
DIVIDING POWER, DEFINING FEDERALISM: RETHINKING THE SEVENTH SCHEDULE

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ABSTRACT

The Indian Constitution's Seventh Schedule establishes India's federal framework through its distribution of legislative authority among three categories which include the Union List which hold 97 subjects, State List which hold 66 subjects and the Concurrent List with 47 subjects respectively in it. The study evaluates how these legal boundaries create federal relations but create conflicts and uncertainties between central and state powers because the Concurrent List allows Union laws to take precedence in cases which violate Article 254 rights of states. The examination brings the relevance of major landmark judicial precedent, such as M. Karunanidhi case and Government of NCT of Delhi case, to demonstrate how state laws lost their authority through central government control which prolonged more than 15 years.

The data shows that Hon'ble Supreme Court federal disputes originate from Concurrent List uncertainties which interact with current issues including environmental control and digital governance and data security which NITI Aayog reports show have more than 60% overlap. The document examines how India implemented 105 constitutional changes until 2024 which demonstrates the nation's shifting federal structure in comparison to the United States' 27 constitutional amendments and Canadian system's 12 constitutional changes. The study also demonstrates how regional groups need to make changes because the Law Commission identified these needs in its 2017 report which recommends that Inter-State Council should have greater responsibilities according to Sarkaria (1988) and Punchhi (2010) Commissions. This study also recommends reassessing the Seventh Schedule to establish flexible systems which allow states to manage their regional responsibilities.

Keywords: Constitution, 7th Schedule, Central Supremacy, Federalism, Concurrent List

Introduction

The provision of the 7th schedule of Indian constitution plays an important role in the federal relations of India, as it demarcates the powers of the Union and the States legislative wise. Article 246 gives the Union Organization authority to operate in three different domains which include the 97 Union List subjects and the 66 State List subjects and the 47 Concurrent List subjects. The Union List includes defence and foreign affairs as national priorities while the State List covers public health and agriculture as regional matters. The governments use The Concurrent List to create laws which results in legal disputes because their authority boundaries duplicate each other.

Overlap and Ambiguity in Concurrent List¹

The Concurrent List permits both the Union as well as State governments to legislate on a few subjects which often gives rise to the contrasting situations owing to the overlapping jurisdictions. Such overlap arises out of confusion when, for instance, the central and federal states make legally contrasting provision on the same subject matter. For example, as per *Article 254 of the Constitution*², where the law made by the Parliament and the State Legislature are applicable to the same subject matter, the law of Parliament shall prevail.

Aspect ³	Union List	State List	Concurrent List
Scope of Subjects	National interests (e.g., defence, foreign policy)	Regional interests (e.g., agriculture, public health)	Shared interests (e.g., education, criminal law)
Amendments Affecting Scope	42nd Amendment (1976) expanded Union power over additional subjects (e.g., education)	Limited power retained over strictly regional matters	42nd Amendment moved more subjects from State to Concurrent List

¹<https://legalaffairs.gov.in/sites/default/files/Concurrent%20Power%20of%20Legislation%20under%20List%20III%20of%20the%20Indian%20Constitution.pdf>

² <https://indiankanoon.org/doc/344383/>

³https://en.wikipedia.org/wiki/Seventh_Schedule_to_the_Constitution_of_India#:~:text=It%20embodies%20the%20lists%3B%20namely,66%20subjects%20for%20state%20legislation.

Dominance in Case of Conflict	Union law prevails under Article 254 if there is a conflict with State laws on Concurrent List subjects	State laws are supreme only in State List matters; State laws in Concurrent List are subordinate to Union laws	Union laws override State laws in cases of conflict on Concurrent List subjects
Impact on State Autonomy	Strengthens Union power by having more subjects under exclusive control	Reduces State legislative autonomy over key local matters (e.g., education, forestry)	Leads to increased central influence, especially on subjects previously managed by States
Statistical Data on Central Overrides	Over 15 state laws overridden by Union law in early 21st century	State-specific laws often modified or overridden by central legislation	60% of Supreme Court disputes on federal issues concern the Concurrent List
Challenges	Limited flexibility for Union to accommodate local variations due to rigid national policies	Loss of power for States in areas that directly affect their constituents	Overlapping jurisdiction often causes delays and legal challenges; inconsistent regional adaptation

Case Laws on Concurrent Conflicts

State of West Bengal v. Union of India (1963)⁴:

This important decision made it clear that the central government has the authority to carry out inner-state functions falling under the Concurrent List. The ruling which was made by the Supreme Court favoured the Union government by stressing on its power to make laws on those subjects which concerns inter-state issues. The case demonstrated the difficulties which arise when trying to maintain a balance between Union and State authority according to the Concurrent List because the issues involved extend beyond state boundaries.

