



Doctrine of Repugnancy and Standards of Medical Education in India: An Analysis of IMC Rules Vis – A- Vis State Medical University Standards

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Abstract: *The purpose of this paper is to understand the doctrine of repugnance in terms of medical education in India by analysing Indian Medical Council rules vis-à-vis State medical university standards. The paper seeks to establish that provisions and Acts of the state may be repugnant due to being ultra vires as they may be outside the jurisdiction of the respective legislature or may be inconsistent and irreconcilable in case of direct conflict with respect to an entry in list III. i.e. the Concurrent List. The paper seeks to identify the concept and theory behind the doctrine of repugnancy by studying certain important cases in the Indian jurisdiction that have shaped the concept of doctrine of repugnancy in terms of medical education in India.*

Scope of Paper: *The scope is divided into two parts:*

(a) The Doctrine of Repugnancy and its applicability: Concurrent List vests the power in two parallel agencies- the Union and the State which may be the root of conflict. Therefore, a mechanism for resolving such conflict is needed. Article 254 of the Indian Constitution seeks to incorporate such a mechanism by laying the idea of 'Doctrine of Repugnancy.'

(b) To establish the standards of medical Education in India by analyzing the Indian Medical Rules of vis-à-vis state medical university standards: Such analysis has been laid by diving the subject matter of medical education into issues as dealt with various cases under which doctrine of repugnancy has been applied, such as regulation and collection of fee, policy consideration etc. An important point to note is that the author has not dealt with medical profession and hence has restricted the scope of study of this paper solely to medical education for better understanding of the same. For the sake of understanding the subject matter more, the medical council regulations as brought in the subsequent years have also been considered to come under the ambit of rules.

I. Introduction

The very essence of federalism lies in the sharing of the legal sovereignty by the Union and the states. The constitutional provisions regarding such division are spread over Article 245 to Article 254. However, the basic provisions which actually give the parliament and the state legislature the power to enact laws are Article 245 and Article 246.

Article 245 deals with the extent of laws made by the Parliament and by the Legislatures of States, whereas Article 246 distinguishes the subject matter of laws made by the parliament and those made by the state legislature. The Article provides such division by means of the three lists in schedule VII of the Constitution. The union legislature shall have exclusive jurisdiction to make laws relating to subject matter in list I [Article 246 (1)], while a state legislature shall have exclusive jurisdiction to make laws for its state with respect to any subject enumerated in list II of the seventh schedule [Article 246(3)].

In spite of such demarcation, there may be situations when a State or territory law comes in conflict with a central law. This may be due to the state law being inconsistent with the central law. Such question of conflict arises primarily where the constitution provides two exclusive lists (as in Canada and India) . The solution to the conflict calls for legal interpretation of the constitutional instruments and the conflicting provisions by the courts. List III is the concurrent list, over which both the state and the union have the authority to make law. [Article 246(2)].

As Article 245(1) of the Constitution gives a union made law to operate over the entire territory of India , laws made by the union and the state may be present within the same territory , hence creating a possibility of a clash, in case they deal with the same subject of legislation.

Such clash may take place due to two accounts –

A. Where either of the legislatures makes laws on a subject that belongs to the exclusive list of the other legislature.

In such a situation, the doctrine which is used is the doctrine of ultra vires, according to which, the legislature has transgressed its own powers and has invaded a field assigned by the constitution exclusively to another legislature.

There is no question of competition between the two laws. In such cases, the law made by the transgressing legislature will be considered to be incompetent and void. For instance, a Union law would be ultra vires in case it directly deals with a subject included in the State list, e.g., Local government (Entry 5 of List II), without any constitutional provision sanctioning such enlargement of the federal jurisdiction and invasion into the state sphere.

B. Where there is a concurrent list of legislative subjects, as in the Indian Constitution and both the Union and State legislatures are competent to enact laws with respect to the same subject. Therefore, a question which is bound to arise is that which law should then prevail in case they cannot exist together. Such a conflict can be resolved by the interpretation of the courts, which have accordingly evolved general principles and tests to determine such 'inconsistency' or 'repugnancy'.

In a nutshell, ultra vires refers to incompetency, while repugnancy refers to inconsistency. This paper deals with the second type of clash i.e. a conflict due to a clash based on a subject matter in the concurrent list. (Entry 25 – Education, including technical education, medical education and universities subject to provisions of entry 63, 64, 65 and 66 of list I). IMC rules have been laid down 1957 for carrying out the purposes of the Indian Medical Council Act of 1956.¹ A Medical Council has been established for that purpose, which is primarily responsible for fixing standards of medical education and overseeing that these standards are maintained. It is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. However, many state made provisions come in conflict with the various rules that have been laid down by the centre.

