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RESOLVING CONFLICTING LEGISLATIVE COMPETENCES: UNDERSTANDING THE DOCTRINE OF PARAMOUNTCY IN CONCURRENT FIELD

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Abstract

This article delves into the intricate framework of legislative powers delineated between the Union and the States in India's Constitution, mainly focusing on the Concurrent List. It examines the constitutional provisions, judicial interpretations, and the application of the Doctrine of Paramountcy in resolving conflicts between Union and State laws. Through analysis of landmark cases, the article elucidates the principles and tests employed in determining the supremacy of Union laws in the concurrent field, emphasizing the nuanced interplay between legislative competencies and the doctrine of repugnancy. Furthermore, it explores the principle of supersession and its implications in ensuring legislative coherence amidst concurrent jurisdictions.

Keywords: Concurrent List, Doctrine of Paramountcy, Legislative Competences, Repugnancy Rule, Supersession, Indian Constitution.

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Introduction

India's federal structure embodies a delicate balance of powers between the Union and the States, enshrined in the Constitution's distribution of legislative competencies. The Concurrent List, delineating subjects where both Union and State legislatures hold concurrent powers, often presents challenges of conflicting competencies and legislative inconsistencies. This article navigates the concurrent field's legal intricacies, analysing the Doctrine of Paramountcy and its pivotal role in adjudicating conflicts between Union and State laws. By examining seminal court judgments, the article aims to unravel the complexities inherent in India's federal governance structure and provide insights into the evolving jurisprudence surrounding conflicting competencies. The scheme of distribution of legislative powers between the Union and the States

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has been laid down in Articles 246[1] and 248[2] of the Constitution. Besides, these legislative fields, Union List, State List and Concurrent List, consisting of several subjects, have been clearly delimited in the Seventh Schedule of the Constitution. According to the scheme, the Union Parliament has exclusive and concurrent powers to make laws "concerning" any of the matters enumerated in the Union and Concurrent lists, respectively. In contrast, the legislature of any State has exclusive and concurrent powers to make laws "concerning" any of the matters enumerated in the State List and Concurrent List, respectively. But while the former may exercise its exclusive and concurrent legislative powers "notwithstanding" anything in the exclusive and concurrent powers conferred on the latter, the latter has to exercise its powers always subject to the powers of the former. Further, the residuary powers, including the residuary taxing powers, have been exclusively vested in the Union Parliament. The Supreme Court pointed out in many cases.[3]The entries in the list are not power but only legislation fields. Thus, the scheme presents a picture of a federal government with enumerated, concurrent, and residual powers and state governments with enumerated and concurrent powers. Each law passed by a legislature in India must be capable of being traced to one of the relevant entries in the allotted list, lest it should suffer from unconstitutionality arising from want of legislative competence.

The Union and the State List may permit such incidental and unintentional encroachment into their domain by a legislative body, which is not authorized to operate within it, as may be warranted by the similarity of the subjects dealt within the Lists; but they because of the very exclusive nature of the powers conferred on the Union Parliament and the Stat Legislatures, do not give scope for any conflict between the Union and State Laws, much less entertain the repugnancy rule. The repugnancy rule is the very antithesis of the concept of exclusive power. Therefore, it would be idle to speculate on the possibility of applying the repugnancy rule to these two lists. However, a conflict between the Union and State laws may be a common feature in the concurrent list. Perhaps it is inevitable by the very nature of the power stipulated therein. The framers have, therefore, elaborately provided in Article 254[4] for resolving such conflicts. Conflicting competencies in the concurrent field are the main points at which the power distribution scheme gives rise.

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[1]. (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 Seventh Schedule (in this Constitution referred to as "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 there of with respect to any of the matters, enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List")

[2]. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those lists.

[3]. *Balaji* v. *W.I.T. Officer*, AIR 1962 SC 123 at 125; *Calcutta Gas Co.* v. *State of West Bengal*, AIR 1962 SC 1044 at 1049

