AS INTRODUCED IN THE RAJYA SABHA
ON 26TH JULY, 2024

Bill No.XXVI of 2024

THE UNIVERSITY GRANTS COMMISSION (AMENDMENT) BILL, 2024

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BILL

further to amend the University Grants Commission Act, 1956.

WHEREAS it is expedient to reinforce the principles of constitutional governance an uphold the integrity of legislative authority of the States in the realm of education.

BE it enacted by Parliament in the Seventy-fifth Year of the Republic of India as follows: —

Short title and commencement.

1. *(1)* This Act may be called the University Grants Commission (Amendment) Act, 2024.

(2) It shall come into force at once.

Insertion of new section 27A.

2. In the University Grants Commission Act, 1956, after section 27, the following new section shall be inserted, namely, — 3 of 1956

State laws to prevail over rules and regulations made under this Act in case of repugnancy.

"27A. Notwithstanding anything contained in this Act, if any provision of a law made by the Legislature of a State is repugnant to any provision of the Rules or Regulations made under this Act, then, the law made by the Legislature of the State, whether passed before or after the notification of the Rule or Regulation made under this Act, shall prevail and the Rule or Regulation so made under this Act shall, to the extent of the repugnancy, be void in that State.". 5

STATEMENT OF OBJECTS AND REASONS

Education is a field which our founding fathers were resolute to keep under the domain of the States, as evident from its placement Entry 11 of the State List under the Seventh Schedule of the Constitution. However, during the period of emergency, the Constitution (Forty-second Amendment) Act of 1976 altered this paradigm by transposing Education from the State List to the Concurrent List as Entry 25. This pivotal shift significantly curtailed the autonomy of States in overseeing their educational institutions and Universities, ushering in an era where the Union Government and its instrumentalities wielded control over this vital sphere of governance. Compounding these challenges, recent decisions of the Supreme Court in cases such as *Gambhirdan K. Gadhvi vs. State of Gujarat & Ors*. [(2022) 5 SCC 179], *State of West Bengal Vs. Anindya Sundar Das & Ors*. [2022 SCC Online SC 1382], *Professor (Dr.) Sreejith P.S. vs. Dr. Rajasree M.S. & Ors*. [2022 SCC Online SC 1473], and others, concerning the precedence of UGC Regulations over State laws, have ignited fervent debates on the constitutional interpretation of the relationship between Central Regulations *vis-à-vis* State laws. At the heart of this discourse lies the concept of subordinate legislation/delegated legislation, a progeny of executive fiat, which refers to Rules, Regulations, or Orders promulgated by executive authorities under the powers conferred upon them by an Act of Parliament or State Legislature.

2. In *Gambhirdan K. Gadhvi vs. State of Gujarat & Ors*. and subsequent cases, the Supreme Court deliberated on whether the Regulations issued by the University Grants Commission (UGC) under the University Grants Commission Act, 1956 [Act No. 3 of 1956] {hereinafter referred to as "UGC Act"}, representing a quintessential example of subordinate legislation, could supersede laws enacted by State Legislatures, based on the doctrine of repugnancy under Article 254 of the Indian Constitution. The Apex Court, accorded primacy to UGC Regulations, contending that they formed an integral part of the UGC Act as a subordinate legislation, thus prevailing over conflicting State laws. The Supreme Court reasoned that since UGC Regulations and Rules are to be laid before each House of Parliament as per section 28 of the UGC Act, the UGC Regulations assume statutory force and becomes inseparable from the parent Act. However, granting primacy to delegated legislation over State enactments not only impinges upon the federal tapestry woven by the framers of our constitution but also raises profound questions regarding its constitutional legitimacy and ramifications on the constitutional framework governing legislative relations between the Union and States. Furthermore, this judgement of the Apex Court effectively diminishes the concurrent legislative authority granted to the States by the Constitution in the realm of education. Therefore, a nuanced understanding of constitutional principles and a re-consideration of the role of subordinate legislation in the hierarchy of laws are imperative to safeguard the federal structure and democratic ethos enshrined in the Constitution.

