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The Doctrine of Repugnancy the Constitutional Governance and Judicial Interpretation with Reference to Farm Laws in India

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Abstract

Federalism implies the system of division of powers between the Central and State Governments. India is a Quazi-Federal country with strong Centre with 97 subject matters of legislation. The framers of the Indian Constitution gave residuary matters in the hands of the Central Legislature. The States are subordinate to Central Government in co-ordinating the administration. Co-operative federalism is a pre-requisite of Indian administration through the creation of various administrative agencies. The doctrine of repugnancy will arise in matters relating to Concurrent list. If the law made by the State Legislature is in conflict with the law made by the Parliament, the Central Law will prevail over State law. The state law becomes void in view of the doctrine of Repugnancy.

Keywords: Federalism, Division of powers, residuary powers, Repugnancy.

I. Introduction

The Constitution of India has divided the legislative powers between Centre and State Governments under Seventh Schedule of the Indian Constitution. The Hon'ble Supreme Court of India have developed the various doctrine in interpretation of lists as enumerated in the Schedule to the Constitution. The doctrine of Repugnancy as evolved by the judiciary denotes the inconsistency between the Centre and State laws. The legislative power of the Central and State governments should run in compliance with each other. If the State law is

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inconsistent with Central law, then the Central law will prevails over the State law. The term repugnancy denotes adverse, hostile, repulsive and disagreeable.

II. Indian Constitution and Doctrine of Repugnancy

India is a federal country with strong Centre which has the power of overriding the State government's administration. The framers of the Constitution thought that, the sovereign power in matters of legislation lies in the hands of the Central Government. The States are not entrusted with Sovereign power to override the Central law in case of the Concurrent subject matters.

A. Law inconsistent with the law made by Parliament

Article 254(1) provides that, if any provision of a state law is repugnant to a provision in a law made by Parliament which it is competent to enact or to any existing law with respect to one of the matters in the Concurrent List, then the Parliamentary or the existing law prevails over the State law. To the extent of Repugnancy, the State law is void.

In K T Plantation Pvt. Ltd v. State of Karnataka[2] , the Court has opined that, the repugnancy between two statutes arises if there is a direct conflict between the two laws. These laws are fully inconsistent and have absolutely irreconcilable provisions and if the laws made by Parliament and the State legislature occupy the same field. Therefore, every effort should be made to reconcile the two enactments and construe both to avoid repugnancy.

In Bharat Hydro Power Corporation Ltd v. State of Assam[3] , court has held that, if the two enactments operate in different fields without encroaching upon each other, then there would be no repugnancy. Therefore the repugnancy has to exist in fact and it must be shown clearly and sufficiently.

In State of Maharashtra v. Bharat Shantilal Shah[4] the court held that, there was no such repugnancy between Sections 13 to 16 of the State Act (The Maharashtra Control of Organised Crime Act 1999) and provisions of the Central Act i.e- The Telegraph Act,1885, and Section 5(2) read with Telegraph Rules,1951.

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[2] AIR 2011 SC 3430.
[3] AIR 2004 SC 31 73.
[4] (2008) 13 SCC 5.

In Srinivasa Raghavachar v. State of Karnataka[5], the Advocates Act,1961 has enacted under entries 77 and 78[6] of List –I.[7] Section-48(8) of the Karnataka Land Reforms Act, 1961 prohibited the legal practitioners from appearing before land Tribunal. The question of inconsistency between the Central and State law had arrived in this case. The court held that, the State law was invalid as repugnant to Central Law.

For example, **The Indian Medical Council Act, 1965** has been enacted by Parliament under entry 26 of list-III.[8] Section-27 of the Act provides that, every person who is enrolled as a medical practitioner on the Indian Medical Register shall be entitled according to his qualifications to practise in any part of the country.

The West Bengal Act was enacted under Entry 41[9] of List-II had prohibited members of the State Health service from carrying on any private practise. It was considered as there is no conflict between the two enactments.

Article 254(2)[10] is an exception to article 254(1), as it lays down the general rule by providing an expedient to save a state law repugnant to a Central law on a matter in the Concurrent List and thus relaxes the rigidity of the rule of

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[5] AIR 1987 SC 1518.

[6] Inserted by the Constitution (Fifteenth Amendment) Act,1963 with retrospective effect.

[7] *Entry 77 of list –I* says that, constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such court), and servants of High Courts, persons entitled to practice before the Supreme Court.
Entry 78 of List-I provides for the constitution and organizations (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts.

[8] Entry 26 of List-III provides for, Legal medical and other Professions

[9] Entry 41 provides for, State Public Services, State Public Service Commission

[10] *Article 254(2)* provides that, 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, prevails in that State. Provided that, nothing in this clause shall prevent the 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.

repugnancy contained in Article 254(1). The reasons for such exceptions are as follows; -

a) Due to some peculiar local circumstances prevailing in a State
b) To make some special provision
c) To introduce the element of flexibility
d) To make the law suitable to local circumstances

Where a State law with respect to a matter in the Concurrent List contains any provision repugnant to the provisions of a previous Central law with respect to that matter, the State law prevails in the State concerned if, having been reserved for the consideration of the President and if it received the President assent then, it prevails in the State and overrule the Central Law.

