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## “A DESCRIPTIVE STUDY OF JUDICIAL APPROACHES TO RECENT DEVELOPMENTS IN SEVENTH SCHEDULE MATTERS”

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### ABSTRACT

*The Seventh Schedule’s allocation of legislative fields are rooted in the Government of India Act, 1935 and refined by the Constituent Assembly, which establishes a three-list framework that balances national unity with State autonomy through Union, State, and Concurrent Lists under Articles 246–255. The constitutional design elevates parliamentary primacy on Union subjects and provides a repugnancy rule for Concurrent matters, while preserving State exclusivity subject to harmonious construction and pith and substance analysis to manage overlaps. Historically, centralization increased during nation-building and through shifts like the 42nd Amendment, even as States retained core local competencies.*

*Judicial doctrine has stabilized this terrain, courts separate general regulatory heads from taxation entries, insist on ancillary encroachment only where proportionate, and deploy repugnancy and occupied field controls sparingly, keeping Article 254 as a last resort. Recent jurisprudence underscores these guardrails are maintaining State fiscal space in areas like mineral rights taxation subject to parliamentary limits, and policing attempts to expand non-tax entries into de facto taxes. The amendment process itself safeguards federal balance, as seen in limits on altering State List domains without State ratification.*

*This paper deals with the contemporary challenges that arise from emerging subjects like digital economy, environmental federalism, and complex supply chains, where entry ambiguity can spur intergovernmental friction, prompting calls for periodic review and rationalization of entries while respecting cooperative federalism. Today’s issues therefore center on calibrating national uniformity with local variation, clarifying concurrency without eroding autonomy, and updating the Schedule to contemporary governance needs without unsettling the Constitution’s unitary tilt with federal safeguards.*

**Key words:** *Cooperative Federalism, Harmonious construction, Pith and substance, Repugnancy, Residuary power etc.*

### 1. INTRODUCTION

India’s Seventh Schedule is the constitutional grammar of legislative power, structuring a federal polity with a deliberate unitary tilt. Originating in the Government of India Act, 1935 and reworked by the Constituent Assembly, it organizes governance into three lists namely Union, State, and Concurrent was

implemented through Articles 246–255 that bestow competencies and resolve conflicts.

Union List secures national uniformity over defense, foreign affairs, currency, and inter-State trade whereas the State List preserves local autonomy for public order, police, land, agriculture, and public health and finally

Concurrent List accommodates shared concerns such as criminal law, education, forests, and social planning, subject to a repugnancy rule that privileges Parliamentary law in irreconcilable clashes<sup>352</sup>.

This architecture is not siloed but dynamic: Articles 249–253 allow time-bound or purpose-specific central forays into State domains (national interest resolutions, emergencies, State consent enactments, and treaty implementation), while Article 248 and Entry 97 assign residuary subjects to Parliament, ensuring legislative completeness as new fields emerge.

The judicial method has stabilized this distribution. Courts begin with pith and substance to identify a law's true character, accept incidental encroachment where necessary, and strive for harmonious construction so both Union and State fields operate simultaneously whenever possible. Repugnancy and occupied-field doctrines are reserved for when reconciliation fails, preserving federal balance while maintaining national coherence. A critical discipline is the sharp separation between general regulatory entries and taxation entries regulation cannot be used as a backdoor to impose taxes without a specific tax head, a rule that protects fiscal federalism and prevents erosion of State revenue authority<sup>353</sup>.

In resource governance, the Court has calibrated mineral policy and taxation by recognizing Parliament's primacy in development under Union entries while retaining States' power to tax mineral rights subject to express Parliamentary limits. Federalism is also guarded by constitutional process that efforts to restructure State List spaces through amendment require State ratification where mandated, reflecting cooperative principles embedded in Article 368.

Contemporary pressures test this settlement. The digital economy, data governance, environmental federalism, climate transitions, and integrated supply chains straddle multiple entries, increasing overlap and the need for clear doctrinal navigation. Uniform national baselines must be reconciled with regional differentiation, especially in implementation where State executive power ordinarily carries Concurrent legislation unless Parliament specifies otherwise<sup>354</sup>.

Reform proposals urge periodic clarification and rationalization of entries to reduce litigation, align competencies with 21st-century statecraft, and integrate post-GST fiscal realities without destabilizing the core balance between unity and diversity. The judicial approach, prioritizing harmonious construction, guarding taxation boundaries, deploying repugnancy sparingly, and respecting both constitutional levers and procedural safeguards remains the central instrument for keeping the Seventh Schedule responsive, coherent, and democratically legitimate in a complex, evolving federation<sup>355</sup>.

### 1.1 IMPORTANCE OF THE STUDY

A rigorous study of the Seventh Schedule's Lists and their judicial interpretation manifests how Indian federalism balances Union primacy with State autonomy through constitutional text, hierarchy clauses, and conflict-resolution rules, especially Articles 246 and 254 read with the three Lists. Contemporary constitutional litigation shows that sectoral shifts (education, lotteries, taxation, digital economy, and cooperative regulation) are mediated by courts through list-based competence analysis, shaping legislative design and inter-governmental coordination.

