# CASE COMMENT: UNDERSTANDING REPUGNANCY IN M. KARUNANIDHI v. UNION OF INDIA

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## INTRODUCTION

The case of *M. Karunanidhi v. Union of India and Anr.*[467] delves into the question of repugnancy. Various Indian as well as foreign authorities are cited in this case to establish certain conditions which are required to be fulfilled for an Act to be held repugnant.

In the present case, the State of Tamil Nadu, along with the assent of the President, passed the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 (herein referred to as the State Act) on the 30th of December, 1973. However, this Act was then amended by Act 16 of 1974 and it received the assent of the President on the 10th of April, 1974. The Act was brought into force by virtue of a notification dated 8th May, 1974. The Acts committed by the appellant was said to have occurred between November 1974 and March 1975. The appellant's petitions were dismissed by Tamil Nadu High Court on the 10th of May, 1977. On the 6th of September, 1977 the President gave the assent to repeal the State Act. So it is quite evident that the Act no longer exists while it was being heard at the Supreme Court.

The counsel for the appellant had raised two contentions in front of the Supreme Court:

(1) With the State Act being repealed on the 6th of September, 1977, even during the time the State Act being in force, it was repugnant to various provisions under the Indian Penal Code, 1860, the Prevention of Corruption Act, 1988 and the Criminal Law Amendment Act, 1952. Hence, under Article 254(2) of the Indian Constitution the provisions of the State Act were to have priority over the Central Acts in the State of Tamil Nadu.

(2) The appellant cannot be prosecuted under the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988 as he does not fit under the term "public servant" under Section 21(12) of the IPC during the time when the crimes were alleged. As he was the Chief Minister during that time and no master and servant relationship between the Government and him and hence he does not fit under the term "public servant" in Section 21(12) of the IPC.

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[467] AIR 1979 SC 898.

## THE QUESTION OF REPUGNANCY

### The Question of Presence of Inconsistency between the two Acts

The question that the Court looked into was that of whether there was a repugnancy between the two Acts which resulted from a irreconcilable inconsistency between the Central and State Act.

Article 254(1) of the Indian Constitution clearly states that when there is a direct collision between a statute enacted by the Union and the Parliament regarding a matter enumerated in List III, then State law would be rendered repugnant to the extent that it collides with the law enacted by the Parliament, subject to clause (2). However, sub-clause (2) says that a State law can be protected from the repugnancy if it obtains the assent of the President. This would, in effect, give the State law priority over the Parliament law and the State law would become applicable to the extent that it collides with the Parliament Act in that particular State. This state of affairs exists until the Parliament adds, amends or repeals the law made by the State Legislature under the proviso of Article 254.

As there was no Act passed under the proviso to Article 254 by the Parliament, the State law was not repealed. The question the Court dealt with was whether the State Act and Central Act dealt with the same issue. For repugnancy to occur both the Acts need to deal with the same offence. However, as the High Court had decided, if merely a new and distinct offence is created by the State Act, which is different from the offences in the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988, both in nature and purport, then the Doctrine of Repugnancy cannot be applied and both the Acts are applicable in the State of Tamil Nadu.

### The Use of Various Judgements and Authorities

For the Doctrine of Repugnancy to arise certain conditions need to be satisfied:

(1) A clear and direct inconsistency between the Central and State Act is seen.
(2) The inconsistency is absolutely irreconcilable.
(3) The inconsistency between the two Acts is of such a nature that brings it into direct collision with each other and so it is impossible to follow one without disobeying the other.

The Court places reliance on Colin Howard's Australian Federal Constitutional Law, 2nd Edition[468] where the author describes the nature of the inconsistency and states that "*an obvious*

[468] Colin Howard, Australian Federal Constitutional Law, 2nd Edition, Law Book Company, 1972.

*inconsistency arises when the two enactments produce different legal results when applied to the same facts.*"

The Court relies on the case of *Hume v. Palmer*,[469] in which there were three separate observations made by the judges on the issue of repugnancy.

Chief Justice Knox while disagreeing with the judgment pronounced by Justice Starke and Justice Issacs in the cases of *Clyde Engineering Co. v. Cowburn*,[470] and *Union Steamship Co. of New Zealand v. Commonwealth*,[471] stated that when laws enacted by the State and the Commonwealth are respectively for substantially an identical purpose then the State law is invalid.

