
CONSTITUTIONAL LAW: FEDERAL RELATIONS BETWEEN UNION AND STATE THROUGH THE LENS OF FARM LAW

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ABSTRACT

The President approved three contentious agricultural regulations in September 2020, which led to one of the largest demonstrations in India. They aim to change how Indian agriculture does business and have asked the federal system of India different questions, where legislation is assigned via the Union, the State, and Competition List, outlined in the 7th Schedule of the Constitution. The lists separate different subjects and enable the Union and the State legislature to formulate and enact legislation in their respective areas. Agriculture is an object of state concern that includes all associated issues such as cattle, irrigation, etc. Entry 33 of the Concurrent List is the foundation for this debate since farms' legislation has been adopted under the pretense of this entry. The authors seek to give a realistic picture of the legislative competence of Union and State legislatures via this article and concentrate on current agriculture legislation.

INTRODUCTION

Agriculture creates significant problems for all countries that are attempting to strike a balance between market and State.¹ Agriculture remained a State issue when the Constitution was written. Since a result, all associated concerns must be addressed by the states, as various regions face unique challenges, such as severe weather conditions. Additionally, the Government determines the subsidy price for critical agricultural commodities.² Agriculture has evolved into a commercial enterprise over the years, owing to the growth of agrochemical companies and exporting agricultural goods. The Union list³ includes items like currency and commerce, imports and exports, and banks. All Indian farmers anticipate assistance in the Union budget, whether via debt waivers or an increase in the minimum support price.⁴ Thus, many agricultural laws have been enacted by both the federal and State legislatures throughout the years.

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act⁵, The Farmers (Empowerment and Protection) Price Assurance and Farm Services Agreement⁶, and The Essential Commodities (Amendment) Act⁷ were all signed into law by the President in September 2020. These regulations, which were enacted without legislative discussion or debate at all, have garnered tremendous worldwide attention.⁸ The Government has suggested these laws as reforms to link India's economy to the global market⁹ and to empower farmers¹⁰.

However, due to widespread protests, the Supreme Court temporarily halted the

¹ 'State of Agriculture in India' (PRS Legislative Research 2021) < <https://prsindia.org/policy/analytical-reports/state-agriculture-india> > accessed 22nd June 2021.

² Bharat Ramaswami Indian Statistical Institute, Agricultural Subsidies, Study Prepared for XV Finance Commission March 2019 < https://fincomindia.nic.in/writereaddata/html_en_files/fincom15/StudyReports/Agricultural%20subsidies.pdf > accessed 22nd June 2021.

³ INDIAN CONSTI., Schedule VII, List I, Entry 41 and 42.

⁴ 'State of Agriculture in India' (PRS Legislative Research 2021) < <https://prsindia.org/policy/analytical-reports/state-agriculture-india> > accessed 22nd June 2021.

⁵ The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act 2020

⁶ The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services 2020.

⁷ The Essential Commodities (Amendment) Act 2020.

⁸ 'Farm laws: Are India's New Reforms a 'Death Warrant' for Farmers?' BBC News (16 February 2021) < <https://www.bbc.com/news/world-asia-india-54233080> > accessed 22nd June 2021.

⁹ Prabhask K Dutta 'What is there in Farm Laws That Make Them So Contentious?' India Today (New Delhi, 15 December 2020. < <https://www.indiatoday.in/news-analysis/story/what-are-farm-laws-farmers-protest-msp-1749723-2020-12-15> > accessed 22nd June 2021.

¹⁰ Ibid

implementation of these agricultural regulations.¹¹

The authors of this article intend to provide an accurate profile of the relevant constitutional provisions by discussing the history of legislative competence in agricultural matters and the distribution of legislative powers between the Centre and the States, and the constitutionality of farm laws through an interpretation of the entries. Finally, the authors conduct a comparative study of the problem at hand using laws from the United States of America, which is comparable to India in that it is a common law country with a federal system and a large agricultural producer.

THE HISTORY OF THE LEGISLATIVE AUTHORITY TO DECIDE ON AGRICULTURAL ISSUE

- Before the Constitution

The Government of India Act, 1919¹² divided legislative powers into two categories: 'provincial' and 'central.' Later, the 'provincial' topics were categorised as 'transferred' and reserved. The Governor and his council were to legislate on reserved issues (akin to Union List Matters), while transferred subjects like agriculture, local governments, and so forth needed more extraordinary local expertise and were to be legislated by elected representatives (similar to State List Matters)¹³.