### 1.2. AIMS AND OBJECTIVES OF THE STUDY

The study aims to critically analyze the Supreme Court and High Courts' approach to

<sup>352</sup> <https://www.constitutionofindia.net/schedules/list-i-union-list/>

<sup>353</sup> [https://thelawbrigade.com/PDFcentre state relations- doctrine of pith and substance](https://thelawbrigade.com/PDFcentre%20state%20relations-%20doctrine%20of%20pith%20and%20substance)

<sup>354</sup> [https://kingcenter.stanford.edu/PDFIndia's Federal Institutions and Economic Reform](https://kingcenter.stanford.edu/PDFIndia's%20Federal%20Institutions%20and%20Economic%20Reform)

<sup>355</sup> [https://www.researchgate.net/publication/353632375\\_GOVERNANCE\\_AND\\_POLITICAL\\_PSYCHOLOGY\\_Part\\_I\\_Early\\_Observational\\_Studies](https://www.researchgate.net/publication/353632375_GOVERNANCE_AND_POLITICAL_PSYCHOLOGY_Part_I_Early_Observational_Studies)

legislative competence disputes under the Seventh Schedule, mapping doctrinal trends, consistency, and implications for cooperative federalism.

### Objectives

- (a) explicate the structure and hierarchy of Lists I–III and Articles 246–254
- (b) synthesize recent case law on overlapping fields and repugnancy
- (c) evaluate standards for characterizing “pith and substance,” “incidental encroachment,” and “occupied field” and
- (d) assess policy impacts on States’ regulatory space.

### 1.3 RESEARCHER’S INTEREST

The research interest is to trace how judicial characterizations of subjects—especially at the intersections of education, betting and gambling, actionable claims, and sectoral taxation—recalibrate State and Union spheres in practice. The study focuses on methodology (text, structure, precedent) and outcomes (competence allocation, conflict resolution, and doctrinal clarity) to inform legislation and inter-governmental design.

### 1.4 REVIEW OF LITERATURE

Foundational constitutional materials delineate the Seventh Schedule’s Lists and competence hierarchy, with government portals providing authoritative text and structure. Contemporary explainers and doctrinal summaries capture evolving interpretations of Articles 246–254 and recent policy-sensitive judgments touching education and lotteries/actionable claims within State and Concurrent domains. Recent Supreme Court rulings reference the Lists in competence and repugnancy controversies, underscoring the continuing salience of pith and substance and legislative priority ordering.

Jain, Aastha, “Repugnancy Laws and Its Effect on the Indian Federalism,”<sup>356</sup> To

systematize the Article 254 repugnancy framework (Later Central law primacy, and Presidential assent limits), evaluate its practical impact on Centre–State relations, and argue for narrow, evidence-based findings of inconsistency to preserve workable concurrent governance rather than default displacement of State laws.

Sharma, Neha, “Doctrine of Pith and Substance—‘The’ Metaphor,”<sup>357</sup> To trace the historical evolution and rationale of pith and substance in India, clarify how purpose-and-effects characterization tolerates incidental encroachment, and demonstrate—through leading cases—that careful entry characterization is the decisive safeguard for State competence and coherent federal allocation.

### 1.5 RESEARCH METHODOLOGY

This is a doctrinal, explanatory study using primary constitutional text (Seventh Schedule; Articles 246, 254) and binding judgments to extract governing principles, interpretive canons, and application patterns. The method integrates close reading of constitutional provisions and structured case synthesis to identify trends in characterization tests, overlap handling, and repugnancy analysis across sectors. Secondary syntheses are used sparingly to triangulate themes and historic evolution of the Lists’ architecture.

### 1.6 STATEMENT OF THE PROBLEM

Indian federal competence disputes increasingly arise in complex, cross-sectoral fields; courts’ resolution through Seventh Schedule doctrine determines both policy bandwidth and regulatory accountability. The problem is to clarify whether recent jurisprudence exhibits coherent standards for subject characterization and conflict resolution, and whether it preserves meaningful State space consistent with constitutional structure.

### 1.7 RESEARCH QUESTIONS

<sup>356</sup> Jain, Aastha, “Repugnancy Laws and Its Effect on the Indian Federalism,” IJFMR, Vol. 10, Issue 5 (2024), pp. 112–121.

<sup>357</sup> Sharma, Neha, “Doctrine of Pith and Substance—‘The’ Metaphor,” IJRAR, Vol. 11, Issue 2 (2024), pp. 455–463.

1. How do courts apply Articles 246 and 254 to prioritize Union, Concurrent, and State powers when legislative fields overlap, and what weight is given to pith and substance versus incidental encroachment?
2. In recent cases, how have entries on education (Concurrent List) and betting/gambling/actionable claims (State List) been interpreted to allocate taxation and regulatory authority between Union and States?
3. What constitutes “repugnancy” under Article 254 in practice, and how do courts treat Presidential assent to preserve State legislation in Concurrent subjects?
4. Do judgments reveal a consistent approach to “occupied field” and “comprehensive code” arguments advanced to displace State action, and how is severability handled where partial overlap exists?
5. Are there discernible trends indicating expansion or contraction of State legislative space in sectors affected by national schemes or harmonization goals, and how are federal comity and cooperative mechanisms factored?
6. What methodological signals (textual anchoring, historical practice, structural inference) do courts deploy when reconciling List entries with new policy domains and technologies?
3. State List subjects such as betting and gambling remain robust loci of State authority, including for taxation, unless Parliament legislates within a valid Union/Concurrent field that creates a genuine conflict.
4. Courts increasingly scrutinize “occupied field” claims, favoring specific conflict analysis over broad displacement, and use severability to preserve valid State domains.
5. Over time, judicial interpretation reflects cautious centralizing drift in harmonization-sensitive sectors, yet retains meaningful State competence where List text and historical allocation are clear.

### 1.9 DATA COLLECTION

Primary data consists of the Seventh Schedule text and Articles 246–254, along with recent Supreme Court constitutional bench and other competence judgments. Supplementary sources include government portals consolidating the schedule and reputable doctrinal summaries of List structures and conflicts across sectors like education and lotteries/actionable claims. Case repositories and curated annual round-ups aid completeness checks for the latest competence decisions.

