Centre State Relations in India

Prof. Uday Shankar

Rajiv Gandhi School of Intellectual Property Law

Indian Institute of Technology, Kharagpur

Week 04: Legislative Relations: Territorial Jurisdiction; Distribution of Legislative Subjects and Related Areas

Lecture 17: Doctrine of Repugnancy

Greetings to all of you. We have been discussing legislative relations and in that we have already discussed the territorial jurisdiction, subject matter related jurisdiction. Along with that we have also discussed the situations in which Parliament shall be allowed to enact a law on the State subject. Moving further, now in today's session we will be discussing that what mechanism Constitution presents to address the conflict between the laws made by the Centre and the States, what we call also as repugnancy. So, what is the methodology, formula suggested to resolve the conflict under the Constitution that we would be discussing today. We know very well that if laws are being made and where the power to make law has been entrusted upon both the Central and the States conflict is bound to arise. If conflict is bound to arise what shall be the processes of resolving the conflict. Article 254 of the Constitution details out the nature of conflict and the processes of resolving that conflict, what we may also call it as doctrine of repugnancy. So, in today's session, in this session we are discussing doctrine of repugnancy, what is the history of Article 254, how Article 254 came into existence and what kind of learning it carried from the Government of India Act 1935. When the framers were debating about repugnancy provision, what was there in their mind, what factors they brought in and how the court has discussed and dealt this issue of repugnancy that we will be discussing.

Now, when you look at doctrine of repugnancy, when you look at what this repugnancy is all about, we do understand that when laws are being made and if laws are being made on the same subject matter where competence has been conferred upon two legislatures, then such law

making exercise may come in conflict with each other, it may become repugnancy. So, repugnancy generally what we understand is that applicability of the law made by the Centre and the States may lead to conflicting results, when such laws are applied to the same facts. It is not taking us to one convergent view to contrary outcome is there and such conflict may arise because of irreconcilable differences between the Central Law and the State Laws or may be because of the direct conflict between the Central Law and the State Law. Now, when you look at the history of the law relating to resolving repugnancy, it traces back to the Government of India Act 1935.

We know very well that 1935 Act was the first experiment done of introducing a federal system of governance in this country and much of the provisions with regard to Centre State relations having taken from 1935 Act. Now, Section 107 dealt with the issue of repugnancy, dealt with the issue of inconsistency between the Federal Law and the Provincial Law. It said that if the Provincial Law is repugnant to the Federal Law on which Federal Legislature is also competent to make a law, then the Provincial Law shall be void to the extent of repugnancy. It does not say it will be void of an issue. It says that the declaration of non-operability of the law shall only be to the extent of conflict not more than that.

Section 107 also comes up with an exception where Provincial Law may prevail when the law made by the province has received the consideration of the Governor General or the signification of his Majesty's pleasure. And if the consent has come from the Governor General after considering the State Law/Provincial Law or from his Majesty, then it is the Provincial Law which shall prevail and not the Federal Law. Under Section 107, it was suggested that any bill or amendment in the law which is made by the provinces and which otherwise is in conflict with the Federal Law to be introduced only after obtaining prior sanction of the Governor General. So, a procedural step was laid down for effectuating the State Law if such law is in conflict with the Central Law. That is what was provided under Section 107.

Now, Section 107 comes under judicial scrutiny in this case of A.S. Krishna which is a case pertaining to a law enacted prior to independence where the court explains the ambit of Section 107 which is also there under the 1950 Constitution as Article 254(1). In this case, the court lays down two conditions for the applicability of this doctrine. First it says that the Central Law and

the State Law must be in respect of a Concurrent List where both the laws have got a competence to make law. And they must be repugnant to each other, repugnant to each other means both the laws cannot exist together. Validity of both the laws may not be possible together. And when these one well these two conditions are fulfilled then it says that the Provincial Law shall be void and void shall be to the extent of the same.

Now, Article 254 as Draft Article 231 was adopted without much debate. As we have studied that on the legislative relations there has been an elaborate discussion and it was decided that mechanism adopted, governance pattern which was there under 1935 Act should continue with necessary modification under 1950 Constitution. And that is why it was adopted without much debate because largely there was a kind of agreement on continuing with the system prevalent under 1935 Act.

