
UNDERSTANDING THE PRINCIPLES FOR INTERPRETATION OF LEGISLATIVE LISTS

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ABSTRACT

The foundation of India's constitutional federal system is the division of legislative authority between the Union and the States. The Union List, State List, and Concurrent List—the three legislative lists found in the Seventh Schedule of the Constitution—are principally responsible for this distribution. However, overlaps, uncertainties, and disagreements about legislative competence have often resulted from the intrinsic range of legislative entries and the changing character of governance. In order to maintain the delicate balance of federal power and to guide the interpretation of these legislative lists, the Indian judiciary has developed a number of well-established constitutional principles.

The ideas guiding the interpretation of legislative lists are examined in this essay, along with their function in preserving the constitutional balance between the Union and the States. It explores the doctrinal foundations and judicial application of key interpretative principles such as the Doctrine of Pith and Substance, the Doctrine of Harmonious Construction, the Doctrine of Colourable Legislation, the Doctrine of Territorial Nexus, and the Doctrine of Repugnancy. The paper shows how courts have continuously taken a liberal and purposeful approach to reading legislative entry while making sure that one level of government does not infringe onto the exclusive realm of the other through a thorough analysis of significant court rulings.

INTRODUCTION

Federalism is a fundamental characteristic of the Indian Constitution, referring to the relationship between the States and the Union, which balances state autonomy and the Interests of the Nation as a whole. Both the levels of the government have their own responsibilities and powers, which are outlined in the Legislative lists, which are mentioned under the Seventh Schedule of the Indian Constitution.

SUBJECT MATTER JURISDICTION

The legislative lists of the Seventh Schedule of the Indian Constitution are a clear application of the Quasi-Federalism structure, which is prevalent in India. These legislative lists segregate the powers of the Union and the State into three different lists, namely: the Union List, the State List, and the Concurrent List. The Union List has the items which are to be managed by the Union Government, the State List has the items which are to be managed by the State alone, and the Concurrent List has the items which are in the interest of both the State as well as the Union. If there is a failure in the applicability of the Legislative Lists, then the Indian Judiciary will step in.

Even though different legislative lists segregate the subject matter jurisdiction of the Union and the State, the phraseology of the clauses of Article 246 of the Indian Constitution is such as to secure the *Principle of Union Supremacy*. The general idea behind a concurrent list is that there are certain matters that are not necessary to initiate legislation in the first instance because these matters may not have assumed such national importance. But it is indeed clarified that if such a matter gains national importance, then, as per Article 249 of the Indian Constitution, the Union can also override the power of the state government in matters of the national interest, and there is clear predominance of the central legislation over the state legislation, and that is mainly why a Non-Obstante clause has been placed in the beginning of Article 246 of the Indian Constitution.

Articles 250, 252, 253, and 256 of the Indian Constitution specify the situations under which Parliament may legislate on issues on the State List, therefore expanding its legislative authority beyond the customary bounds. According to Article 250, during a Proclamation of Emergency, Parliament may adopt laws for any portion of India on State List issues that will remain in effect for six months after the emergency ends. Article 252 permits Parliament to

legislate on State List topics if two or more States agree through resolutions, with other States free to do so later. Article 253 empowers Parliament to enact legislation to implement treaties, international agreements, or conventions, even if they touch State List matters. Finally, Article 256 empowers Parliament to exercise legislative authority over State concerns when the constitutional machinery of a State fails, ensuring that government continues in conformity with constitutional rules.

PRINCIPLE(S) OF INTERPRETATION OF LISTS

The judiciary has developed a series of well-established constitutional principles to interpret the legislative lists under the Indian Constitution. These beliefs serve as guiding principles to guarantee a logical and definitive interpretation of the Seventh Schedule's entries. These principles' fundamental goal is to give each legislative entry the broadest and most liberal interpretation possible while also protecting the constitutional balance of federal authority by prohibiting one legislature from invading another's exclusive territory. The courts aim to give effect to the constitutional framework of distribution of legislative authority and harmonise overlapping sectors of legislation through these interpretive tools.

Doctrine of Pith & Substance

The essence of this doctrine is derived from the fundamental meaning of the words “pith and substance”, which is the principle that enables to understand the true nature, purpose and essence of the law and most importantly the substance of the law, rather than its incidental effects.

The Doctrine of Pith and Substance, a fundamental legal principle in constitutional law, provides a framework for determining the true character and extent of legislation, particularly when it involves various areas of jurisdiction within federal systems. It enables judges to look beyond the literal text of statutes to discover their underlying purpose or primary focus.