### 1.10 RESEARCH DESIGN

The design proceeds in three layers:

(a) textual mapping of List entries and Articles 246–254

(b) case matrix coding of issues—subject characterization, overlap, repugnancy, and outcome and

(c) synthesis identifying doctrinal rules and sectoral patterns. The analysis uses comparative vignettes (education vs lotteries/actionable claims) to test the stability of competence principles across fields and time, highlighting implications for federal policy design. Outputs include

### 1.8 HYPOTHESES

1. Courts maintain the classical hierarchy of Lists through pith and substance while tolerating incidental encroachment, preserving constitutional ordering without formalism.
2. In Concurrent subjects like education, Article 254’s repugnancy rule—with limited saving via Presidential assent structurally advantages Union legislation in case of conflict.

doctrinal propositions, decision trees for competence analysis, and recommendations for drafting to minimize conflict.

### 1.11 LIMITATIONS OF THE STUDY

The study relies on publicly accessible judgments and government texts, some competence disputes may be pending or lack detailed reasoning at interim stages. Explanatory summaries are used to cross-verify trends but are not substitutes for full-text analysis, and sectoral generalizations are constrained by fact-specific subject characterization.

## 2. EVOLUTION OF INDIAN FEDERAL COMPETENCE

Indian federal competence has evolved from layered sovereignties in the subcontinent to a constitutionalized division of powers anchored in the Seventh Schedule and Articles 246 and 254, with courts using pith and substance, incidental encroachment, and repugnancy to manage overlaps. Pre-modern polities (Mahajanapadas, empires) practiced delegated provincial authority without a strict legal demarcation of subjects.

Modern federal design arrived through British legislation culminating in the Government of India Act, 1935, which introduced three legislative lists and provincial autonomy, a template later constitutionalized in 1950. Landmark decisions since then have refined characterization, conflict rules, and the balance between Union primacy and State autonomy, fostering a model of cooperative federalism responsive to national schemes and local diversity<sup>358</sup>.

### 2.1 HISTORICAL BACKGROUND OF FEDERAL ALLOCATION UNDER THE GOVERNMENT OF INDIA ACTS

The Government of India Act, 1935 replaced dyarchy in provinces with provincial autonomy and, crucially, divided legislative

competence into Federal, Provincial, and Concurrent Lists, with federal law prevailing on inconsistency in the concurrent field. This list-based architecture with 59 federal, 54 provincial, and 36 concurrent subjects informed Articles 246 and the Seventh Schedule of the Indian Constitution<sup>359</sup>.

Court later drew on this structure to apply the pith and substance test: if the true nature of a law lies within the enacting legislature's field, incidental trenching does not invalidate it, a principle adapted from dominion jurisprudence and used to save valid regulation despite overlaps. The Act's scheme established the idea of a supremacy rule in concurrent subjects that would be re-expressed by Article 254, and its design of enumerated entries set the stage for wide, purposive construction of subjects by post-Independence judiciaries.

### 2.2 CONSTITUENT ASSEMBLY DEBATES ON LIST STRUCTURING AND POWER BALANCE

Constitution framers retained the tripartite list model but recalibrated hierarchy. Article 246(1) confers exclusive Union power over List I; Article 246(2) permits concurrent law-making over List III; Article 246(3) secures exclusive State power over List II, while Article 248 assigns residuary power to Parliament, signaling planned central strength with space for State autonomy<sup>360</sup>. The Assembly accepted that overlapping was inevitable and must be managed by rules of priority and characterization, anticipating judicial reliance on pith and substance, incidental encroachment, and severability.

So fields could function without paralyzing formalism. Article 254 codified a conflict rule in concurrent subjects, including Presidential assent to save certain State laws, while expecting courts to police genuine inconsistency rather than presume displacement by mere presence of a Union statute.

<sup>358</sup> [https://hmmcollege.ac.in/PDF/Indian Government and Politics](https://hmmcollege.ac.in/PDF/Indian%20Government%20and%20Politics)

<sup>359</sup> [https://magadhmahilacollege.org/PDF/Government of India Act 1935: Main Features](https://magadhmahilacollege.org/PDF/Government%20of%20India%20Act%201935%20Main%20Features)

<sup>360</sup> [https://www.mea.gov.in/PDF/SEVENTH SCHEDULE](https://www.mea.gov.in/PDF/SEVENTH%20SCHEDULE)

### **2.3 FEDERAL EVOLUTION POST-1950 AND EMERGENCE OF COOPERATIVE FEDERALISM**

After 1950, courts built a doctrinal toolkit to keep the lists workable in a complex economy and welfare state: pith and substance to identify a statute's dominant entry, incidental encroachment to tolerate peripheral overlap, and repugnancy to resolve true conflicts in the concurrent field. Early anchors emphasized characterization and breadth of entries; later jurisprudence layered "occupied field" and "comprehensive code" arguments, requiring careful inquiry into whether Parliament intended to exhaust a field or set minimum standards consistent with continued State regulation. Education illustrates calibrated centralization: Union coordination of standards (Entry 66 List I) prevails where Parliament creates a structured regime (e.g., AICTE/NCTE), but compatible State measures on admissions and administration can survive absent direct inconsistency<sup>361</sup>.

### **3. CONSTITUTIONAL ARCHITECTURE OF THE SEVENTH SCHEDULE**

Indian constitutional architecture distributes lawmaking across three lists in the Seventh Schedule and prioritizes them through Articles 246 and 254, enabling a balance between national unity and State autonomy in a complex, multi-level polity. The structure evolved from pre-modern delegated provincial authority to the British list-based model and finally to a constitutional hierarchy where Parliament's domain prevails on overlap with carefully protected State fields and a shared concurrent sphere mediated by conflict-resolution rules. Courts operationalize this design through pith and substance, incidental encroachment, and repugnancy analysis to reconcile overlaps without paralyzing governance<sup>362</sup>.

