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CONTEXT OF PROVISION OF CONSTITUTION*

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## **INTRODUCTION :**

Part XI of the Indian Constitution describes the legislative relations between the States and Centre. Article 254 to establish the doctrine of Repugnancy is one of the laws laid down under the Indian Constitution as a safeguard to solve disputes arising between the states and the Union. 'Repugnancy' is meant to express 'conflict', whereby there is an expressed inconsistency between the State-made law and the Union-made law.

## **OBJECTIVE :**

The objective of this article is to explain the distribution of legislative powers between centres and states in general and its main object is deals with the Doctrine of Repugnance under Article 254 of the Indian Constitution.

The Constitution of India the lawmaking power between the Union Parliament and State Legislatures in terms of its various provisions read with Schedule VII. It therein distributes the subject-matters over which the two are competent to make laws; 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 Constitution, however, itself provides [vide Article 254] that a law on a subject-matter prescribed in List III enacted by the State Legislature would be valid only in the absence of or not being contrary to a law made by the Parliament on the same subject-matter. Thus has developed the doctrine of repugnancy which is employed to test as to when and where a State law turns repugnant to the Parliamentary legislation.

### **Repugnancy between a central Law and State Law ( Art. 254)**

Article 254 (1) says that any provision of law made by the Legislature of the state of the is repugnant to any provision of a law made by Parliament which is competent to enact or to any provision of the existing law with respect to one of the matters enumerated in the concurrent list then the law made by the parliament, whether passed before or after the law made by the legislature of such stage 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

Art. 254(1) only applies where there is inconsistency between a Central Law and State Law relating to the subject mentioned in the concurrent list. But the question is how the repugnancy is to be determined?

**In M. Karunanidhi v. Union of India , Fazal Ali J.,** reviewed all his earlier decisions and summarised the text of repugnancy. According to him a repugnancy would arise between the two statutes in the following situations:-

1. It must be shown that there is clear and direct inconsistency between the two enactments [Central Act and State Act] which is irreconcilable, so that they cannot stand together or operate in the same field.
2. There can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. Where the two statutes occupy a Parliament field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.
4. Where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arise and both the statutes continue to operate in the same field.

The above rule of repugnancy is, however, subject to the exception provided in clause (2) of this article according to clause (2) if a State Law with respect to any of the matters enumerated in the concurrent list contains any provision repugnant to the provision of an earlier law made by Parliament, or an existing law with respect of that matter, then the state law if it has been reserved for the assent of the President and has received his assent, shall prevail notwithstanding such repugnancy. But it would still be possible for the Parliament under the provision to clause (2) to override such a law by

subsequently making a law on the same matter. If it makes such a law the State Law would be void to the extent of repugnancy with the Union Law.

**In M. Karunanidhi v. Union of India**, the appellant challenged the validity of the Tamil Nadu Public Men ( Criminal Misconduct) Act. 1947, as amended by the Act of 1947 on the ground that it was inconsistent with the Central Act and Prevention of Corruption Act, 1947 and hence void. A CBI inquiry was instituted against the appellants who were alleged to have abused their official position in the matter of purchase of wheat from Punjab. As a result of the inquiry a prosecution was launched against the appellant under the IPC and the Prevention of Corruption Act. The state Act was passed after obtaining the assent of the President. The State Act repealed and the question arose whether action could be taken under the Central Laws i.e. the IPC, the Corruption Act and Criminal Law Amendment. The appellant contended that even though the State Act was repealed it was repugnant to the Central Laws, i.e. the IPC and the Corruption Act. It was argued that by virtue of Art. 254 (2) the provision the Central Act stood repealed and could not be revived after the State Act was repealed. He argued that even though the State Act was repealed the provisions of the Central Act having themselves been pro tanto repealed by the State Act when it was passed could not be applied for the purpose of prosecuting the appellant unless they were re-enacted by the Legislature. Thus the question before the court was whether there was any inconsistency between the State Act and the Central Act that the provisions of the Central Act stood repealed and unless re-enacted could not be invoked even after the state Act was itself repealed. The Supreme Court held that the State Act was not repugnant to the Central Acts and therefore it did not repeal the Central Act which continued to be in operation even after the repeal of the State Act creates distinct and separate offences with different ingredients and different punishments and does not in any way collide with the Central Acts. The State Act is

rather a complimentary Act to the Central Act. The State Act itself permits the Central Acts to come to its aid after an investigation is completed and a report is submitted. The State Act provides that the 'public man' will have to be prosecuted under the Central Acts.

