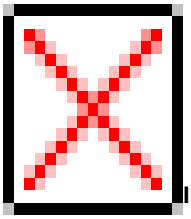
Cross-Referencing in Central & State Legislations: A Fiendish Job!

THE POLICY LAB (TPL-14)
NOVEMBER 09, 2022

By J B Mohapatra



INTERLACING and inter-disciplinary boundaries of various fields of law are often coalesced in a single legislation creating an interlaced web where certain critical parts of a single legislation are connected with, dependent on, and having the same scope and limitation of the other legislations which have been drawn in and consolidated in that single legislation. More of this is visible in our central laws which configure our regulatory systems. For example, Lokpal and Lokayuktas Act, 2013 heavily draws upon the Prevention of Corruption Act, 1988- from definition in section 2 to inquiry process from sections 11 to 15, power to accord sanctions in sections 23 and 24, confirmation processes for attachment of assets in section 30, and in constitution of special courts in section 35. Section 71 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 draws upon Narcotic and Psychotropic Substance Act, 1985. Similarly many significant parts of the Companies Act, 2013 - from part 1 of schedule V enumerating the fitness criteria for being a Managing Director or Whole Time Director of a company, to punishment for contravention of sections 73 to 76 (acceptance of public deposits), reopening of accounts of a company on court's or tribunal's orders in section 130 and 147, to the powers and processes at Serious Fraud Investigation Office (SFIO) under section 211/212 do lean on, draw upon, and feed off the provisions of the Income Tax Act, 1961. Similarly, Income Tax Act too at many instances makes references to provisions of other Acts, for example to Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 or the Prohibition of Benami Property Transaction Act, 1988 or the Prevention of Money Laundering Act, 2002, or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax act, 2015 in section 139(8A) of the Income Tax Act.

Under appropriate circumstances cross referencing in legislations ***inter se*** among various legislations is unavoidable largely because proximate connection and common intent among legislations and also since it will become tenuous, repetitive and impractical if one were to include everything that is provided in one Act while one writes down the provisions of another Act. On the flip side, there are real risks and complications in the practice of cross referencing in legislations either while borrowing from the definition or attempting to replicate the operational processes or fastening a criminal or civil liability on certain actions or omissions, foremost of the risks being the consequences if the primary definition or the primary Act itself stood amended or repealed.

An example is section 10(37A) of the Income Tax Act affording an individual or a HUF owner of a 'specified capital asset' exemption from capital gains if the 'specified capital asset' is transferred under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 made under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014 (APCRDA, 2014). The said provision reads as follows:

> "(***37A***)
> ***any income chargeable under the head "Capital gains" in respect of transfer of a specified capital asset arising to an assessee, being an individual or a Hindu undivided family, who was the owner of such specified capital asset as on the 2nd day of June, 2014 and transfers that specified capital asset under the Land Pooling Scheme (herein referred to as "the scheme") covered under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 made under the provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014 (Andhra Pradesh Act 11 of 2014) and the rules, regulations and Schemes made under the said Act.***

Explanation.-For the purposes of this clause, "specified capital asset" means,-

(a)Â the land or building or both owned by the assessee as on the 2nd day of June, 2014 and which has been transferred under the scheme; or

(b)Â the land pooling ownership certificate issued under the scheme to the assessee in respect of land or building or both referred to in clause (a); or

(c)Â the reconstituted plot or land, as the case may be, received by the assessee in lieu of land or building or both referred to in clause (a) in accordance with the scheme, if such plot or land, as the case may be, so received is transferred within two years from the end of the financial year in which the possession of such plot or land was handed over to him;"

Explanatory Memorandum to Finance Bill, 2017 which introduced section 10(37A) into the Act has explained the rationale for its introduction as follows:

"Tax incentive for the development of capital of Andhra Pradesh

As per section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2014, the specified compensation received by the landowner in lieu of acquisition of land is exempt from income tax. The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amaravati to avoid land-acquisition disputes and lessen the financial burden associated with payment of compensation under that Act. In Land pooling scheme, the compensation in the form of reconstituted plot or land is provided to landowners. However, the existing provisions of the Act do not provide for exemption from tax on transfer of land under the land pooling scheme as well as on transfer of Land Pooling Ownership Certificates (LPOCs) or reconstituted plot or land.