Seventh constitutional amendment deleted the reference of Part A and Part B because we know very well that when India called independence States were categorized as Part A, Part B and Part C States. That was done away with when States were reorganized under the State Reorganization Act. Now, what is this doctrine of repugnancy what it says? Now, when you look at Article 254(1) it says that if a State Law is repugnant to a parliamentary legislation which Parliament is competent to enact or to a provision of an existing law with respect to one of the matters enumerated in the Concurrent List. Then the law made by Parliament is to prevail and the law which is made by the State shall to the extent of repugnancy be void. Now, there are two important expressions which are being used here.

One expression is parliamentary law which Parliament is competent to enact or to a provision of an existing law with respect to one of the matters enumerated in the Concurrent List. Existing law as it has been defined under the General Clauses Act or under the Constitution under Article 367. It refers to the laws which were enacted prior to 1950 which were made before the Constitution of India came into existence and it has not been repealed or amended or varied after the 1950 Constitution coming into effect. Now, existing law you find here is in relation to the Concurrent List whereas, competence of Parliament is not connected with the Concurrent List. So, the question comes in that the applicability of this doctrine of repugnancy shall exclusively

dealt with the Concurrent List or there could be a possibility of applying this doctrine in relation to List I versus List II.

We will deal this matter little later. Now, when you look at the applicability of doctrine of repugnancy, when you look at the law as it is prevalent today, it is very clear that that the applicability has been limited only to the laws made in reference to the Concurrent List [Article 254(2)]. Article 254(2) has been brought into effect for providing meaning to Article 254(1) because there is a specific reference of Concurrent List in Article 254(2).

Therefore, it is suggested that that let the applicability of repugnancy doctrine be only in relation to the Concurrent List because Article 254(2) refers only to Concurrent List. Because Article 254 says that if a State Law on a matter enumerated in Concurrent List contains a provision that is repugnant to earlier of law of Parliament or an existing law with respect to the subject matter, then the State Law shall prevail even though it is in conflict with the parliamentary law on the satisfaction of these two conditions. What is the condition? If such proposal has been reserved for the consideration of the President and it has received assent of the President. Now, this is what Article 254(2) in a way curves out an exception in relation to Article 254(1).

Why it is an exception? Why it is an exception? Because what is declared as void to the extent of repugnancy under Article 254(1) becomes valid if a State Law has been enacted by following the procedural steps let down under Article 254(2). That is why it is an exception. Further Article 254(2) proviso says that even though there has been assent granted by the President with regard to the State Law still there is necessary legislative authority with the Parliament to make a law by amending that State Law by varying that State Law for repealing that law. So, this proviso establishes a federal supremacy one may say that even after the assent necessary power is there with the Parliament.

So, ultimately the formula suggested is that it is a Central Law which shall prevail and there is a scope of according validity to the State Law by following certain procedural steps. However, the validity of the State Law can again be taken away or suppressed by parliamentary legislation which aims to amend or repeal or vary such a State Law. It says that repugnancy is there on the matter of legislative competence on the Concurrent List and if repugnancy happens then state

legislation has to give way to the parliamentary legislation. This is what it says.

And how do you understand that there is a case of repugnancy? Because reading of legislative process very well conveys this that as far as possible legislations is to be read as a constitutional one or a valid one. So, it is been suggested that only when there is a clear and sufficient situation of conflict between the Centre and the State Law, repugnancy should not be brought into play. Now as I said the Article 254 uses the expression which Parliament is competent to enact. Now when Parliament is competent to enact what does it mean and where the repugnancy applies. As I said repugnancy must be in relation to the Central Law and the State Law and it must be in an area where the Parliament has made a law and Parliament intends to give an exhaustive code on that matter.

If the parliamentary legislation is not exhaustive and qualified one then attempt should be made to give effect to both state law and the parliamentary law. So, what is required to be looked at is that whether in no situation both the laws can stand together. Now question comes in that should there be applicability of this doctrine also in relation to List I and List II. As we have discussed that judicial opinion on the applicability of this doctrine is only in relation to the Concurrent List not in relation to List I and List II. And such reading is coming from connect between Article 254(1) and Article 254(2) where an interpretation has been given that Article 254(2) controls the scope and ambit of Article 254(1).

Now, how the List I and List II conflict has to be resolved then if there is any conflict. One may argue that conflict between Article 254(2) and Article 254(2) can be addressed by referring to notwithstanding clause given under Article 246 by looking at pith and substance doctrine which we will be discussing in other lectures. So, Article 254 confines only to the Concurrent List and does not get into the matter of conflict on a law made under List I and List II. This is one way of looking at it. But then we need to also look at it that the reference of Concurrent List is only for existing law.