In Karunanidhi v. Union of India[11], the Tamil Nadu Legislature had passed the, 'Public Men (Criminal Misconduct) Act, 1974 which received the Presidential assent under Article 254(2). Action was initiated under the Act against M. Karunanidi. The question before the court was that, another action can be taken against him under Central Law[12]?. But the State law was prevailed over the Central law because the State law has received the President assent.

III. Judicial interpretation of the Doctrine of Repugnancy

The Apex court has reiterated the doctrine of repugnancy in a broader manner in keeping the Constitutional ambition of Federalism. It is the duty of the Supreme Court of India to ensure co-operative federalism as compared to competitive federalism in United States of America.

In Deep Chand v. The State of Uttar Pradesh[13], the repugnacy between Uttar Pradesh Transport Service (Development) Act,1955 and Section-11 of the Motor Vehicles (Amendment) Act,1956[14] and Chapter- IV A of the General Clauses

[11] AIR 1979 SC 898.
[12] Section- 5(5) (d) of the Prevention of Corruption Act,1988.
[13] 1959 AIR 648.
[14] Section 11 in The Motor Vehicles Act, 1988 : Additions to driving licence.—
(1) Any person holding a driving licence to drive any class or description of motor vehicles, who is not for the time being disqualified for holding or obtaining a driving licence to drive any other class or description of motor vehicles, may apply to the licensing authority having jurisdiction in the area in which he resides or carries on his business in such form and accompanied by such, documents and with such fees as may be prescribed

Act,1897[15] has been involved. The question before the Court was the Constitutional validity of the enactments.[16] The State Legislature has passed the said law after obtaining the assent of the President of India. The validity of scheme of nationalisation has framed and the notifications issued by the State government under the Act.[17]

> The court has held that, the State law did not become wholly void under Article 254(1) of the Indian Constitution but, continued to be valid and subsisting law supporting the scheme already framed under the State Act. Justices Bhagwati, Subba Rao and Wanchoo had expressed that, the power of Parliament and relevancy lists in the Seventh Schedule were subject to the provisions of the Constitution including Article 13. There was a clear distinction between the two clauses of article 13.[18]The State

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by the Central Government for the addition of such other class or description of motor vehicles to the licence.
(2) Subject to such rules as may be prescribed by the Central Government, the provisions of section 9 shall apply to an application under this section as if the said application was for the grant of a licence under that section to drive the class or description of motor vehicles which the applicant desires to be added to his licence.

[15] Section 4A in The General Clauses Act, 1897: Application of certain definitions to Indian Laws. —
(1) The definitions in section 3 of the expressions "British India", "Central Act", "Central Government", "Chief Controlling Revenue Authority", "Chief Revenue Authority", "Constitution", "Gazette", "Government", "Government securities", "High Court", "India", "Indian Law", "Indian State", "merged territories", "Official Gazette", "Part A State", "Part B State", "Part C State", Provincial Government", "State" and "State Government" shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.
(2) In any Indian law, references, by whatever form of words, to revenues of the Central Government or of any State Government shall, on and from the first day of April, 1950, be construed as references to the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be.

[16] Article 13, 31,245,246 and 254 referred.

[17] Chapter –IV A inserted by the Motor Vehicles (Amendment Act of 1956 which provided for nationalization of transport services.

[18] Article 13 in The Constitution Of India 1949: Laws inconsistent with or in derogation of the fundamental rights
(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

law passed in spite of the prohibition contained therein, and did not pre-suppose that, the law made was not a nullity. In construing the Constitutional provisions relating to the powers of the legislature embodied in Articles 245 and 13(2) of the Constitution, no distinction should be made as between an affirmative and a negative provision for both are limitations on that power.

A. The Supreme Court of India on Validity of new Farm Laws

Rakesh Vaishnav v. Union of India, W.P 1118/2020

The writ petition was filed by more than 85 farmers union by challenging the new farm laws enacted by the Central Government on September, 2020. the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, the Farmers (Empowerment and Protection) Agreement of Price Assurance, Farm Services Act, 2020, and the Essential Commodities (Amendment) Act, 2020.[19]

The court was hearing three 'categories' of petitions: those opposing the laws; those in favour of the laws; and those by residents of Delhi and its surrounding areas which said the protesters were infringing their rights by blocking the roads.

B. Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020

The Acts seeks to provide farmers with a framework to engage in contract farming, where farmers can enter into a direct agreement with a buyer (before sowing season) to sell the produce to them at pre-determined prices. Entities that may strike agreements with farmers to buy agricultural produce are defined as

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void
(3) In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas
(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equality.

[19] During its monsoon session culminating on 23 September, 2020.

"sponsors'' and can include individuals, companies, partnership firms, limited liability groups, and societies.

The act provides for setting up farming agreements between farmers and sponsors. Any third parties involved in the transaction (like aggregators) will have to be explicitly mentioned in the agreement. Registration authorities can be established by state governments to provide for electronic registry of farming agreements.

