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Legislative Relations between the Union and The States with special reference to Various Doctrines

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ABSTRACT

The distribution of powers between the Union and the States is an essential feature of federalism. The tendency of federalism is to limit on every side the action of the government and to split up the strength of the State among co-ordinate and independent authorities is specially noticeable, because it forms the essential distinction between a federal system and a unitary system of Government . A Federal Constitution establishes the dual polity with the Union at the Centre and the States at a periphery and each endowed with exercise sovereign powers in the field assigned to them respectively by the Constitution. The one is not subordinate to the other, but the authority of one is to co-ordinate with other. In America, the Sovereign States which were keen to federate, did not like complete subordination to the Central Government hence they believed in entrusting subjects of common interest to the Central Government, while retaining the rest with them. The American Constitution only enumerates the powers of the Central Government and leaving the residuary powers to the States. Australia followed the American pattern because their problems were similar to the Americans. The Canadians were conscious of the unfortunate happenings in U.S.A. culminating in Civil War of 1891. They were aware of the shortcomings of the weak Centre. Hence, they adopted strong Centre. Our Constitution-makers followed the Canadian scheme. however, they added one more List - the Concurrent List. The present Constitution adopts the method followed by the Government of India Act, 1935, and divides the power between the Union and the States in three Lists – the Union List, the State List and the Concurrent List. In India, the Legislative powers of the Parliament and the State Legislatures is subject to the provisions of the Constitution, viz., the Scheme of the distribution of powers, Fundamental Rights and other provisions of the Constitution. The powers of the Centre and the States are divided. They cannot make laws outside their allotted subjects. It is completely through that a scientific division is not possible and questions constantly arise whether a particular subject falls in the sphere of one or the other government. This duty is vested in the Supreme Court of India. The Supreme Court has evolved the certain principles of interpretation in order to determine the respective power of the Union and the States under the three Lists. This article is an attempt to analyze the

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legislative relations between the Union and the States and role of Judiciary in protecting and preserving this concept by evolving various principles of interpretation.

Keywords: *Legislative Relations, Union, States, Principles of Interpretation.*

I. INTRODUCTION

The Indian Constitution is one of the very few that has gone into details regarding the relationship between the Union and the States. The distribution of powers between the Centre and the States is an essential feature of federalism. In fact, the basic principle of federation is that the legislative, executive and financial authority is divided between the Centre and the States not by any law passed by the Centre but by the Constitution itself. The States are not delegates of the Union and that, though there are agencies and devices for Union control over the States in many matters – subject to such exceptions, the states are autonomous within their own spheres as allotted by the Constitution, and both the Union and the States are equally subject to the limitations imposed by the Constitution, for instance, the exercise of legislative powers being limited by Fundamental Rights. Thus, neither the Union Legislature nor a State Legislature can be said to be 'sovereign' in the legalistic sense, each being limited by the provisions of the Constitution effecting the distribution of legislative powers as between them, apart from the Fundamental Rights and other specific provisions restraining their powers in certain matters. At the outset, a federal system postulates a distribution of powers between the federation and the units. Though the nature of distribution varies according to the local and political background in each country, the division, obviously, proceeds on,

- The territory over which the Federation and the Units shall, respectively, have their jurisdiction.
- The subjects to which their respective jurisdiction shall extend.

Article 245 to 300[2] in Part XI and XII of the Indian Constitution are devoted to the Centre-State relations. Part XI (Articles 245-263) contains the legislative and administrative relations and Part XII (Articles 246-300) the financial relations. By going into great details of the relations, the Constitution framers hope to minimize the conflicts between the Centre and the States. By and large, the confrontations between the two have been minimal.

[2] Articles 245 to 255 of the Indian Constitution deals with Legislative Relations between the Union and the States, Articles 256 to 263 deals with Administrative Relations, Articles 264 to 291 deals with Financial Relations, Articles 292 & 293 deals with Borrowing Powers, Articles 294 to 300 deals with Property, Contracts, Rights, Liabilities, Obligations and Suits and Article 300A deals with Right to Property.

