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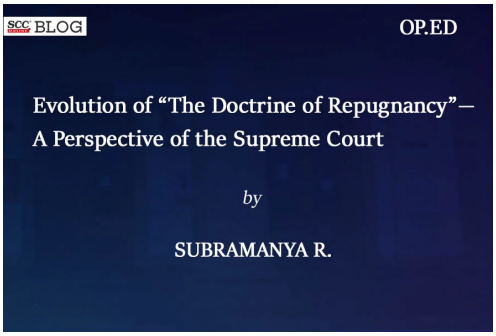
Evolution of "The Doctrine of Repugnancy"—A Perspective of the Supreme Court



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Published on September 16, 2023 - By Bhumika Indulia

Post

Introduction

In the past, while deciding the constitutional validity of the West Bengal Housing Industry Regulation Act, 2017[1], the Supreme Court in its *Forum for People's Collective Efforts* v. *State of W.B.*[2] revisited the contours of the well-established three-pronged test of repugnancy and explained the manner in which the tests for repugnancy shall apply. In that case, the Supreme Court struck down the West Bengal Housing Industry Regulatory Authority (W.B.-HIRA) as unconstitutional on the ground that its provisions were identical and in direct conflict/collision with the Central RERA Act[3].

The word "repugnant" in common parlance means "inconsistent" or "incompatible". Black's Law Dictionary defines the term "repugnant" as "inconsistent or irreconcilable with"[4] and "that which is contrary to what is stated before, or insensible …". Further, the term "repugnancy" is defined as "an inconsistency, opposition, or contrariety between two or

more clauses of the same deed, contract or statute, or between two or more material allegations of the same pleading or any two writings". *Wharton's Law Lexicon* defines "repugnant" as "really means inconsistent with and when they cannot stand together at the same time and one law is inconsistent with another law when command or power or provision in the one law conflicted directly with the command or power or provision in the other".

In that precis, this article seeks to edify how the Supreme Court has dealt with the issue of repugnancy arising out of two competing legislations and the principles evolved/summarised by the Court in identifying and resolving the same.

Provisions relating to repugnancy in the Constitution

Article 246 of the Constitution of India[5] confers exclusive power on Parliament and the State Legislature to legislate with respect to the matters provided for in the Union List and the State List in Schedule VII[6] respectively. With respect to the matters provided for in List III, namely, the Concurrent List, both Parliament and the State Legislatures possess the competency to enact laws. The non obstante clause in Article 246 brings to facade the principle of federal supremacy implying that in case of an inevitable conflict between the Union and the State powers, the power of the Union under List I shall prevail over the State powers under Lists II and III and in case of overlapping between Lists III and II, the power of Parliament under List III shall prevail.

Article 254 of the Constitution[7] which is modelled on Section 107 of the Government of India Act, 1935[8] is hailed as the article incorporating the doctrine of repugnancy under the Constitution. Article 254(1) lays down the general rule that in the event of a conflict between a Union law and a State law enacted under the Concurrent List, the former shall prevail and the State law shall be void to the extent of repugnancy. This is irrespective of whether the Union law is enacted prior to or later than the State law.

However, Article 254(2) provides for an exceptional situation where in a law made by the State Legislature, though repugnant to the parliamentary law enacted under List III shall continue to prevail in the State concerned. This is when the law made by the State Legislature has been reserved for the consideration of the President and has received his assent. The aforesaid exception is followed by a caveat that Parliament retains the competency to enact a law with respect to the same matter including a law that adds to, amends, varies, or repeals the law made by the State Legislature afterwards.

The analysis — Supreme Court observations

The Supreme Court in *Forum for People's Collective Efforts* v. *State of W.B.*[9] enunciated the following salient features of Article 254:

> *116.1.* Firstly, Article 254(1) embodies the concept of repugnancy on subjects within the Concurrent List on which both the State Legislatures and Parliament are entrusted with the power to enact laws.

116.2. Secondly, a law made by the legislature of a State which is repugnant to parliamentary legislation on a matter enumerated in the Concurrent List has to yield to a parliamentary law whether enacted before or after the law made by the State Legislature.