Agreements can cover mutually agreed terms between farmers and sponsors, and the terms can cover supply, quality, standards, price, as well as farm services. These include supply of seeds, feed, fodder, agro-chemicals, machinery and technology, non-chemical agro-inputs, and other farming inputs.

Agreements must have a minimum duration of one cropping season, or one production cycle of livestock. The maximum duration can be five years. For production cycles beyond five years, the period of agreement can be mutually decided by the farmer and sponsor.

Purchase price of the farming produce—including the methods of determining price—may be added in the agreement. In case the price is subject to variations, the agreement must include a guaranteed price to be paid as well as clear references for any additional amounts the farmer may receive, like bonus or premium.

There is no mention of minimum support price (MSP) that buyers need to offer to farmers.

Delivery of farmers' produce may be undertaken by either parties within the agreed time frame. Sponsors are liable to inspect the quality of products as per the agreement, otherwise they will be deemed to have inspected the produce and have to accept the delivery within the agreed time frame.

In case of seed production, sponsors are required to pay at least two-thirds of the agreed amount at the time of delivery, and the remaining amount to be paid after due certification within 30 days of date of delivery. Regarding all other cases, the entire amount must be paid at the time of delivery and a receipt slip must be issued with the details of the sale.

Produce generated under farming agreements are exempt from any state acts aimed at regulating the sale and purchase of farming produce, therefore leaving no room for states to impose MSPs on such produce. Such agreements also exempt the sponsor from any stock-limit obligations applicable under the Essential Commodities Act, 1955. Stock-limits are a method of preventing hoarding of agricultural produce.

Provides for a three-level dispute settlement mechanisms like, the conciliation board—comprising representatives of parties to the agreement, the sub-divisional magistrate, and appellate authority.

C. Essential Commodities (Amendment) Act, 2020

An amendment to the Essential Commodities Act, 1955, this act seeks to restrict the powers of the government with respect to production, supply, and distribution of certain key commodities. The act removes cereals, pulses, oilseeds, edible oils, onion, and potatoes from the list of essential commodities.

Government can impose stock holding limits and regulate the prices for the above commodities—under the Essential Commodities, 1955—only under exceptional circumstances. These include war, famine, extraordinary price rise, and natural calamity of grave nature.

Stock limits on farming produce to be based on price rise in the market. They may be imposed only if there is: (i) a 100 percent increase in retail price of horticultural produce, and (ii) a 50 percent increase in the retail price of non-perishable agricultural food items. The increase is to be calculated over the price prevailing during the preceding twelve months, or the average retail price over the last five years, whichever is lower.

The act aims at removing fears of private investors of regulatory influence in their business operations. Gives freedom to produce, hold, move, distribute, and supply produce, leading to harnessing private sector/foreign direct investment in agricultural infrastructure.

D. Committee appointed by the Supreme Court on 11th January, 2021

According to the committee's website, the panel held 12 rounds of consultations with various stakeholders, including nearly 85 farmers groups, farmer producers' organisations (FPOs), procurement agencies, professionals, academicians, private

as well as state agriculture marketing boards. It also sought comments, views, and suggestions of the public.

The committee originally comprised four members including agricultural economists Anil Ghanvat, Ashok Gulati, Pramod Joshi, and Bhupinder Singh Mann. Mann, who is the president of Bharatiya Kisan Union, and All India Kisan Coordination Committee, recused himself from the panel after receiving flak from protesting farmers.

The Supreme Court in its order said that, the Committee should submit its recommendations to the court within two months from the date of its first sitting. The bench comprised of Chief Justice of India and justices A.S.Bopanna and V.Ramasubramanian had sought the co-operation of farmers who were protested at Delhi's border and said that, no power can prevent the court for setting up a committee to resolve the impasse.[20]

Supreme Court opined in the following ways

1. No power can prevent the court from appointing a committee to resolve the dispute on new farm laws.
2. The apex court has powers to suspend the legislation in order to solve the problem
3. Those who wants the genuine resolution will go to the committee as constituted by the court
4. There is a difference between judiciary and politics. Farmers to co-operate with the judiciary

Due to widespread strike against the New Farm laws, the Prime Minister of India has announced to take back the three legislations in the month of November, 2021. This may be due to pressure on the government to farmer's agitation against the implementation of the laws.

[20] Earlier, attorney general K.K. Venugopal informed the court that 'Khalistanis' had 'infiltrated' the protests. This came after an intervenor in the hearing alleged that the banned group 'Sikhs for Justice' are involved in the protests. When CJI Bobde asked the AG to confirm the allegation, Venugopal said, "We have said that Khalistanis have infiltrated the protests."

IV. Conclusion

Thus, it can be concluded that the power of legislation is prescribed under seventh schedule of the Indian Constitution. The powers should be exercised in a broader manner in compliance with each entry as listed in three lists. The Parliament has power to override the State legislature in making the law in any subject matters of the three lists. Subject matters like land and agriculture should have universal application in making the legislation. Since India is a Quasi-Federal country, the co-operation between the Central and State governments in compliance with the power of legislation is in need of an hour.