#### **3.1. STRUCTURE AND CONTENT OF LISTS I, II, AND III**

List I (Union) contains nationally uniform matters defence, foreign affairs, citizenship, railways, currency, banking where Parliament alone legislates, with entries construed broadly for national integration and standardization. List II (State) houses local and police-power subjects deals with public order, police, public health, agriculture, betting and gambling where States legislate exclusively in normal times, preserving diversity and proximity to local needs. List III (Concurrent) includes shared domains education, forests, marriage and succession, contracts, labour where both levels legislate, anticipating overlap and requiring doctrines to manage coexistence; the Constitution secures a hierarchy favoring Union/Concurrent over State on overlap to avoid stalemate.

#### **3.2. INTER-RELATIONSHIP BETWEEN ARTICLES 246, 254 AND LIST HIERARCHY**

Article 246 establishes the vertical allocation: clause (1) grants Parliament exclusive power for List I, clause (2) shares List III, clause (3) grants States exclusive power for List II, with the scheme ensuring Union List predominance over the other two and Concurrent over State where entries overlap. Article 254 resolves collisions in the concurrent field by giving primacy to Parliament, subject to the saving of a State law via Presidential assent and to later Central enactments overriding earlier State laws in the same subject, requiring courts to identify true inconsistency rather than mere coexistence. Judicially, pith and substance first fixes the statute's dominant entry; only if both laws truly occupy the same concurrent subject does repugnancy arise, and incidental overlap is tolerated to keep both levels functioning.

#### **3.3. CONSTITUTIONAL DESIGN ENSURING BALANCE BETWEEN AUTONOMY AND UNITY**

The design blends ancient traditions of local autonomy with the modern need for national coordination by giving the Union wide

<sup>361</sup> <https://www.desikanoon.co.in> Constitutional Law - Doctrine of Pith and Substance

<sup>362</sup> Poonam Sonwani, "Distribution of Legislative Powers under the Indian Constitution" 7 Research Journal of Humanities and Social Sciences 39–46 (2016), doi: 10.5958/2321-5828.2016.00009.7.

fields and residuary power while preserving exclusive State domains and a shared concurrent space. Case law in education shows calibrated centralization: Union coordination of standards under Entry 66 (List I) prevails where Parliament enacts a structured regime, but compatible State measures on admissions or administration survive absent direct inconsistency, illustrating coexistence within List III<sup>363</sup>. In gambling/lotteries and actionable claims, States exercise List II police powers and regulation while Union fiscal schemes like GST can operate concurrently, with courts using characterization and severability to preserve valid State regulation and repugnancy to resolve genuine conflict, reflecting cooperative federalism in practice.

#### 4. COMPETENCE AND AUTONOMY OF STATE GOVERNMENTS

State legislative competence under Article 246(3) rests on exclusive authority over List II subjects, safeguarded by rules of characterization that tolerate incidental overlap while preserving the State's core domain. Over time, courts have construed State entries with wide amplitude especially for police, public order, betting and gambling, and certain taxes, while policing limits through pith and substance, territorial nexus, and repugnancy principles to balance autonomy with national coherence. This trajectory reflects a long arc from locally rooted governance in pre-modern India, through British list-based federal design, to a post-1950 jurisprudence that secures meaningful State space alongside Union schemes.

##### 4.1. SCOPE AND EXTENT OF STATE LIST POWERS AND THEIR PROTECTIVE INTERPRETATION

List II covers public order, police, administration of justice, local government, public health, agriculture, and betting and gambling, among others, with Article 246(3) granting States exclusive power in normal times over these fields. Courts protect this exclusivity

by identifying the true nature of legislation via pith and substance and allowing incidental encroachment on Union fields when the dominant subject is within List II, territorial nexus further supports State levies closely linked to State territory. The Supreme Court has repeatedly affirmed that public order and police are quintessential State subjects, reflecting constitutional text and administrative practice where States maintain primary responsibility for crime control and public safety<sup>364</sup>.

##### 4.2. ILLUSTRATIVE FIELDS: BETTING, GAMBLING, TAXATION, AND PUBLIC ORDER

Gambling and betting fall under Entries 34 and 62 (taxes on luxuries including entertainments, amusements, betting and gambling), enabling States to regulate and tax within their territory, subject to characterization and nexus tests. In the *Chamarbaugwala* case, the Court upheld State competence over prize competitions with sufficient territorial nexus, treating chance-dominant schemes as gambling and validating State regulatory and taxing measures; later jurisprudence distinguishes games of skill from gambling, shaping the outer bounds of State bans and taxes. Public order and police entries empower States to legislate on processions, assemblies, preventive measures, and policing, with the Union assisting but not displacing State primacy; simultaneous levies (e.g., entertainment taxes alongside central service levies) have been sustained where fields are distinct and no direct conflict arises.

##### 4.3. DOCTRINAL LIMITS AND ACCOUNTABILITY MECHANISMS UNDER ARTICLE 246(3)

Three limits recur. First, repugnancy under Article 254 can disable a State law in a concurrent subject where a Central law occupies the same field with direct inconsistency; this does not apply to pure List II subjects but matters often straddle List II and List III, requiring careful characterization before invoking conflict rules.