116.3. Thirdly, in the event of repugnancy, the parliamentary legislation shall prevail, and the State law shall "to the extent of the repugnancy" be void.

116.4. Fourthly, the consequence of a repugnancy between the State legislation with a law enacted by Parliament within the ambit of List III can be cured if the State legislation receives the assent of the President.

116.5. Fifthly, the grant of presidential assent under clause (2) of Article 254 will not preclude Parliament from enacting a law on the subject-matter, as stipulated in the proviso to clause (2).

When does repugnancy arise: The test for Repugnancy

When both laws are referable to the Concurrent List

It has been held in a catena of decisions that the issue of repugnancy arises only in a case where two inconsistent laws relate to a subject falling under the Concurrent List in the Seventh Schedule of the Constitution of India. It is only then that Article 254(2) will be invoked.

No repugnancy when law relates to List I or List II

There cannot be any repugnancy when the legislation in question relates to either the Union List or the State List as Parliament and the State Legislature has exclusive jurisdiction with regard to the subjects falling under the Union List and the State List, respectively. In such a case, the only issue that may arise is with regard to legislative competence and one of two laws must be void on grounds of legislative incompetency. The same can be ascertained by applying the doctrine of ultra vires.

Applying the doctrine of pith and substance

The doctrine of "pith and substance" means "if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature". It has been evolved to solve the problem of competitive legislatures as held by the Privy Council in *Gallagher* v. *Lynn*[10] and *Prafulla Kumar Mukherjee* v. *Bank of Commerce, Ltd.*[11]. Once a law *"in pith and substance"* falls within a legislative entry, an incidental encroachment on an entry in another list does not affect its validity. The doctrine of pith and substance is invoked to determine the true nature and character of the legislation under question as decided in *Atiabari Tea Co., Ltd* v. *State of Assam*[12]. In *Tika Ramji* v. *State of U.P.*[13] a Constitution Bench of the Supreme Court has held that the doctrine of pith and substance has no application in determining questions of repugnancy once it is ascertained that both the laws relate to a subject under the Concurrent List. The bottom line

of the said doctrine is to look at the legislation as a whole and is a proven method to examine the legislative competence of enactment. However, in its later judgment in *Rajiv Sarin* v. *State of Uttarakhand*[14], another Constitution Bench, without considering *Tika Ramji case*[15], held that the doctrine of pith and substance can be relied upon to find out whether the statutes relate to the same subject-matter or deal with different subject-matters.

In *Innoventive Industries Ltd.* v. *ICICI Bank*[16] the Supreme Court considered its earlier decisions and acknowledged the limited role of the doctrine of pith and substance in ascertaining as to where the subject-matter of the competing statutes as a whole falls. The Supreme Court of the land has echoed the principles enunciated in *Deep Chand* v. *State of U.P.*[17], *Prem Nath Kaul* v. *State of J&K*[18] *Ukha Kolhe* v. *State of Maharashtra*[19], *Bar Council of U.P.* v. *State of U.P.*[20], *T. Barai* v. *Henry Ah Hoe*[21] , *Hoechst Pharmaceuticals Ltd.* v. *State of Bihar*[22], *Lingappa Pochanna Appelwar* v. *State of Maharashtra*[23], *Rajiv Sarin* v. *State of Uttarakhand*[24] and in *Innoventive Industries Ltd.* v. *ICICI Bank*[25].

Repugnancy of provision

It is noteworthy that Article 254 does not speak of repugnancy only of a statute as a whole but also of repugnancy of "any provision" of a statute.

When both the laws occupy the same field

The doctrine of repugnancy applies when a law made by Parliament and a law made by the State Legislature occupy the same field. While dealing with the challenge to the U.P. Sugarcane Act, 1953[26], a five-Judge Bench of the Supreme Court in one of its earliest pronouncements on this issue has held that:

> *26.* ... 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.[27]

Here, it must be noted that two legislations occupying the same field under the Concurrent List need not necessarily mean that both laws fall under the same entry in the Concurrent List. In *Rajiv Sarin case*[28], it was held that in order for repugnancy to arise, the two laws, namely, the parliamentary law and the State law need not find their origin in the same entry under the Concurrent List so long as they deal with the same subject-matter. This position seems to have been accepted by the Supreme Court in *Innoventive Industries Ltd. case*[29].