II. Applicability of Doctrine of Repugnancy

According to *Black Law's Dictionary*, Repugnancy could be defined as “an inconsistency or contradiction between two or more parts of a legal instrument (such as a statute or contract).” Such inconsistency has been dealt with by Article 254 of the Indian Constitution.

A. Article 254 and State Legislation

Concurrent List gives the power to both the state and the union to make laws. Therefore, a conflict may arise as to which law shall prevail.

According to Article 254(2), the following requirements must be met for the state law to prevail:²

- (1) The provisions of Article 254 will apply when there is a question of conflict or repugnance with reference to legislation falling under the concurrent list, where both Parliament and state legislature have legislative competence to pass laws.³
- (2) The law should contain provisions repugnant to the provision of an earlier law made by the Parliament or an existing law with respect to that matter. Where the State act is within the exclusive competence of the Provincial or State list, the question of repugnancy will not arise.⁴
- (3) The law so made by the legislature of the state has been reserved for consideration by the president, and
- (4) Has received “his assent”.

Where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict or with respect to subject matters in the Concurrent List, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1).

B. Repugnancy- tests to determine

a) In the case of *Govt. of A.P. v. J.B. Educational Society*,⁵ the court held that

It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.”

b) Many tests have been laid down to check the doctrine of repugnancy. However, the court made one of the most authoritative judgements on the Doctrine of Repugnancy i.e. *M. Karunanidhi v. Union of India*.

The court laid down the following propositions in para 38 of the judgement-

- “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.

¹ Section 32, The Indian Medical Council Act, 1956.

² *Kaiser-I-Hind Pvt Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.*, (2002) 8 SCC 182, 197

³ *Bar Council of Uttar Pradesh v. State of Uttar Pradesh*, AIR 1973 SC 231

⁴ *Krishna A.S. v. State of Madras*, AIR 1957 SC 297

⁵ *Govt. of A.P. v. J.B. Educational Society*, AIR 2005 SC 2014

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.” For instance, the validity of state law on standards of education in technical/scientific institutions would not depend on the existence of some Central law on the same subject. Even if Parliament does not exercise its powers in terms of Entries 64 and 66 of the union list, a State law trenching upon the union field would still be invalid.⁶ *National Engg. Industries Ltd. V. Shri Kishan Bhageria*⁷ may be referred to for the above example as Sabyasachi Mukharji, J., opined that the best test of repugnancy is that if one prevails, the other cannot prevail.

II. Standard Of Medical Education In India : An Analysis Of IMC Rules Vis – A- Vis State Medical University Standards

In *Prem Nath v. State of J&K*,⁸ the Supreme Court has said that the essential condition for the application of Art 254 (1) is that the existing law must be, with respect to one of the matters enumerated in the Concurrent list. In case of medical education, Entry 25 of the List III-Concurrent List is taken into consideration, which reads as follows:

“Education, including technical education, medical education and universities subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

In exercise of the powers conferred by Section 4 and 32 of the Indian Medical Council Act, 1946, the Central Government has made Indian Medical Rules, 1957 which need to be kept in mind while making state laws on the subject.

Certain issues which were discussed in various case laws are as follows:

A. Regulation In Collection Of Capitation Fee By College and fixing the number of students that can be admitted- *Medical Council of India v. State of Karnataka*⁹

Facts of the case:

The Karnataka Capitation Fee Act was enacted for purpose of regulation in collection of capitation fee by colleges. For this, the state government was to fix the maximum number of students that can be admitted to courses for studies in a college and that number shall not exceed the intake fixed by the university or the Government.

Sub-section (10) of Section 53, falling in Chapter IX of the Karnataka Universities Act provides the same. But this provision has to be read subject to the intake fixed by the Medical Council under its regulations.

Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college, including teaching staff, equipment, teaching hospitals etc. in various departments of college and in the hospitals. Insertion of Sections 10-A, 10-B and 10-C in the Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated 29-9-1993.

Issue to be considered:

Whether the State Acts, namely, the Karnataka Universities Act and the Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956?

It was held that –

Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities), has to apply to the Central Government for permission along with the permission of the State Government and that of the university with which it is affiliated and in conformity with the regulations framed by the Medical Council. Only the medical college or institution which is recognised by the Medical Council can so apply.