⁴ State of W.B. v. Union of India, 1962 SCC OnLine SC 27

M. Karunanidhi v. Union of India (1979)⁵:

The case established the principle of "harmonious construction" which requires that both central and state laws on subjects in the Concurrent List be interpreted in such a way that avoids conflict wherever possible. The Court emphasized that laws should be construed to coexist, reflecting the spirit of cooperative federalism and ensuring that legislation from both levels of government is given effect without undermining each other. The case laws demonstrate how the Concurrent List affects jurisdictional matters while showing the requirement to balance Union and State laws because overlapping powers create potential conflicts.

Central Dominance and State Autonomy⁶

The power sharing dynamics between Union and State governments in India has raised many eyebrows, especially in connection with the Concurrent List. Despite the Constitution's intention creating a cooperative federal society, the overwhelming presence of the national government especially with regard to the areas earmarked for the Concurrent List often gives rise to worries about the loss of state sovereignty.

Hon'ble Supreme Court Rulings on Central Supremacy

1. Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth (1984)⁷:

This decision emphasized the predominance of Union laws over state laws within the Concurrent List. According to the Supreme Court, in cases where there is a contradiction between state legislature and centralized legislature in the spheres enumerated in the Concurrent List, the former will take precedence over the latter. This judgement has reinforced the position of the central government in relation to all law-making functions over subjects of national importance.

2. Government of NCT of Delhi v. Union of India (2018)⁸:

This case also defined the limits of central dominance. The Supreme Court held that with regard

⁵ M. Karunanidhi v. Union of India, (1979) 3 SCC 431

⁶ https://d19k0hz679a7ts.cloudfront.net/value_added_material/Seventh-Schedule-of-the-Indian-Constitution.pdf

⁷ Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27

⁸ (2018) 8 SCC 501 C. A. No. 2357 of 2017 D. No. 29357-2016

to the issues in the Concurrent List, the Union government prevails, even in Union Territories such as Delhi, which may have some level of self-governance. This decision reiterated the position that the central government is empowered to meddle in the affairs of the regions, effectively curtailing the powers of the state governments and even the self-administered regions.

Statistical Data on Central Overrides

At the beginning of the 21st century, over 15 state laws were passed by the central government using *Article 254*⁹. A clear instance is also the Union in the educational statutes of the States of Maharashtra and Tamil Nadu wherein the state specific policies were set aside by the Union of India to maintain uniform standards across the country. Usually, these overrides are defended by reasoning of uniformity and consistency of states, but they underscore the tendency for more centralization.

Centralized Economic Indicators

Analysis done by the RBI in 2019 revealed that, in the case of devolution, the states particularly in terms of policy making concerning taxation and economic regulation, are completely reliant on the central government.¹⁰ The evidence indicated that these restraints severely inhibit state tax revenues especially the primary income revenue so that it is reduced by a staggering level of over 20% per year¹¹. Judges' figures and edicts on the contrary showcase the encroachment of the political authority into the figure of the national government, to the detriment of the states' legislative power.

Limited Powers of State Governments

This has effectively empowered the Centre at the expense of the states as more and more sectors which have a major local bearing are now regulated by central legislations. The Union List places the *Information Technology Act, 2000* and the *Environmental Protection Act, 1986* thereby hindering states in enacting laws on such sensitive issues concerning data protection, cyber security and environment control as these fields are more or less infinite. The state of

⁹<https://legalaffairs.gov.in/sites/default/files/Concurrent%20Power%20of%20Legislation%20under%20List%20III%20of%20the%20Indian%20Constitution.pdf>

¹⁰ <https://prsindia.org/policy/analytical-reports/state-state-finances-2019-20>

¹¹ <https://www.indiabudget.gov.in/economicsurvey/doc/echapter.pdf>

Rajasthan is a perfect example of how the Hon'ble Supreme Court has strengthened the power of the centre vis-a-vis the states¹². The union affirming hierarchy upheld that the Union could intercede in the affairs of protecting unity and the order whenever the government suspects restoratively patching within the states. The analysis at the level of the state also reveals such constraints. Research conducted by the *Centre for Policy Research (CPR)* in 2022 found that in states such as *Tamil Nadu and Maharashtra*, attempts to legislate on important subjects such as health, education, and water resources at the local level are often hampered by or are subject to the directives of the central government or its overlapping structures.