<sup>363</sup> [https://legalaffairs.gov.in/PDFUNION – STATE RELATIONS](https://legalaffairs.gov.in/PDFUNION%20-%20STATE%20RELATIONS)

<sup>364</sup> [https://www.delhilawacademy.com/Legislative Powers in India: Articles 245 to 254 Explained](https://www.delhilawacademy.com/Legislative%20Powers%20in%20India%20-%20Articles%20245%20to%20254%20Explained)

Second, “occupied field” and “comprehensive code” arguments can curtail State measures when Parliament enacts an exhaustive scheme in a valid field, but courts require evidence of actual coverage and inconsistency rather than presume displacement; where possible, severability preserves valid State portions.

Third, taxation must align with List II taxing entries and territorial nexus, as illustrated in lottery and gaming disputes where State taxes were upheld on local activity but central imposts on the same transaction required distinct heads or explicit authority. These checks combined with judicial insistence on real, not illusory connections ensure States remain autonomous within their constitutional field yet accountable to federal supremacy where the Constitution so commands<sup>365</sup>.

## 5. LEGISLATIVE DOMAIN OF THE UNION GOVERNMENT

The Union’s legislative domain is anchored in the Union List and reinforced by residuary power under Article 248, enabling Parliament to legislate on nationally uniform matters and on subjects not found in the State or Concurrent Lists. This design, refined from ancient localism through the British list model to a post-1950 constitutional hierarchy, is judicially operationalized through doctrines that prioritize national interest, harmonization, and workable coexistence with State autonomy. Courts have repeatedly validated Union predominance where Parliament legislates within List I, invokes residuary authority, or enacts comprehensive codes that require uniformity across India.

### 5.1. NATURE AND SCOPE OF UNION LIST AND RESIDUARY POWER UNDER ARTICLE 248

List I covers defence, foreign affairs, citizenship, currency, inter-State trade, banking, communications, atomic energy, and coordination of standards in higher education, reflecting functions demanding uniform national

regulation. Article 248, read with Entry 97 of List I, vests exclusive residuary competence in Parliament, including residuary taxation, ensuring central capacity to govern new or unenumerated subjects such as emerging digital or financial architectures. Judicial exposition underscores that if a matter is not in Lists II or III and not specifically elsewhere in List I, Parliament may legislate by residuary power, and States cannot claim competence over such unenumerated fields.

### 5.2. DOCTRINES PROTECTING NATIONAL INTEREST AND HARMONIZATION

Indian federalism deploys characterization, occupied-field<sup>366</sup>, and comprehensive-code doctrines to sustain national schemes where uniformity is essential, while tolerating incidental encroachments on State subjects to keep Union laws effective. Federal supremacy in concurrent subjects is managed by Article 254, under which a Central law prevails on direct conflict and later Central enactments can override earlier State laws, with Presidential assent saving specific State measures only within its scope. The “national interest” pathway through structured Union schemes and, where applicable, constitutional avenues such as residuary power facilitates harmonization in sectors like insolvency, banking, and indirect taxation, allowing coherent economic governance across State lines.

### 5.3. INSTANCES OF JUDICIAL VALIDATION OF UNION PREDOMINANCE

Courts have upheld Union predominance where Parliament legislates comprehensively in fields requiring uniformity or wields residuary power to regulate novel subjects. Insolvency and Bankruptcy Code jurisprudence affirms that a Central, complete code prevails over inconsistent State recovery statutes and binds governmental creditors, reflecting federal supremacy in a harmonization-sensitive domain and validating Union scheme design. Higher

<sup>365</sup> <https://www.scoobserver.in/Supreme Court Clarifies Stance on Repugnancy of Statutes>.

<sup>366</sup> <https://www.juscorpus.com/doctrine-of-occupied-field/>

education standards similarly illustrate Union priority.

Parliament's coordination of standards in List I prevails over inconsistent State measures in the concurrent space, preserving national benchmarks while allowing compatible State regulation. In fiscal federalism, nationwide tax reforms and Union imposts grounded in List I or residuary competence have been sustained against challenges premised on State fields, so long as the Union measure is properly characterized and any overlap remains incidental rather than directly conflicting with List II.

## 6. CONCURRENT LIST AND THE DYNAMICS OF COOPERATIVE FEDERALISM

The Concurrent List embodies a shared legislative space designed to manage subjects where both national uniformity and regional adaptation are needed, operationalized through Articles 246(2) and 254 with a calibrated supremacy rule and a saving via Presidential assent. Its evolution traces a long arc from diffuse local regulation in pre-modern India to British list experiments and, post-1950, to a constitutional mechanism of cooperative federalism that allows coexisting Union and State regulation subject to precise conflict tests, not mere overlap. Courts mediate this space through pith and substance, repugnancy, occupied-field, and severability doctrines to preserve workable governance and federal comity.

### 6.1. EVOLUTION AND CONSTITUTIONAL PURPOSE OF CONCURRENT LIST

The British introduced list-based allocation culminating in a concurrent sphere to accommodate overlapping interests like education, criminal law, and labour, which India constitutionalized as List III to enable parallel regulation by Parliament and States. Article 246(2) authorizes both to legislate on List III, recognizing that subjects evolve and require dual inputs, while the List's purpose is to foster

harmonization, set national baselines, and permit State tailoring consistent with central frameworks. Modern jurisprudence applies characterization first, then overlap handling, so that Union standards can coexist with compatible State measures unless Parliament intends an exhaustive scheme or an actual inconsistency arises<sup>367</sup>.