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(A) Legislative Relations (Articles 245-255):

From point of view of the territory over which the legislation can have effect, the jurisdiction of a State Legislature is limited to the territory of that State. The Legislature of a State may make laws for the whole or any part of the State. This means that State Laws would be void if it has extra-territorial operation i.e., takes effect outside the State[3]. However, there is one exception to this general rule. A State law of extra-territorial operation will be valid if there is sufficient nexus between the object and the State[4]. But in the case of Parliament, it has power to legislate for the whole or any part of the territory of India i.e., States, Union Territories or any other areas included for the time being in the territory of India[5]. Parliament has the power of 'extra-territorial legislation' which means that laws made by the Union Parliament will govern not only persons and property within the territory of India, but also Indian subjects resident and their property situated anywhere in the world[6]. Only some provisions for scheduled areas, to some extent, limit the territorial jurisdiction of Parliament.

(B) The Three Lists:

As for the subjects of legislation the Constitution has adopted, as if directly from the Government of India Act, 1935, a three-fold distribution of legislative powers between the Union and the States, a procedure which is not very common with federal constitutions elsewhere. The Constitutions of the United States and Australia provided a single enumeration of powers and placed the residuary powers in the hands of the States. Canada provides for a double enumeration, dividing the legislative powers between the Federal and State legislatures. The Indian Constitution introduces a scheme of three-fold enumeration, namely, Federal, State and Concurrent.

List I includes all those subjects which are in the exclusive jurisdiction of Parliament.

List II consist of all the subjects which are under exclusive jurisdiction of the State Legislature, and

List III which is called the Concurrent List, consists of subjects on which both Parliament and the State legislatures can pass laws.

[3] K.K.Kochuni v. State of Madras, 1960 AIR 1080.
[4] State of Bombay v. R.M.D.C, AIR 1957 SC 699, In this case, the Bombay State levied a tax on lotteries and prize competitions. The tax was extended to a newspaper.
[5] Article 245 of the Indian Constitution.
[6] A.H.Wadia v. Income-tax Commissioner, Bombay, AIR 1949 FC 18. In this case, the Supreme Court held: "In the case of a sovereign legislature question of extra-territoriality of any enactment can never be raised in the municipal court as a ground for challenging its validity. The legislation may offend the rules of International Law, may not be recognized by foreign courts, or there may be practical difficulties in enforcing them but these questions of policy with which the domestic tribunals are concerned".

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(i) Union List:

List I, or the Union List, includes 97 items, including residuary powers, most of them related to matters which are exclusively within the jurisdiction of the Union. Subjects of national importance requiring uniform legislation for the country as a whole are inducted in the Union List. The more important examples are defence, armed forces, arms and ammunition, atomic energy, foreign affairs, coinage, banking and insurance. Most of them are matters in which the State legislatures have no jurisdiction at all. But, there are also items dealing with inter-state matters like inter-state trade and commerce regulation and development of inter-state rivers and river valleys, and inter-state migration, which have been placed under the jurisdiction of the Union Parliament. Certain items in the Union List are of such a nature that they enable Parliament to assume a role in certain spheres in regard to subjects which are normally intended to be within the jurisdiction of the States; one such example is that of industries.

While assigned primarily to the State List; industries, the control of which by the Union is declared by a law of Parliament, to be expedient in the public interest' are to be dealt with by parliamentary legislation alone. Parliament, by a mere declaration, can take over as many industries as it thinks fit. It is under this provision that most of the big industries, like iron, steel and coal, have been taken over by Parliament under its jurisdiction. Similarly, while museums, public health, agriculture etc. come under State subject, certain institutions like the National Library and National Museum at New Delhi and the Victoria Memorial in Calcutta have been placed under the jurisdiction of Parliament on the basis of a plea that they are financed by the Government of India wholly or in part and declared by a law of Parliament to be institutions of national importance.