Actual, direct, and irreconcilable conflict

Repugnancy would not arise merely because two laws are *prima facie* inconsistent. There has to be something more than a mere inconsistency. The Supreme Court in *M. Karunanidhi* v. *Union of India*[30] opined that where there is a direct collision between State made law and a parliamentary law, the State Law would be void to the extent of repugnancy.

In *West U.P. Sugar Mills Assn.* v. *State of U.P.*[31] the Court took the view that the question of repugnancy arises only in a case where there is an actual irreconcilable conflict between two laws. This implies that the plea of repugnancy will be attracted only in a circumstance where both laws are substantially on the same subject and cannot co-exist.

Test to determine repugnancy

In *Deep Chand* v. *State of U.P.*[32] after referring to its earlier decisions in *Tika Ramji*[33] and *Saverbhai Amaidas* v. *State of Bombay*[34] the Supreme Court laid down the following tests/principles to determine repugnancy between two statutes:

(*i*) whether there is a direct conflict between the two provisions;

(*ii*) whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and

(*iii*) whether the law made by Parliament and the law made by the State Legislature occupy the same field.

Conditions for repugnancy

In *Rajiv Sarin case*[35], the Court laid down the twin requirement for the existence of repugnancy i.e. there must be repugnancy between a Central and State Act and the presidential assent has to be held as being non-existent.

In *M. Karunanidhi* v. *Union of India*[36] the Supreme Court laid down three conditions that must exist for repugnancy to arise which were later reiterated by another five-Judge Bench[37] in the year 2020. These conditions are:

(*i*) that there is a clear and direct inconsistency between the Central Act and the State Act;

(*ii*) that such an inconsistency is absolutely irreconcilable;

(*iii*) 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 one without disobeying the other.

Further, the Supreme Court also laid down the various circumstances[38] wherein repugnancy may arise:

(*i*) 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 repugnancy.

(*ii*) 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.

(*iii*) Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches 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.

(*iv*) 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.

Principles for determining repugnancy

In *M. Karunanidhi* v. *Union of India*[39], the Supreme Court has laid down the following tests for determining repugnancy:

(i) 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.

(*ii)* That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

(*iii)* 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.

(*iv*) 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.

Exception: When repugnancy does not arise

When laws deal with different subject-matters

It is well settled that there can be no repugnancy when Union Law and State Law pertain to different subject-matters. In *Vijay Kumar Sharma* v. *State of Karnataka*[40] the Supreme Court held that there was no repugnancy between Karnataka Contract Carriages (Acquisition) Act, 1976[41] and the Motor Vehicles Act, 1988[42] enacted under Entries 42 and 35 of List III respectively. It was held that there can be no repugnancy when the two laws relate to different heads under the Concurrent List.

However, such a position does not seem to be correct as per the law laid down in *Rajiv Sarin* v. *State of Uttarakhand*[43] and *Innoventive Industries Ltd. case*[44]. As mentioned earlier, the test is not whether the two laws fall under the same entry under List III, but whether the two

laws deal with substantially the same subject- matter as the entries in List III are merely fields of legislation.

Incidental coverage, partial or superficial overlapping

The plea of repugnancy will not be attracted when there is some incidental, partial, or superficial overlapping between two legislations in a different context and to achieve a different purpose. In *State of W.B.* v. *Kesoram Industries Ltd.*[45] the Court observed that the various entries in the three Lists are not "powers" of legislation but "fields" of legislation and the power to legislate on the principal matter specifically mentioned in the entry includes within itself legislations pertaining incidental or ancillary matters. The doctrine of pith and substance has to be applied in order to determine the entry to which a particular law relates and once it is so determined, any incidental or superficial trenching on the field reserved to the other legislature has to be ignored. It was held that the question of repugnancy between a parliamentary law and a State-made law may arise only in a case where both legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is apparent. If the repugnancy is due to some overlapping between the Union List on one hand and the State List and the Concurrent List on the other, the State law will be ultra vires and must give way to the Central law.