- The Intention of the Constitution Makers vide Constituent Assembly Debates

While drafting sections relating to legislative competence, the Constitution's authors considered the division of powers in other federations, modern government operation, and contemporary scientific and technical advances. They allocated duties between the Centre and the States in a manner that suited our country's unique conditions and needs.¹⁴

¹¹ DebayanRoy 'Supreme Court Stays Implementation of Three Farm Laws, Forms 4-Member Committee to hold Talks' Bar and Bench (12 January 2021). < <https://www.barandbench.com/news/litigation/supreme-court-stays-implementation-of-farm-laws> > accessed 22nd June 2021.

¹² Government of India Act, 1919.

¹³ Bernard D' Sami 'Time Agriculture Moved from State to Concurrent List' DT Next (17 April 2017) < <https://www.dtnext.in/News/Opinion/2017/04/17074724/1031520/Time-agriculture-moved-from-State-to-Concurrent-List.vpf#:~:text=Agriculture%20is%20a%20state%20subject,the%20state%20list%20of%20subjects> > accessed 23rd June 2021.

¹⁴ V. Jagannadham 'Division of Powers in the Indian Constitution' (1947) vol. 8, no. 3 pp. 742–751 JSTOR < <https://www.jstor.org/stable/42743171> > accessed 23rd June 2021.

Agriculture was included in the 1948 Draft Constitution of India as Entry 22. Shri Brajeshwar Prasad proposed that agriculture be nationalized to address the issue of food supply since the Union's agricultural strength was critical in 'challenging' subversive activities.¹⁵ Shri Shibani Lal Saxena suggested that this topic be transferred from the State to the Concurrent List, where the Union would more easily manage it.¹⁶ Chaudhari Ranbir Singh backed him up by mentioning the inter-state locust issue. On the other hand, T.T. Krishnamachari, a member of the Drafting Committee, stated, "agriculture is the primary industry in this country and practically one of the primary functions of the state, and aside from taking certain powers for coordination, I do not believe the Centre is capable of handling this enormous problem..." He cited State ministers' opposition to similar ideas when they were presented to them since they would have further eroded their legislative authority. Notably, the Drafting Committee demonstrated sensitivity to the States' concerns and suggested that the Union might play a significant role in agricultural management by assisting State governments with financial awards.

As specified in Articles 1 and 246 of the Constitution, the Constituent Assembly envisioned a limited federation. Dr BR Ambedkar stated on 17th September 1949 that the Constitution is a basic text that establishes the State institutions and limits their power to prevent total oppression and tyranny. Agriculture was therefore retained in Entry 22 (now renumbered as Entry 14¹⁷) while the suggested changes were rejected.¹⁸

DISTRIBUTION OF POWERS

The Indian Constitution has a complex system for allocating legislative authority between the Centre and the States. The Constitution establishes a strong central government with sufficient powers, both in scope and character, to safeguard the country's unity and integrity. The Constitution establishes three functional divisions:

- a) a zone designated exclusively for the Centre;
- b) a zone reserved for the sole use of the States; and

¹⁵ CAD Vol 9 at pp 130. See also, Constituent Assembly of India Debates (Proceedings) - Volume IX, Constitution of India(2021) < https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-09-02/ > accessed 23rd June 2021.

¹⁶ Ibid

¹⁷ INDIA CONST. schedule VII, list II, entry 14.

¹⁸ INDIA CONST. art. 246.

c) a shared region in which the Centre and States may function concurrently, subject to the Centre's overall dominance.

Parliament has the power to act on State issues only when the Rajya Sabha chooses to do so in the 'public interest'¹⁹ by a two-thirds majority. Additionally, it may be created by legislation on State List Entries in response to declarations of emergencies²⁰ or at the request of States²¹. However, none of these groupings covers the three farm laws.

Federalism is a critical component of the Constitution's construction. Articles 245 to 254 govern the various legislative authorities. The State qua, in its exercise of legislative power, is federal in structure and autonomous.²²

CONSTITUTIONAL ASPECTS OF FARM LAWS

• Provisions in the Lists

Agriculture-related words appear in the Seventh Schedule 15 times, including four times in the Union List,²³ eight times in the State List,²⁴ and three times in the Concurrent List.²⁵ Agriculture is excluded from Parliament's legislative authority under the Union List and the Concurrent List. Thus, no item in the State List for agriculture is susceptible to a Union or Concurrent List entry.