The university is a State subject but a number of universities have been declared as Central Universities and placed under the exclusive jurisdiction of Parliament. Elections and Audit, even at the State level, were considered matters of national importance. The Extensive nature of the Union List thus places enormous powers of legislation even over affairs exclusively under the control of the States in the hands of Parliament.

(ii) State List:

List II or the State List, comprises 66 items or entries over which the State Legislature has exclusive power of legislation. The subject of local importance, where variations in law in response to local situations may be necessary, has been included in the State List. Some subjects of vital importance in the list are State taxes and duties, police, administration of justice, local self-government, public health, agriculture, forests, fisheries, industries and minerals. But, in

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spite of the exclusive legislative jurisdiction over these items having been given to the States, the Constitution, through certain reservations made in the Union List has given power to Parliament to take some of these items under its control. Subject to these restrictions, one might say, the States have full jurisdiction over items included in the State list.

(iii) Concurrent List:

The inclusion of List III or the Concurrent List, in the Constitution gives a particular significance to the distribution of legislative power in the Indian federal scheme. The Concurrent List consists of 47 items, such as criminal law and procedure, civil procedure, marriage, contracts, port trusts, welfare of labour, economic and social planning. These subjects are obviously such as may at some time require legislations by Parliament and at other by a State Legislature. The provision of a Concurrent List has two distinct advantages.

In certain matters in which Parliament may not find it necessary or expedient to make laws, a Sate can take the initiative, and if other States follow and the matter assumes national importance, Parliament can intervene and bring about a uniform piece of legislation to cover the entire Union Territory. Similarly, if a State finds it necessary to amplify a law enacted by Parliament on an item included in the Concurrent List in order to make it of a greater use of its own people, it can do so by making supplementary laws.

The items included in the Concurrent List can be broadly divided into two groups-those dealing with general laws and legal procedure, like criminal law, criminal procedure, marriage, divorce, property law, contracts etc, and those dealing with social welfare such as trade unions, social security, vocational and technical training of labour, legal, medical and other professions etc.; while the items coming under the first group are of primary importance to the Union Government, they have been left, by convention, to Parliament. In matters of social welfare, it is open to the State legislatures either to take the initiative in making laws or to enact laws which are supplementary to the Parliamentary laws.

II. DISTRIBUTION OF LEGISLATIVE POWERS WITH REFERENCE TO VARIOUS DOCTRINES

(A) Doctrine of Pith and Substance

The basic purpose of this doctrine is to determine under which head of power or field i.e. under which list (given in the Seventh Schedule) a given piece of legislation falls. Pith means ‘true nature’ or ‘essence of something’ and Substance means ‘the most important or essential part of something’.

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Doctrine of Pith and Substance says that where the question arises of determining whether a particular law relates to a particular subject (mentioned in one List or another), the court looks to the substance of the matter. Thus, if the substance falls within Union List, then the incidental encroachment by the law on the State List does not make it invalid.

This is essentially a Canadian Doctrine now firmly entrenched in the Indian Constitutional Jurisprudence. This doctrine found its place first in the case of *Cushing v. Dupuy*[7]. In this case the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was *intra vires*, regard must be had to its pith and substance.

a. Need for the Doctrine of Pith and Substance in the Indian Context

The doctrine has been applied in India also to provide a degree of flexibility in the rigid scheme of distribution of powers. The reason for adoption of this doctrine is that if every legislation were to be declared invalid on the grounds that it encroached powers, the powers of the legislature would be drastically circumscribed.

"It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude."

b. Incidental or Ancillary Encroachment

The case of *Prafulla Kumar Mukherjee v. The Bank of Commerce*[8]succinctly explained the situation in which a State Legislature dealing with any matter may incidentally affect any Item in the Union List. The court held that whatever may be the ancillary or incidental effects

of a Statute enacted by a State Legislature, such a matter must be attributed to the Appropriate List according to its true nature and character.