Parliament competent to enact ordinarily may be the case with Concurrent List where Parliament is also competent to enact a law and the State is also competent to enact law. But situation may be such where you find that law made by Parliament may be not in relation to the Concurrent

List. For example, as we have discussed in the earlier session that treaty making power is there with the Centre and in pursuant to that treaty making power Parliament has been given necessary legislative power to make law to give effect to the treaty. And as we have discussed that situation may arise that the subject matter of treaty may be there in there in relation to List II. Then what would happen in such situation? How that conflict will be resolved? If Parliament makes a treaty and such treaty is in relation to such treaty is in relation to List II if that conflict comes in how that conflict has to be resolved.

Now one may argue that that can also be resolved in reference to notwithstanding clause under Article 246, but then such conflict may not be a conflict based on legislative competence. Such conflict may be arising because of the international treaty which the government is signing and in furtherance of the treaty a law has been enacted. So, it is not about competence it is more about giving effect to the treaty. So, situation may arise one may argue where this doctrine of a repugnancy may be applicable also in relation to List I and List II, this is what one can argue. But as far as legal position is concerned as I said legal positioning is there where the applicability of doctrine of a repugnancy is determined only in reference to the Concurrent List.

This one case where reference is been given is Kannan DHP Co. v. State of Kerala which regards with acquisition of land by the State under the State Law and the matter relating to tea plantation under the Central Law. However, in this case the court observed that the two laws are not in conflict, but then situations may arise where conflict between the law enacted under List I and List II be there. Now, Hoechst Pharmaceuticals Ltd. v. State of Bihar is a case which is very important in relation to the doctrine of repugnancy. It is a case with regard to levying of taxes and surcharge by the State. The court in this case says that *"Cl. (1) lays down that if a State law relating to a concurrent subject is repugnant to a Union Law relating to that subject, whether the Union law is prior or later in time, the Union Law will prevail and the State law shall, to the extent of such repugnancy, be void."* So, it does not matter whether Union Law is enacted prior to the State Law or post that State Law that is irrelevant.

If the Union Law is been enacted then it has to be given effect. It is irrelevant whether the Union Law has come prior to it or post the enactment of the State Law. If there is a repugnancy if both the laws cannot be given effect, if it is difficult to operationalize both the laws it is a Central Law

which shall prevail that is what the court says in Hoechst Pharmaceuticals Ltd. v. State of Bihar. Again the court in Srinivasa Raghavachar v. State of Karnataka takes up the issue of List I versus List II in the context of the repugnancy doctrine wherein the court decides the validity of Karnataka Land Reforms (Amendment) Act, 1974 made by State of Karnataka which prohibited practitioners lawyers to practice before the land tribunal and it is argued that it comes in conflict with the Advocates Act which is a law made by the Parliament in pursuant to Entries 77 and 78 of List I. The court in this case has said that it is repugnant, but then in this case the court has looked at repugnancy on the issue of legislative competency. Court said that that it is a Central Law we shall prevail because it is a matter of regulating legal profession

Then this is another interesting case of Vijay Kumar Sharma v. State of Karnataka wherein the issue came on two different entries of the concurrent list where Karnataka government has enacted a law to regulate contract carriages and there was law enacted later on by the Parliament to regulate the movement of vehicles under the Motor Vehicles Act. Now question was that whether the Karnataka Contract Carriages (Acquisition) Act, 1976 is in conflict with Motor Vehicles Act, 1988. Now in this case the court said that repugnancy would arise only when the law is made on one of the matters enumerated in the Concurrent List and here it was said that one deals with contract carriage other deals with regulation of vehicles. So, if the subject matter is not same then the relevant rule to apply shall be pith and substance to understand that what is the intent of the law maker and whether it is possible to give effect to both the laws because there is a doctrine of presumption of constitutionality it is to be presumed that the laws are enacted and those laws which are enacted they are valid one. So, it is important to note that that repugnancy applies only when the laws made are substantially on the same subject.