This idea is especially relevant in federal systems like Canada, India, and Australia, where legislative functions are divided between central and regional administrations. The Doctrine of Pith and Substance ensures the harmonious allocation of legislative authority, hence preserving the integrity and functionality of constitutional systems.

This doctrine was first used in the case of *State of Bombay V. F N Balsara*¹, in which the Supreme Court applied the Doctrine of Pith and Substance to determine the validity of a Bombay State law related to prohibition. The verdict of the court was that the legislation comes under the jurisdiction of the state despite the incidental effects on trade and commerce.

In the case of *Prafulla Kumar Mukherjee V. Bank of Commerce*², the court held that if a state law is made on money lending, it will not be invalid even if it affects the promissory notes incidentally. The court recognised the true character of law by analyzing its main purpose, which was to regulate money lending, which was a state subject at that time.

Now, in the case of the *Association of Natural Gas V. Union of India*³, the court placed emphasis on the scope of the legislative power in a particular subject. The court highlighted that this doctrine is particularly used to often appraise the essence and content of legislation. The court also stated that in matters of irreconcilable conflicts between the central legislation and the state legislation, precedence is given to the central legislation to make efforts to reconcile the issue at hand.

Doctrine of Harmonious Construction

This rule states that a statute should be viewed as a whole, and each section should be interpreted in relation to other provisions to ensure consistency. This interpretation prevents inconsistencies inside and between sections of the statute.

The conceptualization of the doctrine can be tracked all the way back to the first amendment to the Indian Constitution, i.e, in the *Shankari Prasad Singh Deo V. Union of India*⁴. The core issue of this case was the disagreement between the Fundamental Rights and the Directive Principles of State Policy. The SC also states that the Fundamental Rights impose limitations on the executive and legislature of India. The parliament can amend them and bring them into conformity with the DPSP.

In the case of *Re: Kerala Education Bill Case*⁵, the Supreme Court pronounced the doctrine of harmonious construction. The court stated that there is no conflict in the fundamental rights

¹ 1951 AIR 318

² AIR. 1947 P.C. 60.

³ (2004) 4 SCC 489

⁴ AIR 1951 SC 458

⁵ AIR 1958 SC 956

and the directive principles of state policies. The SC gave preference to both of them and stated that they are like “two faces of a coin”. The court called them supplementary and complementary in nature. They are meant to run parallel with each other and neither one of them is subordinate in the eyes of the law.

These are the five main ideas behind this rule:

- 1) The courts should not let provisions that seem to be at odds with each other come into direct conflict; instead, they should try to find ways to make the provisions more compatible.⁶
- 2) One provision cannot be used to get around another provision; that is, unless the court can't find a way to make them work together.⁷
- 3) If it's not possible to make the provisions work together completely, the courts should try to interpret them in a way that gives both provisions as much weight as possible.⁸
- 4) Courts should avoid interpreting a clause as meaningless or dead, as this does not align with harmonious construction principles⁹, and,
- 5) Harmonizing does not mean destroying or rendering a law provision ineffective.¹⁰

This principle is best when expressed in the maxim *Generalia specialibus non derogant*, meaning general things do not derogate from the special things and *Generalia specialibus derogant*, meaning special things derogate from the general things.¹¹

In the case of *Venkataramana Devaru V. State of Mysore*¹², the Supreme Court used the harmonious construction rule to resolve a conflict between Articles 25(2)(b) and 26(b) of the Constitution. It was determined that the right of religious denominations to manage their own affairs in matters of religion [Article 26(b)] is subject to a law made by a State providing for social welfare and reform or opening Hindu religious institutions of a public character to all

⁶ CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57, p. 74.

⁷ Ibid.

⁸ Sultana Begum v. Premchand Jain, AIR 1997 SC 1006, pp. 1009, 1010

⁹ CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57, p. 74.

¹⁰ Ibid.

¹¹ OSBORNS Law Dictionary

¹² AIR 1958 SC 255

classes and sections of Hindus.

In *Calcutta Gas Ltd. v. State of West Bengal*¹³, the Supreme Court ruled that each entry's language should be interpreted as broadly as practicable and liberally. A general word in an entry refers to all supplementary or subsidiary issues that are appropriately included. The Court aims to reconcile and harmonise entries whenever possible. In cases where this is not practicable, the Union Legislature's non-obstante clause takes precedence and federal power triumphs.