[4]. (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

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Doctrine of Paramountcy

Article 246(2) of the Constitution granted concurrent powers to Parliament and State Legislatures for matters enumerated in the Concurrent List. Having conceded power to two authorities to operate within the concurrent field, the Constitution necessarily had to provide for resolving conflicts that might arise from the simultaneous exercise of power by the two competent authorities in respect of matters in the field. Such provision had been made in Article 254(1)[5]. D.D. Basu commenting the above provision states that though the words "competent to enact' in clause (1) are rather wide and might include laws made under List I as well, the scope of clause (1) is made clear by the words subject to the provisions of clause (2), for clause (1) speaks of repugnance between a central law and a state law relating to the same matter in the concurrent list[6]. This seems to be a correct assessment of the scope of clause (1) of Art. 254 and the way the contents of this clause have been summed up by the Supreme Court in various cases[7]. When concurrent powers are exercised the law of the union is paramount and the law of the state to the extent a subject is covered by a union law is void. It is therefore evidently clear from the contents of the clause that it incorporates what may be called the repugnancy rule and introduces thereby into the realm of Indian constitutional jurisprudence the "Doctrine of Paramountcy" which establishes the supremacy or preponderance of union law in the concurrent field. The actual tenor of the doctrine may be comprehended by studying the connotation of the repugnancy rule and in fact the former depends upon the ambit of the latter.

The ambit of the repugnancy rule has been discussed by the Supreme Court in a few cases. In *Tika Ramji* v. *State of UP*[8], the Supreme Court was called upon to decide whether the provisions of the

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 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 a State.

5. "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 the parliament, whether passed before or after the law made by the legislatures of such state, or as the case may be the existing law shall prevail and the law made by the legislature of a state shall to the extent of the repugnancy be void".

6. D.D. Basu, *Commentary on the Constitution of India*, 4th edn., (1999), p. 185

7. *Tika Ramji* v. *State of UP*, (1956) SCR 393; *Deep Chand* v. *State of UP*, 1959 SCJ 1069

8. 1956 SCR 393; See also Zaverbhai Amaldas v. State of Bombay, (1955) 1 SCR 799

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UP Sugarcane (Regulation of Supply and Purchase) Act of 1953 which was a State Legislation, and two notifications issued there under were repugnant to the provisions of two central enactments, namely, the industries (Development and Regulation) Act of 1951 and the Essential Commodities Act of 1955 and therefore void. It may be mentioned here that the object of the impugned State Act was "to provide for a rational distribution of sugarcane to factories, for its development on organized scientific lines, to protect the interest of the cane growers and of the industry". According to the Government notifications issued under the Act, an area has been allotted to each factory and in an area where seventy five percent of the cane growers were members of a Growers Co-operative Society the factory for which the area had been assigned was prohibited from purchasing cane except from the society. On the other hand, while the Central Act of 1951 provided for the development and regulation of certain industries of which the sugar industry was one, the Central Act of 1955 was enacted to provide in the interest of the general public for the control of production, supply and distribution of and trade and commerce in essential commodities of which foodstuff was one by definition included crops of sugarcane.

Before pronouncing its view on the validity of the impugned State Act, the Supreme Court expounded the doctrine of repugnancy. First, it stated that repugnancy falls to be considered when the law made by Parliament and the law made by the State Legislature occupy the same field because if both these pieces of legislation deal with separate and distinct matters though of a cognate and allied character, repugnancy does not arise[9]. This proposition laid down by the Supreme Court speaks about the occasion when repugnancy between provisions of two pieces of legislation enacted by two authorities would be considered and when the two pieces of legislation relate to the same matter in the concurrent field.

In *A.S. Krishna* v. *State of Madras*[10], the Supreme Court was called upon to decide whether section 4(2) of the Madras Prohibition Act of 1937 in so far as it set up a rule of evidence was repugnant to existing law, viz., Evidence Act and sections 28-32 of the same impugned Act in so far as they laid down provisions relating to search, seizure and arrest were repugnant to the provisions relating to similar matters in existing law, viz., the Criminal Procedure Code. The court ruled that it would be an erroneous approach to the question to view such a statute not as an organic whole but as a mere collection of sections, then disintegrate into parts that would severally fall and, by that process, determine what portions thereof were intra vires and what were not. According to the court, the Madras Act was, in substance, a law relating to 'intoxicating liquors' that fell within the state list, and the impugned sections of the Act were provisions wholly ancillary to the main law. The Act was thus entirely a law within the state list; therefore, questions of repugnancy did not arise.[11].

