The primary objective of the Mission is to spread awareness and information. The Mission proposes to launch door-to-door campaign reaching out to the remotest villages to educate the people and enlighten them into awareness.

The Legal Services Authorities should function with a vision, a mission and a passion for securing justice to all. They have to organize legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats.

Even after 60 years of independency, the suffering of the exploited and the poor has not ended and they are looking for help. The achievement of legal literacy by one or two institutions is not an easy task. It is essential that all the three organs of the State – the Legislature, the Judiciary and the Executive – must work together. They have an obligation to ensure that our people do become aware of what is available to them and what is their right in terms of facilities that are now a part and parcel of our development programmes. They have to see that the needy and deserved people should realize their rights. They have to play their role in propagating and strengthening this movement. They have to see that benefits of all the people's welfare schemes should reach the beneficiaries.

Only providing legal aid to the poor and weaker sections to settle their disputes is not the solution. The solution lies if we can grant these people a window of social justice by way of monitoring and ensuring that the benefits are delivered to them; if benefits are not delivered, to identify causes thereof and persons who may be responsible for such lapse and, thereafter, take immediate appropriate steps so that such a lapse is not repeated. We need to set examples of accountability. No legal aid or awareness would reach empty stomach[6].

If the legal literacy campaigns truly translate into a ground level action, the claims of democracy, pro-poor growth and equitable expansion of social opportunities will be met.

There is no happiness like knowing that you have made a difference in someone else's life.

REPUGNANCY BETWEEN STATE ACT VIS-A-VIS CENTRAL ACT – SECTION 354 IPC — A CRITICAL STUDY

By

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Both Laws operating the same field and the two possibly stand together, *e.g.*, when both prescribe for the same offence but the punishment differs in degree and kind the Central Act prescribe a punishment of two years State Act prescribes a punishment of 7 years which prevails ?

By virtue of State Amendment to Criminal Procedure Code (Andhra Pradesh Amendment Act) Act No.3 of 1992 with effect from 15-2-1992 the offence covered by Section 354 Indian Penal Code is triable by the Court of Sessions, non-bailable, and is punishable with imprisonment for seven years and fine.

6. Justice *Y.K. Sabharwal* : Empowering Communities through Legal Literacy and Legal Aid for Social Justice and Equality, Nyaya Deep, Volume VI, Issue 2 : April 2005, pages 16-19 at page 17

During the currency of this State Amendment we have the Central Amendment by Act 25 of 2005, with effect from 21-6-2006, making the offence 354 IPC a bailable offence, triable by any Magistrate and punishable with imprisonment for two years or fine or both.

Thus it is apparent there is repugnancy between the State Act and the Central Act in respect of the Law included in List III Concurrent List of the Seventh Schedule to the Constitution.

Under Article 246 of the Constitution both State Legislature and the Parliament have power to make Laws with respect to any of the matters enumerated in List III Concurrent List of the Seventh Schedule of the Constitution which includes *inter alia* IPC and Cr.P.C.

Now the moot question that falls for consideration is, which of the two Acts prevails over ?

Or in otherwords

Whether the Act of the Parliament prevails over ?

Even after the Central amendment making the offence covered by Section 354 IPC, it is learnt, as usual offence covered by Section 354 IPC are committed to Sessions Courts, treating the offence covered by Section 354 IPC as a Sessions case and it appears there are huge number of cases pending in several Courts.

In this background, the Writer considers

"The advocate owes duty not only to the Clients but to the Courts and to the Society also and is attempting to propagate his views on this important topics of day-to-day occurrence in his characteristic forth right and fearless strain dedicated to the service of law and to the legal institutions as it is felt it would be making a mockery of the Judicial process if such a important matter is not treated as important enough to be placed before the Courts forthwith.

Without further dilly dallying on my part, my views are propagated as it is felt so long as life lasts, so long shall it be the duty and endeavour of the Courts to give to the provisions of our Constitution a meaning which will prevent human suffering and degradation.

The Law on the subject is in no quandary and is well settled and requires no authority.

The Writer of the Article has already making a threadbare analysis of the matter *pro* and *contra*, contributed an Article under similar circumstance of repugnancy between the State amendment of Section 29-A of Hindu Succession Act (introduced by State Amendment of 1985) and Section 6 of the Central Act as amended by Act 39 of 2005 removing the disqualification of marriage of the daughters and making every daughter whether married or not as the coparceners of the family tracing out the guidelines and the tests laid down for repugnancy out of which *Karunanidhi v. Union of India*, AIR 1979 SC 898, is the bedrock of law on the matter under the caption of.

"*Whether Section 29-A of Hindu Succession Act, 1956 introduced by State Amendment Act, 1985, placing twin restrictions or prohibitions on a daughter, to claim equal rights in a coparcenary property either with respect to the date of marriage, or partition is repugnant in the amended Section 6, Hindu Succession Act, 1956 (Central Act) as amended by Act 39 of 2005, placing no such restrictions and the daughter by birth, if so facto, whether married or unmarried becomes a coparcener and have the same rights as that of a son, is violative of Articles 14, 19 and of the Constitution and is liable to be struck down either under Article 252 or 254 of the Constitution No.7.*

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Be this my endeavour or contribution, as it may adverting to the inconsistency between Section 29-A of the Hindu Succession Act and Section 6 as amended by Act 39 of 2005.