### 6.2. ARTICLE 254 AND THE MECHANISM OF REPUGNANCY AND PRESIDENTIAL ASSENT

Article 254 resolves inconsistency in List III by giving primacy to Parliament on direct conflict while providing a narrow safety valve: a conflicting State law can prevail within that State if it has Presidential assent under Article 254(2), subject to Parliament's power to later override it. Courts insist on strict conditions for repugnancy, both laws must be valid in the concurrent field, the inconsistency must be clear and irreconcilable, and if both can operate without contradiction, there is no repugnancy, preserving concurrent coexistence. Decisions on assent emphasize that the State must identify the concurrent entry, specify the inconsistency, state reasons, and secure assent; the saving is confined to the scope of what was presented and does not immunize unrelated conflicts or later Central enactments covering the same subject.

### 6.3. DOCTRINAL AND POLICY IMPLICATIONS OF CONCURRENT LEGISLATION

In education, Parliament's coordination of standards can prevail under List I's standards power in tandem with List III, but compatible State rules on admissions or administration may survive; courts frequently uphold central NCTE/AICTE frameworks over conflicting State norms while allowing non-conflicting State regulation. In sectoral harmonization, Parliament's comprehensive codes (such as modern insolvency or other nationwide schemes) can operate across States with Article

<sup>367</sup> <https://www.constitutionofindia.net/schedules/list-iii-concurrent-list/>

254 ensuring uniformity if inconsistencies surface, but the judiciary resists displacement claims absent demonstrable conflict or clear intent to occupy the field. Policy-wise, the Concurrent List enables iterative, multi-level governance. The Union sets baselines and frameworks; States innovate within local contexts, while Article 254's hierarchy preserves national coherence, Presidential assent allows calibrated divergence, and severability saves valid parts to avoid regulatory vacuums.

## 7. JUDICIAL RESPONSES TO STATE GOVERNMENT TRANSGRESSION

Courts respond to State transgressions into Union fields by first characterizing the statute's true subject, then testing whether any overlap is merely incidental or a direct collision, and finally tailoring remedies to preserve valid State space while enforcing Union primacy where the Constitution so requires. This method reflects a lineage from British list practice to post-1950 constitutional doctrine, using pith and substance, repugnancy, and occupied-field analyses to prevent both over-centralization and impermissible State trenching.

### 7.1. CASE LAW WHERE STATE LEGISLATIONS INTRUDED INTO UNION FIELDS

When States have legislated in areas effectively covered by comprehensive Central codes, courts have invalidated the conflicting portions on occupied-field grounds while sparing coherent State regulation outside the clash, demonstrating calibrated enforcement of federal hierarchy. Examples include higher-education cases where State norms yielded to Central regulatory frameworks coordinating standards, and sectoral rulings striking State provisions that collided with detailed Central schemes, such as State norms conflicting with All India Council for Technical Education regulations, in *State of T.N. v.*

*Adhiyaman Educational & Research Institute*<sup>368</sup> and *NCTE-controlled domains, in State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya*<sup>369</sup>.

In modern economic regulation, Union enactments like the Insolvency and Bankruptcy Code have been treated as complete frameworks, displacing inconsistent State recovery or licensing provisions; courts emphasize that the test is not label but whether compliance with both laws is impossible or the Central law intends to exhaust the field, as seen in *Innoventive Industries Ltd. v. ICICI Bank*<sup>370</sup> and *Swiss Ribbons Pvt. Ltd. v. Union of India*<sup>371</sup>.

Where States attempted to regulate communications-adjacent technologies or inter-State commerce domains tied to Union entries courts have characterized the pith as Union and treated the State regime as ultra vires to that extent, while allowing State public-order measures if genuinely local and non-conflicting, consistent with approaches seen in *State of Rajasthan v. G. Chawla* (incidental powers in sound amplification)<sup>372</sup> and *UCO Bank v. Dipak Debbarma*<sup>373</sup> (banking under List I).

### 7.2. APPLICATION OF PITH AND SUBSTANCE AND INCIDENTAL ENCROACHMENT DOCTRINES

Pith and substance resolves the entry to which legislation truly relates; if the dominant subject is in List II, incidental effects on List I may be tolerated, but if the core lies in a Union entry, State law fails to that extent. Classic applications include *State of Bombay v. F.N. Balsara*<sup>374</sup> (prohibition law saved by characterization), and *A.S. Krishna v. State of Madras*<sup>375</sup> (incidental encroachment tolerated).

Incidental encroachment permits peripheral overlap necessary to make a statute effective; courts insist on a real nexus between means and the State field and reject colourable attempts to occupy Union space under a State

<sup>368</sup> (1995) 4 SCC 104

<sup>369</sup> (2006) 9 SCC 1

<sup>370</sup> (2018) 1 SCC 407

<sup>371</sup> (2019) 4 SCC 17

<sup>372</sup> 1959 AIR 544

<sup>373</sup> (2017) 2 SCC 595

<sup>374</sup> 1951 AIR 318

<sup>375</sup> AIR 1957 SC 297

label, reflecting the approach from aforesaid *Prafulla Kumar Mukherjee v. Bank of Commerce, Khulna (PC)* and later followed in *Federation of Hotel & Restaurant Assn. of India v. Union of India*<sup>376</sup> (characterization of Union expenditure tax).

Occupied-field and repugnancy analyses are applied only after characterization confirms both laws share a concurrent subject or the Central law is an exhaustive code; mere coexistence is insufficient, and displacement requires clear inconsistency or a demonstrated intent to cover the field, as structured in *M. Karunanidhi v. Union of India*<sup>377</sup> and reiterated in *State of Kerala v. Mar Appraem Kuri Co. Ltd.*<sup>378</sup>

### 7.3. JUDICIAL REMEDIES AND VALIDATION STANDARDS ADOPTED BY COURTS

Reading down and severability, supreme courts prefer to read down State laws to remove conflict and sever unconstitutional parts, preserving the remainder where it can operate independently without frustrating the Central scheme. This approach appears in *Godawat Pan Masala Products v. Union of India*<sup>379</sup> (severability within food regulatory overlaps) and *Kesoram Industries Ltd. v. State of West Bengal*<sup>380</sup> (entry-based preservation and limits).