Agriculture, which is listed on the State List, covers a wide variety of activities, including education, research, livestock, fishing, and any related auxiliary and subsidiary companies. Additionally, the State List²⁶ has a section on 'markets and fairs.' The State list²⁷ also includes trade and commerce inside a State, although these are regulated by Entry 33 of the Concurrent List. As a result, we discover that the Centre has the power to propose these agricultural bills under Entry 33 of the Concurrent List. Thus, the Centre may claim the power to pass laws governing contract farming and interstate trade and prohibit states from collecting fees/cesses outside of APMCs (Agricultural Produce Market Committee). While the industry is a State

¹⁹ INDIA CONST. art. 249.

²⁰ INDIA CONST. art. 250.

²¹ INDIA CONST. art. 252.

²² S R Bommai v Union of India, MANU/SC/0444/1994

²³ INDIA CONST. schedule VII, list I, entries 82, 86, 87 and 88.

²⁴ INDIA CONST. schedule VII, list II, entries 14, 18, 28, 30, 45, 46, 47 and 48.

²⁵ INDIA CONST. schedule VII, list III, entries 6, 7 and 41.

²⁶ INDIA CONST. schedule VII, list II, entry 28.

²⁷ INDIA CONST. schedule VII, list II, entry 27.

concern as well,²⁸ Parliament's rider gives it the power to designate any industry it thinks is in the public interest.²⁹ The Constitution's drafters omitted such a rider from the 'farming' or 'markets' provisions, suggesting that these are State-related concerns.

• Interpretation

The Union's present reading of Entry 33³⁰ is novel, attempting to make it an independent provision while conveniently ignoring the context, object, and history of the entries. The Center's mission is to monitor the whole selling and purchasing of all agricultural goods in States covered by the Farmers' Trade and Trade (Promotion and Facilitation) Acts, and it has mapped the entire area, which was previously a field for state legislatures. Furthermore, Section 6 of the Act³¹ stipulates that no market tax, suspension, or charge on agricultural product trade shall be imposed by the State, an apparent infringement on states' legislative authority.³² It is very much a state's responsibility to levy a market tax or to prohibit the selling of agricultural products inside its borders. Unions are limited to regulating the interchange and sale of food items and other commodities and are unable to enact laws prohibiting the State from levying market charges, termination fees, or levies.

In *ITC v. APMC*,³³ the Supreme Court held that "State legislatures are empowered to introduce legislation to levy and raise a retail charge to distribute agricultural tobacco produce in a market area."³⁴ As a result, the market actions enacted by the States were considered legal. The Court determined that state legislation and the Tobacco Board Act "do not coexist" and that the former "prevails over the latter insofar as it relates to tobacco sales in market areas." Thus, the Tobacco Board Act of 1975 was declared ultra-vires. In List III, Entry 33³⁵, the word 'foodstuffs' cannot include 'agricultural products.' As a result, the Union's regulation of agricultural goods as 'foodstuffs' would be incompatible with and opposed to the States' legislative authority under List II Entries 14, 18, and 28. Additionally, even if the Centre has the authority to legislate on 'foodstuffs,' state laws must prevail. This is because, according to Article 254, states may also

²⁸ INDIA CONST. schedule VII, list II, entry 24.

²⁹ INDIA CONST. schedule VII, list I, entry 52.

³⁰ INDIA CONST. Schedule VII, list III, entry 33.

³¹ The Farmers' Produce Trade and Commerce (Promotion and Facilitation), Act 2020, § 6.

³² Amit Jaiswal 'What Will the Legal Challenge to the Modi Government's Farm Bills Look Like?' (The Wire, 5 October 2020). < <https://thewire.in/law/farm-bills-legal-challenge-constitution-seventh-schedule-supreme-court> > accessed 23rd June 2021.

³³ *ITC v. APMCAIR*, MANU/SC/0047/2002.

³⁴ *Ibid.*

³⁵ INDIA CONST. Schedule VII, list III, entry 33

legislate on additions to the Concurrent List (2).³⁶

Thus, these acts affect Entries 14, 18, 28, and 46 of the State List, as well as Entries 7 of the Concurrent List.