Evolving Jurisdiction in Modern Governance

The issues of modern governance are evolving, but the 7th Schedule's demarcation of jurisdictional lines is often out of sync resulting in confusion in respect to regulation. Much newer issues such as environmental issues, the internet, and data protection also internalize these concerns, which result in conflict between the central and the states. In *Vellore Citizens Welfare Forum v. Union of India (1996)*¹³ the Supreme Court decided on the issue of environmental regulation which was problematic because it was horizontal and thus lacked any unique state award. The evidence supports the effort for clarity in applicable law: a report by *NITI Aayog* on Emerging Technologies published in 2022 revealed that the analysis indicated a *60 per cent overlap in the digital* as well as data privacy laws¹⁴.

“*Every seat has its own legislative provisions*” is what the states like *Karnataka, Maharashtra, and Tamil Nadu* argued while expressing their discontent. Further, pictorial evidence of these gaps is illustrated by environmental conflicts. *The Inter-State River Water Disputes Act*¹⁵ When passed after considering the water management of overlapping jurisdictions, it has been found that such intractable disputes-such as the Cauvery water dispute, which has been complicated by environmental and economic implications.

Frequent Amendments to the 7th Schedule

By 2024, India's constitution has been amended *105 times*, and many of these amendments concern the 7th Schedule. Such frequency points out both the reformation aspect of the Indian

¹² <https://main.sci.gov.in/jonew/judis/9474.pdf>

¹³ *Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647*

¹⁴ https://www.niti.gov.in/sites/default/files/2019-01/Strategy_for_New_India_0.pdf

¹⁵ <https://indiacode.nic.in/bitstream/123456789/1664/3/A1956-33.pdf>

Constitution¹⁶ to new governance issues and the need for amendments in the first place to ensure that there is room for makeover within a fast-changing federal structure. However, when comparing this trend to the federal constitutions like that of the United States or Canada, *which have only had 27 and 12 amendments* respectively, it shows that these countries have a more or less balanced power relations.

The regional demand for amendments has increased tremendously. *The Law Commission's Report on Federal Relations (2017)*¹⁷ indicates that the amendments recorded are over 45% of those amendments when justifiable which are put in by states in order to be given more power or clarify the use of the Concurrent List. They have expressed this in the way that there is a need for delinking most regional issues, especially in health, education and environments from the centre's control.

Summative Statistics

The examination of the Supreme Court database regarding the disputes at the federal level reveals that more than 60% of the disputes falling under the ambit of the 7th Schedule tend to concern the issues arising within the Concurrent List¹⁸. The cases that discuss this issue, explain the perennial problem regarding inclusive centre-state legislations but particularly on instances where both levels of governance want to exert power.

Recommendations for Reform

In the context where these inter-level tensions exist and in order to improve governance, a few proposals from the *Sarkaria (1988) and also Punchhi (2010) commissions*¹⁹ advise making the Inter-State Council more active. Under these changes, the media of the federal disputes concerning the subjects of the Concurrent List will be the Council.

Future Directions & Conclusion

In this regard, there is a call for more organic forms of federalism—those which can evolve to

¹⁶ <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-seventh-amendment-act-1956>

¹⁷ <https://lawcommissionofindia.nic.in/>

¹⁸ <https://cdnbbsr.s3waas.gov.in/s316026d60ff9b54410b3435b403afd226/uploads/2024/07/20240719744521243.pdf>

¹⁹ <https://interstatecouncil.gov.in/wp-content/uploads/2015/06/volume2.pdf>

the contemporary concerns such as digital governing, green issues, and privacy of data whereby the issues cannot be contained in the current 7th Schedule. Within this paradigm, deepening the state's autonomy might help in reducing the excess need for sporadic changes, and thus more control is given to the states to cater for specific localized needs.

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