When it is possible to obey both laws

In *U.P. Coop. Cane Unions Federations* v. *West U.P. Sugar Mills Assn.*[46] while deciding the repugnancy between U.P. Sugarcane Act, 1953 and Sugarcane Control Order, 1966[47], the Court held that repugnancy will arise only when the State Government fixes a price lower than that fixed by the Central Government. However, if the State Government fixes a price higher than the Central Government, there shall be no repugnancy as it is possible to obey both orders.

When the parliamentary law does not purport to be a complete code

When the dominant or paramount legislation does not purport to be a complete code in itself, the law enacted by the State Legislature covering the vacant areas will not be considered as repugnant. Further, when the dominant legislation itself permits or recognises other laws restricting or qualifying the general provision made thereunder, then in such a case, any restriction or qualification introduced by another law would not be considered as repugnant to the paramount law.

Point of time when repugnancy arises

In *State of Kerala* v. *Mar Appraem Kuri Co. Ltd.*[48] the Supreme Court has held that the repugnancy arises on the date of enactment of the law and not on the date of its coming into force. In that case, the court was dealing with the question as to whether the Kerala Chitties Act, 1975[49] became repugnant to the (Central) Chit Funds Act, 1982[50] under Article 254(1) upon making of the (Central) Chit Funds Act, 1982 i.e. on 19-8-1982 when the President gave his assent or on the issuance of notification under Section 1(3) of the

(Central) Chit Funds Act, 1982 bringing the Central Act into force in the State of Kerala. It was held that the Kerala Act became repugnant on the date of enactment of the Central law even before the Central Act came into force.

Presidential assent

Presidential assent to the State law under Article 254(2) has the effect of curing the repugnancy and the Central law must give way to the State law only to the extent that it is repugnant and no more. Under proviso to Article 254(2), Parliament is empowered to amend or repeal the repugnant State law by enacting a law on the same subject or by amending or repealing the repugnant State law. As soon as Parliament enacts a law repugnant to the State law, the earlier State law becomes void even though the Central Act does not expressly say so.

In *Kaiser-I-Hind (P) Ltd.* v. *National Textile Corpn. (Maharashtra North) Ltd.*[51] it has been held that it is a procedural requirement under Article 254(2) that while obtaining presidential assent to the repugnant State law, the attention of the President must be drawn to such repugnancy. The power to grant assent is not an exercise of legislative power but of legislative procedure and therefore, the same comes under the purview of judicial review. The State legislation shall prevail over only those Central laws as have been pointed out to the President in the proposal.

Recent decisions on repugnancy

***State of Kerala* v. *James Varghese*[52]**

In this case the issue of repugnancy arose with regard to the State Arbitration Act, 1998[53] vis-à-vis the Arbitration and Conciliation Act, 1996. The Supreme Court held that once the State Act is reserved for the consideration of the President and receives his assent, it would prevail over the Central law in that State and there is no need to consider the issue of repugnancy inasmuch as such exercise becomes inconsequential.

***Forum for People's Collective Efforts* v. *State of W.B.*[54]**

In this case, the Court after considering the various decisions on the issue of repugnancy from *Saverbhai Amaidas* v. *State of Bombay*[55] till *Innoventive Industries Ltd.*[56] culled out the three types of repugnancies which may arise in a given case:

(*i*) Absolute or irreconcilable conflict bringing both statutes in direct collision with each other in that it becomes impossible to obey one without disobeying the other. In this case, the State law shall be void to the extent of repugnancy.

(*ii*) When parliamentary law intends to occupy the whole field i.e. when the parliamentary legislation is a complete and exhaustive code on the subject. In such a case, the State enactment must give way to parliamentary law.

(*iii*) Where both parliamentary law and the State enactment regulate the same subject. In such a case, conflict arises because the subject covered by State enactment is identical to or overlaps with the Central law on the same subject. The doctrine of

implied repeal will be applicable as State law cannot exist with Central law on the same subject. However, if the State law deals with distinct subject-matters, there can be no repugnancy.

The Court further held that in order to decide whether repugnancy arises by applying the second and third tests, both the text and context of the parliamentary legislation have to be considered including factors such as nature of subject-matter legislated upon, purpose of legislation, rights sought to be protected, legislative history and the nature and ambit of the statutory provisions.