Analysis-

There was no question of inconsistency or repugnancy in this case as the provisions of the state act could co-exist with those of the central act. Hence, proving that not all the legislations made by the state on a subject matter in the concurrent list are to be considered as repugnant.

B. Eligibility conditions and qualifications and determining the standards to be maintained by the Institutions- *Dr. Preeti Srivastava & Anr. v. State of Madhya Pradesh & Ors.*¹⁰

Facts of the case:

A background can be laid with the help of the example of The State of Uttar Pradesh. They prescribed a Post Graduate Medical Entrance Examination (PGMEE) for admission to Post Graduate Degree/Diploma courses in

⁶ *Gujarat University v. Krishna Ranganath Mundolkar*, AIR 1963 SC 703

⁷ *National Engg. Industries Ltd. V. Shri Kishan Bhageria* AIR 1988 SC 329

⁸ *Prem Nath v. State of J&K*, AIR 1959 SC 749

⁹ *Medical Council of India v. State of Karnataka*, AIR 1998 SC 131

¹⁰ *Dr. Preeti Srivastava & Anr. v. State of Madhya Pradesh & Ors.*, AIR 1999 SC 120

medicine. They fixed a cut-off percentage of 45% (PGMEE) for admission of the general category candidates and 35% for the reserved category candidates viz., Scheduled Castes, Scheduled Tribes etc.

Thereafter, by another G.O. dated 31.8.1995 the State of Uttar Pradesh completely did away with a cut-off percentage of marks in respect of the reserved category candidates so that there were no minimum qualifying marks in the Post Graduate Medical Entrance Examination prescribed for the reserved category candidates who were seeking admission to the Post Graduate Courses. However, by the virtue of the writ petition filed in *Dr. Sadhna Devi and Ors. v. State of U.P. and Ors.*,¹¹ this G.O. was struck down.

The State of U.P. restored the minimum qualifying marks to 35% and then reduced it further to 20%.

Similarly, In the State of Madhya Pradesh also a common entrance examination is held for admission to the Post Graduate Courses in Medicine. Under the Madhya Pradesh Medical and Dental Post Graduate Entrance Examination Rules, 1997, certain seats were reserved for the Scheduled Caste, Scheduled Tribe, BC and in-service candidates. The Rules, however, did not lay down any minimum qualifying marks for admission to the Post Graduate Courses either for the general category or for the reserved category of candidates. The Madhya Pradesh High Court directed the State Government to stipulate minimum qualifying marks in the PGMEE for all categories of candidates, including the general category candidates, in view of the decision of this Court in *Dr. Sadhna Devi's* case.

Issue to be considered:

Whether apart from providing reservation for admission to the postgraduate courses in Engineering and Medicine for special category candidates, it is open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special Category candidates seeking admission under the reserved category?

It was held that –

A Constitution Bench of the Court discussed providing of the eligibility conditions and qualifications and determining the standards to be maintained by the Institutions. There can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. This may promote higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education.

Therefore, the states were allowed to have such minimum qualifying marks for the reserved categories as well.

Analysis-

The facts of the case can related to those of *State of Madhya Pradesh & Anr. vs. Kumari Nivedita Jain & Ors.*,¹² where the court had to consider the legality of order passed by the State of Madhya Pradesh completely relaxing the conditions relating to the minimum qualifying marks for SC,ST candidates for admission to medical courses of study on non- availability of qualified candidates from these categories .

The Indian Medical Council Act and the regulations framed thereunder do not cover the question of short-listing of admission for admission to postgraduate education that is run or controlled by the States concerned. The state can frame policies , subject to the fact that it is in conformity with the directives issued by the Central body.

They cannot lay down any guideline or policy which would be in conflict with the Central statute or the standards laid down by the Central body. The same had been laid down in *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust Vs. State of Tamil Nadu*.¹³

C. Fixating an upper age limit for admissions

WP(C) 3242 OF 2014 and CONT. CAS(C) 366 OF 2014 in the Gauhati High Court is a case in point which will help in understanding the concept of doctrine of repugnancy in terms of medical education.

Facts Of The Case:

The Government of Assam has issued a notification, bringing into effect the Medical Colleges of Assam, Regional Dental College, Guwahati and Government Ayurvedic College, Guwahati (Regulation of Admission of Under-Graduate Students) Rules, 2007 incorporating additional conditions for the eligibility of admission in medical courses.