The doctrine of harmonious construction serves as a 'safety valve' for the court. According to *Minerva Mills*, the Constitution is a harmonic totality, not a document of conflict but of synthesis. By recognizing fundamental rights and DPSPs as complementary, the courts ensure that individual liberty and social welfare move in tandem rather than in conflict.

Doctrine of Colorable Legislation

This principle is been given a nickname as "*The Fraud of the Indian Constitution*". This principle bans legislative bodies from indirectly legislating on issues beyond their constitutional competence by employing deceitful means. It is based on the Latin maxim "quod prohibetur fieri per obliquum prohibetur et per directum" (what cannot be done directly cannot be done indirectly), and it permits the judiciary to overturn legislation that appears to be valid but, upon closer examination, conceals an unconstitutional aim. The emphasis is on the substance of the law rather than its form, determining whether the legislature had the authority to create it in the first place.

The contrast between legislative competence and legislative motivation is fundamental to the doctrine. A legislature cannot conceal its inability to pass legislation by giving it a "colour" or "guise" that makes it seem like it falls under its purview. As a result, the judge has the authority to "pierce the veil" of the statute in order to assess its actual nature.

In the case of *KCG Narayanan Deo V. State of Orissa*¹⁴, the SC explained the meaning of the and the scope and extent of the doctrine. In the case, it was stated that the substance of the act matters the most and not merely the form or outward appearance. In these cases, the court may

¹³ AIR 1962 SC 1044

¹⁴ 1953 AIR 375

look for whether the true nature, character, object, purpose or design of the law and the motive of enactment is irrelevant in nature. The above-mentioned case is the locus classicus of the doctrine. In this case, the court also mentioned that colourable legislation does not mean that the legislature acted with evil intent. It meant that the legislature acted in a manner that simply pretended it to stay within its scope by transgressing its power.

The case of *State of Bihar v. Kameshwar Singh*¹⁵ is the only one where a law was held illegal due to colourable legislation. The Bihar Land Reforms Act of 1950 was deemed invalid because it failed to establish a clear principle for determining compensation, resulting in the petitioner being denied compensation.

In the case of *R.S Joshi V. Ajit Mills*¹⁶, the Supreme Court clarified that with respect to the constitutional jurisprudence, the word colourable is not used to showcase the idea of shady or immoral. It refers to a lack of jurisdiction of the legislature. The case also clarifies that being called the “Fraud of the Constitution” should be viewed as legal term and no moral aspects should be attached to it.

The true nature of the Doctrine of Colourable Legislation is based on a contrast between legislative competence and legislative intent. As developed in *Gajapati Narayan Deo*, the doctrine entails a functional audit of legislators' constitutional bounds rather than an investigation into their moral reasons. When a legislature hides a 'lack of power' under the 'guise of a permitted head,' it violates the Constitution. However, the judiciary maintains a high threshold for this theory; it will not strike down a law simply because it is a 'poor' law, but only when the statute is a 'pretended' exercise of power that the legislature never possessed under the Seventh Schedule.

Doctrine of Territorial Nexus

A state's legislature can create laws that have extra-territorial impact, meaning they apply outside the state. However, there is one exception to the general norm. A state law of extraterritorial operation is legitimate if there is a strong connection between the object and state.

¹⁵ AIR 1952 SC 252

¹⁶ 977 AIR 2279

Parliament's plenary territorial jurisdiction is limited by specific constitutional requirements. Article 240 allows the President to make regulations that have the same force as Acts of Parliament in certain Union Territories, including the Andaman and Lakshadweep Islands. These regulations can repeal or amend laws made by Parliament in relation to the territory. As per Schedule V, the Governor may restrict or modify the application of Acts of Parliament to any scheduled region through notifications. According to Schedule VI (Para 12), the Governor of Assam can issue a public notification directing that certain acts of Parliament do not apply to autonomous districts or regions in the state of Assam. However, the Governor may specify exceptions or modifications in the notification. These are some of the limitations of the principle of territorial nexus that have been established.

In the case of *Wallace v. Income Tax Commissioner, Bombay*¹⁷ [AIR 1948 PC 118], a corporation established in England partnered with an Indian firm. The Indian Income Tax Authority attempted to tax the company's full income. The Privy Council upheld the validity of the levy tax by applying the territorial nexus concept. A company that derives a significant portion of its income from British India may be considered at home in India for tax purposes, regardless of the source of income.