[7] 1880 UKPC 22, (1880) 5 AC 409.
[8] (1947) 49 BOMLR 568.

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However, the situation relating to Pith and Substance is a bit different with respect to the Concurrent List. If a Law covered by an entry in the State List made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to the provisions of any existing law with respect to that matter in the Concurrent List, then the repugnant provision in the State List may be void unless it can coexist and operate without repugnancy to the provisions of the existing law.

c. Important Supreme Court Judgments on the Doctrine of Pith and Substance:

There are hundreds of judgments that have applied this doctrine to ascertain the true nature of legislation.

1. The State of Bombay And Another vs F.N. Balsara[9]:

This is the first important judgment of the Supreme Court that took recourse to the Doctrine of Pith and Substance. The court upheld the Doctrine of Pith and Substance and said that it is important to ascertain the true nature and character of a legislation for the purpose of determining the List under which it falls.

2. Mt. Atiqa Begam and Anr. v. Abdul Maghni Khan and Ors.[10]:

The court held that in order to decide whether the impugned Act falls under which entry, one has to ascertain the true nature and character of the enactment i.e. its 'pith and substance'. The court further said that "it is the result of this investigation, not the form alone which the statute may have assumed under the hand of the draughtsman, that will determine within which of the Legislative Lists the legislation falls and for this purpose the legislation must be scrutinized in its entirety".

3. Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra and Ors.[11]:

Pith and Substance has been beautifully explained in this case: "This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme. This doctrine is an established principle of law in India recognized not

[9] 1951 AIR 318, 1951 SCR 682.
[10] AIR 1940 All 272.
[11] AIR 2010 SC 2633.

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only by this Court, but also by various High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the Court has to look to the substance of the State Act and on such analysis and examination, if it is found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on any of the matters enumerated in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the matters in the Union List."

(B) Doctrine of Colourable Legislation:

Like any other constitutional law doctrine is a tool devised and applied by the Supreme Court of India to interpret various Constitutional Provisions. It is a guiding principle of immense utility while construing provisions relating to legislative competence. Before knowing what this doctrine is and how it is applied in India, let us first understand the genesis of Doctrine of Colourable Legislation.

Doctrine of Colourable Legislation is built upon the founding stones of the Doctrine of Separation of Power. Separation of Power mandates that a balance of power is to be struck between the different components of the State i.e. between the Legislature, the Executive and the Judiciary. The Primary Function of the legislature is to make laws. Whenever, Legislature tries to shift this balance of power towards itself then the Doctrine of Colourable Legislation is attracted to take care of Legislative Accountability.

a. **Definition**

Black's Law Dictionary defines 'Colourable' as:

1. Appearing to be true, valid or right.
2. Intended to deceive; counterfeit.
3. 'Colour' has been defined to mean 'Appearance, guise or semblance'.

The literal meaning of colourable Legislation is that under the 'colour' or 'guise' of power conferred for one particular purpose, the legislature cannot seek to achieve some other purpose which it is otherwise not competent to legislate on.

This Doctrine also traces its origin to a Latin Maxim:

"Quandoa liquid prohibetur ex directo, prohibeturet per obliquum"

This maxim implies that "when anything is prohibited directly, it is also prohibited indirectly". In common parlance, it is meant to be understood as "Whatever legislature can't do directly, it

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can't do indirectly". In our Constitution, this doctrine is usually applied to Article 246 which has demarcated the Legislative Competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under List I for the Union, List II for the States and List III for both, as mentioned in the Seventh Schedule. This doctrine comes into play when a Legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one. By applying this principle the fate of the Impugned Legislation is decided.

b. Supreme Court on Colourable Legislation

One of the most cogent and lucid explanations relating to this doctrine was given in the case of K.C. Gajapati Narayana Deo and Other v. The State of Orissa[12]. "If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'Colourable Legislation' has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere presence or disguise."

