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# **"CLASHING SOVEREIGNTIES: UNRAVELING THE DOCTRINE OF REPUGNANCY IN THE INDIAN FEDERAL SYSTEM"**

AUTHORED BY - VAISHALI YADAV

## **Abstract:**

The doctrine of repugnancy stands at the crossroads of India's federal structure, a cornerstone of its constitutional framework. This critical analysis delves into the intricate complexities and implications of the doctrine, shedding light on its evolution, interpretation, and the challenges it poses to the Indian federal system.

The Article explores the origins of the doctrine in the Government of India Act, of 1935, and its adoption in the Indian Constitution, as well as its subsequent jurisprudential development through landmark cases. The interplay of powers between the Union and the States is examined, with a focus on the delicate balance that the doctrine seeks to maintain.

This Article critically evaluates the ambiguity surrounding the term "repugnancy" and the discretion it affords to the judiciary in deciding conflicts between Union and State laws. It also addresses the issues arising from the subjective interpretation of repugnancy, which has the potential to undermine the federal spirit of the Constitution.

Furthermore, the analysis considers the impact of repugnancy on legislative and policy dynamics, exploring how it may lead to regulatory uncertainties and hinder cooperative federalism. We also discuss instances where the doctrine has been invoked, leading to complex legal battles and political discord.

Ultimately, this examination calls for a re-evaluation of the doctrine of repugnancy within the Indian federal system. It proposes the need for clearer guidelines, a well-defined scope, and a more transparent decision-making process to ensure that this doctrine serves its intended purpose without impinging on the cooperative and federal character of India's governance.

## **From the Government of India Act, 1935 to the Indian Constitution**

Federalism, a system of governance that divides powers between different levels of government, is a foundational aspect of many nations' constitutional structures. This division of powers is typically enshrined in a written constitution, providing a framework for governance and delineating the rights and obligations of citizens and governments. However, a central challenge of federalism lies in the resolution of conflicts between federal and state laws.

The doctrine of repugnancy serves as a legal principle to address these conflicts within federal systems. It posits that when a conflict arises between a federal law and a state law, the federal law takes precedence, rendering the state law invalid to the extent of the conflict. This doctrine is rooted in the constitutional principle of supremacy, declaring that the federal constitution and laws created following it hold the highest legal authority in the land.

The doctrine of repugnancy has been employed in various federal systems worldwide, including India, the United States, Australia, and Canada. However, the scope and application of the doctrine may vary across different contexts and jurisdictions, and it has not been without its share of criticism and debate, with some scholars questioning its validity and effectiveness in resolving conflicts between federal and state laws.

In the case of India, the concept of repugnancy has its origins in the Government of India Act, of 1935, a pivotal legislative milestone that marked the British government's final constitutional efforts to govern India before independence. The Act introduced the principles of federalism in India, dividing legislative powers among the British Crown, the provinces, and the princely states. It was within this Act that the concept of repugnancy was first introduced. Section 107<sup>1</sup> of the Act was particularly significant, as it addressed the reconciliation of conflicting laws between the central and provincial governments.

The doctrine, as outlined in the Government of India Act, of 1935, stated that in the event of a conflict between a federal law and a provincial law concerning a subject within their concurrent jurisdiction, the federal law would take precedence. This doctrine reflected the centre's paramountcy and the British government's desire to maintain control over India's diverse regions.

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<sup>1</sup> Government of India Act, 1935

Upon gaining independence in 1947, India's constitutional framers faced the formidable task of drafting a constitution that encapsulated the principles of federalism while accommodating the nation's immense diversity. Several provisions from the Government of India Act, of 1935, including the repugnancy doctrine, were adopted and modified for inclusion in the Indian Constitution.

Article 245 of the Indian Constitution empowers Parliament and State legislatures to enact laws for specific geographical areas. Article 246 delineates the legislative powers of these bodies, primarily categorized into the Union List (for Parliament), the State List (for State governments), and the Concurrent List (for both). The potential for legislative overlap exists in the Concurrent List.