Additionally, they violate Entry 65 of List II, which regulates the courts' jurisdiction over all subjects included in List II. Without power, these laws stifle the independence of civil courts. Parliament's agriculture legislation is a direct threat to the State's constitutional power.³⁷

PRINCIPLES OF INTERPRETATION OF LISTS

It cannot be said that the distribution of subjects is perfect from a scientific standpoint, and thus some subjects may overlap. The Supreme Court has established principles defining the respective powers of the Union and State legislatures, regardless of whether the subject matter is covered by one or more lists.

• Plenary Power

All conflicts between Central and State legislation, both of which legislate in their respective fields, must be resolved pursuant to Article 246, which addresses Parliament's and States' plenary legislative powers in their respective fields, as well as general powers in the Concurrent List. Parliament has overriding powers only if both the State and the Centre pass legislation on an issue on the Concurrent List, which is not the case with the three farm laws. If the Centre's Farm Laws and the States' APMC Laws, which are enacted under Entry 14, 18, and 28 of the State List, conflict, the Constitution guarantees the legitimacy of the State's laws, even if they are in conflict with the Union laws. This is because State law supersedes Central law in the areas covered by the State List.

• Harmonious Interpretation

The Court is responsible for resolving and reconciling all conflicting entries. The entries in both lists must be read and interpreted concurrently, and if possible, modified by the other language. This may indicate restricted access (i.e., significantly less broad but can still be given correctly), as an overlap with a more general meaning is possible (i.e., meaning it can hold theoretically).³⁸

³⁶ NDIA CONST. art. 254(2).

³⁷ Vikram Hegde 'SC Stays Implementation of Farm Laws: Right Action But not for the Right Reasons' Firstpost (12 January 2021) < <https://www.firstpost.com/india/sc-stays-implementation-of-farm-laws-right-action-but-not-for-the-right-reasons-9195011.html> > accessed 23rd June 2021.

³⁸ CIT v Hindustan Bulk Carriers, MANU/SC/1379/2002.

Parliament is granted overriding powers under the Constitution only when both the State and the Centre pass legislation on the Concurrent List, which is not the case in agricultural matters.

• **Ancillary or Incidental Powers**

The Union cannot invoke ancillary powers for the simple reason that the framers of the Constitution never intended for the Union to legislate on agriculture, as is abundantly clear from the preceding discussion. Thus the issue of ancillary or incidental powers cannot arise.

• **Pith and Substance**

When an Act overlaps two or more Entries, the rule of 'pith and substance' applies to determine whether it is ultra-vires the enacting legislature in its pith and substance, i.e., its true character.

In each case, the issue is whether the power has been substantially violated or not.³⁹ Legislation is constitutional if it is primarily covered by one list and only touches on the other list incidentally. However, the two new farm Acts go beyond that; they encroach on State List entries.⁴⁰

• **Colourable Legislation**

Colorable legislation is a term that refers to legislation that appears to be very constitutional but actually violates constitutional constraints. If a piece of legislation is found to be ultra vires in substance, even if it appears to be so, it is ultra vires. The doctrine of colorable legislation establishes that one cannot accomplish what cannot be accomplished directly. Thus, the Parliament cannot directly legislate on State List matters (agriculture, for example) and thus cannot do so indirectly either.⁴¹

CAN THE SUPREME COURT SUSPEND THESE LAWS?

The aggrieved states and other interested parties have petitioned the Supreme Court to overturn the agricultural legislation. The Supreme Court will decide the constitutionality of this legislation using the Constitution as a yardstick. The Court may suspend legislation only if one of the following three criteria is met:

a) The law was passed without legislative competence.

³⁹ MP Jain, *Indian Constitutional Law*, (LexisNexis India, 2018) 695-698.

⁴⁰ *State of Rajasthan v G. Chawla*, MANU/SC/0141/1958.

⁴¹ *State of Bihar v Kameshwar Singh*, MANU/SC/0019/1952

b) It constitutes a violation of a fundamental right.

b) Additional constitutional provisions were infringed.