c. Limitations on the Application of Doctrine of Colourable Legislation:

1. The doctrine has no application where the powers of a Legislature are not fettered by any Constitutional limitation.
2. The doctrine is also not applicable to Subordinate Legislation.
3. The doctrine of colourable legislation does not involve any question of *bona fides* or *mala fides* on the part of the legislature. The whole doctrine resolves itself into the, question of competency of a particular legislature to enact a particular law.
4. A logical corollary of the above-mentioned point is that the Legislature does not act on Extraneous Considerations. There is always a Presumption of Constitutionality in favour of the Statute. The principle of Presumption of Constitutionality was succinctly enunciated by

[12] AIR 1953 Ori 185.

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a Constitutional Bench in *Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors*[13]. *"That there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. "*There is a very famous rule of interpretation as well that explains why the courts strongly lean against a construction which reduces the statute to a futility. The Latin Maxim "*construction ut res magis valeat quam pereat"* implies that a statute or any enacting provision therein must be so construed as to make it effective and operative. The courts prefer construction which keeps the statute within the competence of the legislature.

5. When a Legislature has the Power to make Law with respect to a particular subject, it also has all the ancillary and incidental power to make that law an effective one.

6. As already discussed above that the transgression of Constitutional Power by Legislature may be patent, manifest or direct, but may also be disguised, covert and indirect and it is only to this latter class of cases that the expression "Colorable Legislation" is being applied.

(C) Doctrine of Waiver

a. Definition

The Doctrine of Waiver seems to be based on the premise that a person is his best judge and that he has the liberty to waive the enjoyment of such rights as are conferred on him by the state. Black's Law Dictionary defines Waiver as *"the voluntary relinquishment or abandonment (express or implied) of a legal right or advantage"*. It also says that the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it.

b. Doctrine of Wavier in India

There have been plethora of cases that have discussed the doctrine of Waiver. Some of the important ones are.

1. Jaswant Singh Mathura Singh & Anr. v. Ahmedabad Municipal Corporation & Ors.[14]:

In this case, the court said that everyone has a right to waive an advantage or protection which seeks to give him/her. For e.g. In case of a Tenant-Owner dispute, if a notice is issued and no representation is made by either the owner, tenant or a sub-tenant, it would amount to waiver of the opportunity and such person cannot be permitted to turn around at a later stage.

[13] 1958 AIR 538, 1959 SCR 279.
[14] 1991 AIR 385, 1990 SCR Supl.(3)354.

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2. Krishna Bahadur v. M/S Purna Theatre & Ors.[15]:

This case made a differentiation between the principle of Estoppel and the principle of Waiver. The court said that "the difference between the two is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration".

The court also held that:

"A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

3. Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association & Ors.[16]:

This case said that even though Waiver and Estoppel are two different concepts, still the essence of a Waiver is an estoppel and without Estoppel, there cannot be any Waiver. The court also said "Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case".

c. Doctrine of Waiver and Fundamental Rights in India

Fundamental Rights are the most special of the rights in Indian Context. These rights though sacrosanct are not absolute in nature. Our Constitution imposes various reasonable restrictions upon the exercise of fundamental rights. However, the scope of the Doctrine of Waiver with respect to Fundamental rights is a bit different. It was discussed in the case of Basheshar Nath v. The Commissioner of Income Tax[17], The Court said that:

"Without finally expressing an opinion on this question we are not for the moment convinced that this Doctrine has any relevancy in construing the fundamental rights conferred by Part III of our Constitution. We think that the rights described as fundamental rights are a necessary consequence of the declaration in the preamble that the people of India have solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens justice, social, economic and political; liberty, of thought, expression, belief, faith and worship; equality

[15] AIR 2004 SC 4282.
[16] AIR 1988 SC 233.
[17] AIR 2018 SC 357.