To resolve conflicts between Centre and State legislation on Concurrent List matters, Article 254 comes into play. Article 254 is two-fold. The first part stipulates that in the case of repugnancy between a state law and a central law, the central law will prevail. The second part, however, provides the President of India with the opportunity to give their assent to the State law, effectively allowing it to operate notwithstanding the repugnancy.

This unique feature of Article 254, allowing for flexibility in the federal structure while preserving the primacy of central legislation when necessary, is a testament to the wisdom of the constituent assembly.

The doctrine has been the subject of numerous legal disputes, making it a significant aspect of Indian constitutional jurisprudence. The incorporation into the Indian Constitution reflects the changing dynamics of India's governance, marking a shift from colonial centralization to a balanced federal structure, emphasizing the importance of harmony between Central and State laws. It continues to be a vital tool in maintaining this delicate equilibrium in India's federal system.

### **Exploring the Spectrum of Federal Governance Models**

Federalism, a distinctive system of government, partitions authority between a central government and constituent political units, be they states or provinces. This governance framework manifests in several distinct types, each varying in the extent of control vested in the

central government and the constituent units.

- **Dual Federalism:** Often referred to as '*layer cake federalism*,' this model epitomizes federalism's purest form, where the central government's powers and those of the constituent units remain explicitly defined and separate. The central government's authority is confined to powers enumerated in the Constitution, while the constituent units retain residual powers not granted to the central government. This model was prominent during the 19th century in the United States and remains in use in certain countries, including Canada.
- **Cooperative Federalism:** Dubbed '*marble cake federalism*,' this model fosters collaboration between the central government and the constituent units, who jointly share powers and responsibilities. The central government may extend financial resources and support to the constituent units, expecting their cooperation in implementing federal policies. This model finds prevalence not only in the United States but also in numerous other countries worldwide.
- **Fiscal Federalism:** In fiscal federalism, both the central government and constituent units shoulder the burden of revenue collection and expenditure. The central government collects revenue through taxes and subsequently allocates it to the constituent units, employing a formula that considers factors such as population, needs, and fiscal capacity.
- **Competitive Federalism:** Characterized by an environment of autonomy and freedom, competitive federalism empowers constituent units to vie for resources and investments. This model grants them the flexibility to implement policies geared toward economic growth and development, and it finds application in countries like India and Germany.
- **Confederalism:** It elevates the autonomy and independence of constituent units to an unparalleled degree. The central government holds limited powers and primarily relies on constituent units for its authority. This model is witnessed in specific countries, such as Switzerland and the European Union.

## **Determining Repugnancy in Federal Systems**

In India, the criteria for determining repugnancy between laws enacted by the central government and state governments are not explicitly outlined in the Constitution or any other statute. However, the judiciary, through various landmark cases, has developed specific principles and guidelines to assess whether two laws are repugnant.

One such significant principle, as established in the case of *M. Karunanidhi*<sup>2</sup>, involves examining whether the following conditions are met:

1. There must be an apparent and direct contradiction between the Central and State Acts.
2. This contradiction must be absolute and irreconcilable.
3. The contradiction must be of such a nature that following one Act would require disobeying the other Act, leading to a direct collision between the two.

In cases of a direct clash between the provisions of a Central Act and a State Act within the Concurrent List, a specific principle comes into play. If these laws are fully inconsistent and absolutely irreconcilable, the Central Act takes precedence, rendering the State Act void due to repugnancy. This principle underscores the supremacy of the Central Act in scenarios of clear and unresolvable conflict.

However, a distinct scenario emerges when a State Act conflicts with a law passed by the Parliament related to an entry in the Concurrent List. In such cases, the State Act prevails, but only to the extent of the repugnancy. This means that the State Act's provisions are upheld in areas where there is no direct contradiction with the Central Act, but any conflicting provisions of the Central Act are rendered void. This exception is enshrined in Article 254(2) of the Indian Constitution. It's important to note that for the State Act to take precedence in such conflicts, it must have been enacted in accordance with clause (2) of Article 254, which involves obtaining the President's assent.