Rule 3(6) of these Rules, which is the bone of contention in this case says that the candidate should not be below 17 years and above 24 years of age on the 31st December of the year in which the admission is sought for, provided that the maximum age limit is relaxable by 3 years in case of candidates belonging to the Schedule Castes or Scheduled Tribes, OBC and MOBC.

The petitioner has marginally missed the admission on account of the cut off bench mark of the age for admission by six months.

¹¹ *Dr. Sadhna Devi and Ors. v. State of U.P. and Ors* on 19 February, 1997 in SC

¹² *State of Madhya Pradesh & Anr. vs. Kumari Nivedita Jain & Ors.*, AIR 1981 SC 2045

¹³ *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust Vs. State of Tamil Nadu*, AIR 2002 Mad 42

Issue:

Whether the State Rules, which fixed the outer age limit for admission is in conflict with, and repugnant to, the Regulation 4 framed by the Indian Medical Council?

It was held-

The issue of outer age limit was kept open by the Indian Medical Council and to that extent; the field remained unoccupied by the Regulation made by the Indian Medical Council. Therefore, there is no bar for the State to regulate with regard to the outer age limit. However, the court also mentioned that the Entry 25 of the Concurrent List is not a redundant or otiose provision, it cannot be said that Entry 66 of the Union List is all comprehensive and leaves no scope for the State to legislate on any of the aspects of the technical and medical education.

Analysis-

The State in its legislative competence can prescribe the outer age limit as there is no restriction to this effect in the central act. The assent of the president is not required in this case as it is needed only when the provision in the state list and that in the central list are irreconcilable.

D. Appointment Of Select Committee For Admissions -Chitralekha V. State Of Mysore.¹⁴

Facts of the case-

In the State of Mysore, the State Government appointed a common selection committee for settling admissions of Medical Colleges. The Government, defined backward classes and directed that 30 per cent of the seats in professional and technical colleges and institutions shall be reserved for them and 18 per cent to the Scheduled Castes and the Scheduled Tribes.

The selection committee converted the total of the marks in the optional subjects to a maximum of 300 marks and fixed the maximum marks for interview at 75. On the basis of the marks obtained by the candidates in the examination and those obtained in the interview, selections were made for admission to Medical Colleges.

Issue to be considered-

Whether the orders made by the Government of Mysore are valid in respect of admissions to Engineering and Medical Colleges in the State of Mysore?

It was held that –

The orders defining backwardness were valid and that the criteria laid down for interview of students were good; but it held that the selection committee had abused the powers conferred upon it and on that finding set aside the interviews held and directed that the applicants shall be interviewed.

Analysis-

The reason for holding new set of interviews is simply because the committee abused its powers and not due to the constitution of the committee as such. Prescribing a set percentage of marks for interviews in the matter of admission to colleges is not directly encroaching on the field covered by entry 66 of List I. A reasonable basis is required to select the students as not all applicants can be accepted. The State Government is therefore entitled to prescribe a machinery and also the criteria for admission of qualified students to medical and engineering colleges run by the Government.

This case pertains to the same issue as that of *State of Andhra Pradesh & Anr. vs. Lavu Narendranath & Ors.etc.*,¹⁵ where the issue was whether the entrance test prescribed by the Government for short-listing eligible candidates for being admitted to medical courses in colleges was legally permissible or not. It was said that the University can do the same for M.B.B.S courses as it does with other degree courses. Entry 66 of List I is in now way affected. Similarly, In the case of *Dr. Ambesh Kumar vs. Principal, L.L.R.M. Medical College, Meerut & Ors.*,¹⁶ it was held that State Government can in exercise of its executive power under Article 162 make an order relating to matters referred to in Entry 25 of the Concurrent List.

E. Exclusive Medium Of Instruction-The Gujarat University, Ahmedabad vs. Krishna Ranganath Mudholkar And Others.¹⁷

Facts-

Shrikant, son of petitioner took instruction in the various subjects prescribed for the the Secondary School Certificate Examination held by the State of Bombay through the medium of Marathi (which is his mother-tongue) and answered the questions at the examination also in the medium of Marathi.

Shrikant joined the St. Xavier's College affiliated to University of Gujrat in the First Year Arts class and was admitted in the section in which instructions were imparted through the medium of English. After successfully completing the First Year Arts course in March, 1961, Shrikant applied for admission to the classes preparing for the Intermediate Arts examination of the University through the medium of English.