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of status and of opportunity. These fundamental rights have not been put in the Constitution merely for the individual benefit though ultimately they come into operation in considering individual rights. They have been put there as a matter of public policy and the 'doctrine of waiver' can have no application to provisions of law which have been enacted as a matter of Constitutional policy. Reference to some of the articles, inter alia, Articles 15(1) 20, 21, makes the proposition quite plain. A citizen cannot get discrimination by telling the State 'You can discriminate', or get convicted by waiving the protection given under Articles 20 and 21."

Thus, the primary objective of Fundamental Rights is based on Public Policy. The individuals are not allowed to waive off such fundamental rights. Also, it is the constitutional mandate of the Courts to see that Fundamental Rights are enforced and guaranteed even if one might wish to waive them.

(D) Doctrine of severability

This doctrine provides that if an enactment cannot be saved by construing it consistent with its constitutionality, it may be seen whether it can be partly saved. R.M.D. Chamarbaugwalla v. The Union of India (UOI)[18] is considered to be one of the most important cases on the Doctrine of Severability. In this case, the court observed that:

"The doctrine of severability rests, as will presently be shown, on a presumed intention of the legislature that if a part of a statute turns out to be void, that should not affect the validity of the rest of it, and that intention is to be ascertained from the terms of the statute. It is the true nature of the subject-matter of the legislation that is the determining factor, and while a classification made in the statute might go far to support a conclusion in favour of severability, the absence of it does not necessarily preclude it."

The court further said that:

"When a statute is in part void, it will be enforced as regards the rest, if that is severable from what is invalid." In the above-mentioned case, it was also said that: "Another significant canon of determination of constitutionality is that the Courts would be reluctant to declare a law invalid or ultra vires on account of unconstitutionality. The Courts would accept an interpretation, which would be in favour of constitutionality rather than the one which would render the law unconstitutional. The court can resort to reading down a law in order to save it from being rendered unconstitutional. But while doing so, it cannot change the essence of the law and create a new law which in its opinion is more desirable."

[18] AIR 1957 SC 699.

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There are many important cases that have discussed about the Doctrine of Severability. Some of them are:

1. In the case of Kihoto Hollohan vs Zachillhu And Others[19], it was said that the doctrine of severability envisages that if it is possible to construe a statute so that its validity can be sustained against a constitutional attack it should be so construed and that when part of a statute is valid and part is void, the valid part must be separated from the invalid part.
2. In the case of D.S. Nakara & Others v. Union of India[20], the court said that whenever a classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of classification or by striking down words of limitation, the resultant effect may be of enlarging the class. In such a situation, the Court can strike down the words of limitation in an enactment. That is what is called reading down the measure.
3. The principles of severability was also discussed in the case of A. K. Gopalan v. State of Madras[21], wherein the Court observed that what we have to see is, whether the omission of the impugned portions of the Act will "change the nature or the structure or the object of the legislation".

(E) Doctrine of Eclipse

In the case of Keshavan Madhava Menon v. The State of Bombay[22], the law in question was an existing law at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by Article 19(1)(g) restrictions which could not be justified as reasonable under clause (6) as it then stood and consequently under Article 13(1) that existing law became void "to the extent of such inconsistency". The court said that the law became void not in toto or for all purposes or for all times or for all persons but only "to the extent of such inconsistency", that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens.

This reasoning was also adopted in the case of Bhikaji Narain Dhakras and Others v. The State of Madhya Pradesh and Another[23]. This case also held that "on and after the commencement of the Constitution, the existing law, as a result of its becoming inconsistent with the provisions of

[19] 1992 SCR(1) 686, 1992 SCC Supl.(2) 651.
[20] 1983 AIR 130, 1983 SCR(2) 165.
[21] 1950 AIR 27, 1950 SCR 88.
[22] 1951 AIR 128, 1951 SCR 228.
[23] 1955 AIR 781, 1955 SCR(2) 589.