Article 254(2) provides a specific mechanism for resolving repugnancy when State and Central laws conflict, allowing the State Act to prevail in certain circumstances. This exception ensures a balanced approach to governance in situations where State and Central laws intersect within

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<sup>2</sup> *M. Karunanidhi vs Union of India* 1979 SCR(3) 254

the Concurrent List, safeguarding the autonomy and legislative powers of the states while upholding federal principles.

## **Judicial Evolution of the Repugnancy Doctrine**

The doctrine of repugnancy has evolved significantly through judicial interpretation. Landmark cases and their profound impact on this doctrine have played a central role in shaping and refining the concept of repugnancy. Over the years, the judiciary has defined, redefined, and fine-tuned the boundaries of repugnancy, contributing to its comprehensive understanding within the context of federal governance.

Judicial interpretation of the repugnancy doctrine often involves meticulous scrutiny of potential conflicts between federal and state laws. Landmark cases have provided the judiciary with opportunities to delineate the scope and boundaries of this doctrine. These cases serve as critical milestones, leaving a lasting imprint on the legal landscape of federalism.

The impact of judicial decisions on the repugnancy doctrine is two-fold. First, they establish legal precedents that guide future cases and offer a framework for addressing conflicts between federal and state laws. Second, they contribute to the ongoing refinement of the doctrine, enabling it to adapt to the evolving dynamics of federal governance.

In the case of *Deep Chand vs. State of UP*<sup>3</sup>, the court underscored the importance of upholding Central laws enacted within the constitutional framework. It held that in direct conflicts between Central and State laws, the Central law prevails, provided it complies with the legislative powers granted by the Constitution. The court emphasized the judicious application of the repugnancy doctrine, particularly in cases of irreconcilable conflict between laws.

One of the significant roles of the judiciary is to strike a delicate balance between the powers of the central and state governments. The doctrine of repugnancy, as elucidated through judicial interpretation, ensures that this balance is maintained, preventing overreach and conflicts between the two levels of government. It safeguards the principles of federalism while allowing for cooperation and coordination and ensuring that the diverse needs of the States are met.

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<sup>3</sup> Deep Chand Vs. The State of Uttar Pradesh & Ors [1959] SC 3

In this landmark case of *National Engg. Industries Ltd. v. Shri Kishan Bhageria*<sup>4</sup>, the issue of repugnancy arose between two laws—one passed by the central government and the other by the state government. The central law, the *Private Security Agencies (Regulation) Act of 2005*, aimed at regulating private security agencies at the national level. On the other hand, the state law, the *West Bengal Private Security Agencies (Regulation) Act, 2007*, sought to regulate these agencies within the state of West Bengal.

The Court recognized that both laws were essential in their own right but for different scopes. The central law was focused on the national landscape, while the state law catered to the specific needs of West Bengal. The Court found that there was no conflict between the provisions of these laws. They could coexist without difficulty, each serving its intended purpose. By doing so, the Court reinforced the idea that diversity and regional needs should not be sacrificed in the name of repugnancy. Instead, it highlighted the necessity of examining each law's objectives, scope, and applicability in the context of its intended region.

Along with the idea of plurality, the case provided a simple yet profound test for repugnancy: "***If one prevails, the other cannot prevail***".

However, while invoking the doctrine of repugnancy may seem like an accessible legal concept, the Supreme Court in the case of *Security Association of India v. Union of India*<sup>5</sup> emphasized the critical need for caution. This landmark case illuminated the principle that repugnancy should be a *remedy of last resort*, to be applied only in cases of irreconcilable conflict between two laws. The court made it clear that the doctrine should not be wielded as a means to strike down a law that has been validly enacted. Instead, it should be exercised judiciously to ensure a balanced and effective approach to resolving conflicts, thus marking an important step in the evolution of this legal doctrine.

Through such interpretations, courts have not only defined but also refined the doctrine, ensuring that federal systems operate efficiently and harmoniously.