With a view to provide relief to an individual or Hindu undivided family who was the owner of such land as on 2 nd June, 2014, and has transferred such land under the land pooling scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014, it is proposed to insert a new clause (37A) in section 10 to provide that in respect of said persons, capital gains arising from following transfer shall not be chargeable to tax under the Act:

(i) Â Transfer of capital asset being land or building or both, under land pooling scheme.

(ii) Â Sale of LPOCs by the said persons received in lieu of land transferred under the scheme.

(iii) Â Sale of reconstituted plot or land by said person within two years from the end of the financial year in which the possession of such plot or land was handed over to the said persons.

This amendment will take effect retrospectively, from 1 st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

It is also proposed to make amendment in section 49 so as to provide that where reconstituted plot or land, received under land pooling scheme is transferred after the expiry of two years from the end of the financial year in which the possession of such plot or land was handed over to the said assessee, the cost of acquisition of such plot or land shall be deemed to be its stamp duty value on the last day of the second financial year after the end of financial year in which the possession of such asset was handed over to the assessee.

This amendment will take effect from 1 st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

[Clauses 6 & 25]"

A fact sheet of events, both legal and factual, since coming into effect the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014 (APCRDA,2014) would be illuminating.

In terms of the duly notified land pooling scheme of APCRDA, 29,754 land owning farmers of capital region area including the capital city entered into development agreement cum irrevocable general power of attorney arrangement with APCRDA and surrendered no less than 33,771 acres of land to APCRDA, each of them accepting that single capital constituting executive, judicial and legislative would be established at Amaravati.

It was in 2020 that a new government chose to revise the policy of centralised capital at a central place to the exclusion of the participation of other regions on grounds such as: inclusive and equitable development of all regions of the state, deterrent costs in carrying forward the plans of development as planned under the APCRDA Act of 2014, and overriding public interest of saving monies of the state in the process of locating the seats of governance, and brought forth 2 Acts- the Andhra Pradesh Capital Region Development Authority Repeal Act, 2020 (Act no 27 of 2020) and the Andhra Pradesh Decentralisation and Inclusive Development of All Regions Act, 2020 (Act no 28 of 2020) in furtherance of those objects. APCRDA Repeal Act while protecting those persons who have surrendered their land to erstwhile APCRDA of their guaranteed rights of developed/ reconstituted plots of land as per section 3 of the Repeal Act (transitional provisions and savings) proceeded to repeal the whole of the APCRDA Act of 2014. In the pendency of legal challenges to the Repeal Act, vide Andhra Pradesh Act no 11 of 2021, both the erstwhile Acts (No 27 and 28 of 2020) were repealed reviving the APCRDA Act of 2014. High Court of Andhra Pradesh on its part in a common order dated 3-3-2022 proceeded to declare the APCRDA Repeal Act, 2020 as repugnant to Articles 3 and 4 of the constitution and forbade the establishment of the capital in any other place other than the notified area of Amaravati or to trifurcate or bifurcate the capital. An appeal of the Andhra Pradesh government against the decision of the High Court is now lying before the supreme court.

Whatever may be the outcome of the appeal against the High Court's order, fact remains that repercussions of any modification/ alteration/ repeal of a state Act on the working of a central Act in case both are joined at the hip as it were, and in tandem operate for furtherance of a common object are real and enormous. If the primary Act of the state (APCRDA Act of 2014 in this case) is the foundation upon which the provision of the central Act (section 10(37A) of the Income tax Act) is constructed, any repeal of the primary Act if ever it happens, would trigger an irreconcilable inconsistency, and such would be the inter se repugnancy between the 2 Acts that the specific provision of the Income Tax Act would lose its object and in effect truly become otiose. When statutory cross reference is to a specific statute as in the case of section 10(37A) of Income Tax Act, there would always be dangerous uncertainty of possible future amendments and repeal of the referenced provision.

Cross-referencing in legislations particularly when referencing inter se involve central and state Acts is inherently delicate and complex, more so under fraught political dynamics, and unless conceptualised, designed, honed and shaped by right men of experience can sometimes be potentially problematic.