In *State of Bombay v. R. M. D. C.*¹⁸, the Bombay state imposed a levy on lottery and prize competitions. The tax was extended to a newspaper published in Bangalore but widely circulated in Bombay. The response organised the prize competitions using this document. The court determined that the Bombay state had sufficient territorial nexus to tax the journal. The taxing statute can be upheld if there is a clear connection between the individual being charged and the state trying to tax them. However, the imposed liability must be relevant to the illusory connection. The existence of a sufficient relationship is a fact-based determination.

Doctrine of Repugnancy

In essence, "repugnancy" refers to an irreconcilable disagreement, contradiction, or inconsistency. Legally speaking, it occurs when two legislation, or two particular clauses in the same contract or deed, are so diametrically opposed that they cannot coexist or be followed at the same time. "Repugnancy" is the particular species that arises when the enforcement of one

¹⁷ AIR 1948 PC 118

¹⁸ AIR 1957 SC 699

law essentially requires the violation of another, whereas "inconsistency" is the more general genus.

The Doctrine of Repugnancy is an important mediator preventing any legislative conflict within the framework of the Indian Constitution. It is primarily based on Article 254 and deals with situations in which a legislation passed by a State Legislature clashes with a law passed by Parliament on a topic in the Concurrent List (List III). A conflict between two laws that operate in the same field and provide conflicting mandates must be "real in fact" in order for a state of repugnancy to be recognized by the law. This means that the conflict must be more than just a theoretical overlap. As a result, when the "occupied field" is disputed, the concept upholds the primacy of Union legislation and a single legal norm throughout the federation.

Article 254 (1) states that if a State law contradicts a provision in a law made by Parliament or an existing law on one of the Concurrent List, the parliamentary or existing law takes precedence over the State law. This applies regardless of whether the Parliamentary law was enacted before or after the State law.

As a result of the Extent of Repugnancy, state law is null and invalid. This provision is typically used when there is a conflict between Central and State laws regarding an item on the Concurrent list.

In the case of *M. Karunanidhi v. Union of India*¹⁹, Fazal Ali J. examined previous cases and summarised the criteria of repugnancy. He argued that a conflict between the two statutes could occur in the following scenario:

- The two enactments (Central Act and State Act) must be proved to be incompatible and cannot be used in the same field.
- To repeal by implication, the discrepancy between the two statutes must be clearly visible.
- Repugnancy does not occur when two statutes operate in the same field without collaboration.

¹⁹ AIR 1979 SC 898

- If a statute in the same area creates separate offences, there is no conflict and both statutes function in the same field.

In the case of *Bharat Hydro Power Corporation Ltd V. State of Assam*²⁰, the Supreme Court clearly stated that if two enactments have their operations in two different fields without encroaching upon each other, then in such an instance, there will be no repugnancy.

In the case of *Hoest Pharma Ltd V. State of Bihar*²¹, it was observed that presidential assent is important for a state law which is repugnant to the central law for a matter which falls under the concurrent subject as it helps in the prevailing of the state law subject in that particular state, therefore overriding the application of the central law in the state only.

CONCLUSION

The principles controlling the interpretation of the Seventh Schedule are significantly more than simple construction canons; they act as constitutional guardians of India's federal balance. In a diversified and expansive polity, the division of legislative powers between the Union and the States is a living arrangement rather than a hard partition. The judiciary guarantees that legislative lists are dynamic rather than static by using concepts such as Pith and Substance and Harmful Construction. These interpretive techniques allow the Constitution to breathe, preventing minor overlaps from turning into constitutional catastrophes.

By eschewing a "watertight compartment" attitude, the Indian judiciary acknowledges that governance in a modern welfare state is complicated and varied. The Doctrine of Colourable Legislation reinforces this by guaranteeing that indirect encroachments on the Seventh Schedule do not weaken its integrity. This flexible approach recognises that, while the Union and States work in separate areas, their paths will inevitably intersect. Rather than considering these crossings as conflicts, the judiciary considers them possibilities for cooperative federalism.

Finally, these principles ensure that the divide of power is a fruitful cooperation rather than a source of constant conflict. They elevate the Seventh Schedule from a dry list of entries to a dynamic framework for national progress. As the Indian Republic evolves to face new

²⁰ AIR 2004 SUPREME COURT 3173

²¹ 1983 AIR 1019

socioeconomic difficulties, these doctrines will remain the foundation of its democratic stability, ensuring that the balance of power is maintained not only in text, but also in the enduring spirit of constitutionalism.