3. The foundational principle embodied in Article 254 of the Constitution serves as the lodestar amidst this constitutional entanglement. Article 254 delineates a delicate equipoise between Parliamentary enactments, pre-constitutional subordinate legislation and State legislations, save for exceptions carved out under Presidential assent. Notably, the diligent omission of post-constitutional subordinate legislations from this interplay, as elaborately explained hereinafter, underscores need to safeguard the sovereignty of State laws against encroachment by central executive mandates.

4. The fundamental tenet gleaned from a meticulous examination of Article 254 evinces that in the event of any inconsistency between laws enacted by Parliament and those promulgated by State Legislatures, the laws made by Parliament shall prevail unless the conflicting State legislation receives the President's assent. As such, it shows that the concept of repugnancy under this Article pertains specifically to conflicts between State laws and substantive laws passed by Parliament, thereby excluding considerations of Rules, Regulations, and the like. Furthermore, Article 254 is housed within Part XI, Chapter I of the Constitution, which enunciates 'Legislative Relations between the Union and the States'. This Chapter is distinctly concerned with delineating the distribution of legislative powers between State legislatures and Parliament, and not with Union Executive, contrasting with Chapter II, which addresses 'Administrative Relations' encompassing relationships between the Union and State Executives.

5. In addition to the primary principle outlined in Article 254, as elucidated above, clause (1) of Article 254 establishes that if any provision of a law enacted by a State Legislature conflicts with a provision of an "existing law" concerning matters enumerated in the Concurrent List, the "existing law" shall take precedence. This underscores the critical distinction between the terms "law" and "existing law" within the purview of Article 254, as the Article employs them distinctly to delineate different scenarios. Thus, it becomes imperative to comprehend the nuances and scope of these terms for a comprehensive interpretation of Article 254.

6. Within the Constitution's definition clause (Article 366), the term "Law" lacks a specific definition that extends its scope to encompass subordinate legislations such as Rules or Regulations. The sole provision in the Constitution permitting the inclusion of Rules and Regulations within the ambit of "Laws" is Article 13(3)(a) in Part III. However, this provision is confined to the context of determining the validity of laws inconsistent with or derogatory to fundamental rights and is not applicable to other parts of the Constitution. Consequently, the significance of the term "existing laws" becomes paramount, as evidenced by the Constitution framers' decision to differentiate between "Laws" and "existing laws" within the same Article. In this regard, clause 10 of Article 366 is reproduced hereunder;

> ***366. Definitions.—****In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—*
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> .....

> *(10)* ***"existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation****; (Emphasis supplied)*

Therefore, Article 366(10) allows for a narrow interpretation of Article 254, accommodating only those Rules and Regulations promulgated 'before the Constitution's commencement' under the term "existing law". Thus, the framers of the Constitution deliberately employed both "Laws" and "Existing Laws" within the same Article 254 to unequivocally convey their intent that no form of subordinate legislation by the Central Government or its instrumentalities should render State laws subservient, except for those subordinate legislations promulgated prior to the Constitution's commencement, which came into force on 26thJanuary, 1950. This meticulous delineation within the Constitution, reserving a niche for pre-constitutional subordinate legislations under the rubric of "existing law", underscores the Constitution makers' commitment to preserving the principles of co-operative federalism while ensuring administrative continuity by safeguarding pre-constitutional legislation including subordinate legislations.

7. The intention of our founding fathers is unmistakably clear, leaving no room for ambiguity, as they meticulously distinguished between pre-constitutional and post-constitutional subordinate legislations, granting explicit authority for the former to supersede State laws while denying such permission for the latter. This is underscored by the specific meaning attributed to the term "existing law" in clause (10) of Article 366. This differentiation, permitting pre-constitutional subordinate legislation as a transitional provision, finds further reinforcement in the language of clause (2) of Article 254. Here, the distinct terms "earlier law made by Parliament" and "existing law" within the same sentence serve to emphasize this differentiation once more.