Repugnancy cure and Presidential assent, If a State law in a concurrent field conflicts with a Central law, it is void unless saved by Presidential assent; even then, Parliament may later override it, and assent is effective only to the identified inconsistency and subject, as clarified in *Kaiser-I-Hind Pvt. Ltd. v. National Textile Corporation Ltd.*<sup>381</sup> and *T. Barai v. Henry Ah Hoe*<sup>382</sup>. Assent does not shield a State law from a later comprehensive Central code that occupies the field, as seen again in *Mar Appraem Kuri*.

On validation standards, Courts require proof of direct conflict or exhaustive Central occupation; if both laws can operate, both stand. Remedies range from striking specific provisions,

staying enforcement, or issuing interpretive directions to ensure coexistence, reflecting a preference for cooperative federalism over maximal invalidation, consistent with the repugnancy framework in *Deep Chand v. State of U.P.*<sup>383</sup> and later articulations in Supreme Court decisions construing Article 254.

### 8. UNION'S ARBITRARINESS IN CONCURRENT LIST MATTERS

Union arbitrariness in concurrent subjects arises when central measures or executive action effectively displace legitimate State space in List III without a clear textual anchor, demonstrable conflict, or necessity for nationwide uniformity. Courts respond by demanding precise characterization, proof of real inconsistency for Article 254, and evidence that Parliament intended to occupy the field, failing that, States retain room to supplement national baselines. This judicial stance preserves cooperative rather than coercive federalism, ensuring concurrent power remains a shared, not centralized, domain. The cases in aforesaid mentioned states union arbitrariness in concurrent list (*M. Karunanidhi v. Union of India*; *Kaiser-I-Hind Pvt. Ltd. v. National Textile Corporation Ltd.*)

#### 8.1. CASES OF EXCESSIVE CENTRALIZATION IN CONCURRENT SUBJECTS

Education standards and recruitment where supreme court have repeatedly upheld Union frameworks like AICTE/NCTE where they coordinate standards, but they also strike or read down central or central-aligned measures that unnecessarily trench on State administrative space when no direct inconsistency exists, emphasizing that List III allows coexistence until a clear conflict arises by following cases (*State of T.N. v. Adhiyaman Educational & Research Institute*; *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya*).

<sup>376</sup> [1989] INSC 170

<sup>377</sup> 1979 AIR 898, 1979 SCR (3) 254, 1979 SCC (3) 431

<sup>378</sup> (2012) 7 SCC 106

<sup>379</sup> (2004) 7 SCC

<sup>380</sup> (2004) 10 SCC 201

<sup>381</sup> (2002) 6 Supreme 608

<sup>382</sup> 1983 AIR 150

<sup>383</sup> AIR 1959 SC 648

Concurrent criminal and procedural fields, In repugnancy disputes, courts reject displacement by mere presence of a Central Act, unless compliance with both laws is impossible, State innovations in policing, procedure, or social protection within List III survive, resisting centralization that goes beyond the Central statute's text and scheme interpreted in *T. Barai v. Henry Ah Hoe and Deep Chand v. State of U.P.*

Fiscal-regulatory overlays, where nationwide codes operate (e.g., GST or insolvency intersecting with concurrent subjects), courts insist on faithful characterization and avoid treating harmonization rhetoric as a license to extinguish all State regulation in the concurrent slice, preserving State supplements compatible with the national framework (*Innoventive Industries Ltd. v. ICICI Bank; Swiss Ribbons Pvt. Ltd. v. Union of India*)

### **8.2. JUDICIAL OVERSIGHT ON COOPERATIVE VERSUS COERCIVE FEDERALISM**

Cooperative federalism is treated as a constitutional value informing interpretation, not as a blank cheque for Union control; courts emphasize that the Union may set baselines and frameworks, but States can adapt measures to local conditions unless Parliament has unmistakably occupied the field or a direct conflict is shown. This oversight appears in education governance, where central standards prevail yet compatible State rules on admissions or staffing can stand (*Prof. Yashpal v. State of Chhattisgarh*<sup>384</sup> and *Bharati Vidyapeeth v. State of Maharashtra*<sup>385</sup>)

Article 254 is applied with restraint, repugnancy is confined to irreconcilable inconsistency within the same concurrent subject; overlapping objectives or parallel regulation do not suffice, as reiterated in *State of Kerala v. Mar Appraem Kuri Co. Ltd.* And *Zaverbhai Amaldas v. State of Bombay*<sup>386</sup>.

### **8.3. CHECKS ON EXECUTIVE OVERREACH THROUGH INTERPRETATIVE RESTRAINT**

Strict conflict tests are laid down by supreme court require demonstrable inconsistency before invalidating State concurrent laws; where both regimes can operate, both are sustained, and displacement is denied absent clear statutory text or necessary implication of occupation. This ensures that central policy circulars or subordinate legislation do not eclipse primary State statutes (*M. Karunanidhi v. Union of India* and also in *Vijay Kumar Sharma v. State of Karnataka*<sup>387</sup>)

Severability and reading down, when parts of a State measure clash with a Central framework, only the conflicting portions are severed, preserving compatible State content; conversely, if a Central rule strays beyond its statute, it is read down to fit the enabling Act, preventing subordinate overreach from converting cooperation into control (*Godawat Pan Masala Products v. Union of India* and *Hoechst Pharmaceuticals Ltd. v. State of Bihar*<sup>388</sup>)