***G. Mohan Rao* v. *State of T.N.*[57]**

The State of Tamil Nadu had enacted the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978[58] and the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997[59] and Tamil Nadu Highways Act, 2001[60]. Since the field of land acquisition was already covered by the Land Acquisition Act of 1894[61]and the National Highways Act, 1956[62], the aforesaid State Acts, having received presidential assent prevailed in the State of Tamil Nadu.

Parliament enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013[63] with effect from 1-1-2014. Section 105 of the 2013 Act provided for the saving of certain laws specified in the Fourth Schedule. However, by a later notification, the Act was extended to all types of acquisitions.

In order to protect its three enactments, namely, the 1978 Act, the 1997 Act and the Act from the operation of the 2013 Act, the State of Tamil Nadu enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014[64] whereby it inserted Section 105-A in the 2013 Act saving its three enactments mentioned under the Fifth Schedule from the application of the 2013 Act which came to be inserted by the same State Amendment Act, 2014. The 2014 State Act along with the 1997 and 2001 Acts came to be challenged as being repugnant to the 2013 Central Act. It is noteworthy that the 2014 State Act received presidential assent on 1-1-2015 and was applied retrospectively from 1-1-2014 onwards i.e. the date of coming into force of the 2013 Act.

The Madras High Court held that the three enactments, namely, the 1978, 1997, and 2001 Acts became repugnant to the 2013 Central Act when the 2013 Act received the presidential assent i.e. 27-9-2013 and the 2014 State Amendment could not have revived the three void enactments. Thereafter, the State enacted the "The Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019"[65] in order to reactivate the aforesaid three legislations. As per the requirement of Article 254(2), the Act was reserved for the consideration of the President and received his assent on 2-12-2019 and the Act was applied retrospectively from 26-9-2013. The said Act came to be challenged before the Supreme Court on the ground of repugnancy.

In its judgment, the Supreme Court noted the basic ingredients required for the applicability of Article 254(2):

(*i*) A law made by the legislature of the State (the 2019 Act in this case).

(*ii*) Such law is made on a subject falling in the Concurrent List (Entry-42 of the Concurrent List in this case).

(*iii*) Such law is repugnant to the provisions of an earlier/existing law made by Parliament (the 2013 Act in this case).

(*iv*) The State law is reserved for the assent of the President and has received the same.

The Supreme Court held that the above conditions are fulfilled in the case at hand and Article 254(2) has been complied with. The Court opined that the purpose of Article 254(2) is to resuscitate and operationalise a repugnant Act or repugnant provisions thereunder and once the assent of the President is received, the pointing out of any repugnancy is rendered redundant. It was further held that for checking repugnancy, the relevant date is the date of making i.e. date of assent and not the date of commencement.

***T.N. Medical Officers Assn.* v. *Union of India*[66]**

In this case, the legislative competence of the State to make reservations for in-service doctors in State quota in postgraduate and diploma medical courses under Entry 25, List III of the Seventh Schedule to the Constitution of India was challenged as being violative of Regulation 9 of the MCI Postgraduate Medical Education Regulations[67]. The Court held that Regulation 9 does not form a complete code on the subject and the vacant or void legislative zones can very well be filled by the State Legislature. Thus, with regard to a shared field of legislation, the areas left void by the Union Legislature can be filled by the State Legislature. It was further held that repugnancy has to be direct and positive. There can be no implied repugnancy.

***Innoventive Industries Ltd.* v. *ICICI Bank*[68]**

In this case, the Court was considering the issue of repugnancy between the Bombay Relief Undertakings (Special Provisions) Act, 1958[69] and the Insolvency and Bankruptcy Code, 2016[70] and it was held that the Maharashtra Act is repugnant to the later Central Law i.e. the Insolvency Code.