8. As such, since the UGC Act and its corresponding Regulations were enacted after the Constitution's commencement and do not pertain to fundamental rights outlined in Part III of the Constitution, the Regulations under the UGC Act can neither run *pari passu* the State Laws nor make the State laws subservient. Consequently, in instances of conflict between UGC Regulations and State laws, the latter should prevail as per the letter and spirit of Article 254 of the Constitution.

9. Remarkably, this pivotal aspect outlined in Article 254 in conjunction with Article 366(10) seems to have been overlooked in the judgments *supra*. By equating subordinate legislation with central laws without delving into the scope of the term "existing laws" in Article 254 r/w Article 366(10), it appears that the Courts have inadvertently expanded the scope of Article 254 beyond its intended purview. None of the mentioned judgments have addressed the crucial aspect of "existing law" in Article 254, which proscribe the precedence of subordinate legislations passed after the Constitution's commencement over State laws.

10. The doctrine of repugnancy enshrined in Article 254 presupposes a delicate equilibrium of legislative powers among the Parliament and State Legislatures, with each possessing exclusive authority over certain subjects. Allowing post-constitutional delegated legislation to override State laws not only contradicts the Constitution itself but may also disrupt this balance, potentially encroaching upon the autonomy of States in legislative matters.

11. Moreover, treating central subordinate legislation on par with Central Laws confers significant authority upon the Union Government and its instrumentalities to establish any kind of rules and regulations without undergoing thorough legislative scrutiny. Reliance by Courts on Section 28 of the UGC Act to subjugate State laws to UGC Regulations neglects the schism between legislative and delegated powers. While State laws are crafted by elected representatives, delegated legislation originates from executive bodies. Delegated legislation, by its nature, lacks the democratic participation, scrutiny, and consideration of regional interests and deliberation associated with legislative enactments, warranting a more circumspect approach to its legal status. The will of a legislature comprising the elected representatives shouldn't be made subservient to delegated laws promulgated by Executive. An interpretation to the contrary also disregards the significance of Article 254(2), an exception to the doctrine of repugnancy, which allows State laws, even if conflicting with central laws, to supersede them with the President's assent. As previously discussed, the above referred judgments also effectively undermine the concurrent legislative authority granted to the States by the Constitution in the realm of education.

12. Furthermore, the Supreme Court's approach to interpreting Article 254 in the context of conflicts between central regulations and state laws seems to be inconsist. While delivering judgments in *Gambhirdan K. Gadhvi vs. State of Gujarat & Ors.* and subsequent cases, the Supreme Court overlooked its own precedent established in *Kalyani Mathivanan vs. K.V. Jeyaraj & Ors.* [(2015) 6 SCC 363], wherein it was ruled that UGC Regulations are not binding unless adopted by the State Government. While paragraph 3.7 of the Gambhirdan K. Gadhvi judgment made a mention of the Kalyani Mathivanan decision, it failed to engage in any discussion or offer reasons for departing from the precedent set by the latter. This omission led to conflicting conclusions on the same subject matter, thereby creating inconsistency regarding the hierarchy of laws and regulations.

13. In conclusion, the judicial interpretations in Gambhirdan and subsequent cases regarding the UGC Regulations have veered off the constitutional trajectory, highlighting a significant chasm between constitutional intent and judicial interpretation. Given these intricacies, there is a pressing need for recalibration of this jurisprudence to realign with the true essence of Article 254 and to safeguard the federal principles and democratic values enshrined in the Indian Constitution. Therefore, legislative clarity through amendment to the UGC Act is essential to ensure consistency and coherence with constitutional principles in resolving conflicts between UGC Regulations and State laws, upholding the paramountcy of the Constitution.

14. As lawmakers, it is incumbent upon us to heed this clarion call and the Bill seeks to address these imbalances and reaffirm the federal principles of our Constitution.

Hence, the Bill.

JOHN BRITTAS

RAJYA SABHA

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further to amend the University Grants Commission Act, 1956.

(Dr. John Brittas, M.P.)

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