The question of repugnancy between the Parliamentary legislations and State legislation arises in two ways. First, where the legislations are enacted with respect to matters allotted in their fields but they overlap and conflict. Second, where the two legislations are with respect to the matters in the concurrent list and there is a conflict. In both the situations, the Parliamentary legislation will predominate, in the first by virtue of non-obstacle clause in Article 246 (1) and in the second by reason of Article 254 (1)

**In Deep Chand v. State of U.P.**, the validity of U.P. Transport Service (Development) Act was involved. By this Act the State Government was authorised to make the scheme for nationalisation of Motor Transport in the state. The law was necessitated because the Motor Vehicles Act, 1939 did not contain any provision for the nationalisation of Motor Transport Services. Later on, in 1956 the Parliament with a view to introduce a uniform law amended the Motor Vehicle Act, 1939, and added a new provision enabling the State Government to frame rules of nationalisation of Motor Transport. The Court held that since both the Union Law and the State Law occupied the same field, the State Law was void to the extent of repugnancy to the Union Law.

**In Zaverbhai v. State of Bombay** Parliament enacted the Essential Supplies Act 1946, for regulating production supply and distribution of essential commodities . A contravention of any provision of the above Act was punishable with imprisonment up to 3 years or fine or both. In 1947, considering the punishment in adequate, the Bombay Legislature passed an Act enhancing the punishment provided under the Central Law.

The Bombay Act received the assent of the President and thus prevailed over the Central Law and become operative in Bombay. However, in 1950 Parliament amended its Act of 1946 and enhanced the punishment. It was held that as both occupied the same field (enhanced punishment) the State law became void as being repugnant to the Central Law.

**In State of Kerala v. Mar Apparaem Kuri Co. Ltd.** the question involved was whether the Kerala Chities Act, 1975 became repugnant to the Central Chit Funds Act, 1984 upon the enactment of Central Act i.e. when the President assented to the Bill or when a notification was issued under the Act bringing the Act in force in the State of Orissa. The Supreme Court held that the repugnancy arises on making of the law and not on its enforcement. The reason given by the Court is that the verb “made” in past tense finds place in the Head Note to Article 245. The verb “make” in the present tense exists in Article 245 (2) and the verb “made” finds place in Article 246. The word “made” has also been used in Article 250(2). The word “make” and not “commencement” has a specific legal connotation meaning thereby “to legislate”.

In a recent decision, dealing with the issues relating to the constitutional validity of MCOCA (a State legislation), the Supreme Court revisited the doctrine and explained its nuances in its decision in *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra and Ors.* in the following terms:

Chapter I of Part XI of the Constitution deals with the subject of distribution of legislative powers of the Parliament and the legislature of the States. Article 245 of the Constitution provides that the Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.



The legislative field of the Parliament and the State Legislatures has been specified in Article 246 of the Constitution. Article 246, reads as follows:-

**“246. 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 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.”

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:

**“254. Inconsistency between laws made by Parliament and laws made by the legislatures of States.—**

1. 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.”

We may now refer to the judgment of this Court in **M. Karunanidhi v. Union of India**, [(1979) 3 SCC 431], which is one of the most authoritative judgments on the present issue. In the said case, the principles to be applied for determining repugnancy between a law made by the Parliament and a law made by the State Legislature were considered by a Constitution Bench of this Court. At para 8, this Court held that repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.
2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.
3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List trenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.
4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.”

In para 24, this Court further laid down the conditions which must be satisfied before any repugnancy could arise, the said conditions are as follows:-

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

Thereafter, this Court after referring to the catena of judgments on the subject, in para 38, laid down following propositions:-

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.
2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.
4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.”

In **Govt. of A.P. v. J.B. Educational Society**, [(2005) 3 SCC 212], this Court while discussing the scope of Articles 246 and 254 and considering the proposition laid down by this Court in *M. Karunanidhi* case (supra) with respect to the situations in which repugnancy would arise, in para 9, held as follows:-

9. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union Legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State Legislature with respect to a matter enumerated in List II of the Seventh Schedule.
10. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.
11. With respect to matters enumerated in List III (Concurrent List), both Parliament and the State Legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State Legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

Thereafter, this Court, in para 12, held that the question of repugnancy between the parliamentary legislation and the State legislation could arise in following two ways:

12. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1). Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation."

In **National Engg. Industries Ltd. v. Shri Kishan Bhageria [(1988) Supp SCC 82]**, Sabyasachi Mukharji, J., opined that the best test of repugnancy is that if one prevails, the other cannot prevail.

## **CONCLUSION :**

In Article 245, they laid down that parliament might make laws for the whole or any part of the territory of India, and the Legislature of the State might make laws for the whole or any part of the State. Article 246 provided that parliament had exclusive power to legislate with respect to matters included in the Union list, that State Legislatures had exclusive power to make laws with respect to subjects in the State list, and that parliament and State Legislatures were laws with respect to matters in the concurrent list.

Article 254 provided that the law made by parliament, whether passed before or after the law made by the Legislature of a State, shall prevail, and the law made by the Legislature of the State shall to the extent.

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