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article 19(1)(g) read with clause (6) as it then stood, could not be permitted to stand in the way of the exercise of that fundamental right. Article 13(1) by reason of its language cannot be read as having obliterated the entire operation of the inconsistent law or having wiped it out altogether the statute, book. Such law existed for all past transactions and for enforcement of rights and liabilities accrued before the date of the Constitution. The law continued in force, even after the commencement of the Constitution, with respect to persons who were not citizens and could not claim the fundamental right".

The court also said that article 13(1) had the effect of nullifying or rendering the existing law which had become inconsistent with fundamental right as it then stood, ineffectual, nugatory and devoid of any legal force or binding effect, only with respect to the exercise of the fundamental right on and after the date of the commencement of the Constitution. Finally the court said something that we today know of as the crux of Doctrine of Eclipse.

Thus the Doctrine of Eclipse provides for the validation of Pre-Constitution Laws that violate fundamental rights upon the premise that such laws are not null and void ab initio but become unenforceable only to the extent of such inconsistency with the fundamental rights. If any subsequent amendment to the Constitution removes the inconsistency or the conflict of the existing law with the fundamental rights, then the Eclipse vanishes and that particular law again becomes active again.

(F) Doctrine of Repugnancy

It is Article 254 of the Constitution of India that firmly entrenches the Doctrine of Repugnancy in India. According to Black's Law Dictionary, Repugnancy could be defined as "an inconsistency or contradiction between two or more parts of a legal instrument (such as a statute or a contract)".

Article 245 states that Parliament may make laws for whole or any part of India and the Legislature of a State may make laws for whole or any part of the State. It further states that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246 also talks about Legislative power of the Parliament and the Legislature of a State. It states that:

1. The Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I or the Union List in the Seventh Schedule.
2. The Legislature of any State has exclusive power to make laws for such state with

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respect to any of the matters enumerated in List II or the State List in the Seventh Schedule.

3. The Parliament and the Legislature of any State have power to make laws with respect to any of the matters enumerated in the List III or Concurrent List in the Seventh Schedule.
4. Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

a. Supreme Court's Interpretation of Doctrine of Repugnancy

Article 254 has been beautifully summarized by the Supreme Court in M. Karunanidhi v. Union of India[24], The court said that:

"1. 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 the repugnancy.

2. 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.

3. 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.

4. 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

[24] 1979 AIR 898, 1979 SCR(3) 254.

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Article 254.

The conditions which must be satisfied before any repugnancy could arise are as follows:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. 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 the one without disobeying the other."

Thereafter, the court laid down following propositions in this respect:

"1. 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.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. 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.

4. 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."

III. CONCLUSION

The framers of the Indian Constitution have given more powers to the Union Parliament as against the States. The States are not vested with exclusive jurisdiction even over the subjects assigned to them by the Constitution and thus makes the States to some extent subordinate to the Centre. Indeed this is a clear departure from the strict application of federal principal followed in America and Australia. There are very many valid reasons why the founding fathers made India a centralized union. The Nation's vast size and manifold diversities requires such strong Centre which should be armed with enough powers to check divisive tendencies. The Sarkaria Commission has also favored for strong Centre which is necessary to preserve the unity and integrity of the country. Yet, the states are not made subordinate units of the Centre. In normal times, they have been granted enough autonomy to act as independent centers of authority. The conflict between the Union and the States relating to the power to make laws in

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the appropriate entries was addressed in various cases before the Supreme Court. The supreme Court formulated various doctrines for interpreting the constitutional provisions relating to legislative relations between the Union and the States. A doctrine is a principal, theory, or position that is usually applied by courts of law. In Indian Constitution also, there are different judicial doctrines that develop over time as per the interpretation given by the judiciary. The outcome of the above analysis is, a democratic country like India requires a strong Centre, but at the same time the States should be given sufficient autonomy in their own spheres. Because strong Centre should not make the States weak. The paramount consideration for everything is the "Welfare of the Nation".

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