Another critical case on the point is *Deep Chand* v. *State of UP*[12]. In this case, the Supreme Court had to decide whether the provisions of the Motor Vehicles (Amendment) Act of 1956, which was a Union law, were repugnant to the provisions of the UP Transport Services (Development) Act of 1955, which was a state enactment, Mr. Justice Subba Rao, who delivered the majority decision in this case after having closely examined the provisions of the two legislations stated that both the Acts were intended to operate in respect of the same subject matter in the same field. Parliament passed the Amending Act intending to introduce a uniform law throughout the country. The court

9. *Ibid* at p. 423
10. 1957 SCR 399
11. *Ibid* at pp. 410-411
12. (1959) 3 SCJ 1069

opined that this object would be frustrated if both the UP Act and the Amending Central Act. Further, the court said that the authority to initiate the scheme, the manner of doing it, the authority to hear the objections, and the principles regarding payment of compensation under the two Acts differed in essential details. Besides the scheme's provisions, the principles of compensation and the manner of its payment also differed in the two Acts. It is, therefore, manifest that the court said that the Amending Act occupies the same field concerning the schemes initiated after the Amending Act, and thus, to that extent, the State Act must yield its place to the Central Act. However, the same cannot be said of the schemes framed under the UP Act before the Amending Act came into force[13].

Then, rejecting the argument that in as much as the UP Act and the Amending Act operated in the same field and concerning the same subject matter in the nationalization of bus transport, the UP Act became void under Art—254 (1) of the Constitution. Subba Rao, J. said, "What is void is not the entire Act but only to the extent of its repugnancy with the law made by the Parliament. The field's identity may relate to the pith and substance of the subject matter and the period of its operation. The repugnancy is complete when both coincide, and the State Act becomes void.

A scrutiny of the decisions discussed above would show that they have laid down a few principles for applying the repugnancy rule and a few tests to determine the actual repugnancy between the Union and the State laws in the concurrent field. First, as to the application of the repugnancy rule, three principals have been laid down, and they are:

1. the union and the state must have exercised their legislative powers in the concurrent field.
2. that both the union and state laws must be in respect of the same subject matter, and
3. they should not deal with distinct and separate powers though cognate and allied in character.

Secondly, they have prescribed three tests to ascertain the repugnancy between the union and state laws. According to those tests, repugnancy between the union and state law arises.

1. if there is inconsistency in the actual laws of the competing statutes
2. if the union is intended to be a complete, exhaustive code and
3. if in the absence of such intention, the state and the union seek to exercise power over the same subject matter.

These constitute the three-dimensional tests of repugnancy.

To these three dimensioned tests, Subba Rao, J. added a fourth one which may be described as time factor in the repugnancy rule.

Another problem which is closely linked with doctrine of paramountcy is: Whether on repeal or the expiry of the Union law, the state law which was void because of its repugnance with the union law would revive and become operative again? The famous commentator opined[14] That since the state law becomes void "to the extent of repugnancy". When such repugnancy is removed either by repeal or expiry of the Union law, the state law would revive and become operative again.

The Constitution states that in case of repugnancy between the union and state laws, the state law shall "to the extent of repugnancy be void."

The phrase's words "repugnancy" and "void" have more significant connotations. As explained earlier, the word "repugnancy" comes from both contravening and non-contravening state laws. There are, therefore, two types of repugnancies, one arising out of the contravening state laws and the other arising out of the mere existence of state laws in the field occupied by the union law.

[13]. *Ibid* at p. 1090
[14]. *Supra* n. 6 at p. 187.

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Similarly, the word 'void' has also two connotations. In some circumstances, it may mean 'invalid' and in some others, 'unenforceable.' The meaning of the word void is determined by the type or the extent of repugnancy that arises in each case. If the repugnancy is due to the contravening or inconsistent state law, the repugnancy can be removed only by breaking the contravening state law.

If repugnancy is due to the mere existence of a non-contravening state law in the field occupied by the union law, the repugnancy can be removed by eclipsing or overshadowing the state law and that which the union law overshadows or eclipses is only rendered inoperative or unenforceable. Therefore, all non-contravening state laws which exists in the field occupied by the union law is void in the sense that they are only unenforceable.

This leads to the conclusion that all state laws, which are 'void' due to 'repugnance' with union laws, would not revive automatically on the repeal of the union laws. Only those state laws which are rendered unenforceable because of their mere eclipse by the paramount union law in the concurrent field would revive automatically on the repeal of the union laws but the state laws, which are invalid by reasons of their contravention with the union law, would not get such automatic revival and they must be reenacted by the concerned state legislature.

The Principle of Supersession

Normally matters of national importance and matters which are incapable of being locally managed are exclusively given to the union, matters which are purely local in nature are exclusively conferred on the constituent states and matters which are neither purely local in nature nor strictly national in character are listed in the concurrent field. Uniformity in laws relating to concurrent subjects is very essential sometimes. That is why in almost all federal constitutions, which carved out a concurrent field, the paramountcy of the federal laws over the state laws in the concurrent field is invariably stipulated. The Indian Constitution is no exception to this is amply proved by the establishment of the doctrine of union paramountcy in the concurrent field in Article 254(1).