Justice Issacs was of the opinion that the State Act was inconsistent with the Act by the Commonwealth as there was (i) a general supersession of the regulations of conduct; (ii) there was a contravention in the jurisdiction to convict; (iii) there was a difference in the penalty provided; and (iv) the tribunal itself.

Justice Starke saw a disturbance caused by the State Act to the Commonwealth Act and due to this concluded that the State Act was inconsistent with the Commonwealth Act and rendered it invalid.

In the case of *Ex. Parte Mclean*,[472] Justice Issacs and Justice Starke, while looking into the issue of repugnancy held that the scope and bearing of the State Act should not be looked into and Section 109 of the Constitution should be simply applied to declare the State Act *pro tanto* invalid. Justice Dixon in the same case held that the inconsistency does not lie in the mere co-existence of the two laws, it depends on the paramount Legislature to determine the whether the Act is to cover the whole field or not.

The Supreme Court also notes the case of *Ch. Tika Ramji and Ors. etc. v. The State of Uttar Pradesh and Ors.*,[473] in which the Supreme Court had looked at Nicholas in his Australian Constitution, 2nd ed., page no. 303 which referred to 3 cases which have set up 3 different tests of repugnancy.

(1) In the case of *R v. Brisbane Licensing Court*,[474] the Court lays down that the test of repugnancy arises when there are inconsistencies found in the actual terms of the competing statutes.

[469] 38 Cri.L.R. 441.
[470] 37 Cri.L.R. 466.
[471] 36 Cri.L.R. 130.
[472] 43 Cri.L.R. 472.
[473] [1956] 1 SCR 393.
[474] [1920] 28 S. L. R. 23.

(2) In the case of *Clyde Engineering Co. Ltd. v. Cowburn*,[475] the Court lays down that even if there is no direct conflict between the State law and the Commonwealth, if the Commonwealth had the intention to cover the whole field then the State law will be considered inconsistent even to enter the same field, to any extent.

(3) In the cases of *Victoria v. Commonwealth*,[476] and *Wenn v. Attorney-General (Vict.)*,[477] even in absence of intention and if both the State and Commonwealth seek to exercise powers over the same subject matter, the laws made by the Commonwealth prevail.

In the case of *Om Prakash Gupta v. State of Uttar Pradesh*,[478] accepting the proposition held in the case of *Amarendra Nath Roy v. The State*,[479] the Court held that no question of repugnancy arises when both the Acts seek to create distinct and separate offences.

In the case of *T. S. Balliah v. T. S. Rangachari*,[480] the Court held that the enactments need to be in direct collision with each other which is irreconcilable for repugnancy to occur.

**The Four Propositions laid down by the Court**

Referring to the above-mentioned judgments and authorities and some other Indian judgments,[481] the Supreme Court laid down four propositions:

"*(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."*

The Court derives this proposition, regarding repugnancy to arise only when the two enactments contain inconsistent and irreconcilable provisions, from the *T. S. Balliah* case.[482]

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

In the case of *R v. Brisbane Licensing Court*,[483] the High Court of Australia had to deal with a contention regarding the inconsistency between the Commonwealth and State law. Under Section 166 of the Liquor Act, 1912 a State referendum on liquor trading hours was to be held on the same day as the Senate elections. This was in contravention to Section 14 of the

475 [1926] 37 S. L. R. 466.
476 [1937] 58 S. L. R. 472.
477 [1948] 77 S. L. R. 84.
478 [1957] S.C.R. 423.
479 AIR 1955 Cal 236.
480 [1969] 72 ITR 787 (SC).
481 *Zaverbhai Amaidas v. The State of Bombay*, [1955] 1 SCR 799; *Shyamakant Lal v. Rambhajan Singh*, [1939] F.C.R. 188; *Deep Chand v. The State of Uttar Pradesh and Ors.*, [1959] 2 Supp. S.C.R. 8; *Megh Raj and Ors. v. Allah Rakhia and Ors.*, AIR 1942 F.C. 27; *State of Orissa v. M.A. Tulloch and Co.*, [1964] 4 S. C. R. 461.
482 *Supra* 14.
483 *Supra* 8.

Commonwealth Electoral (Wartime) Act, 1947 which forbade electors from voting at a State referendum on the same day as the Senate elections. Since the inconsistency appeared on the face of the two statutes, the High Court of Australia held the Liquor Act to be inconsistent with the Commonwealth Act and due to this the portion which was in contravention to the Commonwealth Act was declared invalid. The test used in this case is known as the "Simultaneous Obedience" test.