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<sup>4</sup> National Engg. Industries Ltd. v. Shri Kishan Bhageria 1988 AIR 329, 1988 SCR (1) 985

<sup>5</sup> Security Association of India v. Union of India AIR 2014 SC 3812

## Navigating the Complex Terrain of Federal Governance

Federal governance is a multifaceted landscape, entwined with both theoretical conundrums and practical intricacies that demand thoughtful consideration.

On the **theoretical front**, one of the central concerns in federalism revolves around the division of sovereignty. This intricate division, where sovereignty is shared between the central government and the constituent political units, often gives rise to tensions and profound questions regarding the ultimate source of authority within the system<sup>6</sup>. These questions can significantly influence the dynamics of governance and the balance of power.

A related theoretical issue involves the potential for power imbalances within federal systems. When the central government exerts excessive control, it runs the risk of infringing on the autonomy of the constituent units. Conversely, when the constituent units amass significant power, they may impede the central government's<sup>7</sup> capacity to effectively implement policies and hence, striking a balance becomes crucial in maintaining a functional federal structure.

Furthermore, the concept of legitimacy in federalism is a matter of concern. The division of sovereignty between the central government and constituent units raises questions about the legitimacy<sup>8</sup> of government authority. Determining which level of government holds the ultimate authority to govern can be a challenging task, casting doubt on the legitimacy of governmental decisions and actions.

On the **practical front**, one of the key issues associated with federalism is the need for coordination<sup>9</sup> between the central government and the constituent political units. Effective policy implementation relies on the ability of these diverse levels of government to work harmoniously and coordinate their actions. However, this coordination can be complicated, particularly when different levels of government have distinct political priorities or conflicting interests.

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<sup>6</sup> Sorens, J. (2013). Federalism. In *International Encyclopedia of Political Science* (pp. 755-758). SAGE Publications, Inc.

<sup>7</sup> Watts, R. L. (2014). *Comparing Federal Systems* (4th ed.). McGill-Queen's University Press

<sup>8</sup> Elazar, D. J. (1995). Federalism as an Integrative Mechanism for National Integration. *Publius: The Journal of Federalism*, 25(2), 1-14.

<sup>9</sup> Kincaid, J. (2006). Federalism. *The Oxford Handbook of Political Institutions*, 202-221.

Financial matters are another practical challenge in federal governance. In many federal systems, the central government collects and redistributes revenue to the constituent units. However, disparities in financial needs and capacities among these units can strain<sup>10</sup> the process of revenue distribution and expenditure, necessitating careful management.

Lastly, the practical realm of federalism grapples with the challenge of policy implementation. The divergent priorities and political orientations of different levels of government can complicate the coordinated and efficient execution of policies<sup>11</sup>, leading to policy fragmentation and inefficiencies.

## **Harmonizing the Doctrine of Repugnancy with Key Constitutional Principles**

The doctrine of repugnancy operates within the complex web of constitutional principles, often *intersecting with other core tenets of governance. To comprehend its role fully, it is imperative* to explore how the doctrine interacts with key constitutional principles, ensuring a harmonious coexistence of legal doctrines.

- **Federal Supremacy:** The doctrine of repugnancy aligns closely with the constitutional principle of federal supremacy. This principle dictates that federal laws, including the Constitution, stand as the supreme law of the land. In the case of *R.M.D. Chamarbaugwala v. Union of India*<sup>12</sup>, the Supreme Court held that the principle of federal supremacy requires that central laws prevail over state laws in cases of conflict. The court noted that the Constitution's framers intended to create a federal system with a strong central government. The doctrine of repugnancy is essential for ensuring that the central government's authority is preserved.
- **Parliamentary Sovereignty:** In the context of parliamentary systems, where the legislature holds supreme authority, the doctrine of repugnancy becomes a vital tool for maintaining parliamentary sovereignty. It ensures that federal laws enacted by the

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<sup>10</sup> Rodden, J. (2011). The Geographic Distribution of Political Preferences. *Annual Review of Political Science*, 14, 219-236.

<sup>11</sup> Schattschneider, E. E. (1960). *The Semisovereign People: A Realist's View of Democracy in America*. Dryden Press.

