> AIR 1989 SC 516.

The words in the '*Concurrent list*' seemed to qualify only the 'present' law that means that the prevailing law in relation to a matter in the Concurrent List triumphs over a State law in the particular area in case of inconsistency. So, if there is repugnancy between a State law and Central law falling in the respective lists, then the latter should prevail over the former. However, the judicial interpretation of the Article 254(1)<sup>10</sup> has so far been otherwise.<sup>11</sup>

There is no provision to confine Article 254(1) only to circumstances where the Central and the State lists fall under the Concurrent lists rather than the circumstances mentioned under various other lists. It is not inconceivable that similar difficulty may arise if the two statutes come under separate lists.

### **LEGISLATIVE SCHEME ENVISAGED IN OUR CONSTITUTION**

Article 245 gives authority to parliament to make laws for the whole or any part of India and the state legislature may make laws for the whole or any part of the State. The legislative field of the Parliament and the State Legislatures have been specified in Article 246 of the Constitution. Article 246, reads as follows: – Subject-matter of laws made by Parliament and by the legislature of States. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the VII<sup>th</sup> Schedule (in this Constitution referred to as the 'Union List').

2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List').

3) Subject to clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

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<sup>10</sup> Article 254(1), the Indian constitution, 1950.

<sup>11</sup> AIR 1972 SC 1738.

4) Parliament has the power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Under the VIIth Schedule of the Constitution, it provides for a three-fold distribution of legislative subjects between the center and the state viz., List – I (the Union list), List – II (the state list), and List-III (the concurrent list). The Parliament has exclusive power to make laws with respect to any of the matters enumerated in the Union list. The state legislature has “in normal circumstances” exclusive power to make laws with respect to any of the matters enumerated in the State list. Both, the parliament and the state legislature can make the laws with respect to any of the matters enumerated in the Concurrent List.

#### **WORDS OF THE ARTICLES – 246 AND 254 OF THE INDIAN CONSTITUTION**

*“246. Subject-matter of laws made by Parliament and by the legislature of States.—<sup>12</sup> 1. Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the ‘Union list’). 2. Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the ‘Concurrent List’). 3. Subject to clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the ‘State List’). 4. Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.”<sup>13</sup>*

*“ Article 254 of the Constitution which contains the mechanism for resolution of conflict between the Central and the State legislations enacted with respect to any matter enumerated in List III of the Seventh Schedule reads as under”:*

<sup>12</sup> Article 246, the Indian constitution, 1950.

<sup>13</sup> Ibid.

**“254. Inconsistency between laws made by Parliament and laws made by the legislatures of States.—**<sup>14</sup> If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void. 2. Where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State.”<sup>15</sup>

#### **LEADING CASES LAWS – REGARDING THE DOCTRINE OF REPUGNANCY**

- State of West Bengal vs Union of India.
- Hoechst pharmaceuticals vs State of Bihar
- Bharat Hydro Power Corpn. Ltd. v. State of Assam
- Central Bank of India v. State of Kerala
- Tika Ramji vs State of UP
- Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra and Ors
- State of West Bengal and others v. Committee for Protection of Democratic Rights and others,
- M. Karunanidhi v. Union of India
- Deep Chand v. State of U.P

<sup>14</sup> Article 254, the Indian constitution, 1950.

<sup>15</sup> Ibid.

## CONCLUSION

In Article 245, they set out that parliament may make laws for the entire or any piece of the domain of India, and the Legislature of the State may make laws for the entire or any piece of the State. Article 246 gave that parliament had elite force to enact concerning matters remembered for the Union rundown, that State Legislatures had restrictive capacity to make laws regarding subjects in the State list, and that parliament furthermore, State Legislatures were laws concerning matters in the simultaneous rundown.

Article 254 given that the law made by parliament, regardless of whether passed previously or after the law made by the Legislature of a State, will win, and the law made by the Council of the State will to the degree.