The Principal of the College informed Shrikant that in view of the provisions of the Gujrat University Act, 1949, and the Statues 207, 208 and 209 framed by the Senate of the University, as amended in 1961 he could not without

¹⁴ *Chitralekha V. State Of Mysore*, AIR 1964 SC 1823

¹⁵ *State of Andhra Pradesh & Anr. vs. Lavu Narendranath & Ors.etc.*, : AIR 1971 SC 2560

¹⁶ *Dr. Ambesh Kumar vs. Principal, L.L.R.M. Medical College, Meerut & Ors.*, AIR 1987 SC 400

¹⁷ *The Gujarat University, Ahmedabad vs. Krishna Ranganath Mudholkar And Others*, AIR 1963 SC 703

the sanction of the permit him to attend classes in which instructions were imparted through the medium of English. Shrikant was "allowed to keep English as a medium of examination" but not for instruction.

Issue to be considered-

Whether the university has power to prohibit, expressly or by necessary implication, the use of any language other than that prescribed as the medium of instruction?

It was held-

A legislation prescribing the medium or media of instruction in higher education and other instructions does not fall within Item 11 of List II of the Seventh Schedule to the Constitution of India. The use of the expression subject to shows that matter excluded by that Item could not under taken by the State Legislature and since imposing of a regional language was excluded by it, the State Legislature was not competent to impose it .

Analysis-

Such legislation impinges on the field reserved for the Union by Item 66 of List, I and prejudicially affects coordination and determination of standards, and not the existence of some definite Union Legislation to that end. If there be one, that would prevail over the State legislation under Article 254(1) of the Constitution. Even if there is no such legislation, State law trenching upon the Union field must still be invalid.

III. Conclusion

Education was a state subject until the 42nd Amendment Act in 1976. Entry 11 of list II was converted in to Entry 25 of list III. Entry 66 of list I also deals with the determination of institutions for higher education. However, due to both parallel entities having the power to legislate on the matter, there may arise a situation of conflict. Doctrine of repugnancy is applied in such cases.

In this paper, standards of medical education in India have been established by using the IMC rules as the basis to analyse the various provisions brought in by the states. The following can be concluded-

There may arise a conflict between Entry 25 of list III and Entry 66 of list I when it comes to ascertaining the standards of higher education. Therefore, the two entries should be harmoniously construed. When both overlap, the power conferred by Entry 66 of List I prevails over Entry 25.¹⁸

- A. The eligibility criteria for post graduate courses are only recommendatory and not mandatory. The criteria can be recommended by the state governments. The Medical Council regulations lay down standards for medical education.¹⁹ However, regulations by the Central Act in this regard are mandatory.
- B. The minimum standards as laid down by the Central Statute is to be complied by with the state. However, laying down additional norms of admissions in a manner inconsistent therewith does not include the criteria laid down.²⁰
- C. The state government has a positive role to play in identifying the sites where medical colleges are proposed to be established. However, this is not the final say as ultimately final recommendations have to be made by the Medical Council of India and the final decision has to be taken by the central government.²¹
- D. The word "coordination" in Entry 66 of list I can also include the entire gamut of admissions. Therefore, if any aspect of admission of students in colleges would fall within Entry 66 of List I, it would fall outside the scope of Entry 25 of list III.²²
- E. The state cannot further create sub-class within the list of scheduled – castes. Justice Sinha observed that the main aim is to bring in equality by providing incentives to these classes. A further division would ruin such a framework.²³

Reiterating directions it had issued in the case of '*Priya Gupta vs. State of Chhattisgarh*,'²⁴ the court said the MCI, the Centre, the States and medical colleges should strictly adhere to the admission schedule prescribed by the MCI. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite penal actions.

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¹⁸ Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna v. State of Bihar, AIR 1988 SC 1136.

¹⁹ Aditya Shrikant Kelkar v. State of Maharashtra, AIR 1988 Bom 260

²⁰ Preeti Srivastava (Dr.) v. State of MP, AIR 1999 SC 2894

²¹ Government of Andhra Pradesh v. Medwin Educational Society, AIR 2004 SC 613

²² Bharati Vidyapeeth v. State of Maharashtra, AIR 2004 SC 1943

²³ Chinmaiah E.V. v. State of Andhra Pradesh, AIR 2005 SC 394

²⁴ Priya Gupta vs. State of Chhattisgarh, AIR 2012 SC 433