While the Court stayed the implementation of agricultural laws until 12th January 2021, it said, "We have the power to suspend the legislation. But the suspension of legislation must not be for an empty purpose. We will form a committee which will submit a report to us."⁴² This statement offers an apparent reason for the legislation to be suspended, not for lack of legislative competence, but to resolve the demonstrations.⁴³

COMPARISON WITH USA

The American Constitution contains four distinct categories of provisions governing the division of legislative powers between the Union and the States. In contrast to the Indian Constitution, there is only one list for determining the Union's legislative authority.⁴⁴ Rather than the State list, the 10th Amendment vests all residual powers in the States, in contrast to the Indian scheme, which vests the residue in the Union. Although the United States Constitution lacks a Concurrent List, a sphere has been created through judicial interpretations in which states may legislate on subjects other than those reserved for the Federal legislature or insofar as it does not conflict with Federal legislation.⁴⁵

Article I, Section 9⁴⁶, and Article I, Section 10⁴⁷ respectively prohibit the Union and the States from taking certain actions to avoid duplication and interference. Similarly, the Indian Constitution vests the Union⁴⁸ and States⁴⁹ with plenary authority to legislate on the subjects listed in List I and List III, respectively.

According to Marshall CJ, "the government of the United States can claim no powers which are not granted to it by the Constitution or given by necessary implication."⁵⁰ Despite the fact

⁴² Ashish Tripathi 'Supreme Court Stays Implementation of Farm Laws, Forms Committee to Hold Talks' Deccan Herald (12 January 2021) < <https://www.deccanherald.com/national/supreme-court-stays-implementation-of-farm-laws-forms-committee-to-hold-talks-938125.html> > accessed 23rd June 2021.

⁴³ Vikram Hegde 'SC Stays Implementation of Farm Laws: Right Action But not for the Right Reasons' Firstpost (12 January 2021) < <https://www.firstpost.com/india/sc-stays-implementation-of-farm-laws-right-action-but-not-for-the-right-reasons-9195011.html> > accessed 23rd June 2021.

⁴⁴ USA CONST. art. I, s. 8.

⁴⁵ DD Basu, DD Basu: Commentary on Constitution of India, vol 12 (9th edn, LexisNexis) 8.

⁴⁶ USA CONST. art. I, s. 9

⁴⁷ USA CONST. art. I, s. 10.

⁴⁸ USA CONST. art. 246, cl. 1.

⁴⁹ USA CONST. art. 246, cl. 2.

⁵⁰ Martin v Hunter's Lessee, 1 Wheat 326

that the doctrine of 'implied and ancillary powers' has aided the Courts in expanding the scope of Federal authority, the position remains unchanged today.⁵¹ As a result, subject to certain constraints such as foreign⁵² and inter-state agreements⁵³, the State retains sovereign authority over matters not expressly or impliedly conferred on the Union.⁵⁴ Agriculture is a state subject in the United States of America. State legislatures, similar to what we have in India, are now empowered to operate in that sphere. While the Federal Government lacks an apparent authority, it has historically exerted the most significant influence and control over agriculture in order to ensure consistency and growth. Thus, it provides grants to states to encourage science, innovation, and research and established the Federal Department of Agriculture, the Office of Experimental Stations, to coordinate the activities of state agencies through its "spending control" Additionally, financial grants are made for farm education and demonstrations. The Court ultimately concluded that the Agricultural Adjustment Act of 1938's 'spending power' was a futile attempt to regulate an area in which Congress lacked legislative competence, similar to the doctrine of colorable legislation discussed previously.⁵⁵

The Indian judiciary adopted the aforementioned doctrine of liberal and harmonious construction to reconcile conflicting entries,⁵⁶ as discussed above.

CONCLUSION

As shown in the different parts of this article, the Farm Laws seem to lack legislative competence simply by their 'substance.' Furthermore, the Constitution's architects never intended for the Union to legislate on agriculture; instead, this topic was left to state legislatures to address the unique challenges faced by farmers in their various territories. Thus, by adopting the concept of colorable legislation, the Union cannot accomplish something that it cannot do directly. The plenary authority over agriculture is set forth in List II of the VII Schedule. Apart from constitutional shortcomings, the new agricultural legislation represents the Centre's abandonment of its duty to protect farmers' welfare, as referred to in Article 37 of the Constitution.

⁵¹ New York v United States, MANU/USSC/0123/1992.

⁵² USA CONST. art. II, s. 2, cl. 2.

⁵³ Virginia v Tennessee[189], MANU/USSC/0278/1893.

⁵⁴ Carter v Carter Coal Co, MANU/USSC/0130/1936; Colorado v Symes, 286 US 540.

⁵⁵ Mulford v Smith, MANU/USSC/0130/1939

⁵⁶ RE C.R & Berar Sales of Motor Spirits & Lubricants Taxation Act,1938.