However, very often, peculiar and unforeseen local conditions may require different treatment in a state and consequently need provisions that are different from and even contradictory to the requirements in the union law. To meet precisely this situation, the principle of supersession has been postulated in Clause (2) of Article 254[15] According to this, state law supersedes union law, which preceded it on the same matter despite its contravention with union law if it is reserved for the consideration of the President and received his permission. The principle of supersession enshrined in cl(2) is an exception to the doctrine of union paramountcy embodied in cl (1) of Art. 254.

To apply the principle of supersession, the state law in question must fulfill four conditions.

1. It must be after the union law
2. This must be done to one of the matters in the concurrent list.

[15]. 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 provision 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 it 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.

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3. Must be repugnant to the union law which preceded it on the same matter and
4. Must have been reserved for the consideration of the President and must have received his permission.

However, there is one interesting question: whether every Amendment by the State Legislature to the superseding state legislation should also be reserved for the President's consideration and for his consent for whether the president's assent to the main legislation is sufficient to cover all the subsequent amendments to the laws? A possible answer seems to be that if amending legislation seeks to remove from the leading law provisions repugnant to the existing law or the union law, such amendment needs no assent of the President; on the other hand, if amending legislation seeks to alter or add a few more provisions to such state law, the assent of the President to such amendment is too vital to be dispensed with for every such amendment to the main law creates new contours like repugnance within the main law towards the earlier union law.

The principal supersession has been qualified by a proviso added to cl. (2) of Art. 254[16]. The first query is that what is the ambit of Parliaments power to repeal under the proviso? It may be noted that the controlling clause in the proviso is "the law so made by the legislature of the state," which means the law enacted by the State in compliance with the main provisions of cl.(2) of Art. 254.

Consequently, parliament can exercise its power to repeal only concerning state law enacted under cl. (2) of Art. 254, which superseded an earlier union law but did not concern any other state law on matters in the concurrent field or on a matter that is closely allied to issues covered by the Union. Supreme Court explained this point of view more elaborately in *Tika Ramji* v. *State of UP*[17].

It is limited to enacting a law concerning the same matter, adding to amending, varying, or repealing a law made by the state legislature. The law referred to here is the law mentioned in the body of Art. 254(2). It is a law made by the State legislature concerning a matter in the concurrent list containing provisions repugnant to an earlier law made by parliament and made with the consent of the President. It is only such a law that could be altered, amended, or repealed under the proviso.[18].

If the Parliament can repeal a "law so made by the State Legislature," can it be said on parity of reasoning that the Union Government can revoke any order made by the State Government in the exercise of the powers conferred upon it by the said law of the state? The Supreme Court answered this in the negative. It said the power of repeal, if any, was vested in the Parliament, and Parliament alone could exercise it by enacting an appropriate provision. Parliament could not delegate this power of repeal to any executive authority. Such delegation, if made, would be void, and the Central Government had no power, therefore, to repeal any order made by the State Government in the exercise of the powers conferred upon it by the law enacted under Art. 254(2) by the state legislature[19].

Thus,, it leads to the conclusion that (1) the Parliament's power to repeal under the proviso is confined to state legislation enacted in conformity with the main provision of Art. 254(2) and (2)

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16. "Nothing in this clause shall prevent Parliament from enacting at anything any law with respect to the same matter including a law adding to amending, varying or repealing the law so made by the legislative of the state".
17. Supra n. 8 at p. 352
18. *Ibid* at p. 438
19. *Tika Ramji* v. *State of UP*, 1956 SCR 393 at p. 439

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the power to veto the superseding state law does not include the Union Government's power to abolish the order of the State Government issued under the superseding state law.

Conclusion: The analysis underscores the significance of the Doctrine of Paramountcy in harmonizing India's federal legislative landscape, particularly within the Concurrent List. While conflicts between Union and State laws in the concurrent field remain inevitable, the constitutional framework and judicial interpretations offer mechanisms for resolution. Through a nuanced understanding of repugnancy, supersession, and the limits of legislative authority, India's legal system strives to maintain coherence and uphold the importance of Union laws where necessary. As India's federal dynamics continue to evolve, the principles elucidated in this article serve as a guiding framework for navigating the complexities of concurrent legislative competencies and ensuring the integrity of the constitutional order.