His Lordship Mr. Justice *D. Apparao* in the decision reported in 2007 (4) ALD 694, has surveyed the entire laws on the subject and agreed with the views suggested by the Writer which may be a happy coincidence, and laid down.

> "If both Parliament and a State Legislature makes laws relating to the same concurrent subject and question of conflict arises between the two enactments, the conflict is solved by Article 254(1) of the Constitution by providing that in such a case the State Law shall be void to the extent it is repugnant to or inconsistent with the Central Act. Undoubtedly, the Central enactment prevails over the State Act. In case of overlappings of a matter as between them, prenominance has to be given to the Union Legislature (Paras 39, 41, 42)
>
> His Lordship referring to the Supreme Court in Para 40"

The Supreme Court in *T. Barai v. Henry Ah Hoe and another*, AIR 1983 SC 150, considered the question as to what would happen if there is a conflict between Union and State Law in the Concurrent List.

> *"There is no doubt or difficulty as to the Law applicable Article 254 of the Constitution makes a provision firstly, as to what would happen in the case of conflict between a Central Law and State Law, with regard to the subjects enumerated in the Concurrent List and secondly, for resolving such conflict.*
>
> *Article 254(1) enunciates the normal rule that in the event of conflict between a Union and a State law, in the concurrent field the former prevails the later. Clause (i) lays down that if a State Law, relating to a concurrent subject is 'repugnant' to a Union Law, relating to that subject, then whether the Union Law is prior or later in time, the Union Law will prevail and the State Law shall to the extent of such repugnancy, be void. To the general rule laid down in Clause (i) (ii) engrafts, an exception, viz., that if the President assents to a State Law, which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier Law of the Union, both laws dealing with a concurrent subject. In such a case the Central Act will give way to the State Act only to the extent of consistency between the two, and no more. In short the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union Law relating to concurrent subject would be that the State Act shall prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of State Law may however be taken away if the Parliament legislates under the Proviso to Clause (2). The Proviso to Article 254(2) empowers the Union Parliament to repeat or amend a repugnant State Law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State Law either directly, or by itself enacting a Law, repugnant to State Law, with respect to the "same matter". Even though the subsequent State Law made by the Parliament does not expressly repeal a State Law, even then, the State Law, will become void as soon as the subsequent Law of Parliament creating repugnancy is made. A State Law would be repugnant to the Union Law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases the law made by Parliament shall prevail over the State Law under Article 254(1). That being so, when Parliament stepped in and enacted*

the Central Amendment Act, it being a later law made by Parliament "with respect to the same matter" the West Bengal Amendment Act stood impliedly repealed."

Even earlier the Supreme Court in Karunanidhi v. Union of India, AIR 1979 SC 898, held that by Clause (2) of Article 246, concurrent power is conferred upon both the Union and State Legislatures to legislate with respect to the subjects included in List-III. Hence if both the Parliament and the State Legislature make laws relating to the same concurrent subject, a question of conflict arises between the two enactments. The conflict is solved by Article 254(1) by providing that in such a case the State Law would be void to the extent it is repugnant or inconsistent with the Central Act.

To a similar effect it is the decision rendered by His Lordship Justice *Gode Raghuram*, reported in 2007 (1) ALD 774

"Article 254 sets out the principles for harmonizing the laws made by the Parliament and by the Legislatures of the State, referable to the concurrent field. Accordingly if the provisions of a law made a State Legislature is repugnant to any of the provisions of law made by the Parliament which the Parliament is competent to act, or to any provision of the existing law, with respect to one of the matters enumerated in the Concurrent List, then, subject to the provision of Article 245(2), the law made by the Parliament whether earlier or subsequent to the law made by the Legislature of State, or an existing law, shall prevail over and the laws made by the Legislature of the State shall, to the extent of repugnancy be void.

It is unnecessary to multiply the article with authorities. It is therefore submitted, in view of the golden thread of law covered by the Apex Court and the High Court of Andhra Pradesh, the State Law amending 354 IPC making it punishable with 7 years and triable by Sessions Court and is non-bailable by Act 3 of 1992, an earlier one to the present amended Central Law, by Act 25 of 2005, with effect from 21-6-2006 is repugnant and the corollary is void.

Conclusions

It is therefore asserted the State Law of 1992, making 354 IPC, a Sessions Case triable by Sessions Court and is punishable with seven years imprisonment, and is non-bailable is void, and the subsequent Central Law, making the offence punishable with two years imprisonment and is triable by any Magistrate prevails.

Even otherwise taking into consideration the Parliamentary objective and policy indisputably be considered having regard to the preamble and also another important factor of prescribing lesser punishment by the Central Amendment a beneficial provision to the accused.

It is, as a corollary submitted all the 354 IPC cases subsequent to 21-6-2007 are to be taken cognizance as criminal cases only to be triable by any Magistrate but not as Sessions Cases triable by the Court of Sessions and if any erroneous cognizance is taken due inadvertence, they may be duly dealt with as suggested supra to avoid human suffering and degradation.

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