The Maharashtra Act was enacted under Entry 23, List III and the Insolvency Code was enacted under Entry 9, List III of the Seventh Schedule. Under the Insolvency Code, on the initiation of the corporate insolvency resolution process, a moratorium is announced under Sections 13 and 14[71] by virtue of which institution of suits and pending proceedings get stayed until the approval of a resolution plan. In the interregnum, an interim resolution professional is appointed under Section 16[72] for managing the affairs of corporate debtors. Under the Maharashtra Act, the State may take over the management of a relief undertaking, after which a temporary moratorium takes place under Section 4 of the Act[73]. The Court took the view that the taking over management of relief undertaking by the State

Government would impede the process of appointment of resolution process under the Insolvency Code and that the moratorium under Section 4 would directly clash with the moratorium envisaged under the Code. Thus, it was held that the Code is an exhaustive law on the subject and unless the Maharashtra Act gives way, the implementation of the insolvency process under the Code will be hindered. Further, it was held that the non obstante clause contained in the Maharashtra Act cannot apply to a Central enactment.

The summation of the propositions

1. Repugnancy arises when the Central Act and State Act are referable to List III in the Seventh Schedule.
2. The doctrine of pith and substance has to be applied to find out as to whether the pith and substance of a statute falls within the Concurrent List.
3. The question is what is the subject-matter of the legislations in question and not as to which entry in List III the competing statutes are traceable since the entries in List III are only fields of legislation. Article 254 talks about the repugnancy of statutes as well as the repugnancy of any provision.
4. The onus of showing that a statute is repugnant to another enactment is on the person who attacks its validity.
5. Efforts should be made to reconcile the competing statutes and they should be interpreted in a manner to avoid any repugnancy.
6. Repugnancy must exist in fact and not depend upon a mere possibility.
7. Repugnancy may be direct i.e. when there is inconsistency in actual terms of the statutes and hence, a direct conflict between the two or more provisions of the competing statutes. In such a case, the repugnancy must be such that it brings the two enactments in direct collision with each other in that it becomes impossible to obey both. Such a situation arises when the two enactments produce different results when applied to the same set of facts.
8. There may be repugnancy even though there is no direct conflict between the two laws. This is when the parliamentary law intends to be a complete or exhaustive code on the subject. However, when the parliamentary law itself recognises other laws restricting or qualifying the general provisions made thereunder, there can be no repugnancy.
9. There can be no repugnancy when State law deals with distinct matters from Central law even though of a cognate and allied nature.
10. The legislation found repugnant to the Central Act is void only to the extent of repugnancy i.e. only the portion of the State Act which is found to be repugnant to the Central Act shall be declared void. The only exception is when the State law has received presidential assent in which case the parliamentary law must give way to State law.

Conclusion

The efficacy of the doctrine of repugnancy lies in determining as to which particular statute or a part of a statute should give way to the other. While deciding upon the challenge to a statute or a provision of the statute, the Court proceeds with the basic presumption in favour of its constitutionality and the burden of proving the unconstitutionality which includes "repugnancy" lies on the person making such challenge. After analysing the case law on the issue, it becomes clear that in all cases, the Court shall first endeavour and strive to reconcile the inconsistency or repugnancy between two laws by resorting to the rule of harmonious construction so that both can coexist and operate in a different sphere unless the same is overshadowed or outshined in its totality. Since the field of legislation is shared under List III, some overlapping between the Union and State legislation enacted under List III is unavoidable and bound to arise sometime. It is well settled that any such incidental and minor trenching upon one another cannot constitute repugnancy if the "doctrine of pith and substance" is applied and propounds that both the laws are not eclipsed by the same subject. Ergo, the Court will read the statute as a whole in order to find out its true nature and character to determine whether it relates substantially and significantly to the same subject and if at all, any repugnancy is there. The resembling or superficial laws are to be disregarded and cannot be characterised or labelled as repugnant.

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1. W.B. Housing Industry Regulation Act, 2017.
2. (2021) 8 SCC 599.
3. Real Estate (Regulation and Development) Act, 2016.
4. *Black's Law Dictionary*, 7th Edn., p. 1306.
5. Constitution of India, Art. 246.
6. Constitution of India, Seventh Schedule.
7. Constitution of India, Art. 254.
8. Government of India Act, 1935, S. 107.
9. (2021) 8 SCC 599, 711-712.
10. 1937 AC 863.
11. 1947 SCC OnLine FC 5.
12. AIR 1961 SC 232, para 56.
13. AIR 1956 SC 676.
14. (2011) 8 SCC 708.
15. AIR 1956 SC 676.
16. (2018) 1 SCC 407.