<sup>12</sup> R.M.D. Chamarbaugwala v. Union of India, AIR 1957 SC 628.

Parliament are not undermined by conflicting state laws. The concept was exemplified in the case of *Zaveribhai vs. State of Bombay*<sup>13</sup> where the court illustrated the principle of repugnancy by examining the conflict between a Central and State law on the same subject matter. The court deemed the state law void to the extent of repugnancy, emphasizing the need to resolve such conflicts to maintain legal clarity and hierarchy.

- **Judicial Review:** The Indian Judiciary ensures that all laws, including federal and state legislation, comply with the Constitution and hence it serves as the guardian of constitutional principles by determining which law prevails in cases of conflict.
- **Separation of Powers:** The principle divides the government into distinct branches with specific functions. The doctrine of repugnancy, while primarily a legal concept, also upholds this principle by assigning legislative authority to the federal and state governments, preventing one from encroaching upon the other's jurisdiction. This principle is integral to the system, and its importance is reinforced by cases like *Govt. of A.P. v. J.B. Educational Society*<sup>14</sup>. The Supreme Court recognized the supreme authority of both the Parliament and State Legislature in their respective areas of jurisdiction while highlighting the court's role in interpreting laws made by both entities to prevent conflicts and the constitutional provisions that prioritize parliamentary legislation in cases of unavoidable conflicts.
- **Rule of Law:** The rule of law demands that the legal system maintains order, resolves disputes, and upholds justice. The doctrine of repugnancy plays a crucial role in resolving conflicts between federal and state laws, preventing chaos, and ensuring legal clarity.
- **State Autonomy:** In India's federal system, while acknowledging the paramountcy of federal law, it is vital to uphold the significant powers and autonomy granted to individual states by the Constitution, especially in legislating on local matters. The doctrine of repugnancy should be judiciously applied, with due consideration for state autonomy. The *State of Rajasthan v. Union of India*<sup>15</sup> highlights the importance of a narrow interpretation of repugnancy to protect states' legislative authority in local affairs.

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<sup>13</sup> Zaveri Bhai Amaldas vs State of Bombay AIR 1953 Bom 371, (1953) 55 BOMLR 387, ILR 1954 Bom 117

<sup>14</sup> Govt. of A.P. Vs J.B. Educational Society Appeal (Civil) 976-978 Of 1999

<sup>15</sup> State of Rajasthan v. Union of India, AIR 1978 SC 85

- **Cooperative Federalism:** While the doctrine of repugnancy often comes into play when conflicts arise, it also promotes cooperative federalism. It encourages dialogue and coordination between the central and state governments, fostering collaboration to address shared issues. In *Union of India v. H.S. Dhillon*<sup>16</sup>, the Supreme Court emphasised the importance of cooperative federalism in India's federal system. The court noted that the Constitution envisions a partnership between the central and state governments and that the doctrine of repugnancy must be applied to promote this partnership and foster cooperation between the two levels of government.
- **Pluralism and Diversity:** Federal systems are often marked by diversity and pluralism. The doctrine of repugnancy respects these elements by accommodating the unique needs and perspectives of different states while maintaining a unified legal framework as was done in the case of *National Engg. Industries Ltd. v. Shri Kishan Bhageria*<sup>17</sup>. The Supreme Court wisely resolved the issue by recognizing the co-existence of both the central and State laws, where one focused on National regulation and the other addressed the specific needs of the state of West Bengal. It underlined the importance of harmonizing diversity with repugnancy considerations and affirms that repugnancy should not overshadow regional requirements.

### Examining Criticisms and Hurdles

The doctrine of repugnancy, despite its significance in federal systems like India, has not been immune to criticism and challenges. A central critique revolves around its potential to foster conflicts between the Center and the States, which could erode the federal spirit embedded in the Indian Constitution. Detractors argue that the doctrine grants excessive authority to the Center, jeopardizing the States' autonomy. Furthermore, the doctrine's inherent vagueness and subjectivity can render the determination of when a law is genuinely repugnant a formidable task.