This case and the test used in it was used in the present case to derive the second proposition regarding no repeal by implication unless inconsistency appears on the face of the two statutes.

*"(3) That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results."*

In the case of *Clyde Engineering Co. Ltd. v. Cowburn*,[484] the contention before the High Court of Australia was once again an inconsistency between a Commonwealth and State law. Under the Forty-Four Hours Week Act, 1925 a person who worked for more than 44 hours a week would be provided full wages. This was in contravention to the Commonwealth award which stated that a worker who worked for lesser than 48 hours would have their pay deducted. In this case Isaacs, J. and Starke, JJ. concluded that if the Commonwealth law, expressly or impliedly, intended to cover the whole field then the State law would be repugnant; however, it is possible for both the laws to operate in the same field without colliding and in such a circumstance no repugnancy arises.

This test was first brought forth in the case of *Australian Boot Trade Employees Federation v. Whybrow*,[485] but it was first clearly formulated in the *Clyde Engineering Co. case*. Later in the case of *Ex. Parte Mclean*,[486] the New South Wales Masters and Servants Act of 1902 was considered to be inconsistent with the Commonwealth Act and was rendered invalid. In this case Dixon, J. brought the "cover the field" test into full authoritative effect.

This test of "cover the field" has been used in the Indian cases as well. In the present case, these Australian judgments have been used to derive this proposition, regarding no repugnancy arising if both the enactments operate in the same field without collision.

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[484] *Supra* 9.
[485] [1910] 11 C.L.R. 311.
[486] *Supra* 6.

*"(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.*"

This proposition, regarding no inconsistency when the two Acts seek to create distinct and separate fields, was derived from the case of *Om Prakash Gupta v. State of Uttar Pradesh*.[487]

The Court came to these four propositions with the help of the foreign as well as Indian judgments and authorities. The second and third propositions were derived from Australian judgments. While the "Simultaneous Obedience" test deals with direct inconsistency. The "Cover the Field" test deals with indirect inconsistency.

**The Intention behind the State Act**

The Court further looks at the amendment that was made to the State Act on 10th April, 1974. Previously, Section 29 of the State Act read

"*Act to overrule other laws, etc.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or decree or order of a court or other authority.*"

With the amendment the new Section 29 read

"*Saving-The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public man from any proceeding by way of investigation or otherwise which might, apart from this Act, be instituted against him.*"

This new section has expressed that it would only be in addition and not in derogation of any other laws that were in force during that time, which also includes the Central Acts. This clearly points out to the fact that there was no repugnancy between the State Act and the Central Act. Through the various case laws stated previously an important test of repugnancy is to determine the intention behind enacting the dominant legislature and whether it intends to occupy the whole field or it allows the subordinate legislature to operate in the same field *pari passu* the State Act.

The Court then goes on to cite Craies in his Interpretation on Statute Law 6th Ed. p. 369 which observes as follow

"*Many earlier statutes contain clauses similar in effect, to the general rule, but without the confusing words as to contrary intention. These statutes, of some of which a list is given below,*

[487] *Supra* 12.

*seem not to be affected by the above rule, save so far as it enables the revisers of the statute-book to excise the particular clauses. In accordance with this rule, penalties imposed by statute for offences already punishable; under a prior statute are regarded as cumulative or alternative and not as replacing the penalty to which the offender was previously liable.*"

Section 29 of the State Act clearly discerns this intention. This section is also presumptive proof of the fact that no repugnancy arises between the Central and State Act neither did the any of the two intend to create any repugnancy between the Central and State Acts or even occupy the same field.

## CONCLUSION

The Court came to the conclusion that the State Act does create distinct and separate offences with different ingredients and different punishments and hence it did not collide with the provisions given in the Central Acts. On the contrary, the State Act itself permits the Central Act to come into the picture. While the State Act may be the dominant Act in the State of Tamil Nadu, since it is not inconsistent with the Central Acts they would remain operative.

With this decision and also deciding that the position of Chief Minister is considered a public servant as well, the Supreme Court affirms the judgment given by the High Court and dismisses all the appeals.

It could thus be derived from the above noted authorities that the Indian Courts have relied on Australian jurisprudence to get a better understanding of the Doctrine of Repugnancy. The present case has been cited frequently for the propositions that it has taken been crucial in the understanding of the Doctrine of Repugnancy.