So, you may look at it in this case of Vijay Kumar Sharma v. State of Karnataka the court has made an attempt to reconcile and to give effect to both the laws. So, applicability of repugnancy should not be the first preference. Effort should be made to see that if provisions can be reconciled and both the laws can be given effect then that is something we should be welcomed. Now Article 254(2) as I said it is an exception to the general clause Article 254(1) where it says that if the bill of the State has been reserved for consideration of the President and if it has received the assent then for the purpose for which consent has been obtained State Law shall prevail. So, what is the outcome of such permission given by the President what is the effect is

that to that extent a State Law overrules the Parliamentary Law that is why this provision of Article 254 is important in the Constitution because it does the overruling of the parliamentary legislation and it is important to note that that applicability of that State Law shall be only in relation to that State not in general because the assent of the President has been received in reference to that State alone and with regard to that bill alone. As I said Hoechst Pharmaceuticals Ltd. v. State of Bihar is an important case to look at where the court has stated *"the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only."*

In another important case of Zaverbhai Amaidas v. State of Bombay where the matter relates to punishments for committing an offence of a similar nature where the court explains that how do we understand the meaning of "with the respect to that matter" which is there under Article 254(2). The court says that important thing to consider with reference to this provision is whether the legislation is in respect of the same matter. If the legislation is not of the same subject matter and if it is a distinct one then Article 254(2) will not be applicable at all. So, what is to be seen is that whether the subject matter is same or not. So, what are the conditions of repugnancy? The conditions of repugnancy as laid down in this case of Prem Nath Kaul v. State of Jammu and Kashmir. It says that "it is clear that the essential condition for the application of Art. 254 (1) is that the existing law must be with respect to one of the matters enumerated in the Concurrent List" and repugnancy is between the provisions of a subsequent law and those of an existing law then the State Law to that extent of repugnancy shall be not applicable.

In M. Karunanidhi v. Union of India, a case related to criminal culpability on the matter of corruption where the law enacted by the State to address corruption related issues and Prevention of Corruption Act which is enacted by the Central government. The court lays down the test that how shall we understand there is a matter of repugnancy and this law which is let down in 1979 is still a good law and being employed being by the court in other cases. What it says? It says that there has to be clear and direct inconsistency it must be indirect conflict. One law cannot be given effect unless and until the other law is declared inconsistent. Second it says inconsistency is absolutely irreconcilable. Inconsistency is of such a nature where both the laws cannot be given effect. It is in the direct collision if you give effect to both the laws both the laws will

come in direct collision. Direct collision in sense if you obey one law other law cannot be obeyed. So, that is what the court says. So, in this recent judgment Western Uttar Pradesh Sugar Mills Association v. State of Uttar Pradesh of 2020 where the court again takes up the matter and the court explains that if the encroachment appears to be only incidental inconsequential then both the laws to be given effect and how it is an inconsequential or incidental encroachment. It is to be seen with the help of doctrine of pith and substance. And if it is a case of complete conflict then the only way out or the only procedure let down for giving effect to the State Law is to go for ascent of the President under Article 254(2). So, this is what is the test laid down which you see in the case of Tika Ramji v. State of Uttar Pradesh, the court categorically says inconsistency shall be there in actual terms. Inconsistency may not appear to be direct, but it may be a scenario where the Central Law has been made to address that space in a comprehensive and complete way. And when you see that the law is made on the same subject matter. So, these are the three limbs of repugnancy laid down. First whether there is a direct conflict, second whether Parliament intends to lay down an exhaustive code and does not want a State to really deal on that subject matter or third the legislation made is occupying the same field.

Now, another question comes in that how we should see the conflict between the State Law and delegated legislation made in furtherance of the Central Law. This question has come up in these two cases of Gambhirdan K. Gadhvi v. State of Gujarat and Prof (Dr.) Sreejith P.S. v. Dr. Rajasree M.S. In these cases the court has said that rules framed under the delegated legislation also becomes part of the Central Law and thus if such delegated legislation comes in conflict with the State Law then it is the it is the Central Law we shall prevail. Because the doctrine of repugnancy will be applied and because of the doctrine it is the Central Law we shall be given effect, State Law will become non-operational. So, the court categorically says that delegated legislation becomes part of the Central Law that is how it has to be seen. So, in Gambhirdan K. Gadhvi v. State of Gujarat, the eligibility criteria for appointment of the Vice Chancellor and Rules were made in pursuant to the UGC Act. It was suggested that the Rules made in pursuant to the UGC Act should be seen as a part of Central legislation. If that Central legislation comes in conflict with the State Law then it is the State Law which has to give way to which has to yield to the Central legislation.

These are the references for this next session. Thank you very much.