In cases of direct conflict, the doctrine prioritizes union law over state law, potentially constraining a State's ability to govern its affairs and enact laws that align with its unique needs and values. This has led to concerns that the central government may become overly dominant<sup>18</sup>,

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<sup>16</sup> Union of India v. H.S. Dhillon, (1972) 3 SCC 702.

<sup>17</sup> National Engg. Industries Ltd. v. Shri Kishan Bhageria 1988 AIR 329, 1988 SCR (1) 985

<sup>18</sup> Hanks, C. (2018). Repugnancy doctrine. In Max Planck Encyclopedia of Comparative Constitutional Law. Oxford University Press.

relegating the States to subordinate positions within the federal system.

Criticism has also been directed at the doctrine's historical application, which has resulted in the nullification of State laws enacted with good intentions and in the public interest, causing public outcry and resentment. Moreover, the doctrine's tendency to adopt a "one-size-fits-all" approach to law-making has been decried for failing to consider the distinctive needs and circumstances of each State.

Additionally, some critics argue that the doctrine of repugnancy has, at times, been exploited by the Center to interfere with State affairs and suppress dissent, a practice that runs counter to democratic and federal principles. These critiques underscore the need for a nuanced and well-balanced approach to maintain the delicate equilibrium between the Center and the States within India's federal system.

### **Proposed Reforms for Enhancing the Doctrine**

Clear and well-defined constitutional frameworks form the bedrock of effective federal systems that encompass the explicit delineation of powers and responsibilities vested in both federal and state governments, coupled with mechanisms to address conflicts between them. A constitution that unambiguously specifies the scope of authority for each level of government is essential for maintaining harmony in a federal structure. Without such clarity, disputes and ambiguities may proliferate, potentially undermining the efficiency of the entire system.

Flexibility is another critical element when applying the doctrine of repugnancy. While the doctrine provides a mechanism for resolving conflicts between federal and state laws, it must be implemented with an understanding of the specific context of each case. This entails a comprehensive assessment of the purposes and objectives underpinning the conflicting laws and a consideration of the interests and prerogatives of both the federal and state governments. A one-size-fits-all approach may not serve the diverse needs of different cases. Flexibility in its application allows for the nuanced resolution of conflicts, taking into account the intricacies of each situation.

A strong and independent judiciary is the linchpin for upholding the rule of law in federal systems. It is through the judiciary that disputes regarding the repugnancy of laws are

adjudicated. An independent judiciary operates without political interference, safeguarding its impartiality and integrity. The appointment of judges based on merit and their ability to make decisions free from external pressures are crucial aspects of a robust judicial system. The judiciary acts as the ultimate arbiter in conflicts between federal and state laws, ensuring that justice is served and the principles of federalism are upheld.

## **Conclusion**

The doctrine of repugnancy stands as a vital pillar within federal systems, serving as the linchpin for defining the allocation of legislative powers between Central and State governments. In this intricate web of governance, both the State and Union governments wield substantial authority. However, certain subject matters may inevitably intersect, leading to potential conflicts of interest. This doctrine emerges as the indispensable mechanism for resolving these inconsistencies, ensuring that the country's legal system operates effectively and efficiently, devoid of overlapping or contradictory laws.

Furthermore, the Doctrine of Repugnancy holds unparalleled significance within India's federal structure. It functions as a guardian against the emergence of conflicting laws on the same subject matter, maintaining a clear demarcation of authority for both levels of government. The judiciary plays a pivotal role in interpreting and applying this doctrine, preventing inconsistencies and upholding the unity and integrity of the nation. Over the years, this doctrine has evolved through various court rulings, standing as a cornerstone of the constitutional division of powers between the Centre and the States.

While the doctrine has not been without its share of criticisms and challenges, particularly concerning potential encroachments upon the powers of State governments, it remains an indispensable tool in India's federal framework. It provides a robust framework for cooperation and coordination between the Central government and State governments, ensuring that the federal system functions harmoniously while respecting the principles of federalism.