Presidential assent under Article 254(2) can validate a State deviation in concurrent subjects within the State, but assent must be informed and specific; later parliamentary legislation can still override it. This procedural check constrains both levels to transparent, accountable pathways rather than backdoor centralization through executive instructions which was dealt in (*Kaiser-I-Hind Pvt. Ltd. v. National Textile Corporation Ltd.; T. Barai v. Henry Ah Hoe.*)

### **9. JUDICIAL INTERPRETATION OF OVERLAPPING COMPETENCE AND POLICY INTERACTION**

Judiciary in several instances has interpreted the constitutional provisions of the articles concerning the seventh schedule. In various cases the supreme court of India drawn

<sup>384</sup> (2005) 5 SCC 420

<sup>385</sup> (2004) 1 SCC 510

<sup>386</sup> AIR 1954 SC 752; (1955) 1 SCR 799

<sup>387</sup> (1990) 2 SCC 562.

<sup>388</sup> 1983 AIR 1019, (1983) 4 SCC 45

the constitutional boundaries of the legislation of union and state legislations

### **9.1. TESTS APPLIED WHILE INSERTING STATE LIST CONCERNS INTO CONCURRENT DOMAINS**

Courts sequence three steps to manage overlaps, first, pith and substance to locate the statute's dominant entry; second, tolerance of incidental encroachment to allow workable regulation; and third, a repugnancy check confined to irreconcilable inconsistency within the same concurrent subject. This method prevents formalistic invalidation and safeguards both levels' space where coexistence is feasible.

In education overlaps, the Court distinguishes Union "standards" power from State administrative spheres, preserving compatible State regulation unless Parliament has created an exhaustive scheme with unmistakable intent to occupy the field. In taxation-policy intersections with gambling/actionable claims, characterization decides the field: if a measure truly addresses fiscal harmonization under a valid Union head, State police-power regulation may still coexist if no direct conflict arises.

Cases like supra Prafulla Kumar Mukherjee case deals with pith and substance with tolerated incidental overlap and Deep Chand case deals with repugnancy tests requiring direct conflict or exhaustive code.

### **9.2. COMPARATIVE JUDICIAL POSTURE IN EDUCATION, TAXATION, AND GAMBLING SECTORS**

In education, the Court consistently prioritizes Union coordination of standards, while allowing State measures on admissions or administration that do not contradict central norms; this balances national benchmarks with local management. In taxation, works contracts and actionable claims show characterization's primacy: the Court avoids double taxation by properly allocating heads and sustains

nationwide fiscal frameworks where constitutionally anchored.

In gambling/lotteries, the Court reconciles State police-power regulation with Union fiscal harmonization, upholding GST on lotteries and betting while recognizing that lotteries are actionable claims, not "goods," outside GST's general sweep except where specifically included by statute. Together, these sectors illustrate a stable approach: insist on the correct entry, preserve coexistence absent true inconsistency, and honor comprehensive Union codes where uniformity is indispensable.

Cases like Adhiyaman Educational & Research Institute case deals with Entry 66 standards prevail over conflicting State norms and Skill Lotto Solutions Pvt. Ltd. v. Union of India<sup>389</sup> pertains to GST on lotteries/betting upheld while aligning with Sunrise Associates on actionable claims.

### **9.3. POLICY HARMONIZATION AND FEDERAL COMITY THROUGH JUDICIAL MODERATION**

Judicial moderation operationalizes cooperative federalism by resisting broad "occupied field" claims unless Parliament's intent to exhaust the field is clear from text and scheme, and by applying severability to preserve valid State content. The Court demands demonstrable, not rhetorical, conflict: if compliance with both laws is possible, both survive; if a Central framework is truly comprehensive, only the conflicting State slice yields. In education, this yields calibrated centralization. Union standards are supreme, but compatible State administration continues.

In gambling-tax overlays, Union GST design coexists with State regulation of betting/gambling as police-power subjects, with courts safeguarding national fiscal coherence while preventing unnecessary extinguishment of State regulation. This calibrated template characterization, narrow repugnancy, severability promotes federal comity and policy

<sup>389</sup> 2020 SCC OnLine SC 990

harmonization without eroding meaningful State space.

Cases like *Mar Appraem Kuri Co. Ltd.* Supra mentioned Which deals with Central “complete code” displaces directly conflicting State law and *Henry Ah Hoe* case insists later Central law overrides earlier State law in the concurrent field.

## 10. COMPARATIVE CONSTITUTIONAL PERSPECTIVES

Across Australia, Canada, and the United States, courts manage overlapping legislative competence with similar tools, characterization of subject matter and conflict rules yet the constitutional architecture and presumptions differ in ways that shape federal provincial/state balance. Australia enumerates Commonwealth powers in section 51 with strong inconsistency control under section 109, often producing concurrent capacity where Commonwealth paramountcy operates on conflict; referral of powers and broad readings of national scheme legislation have reinforced harmonization while preserving residual state authority beyond section 51.

Canada’s Constitution Act, 1867 divides powers in sections 91 (federal) and 92 (provincial) and relies on pith and substance, ancillary powers, double aspect, and federal paramountcy to navigate overlap, enabling both levels to regulate different aspects of the same subject unless an operational conflict or frustration of federal purpose arises. The United States, lacking formal “lists” for states, mediates overlap through the Supremacy Clause and preemption doctrines against a Tenth Amendment backdrop, policing federal commandeering while allowing broad federal reach where Congress acts within enumerated powers.

### 10.1. AUSTRALIAN MODEL

Australia’s model uses section 51 heads (trade, corporations, external affairs, etc.) with states retaining residual powers; when both legislate in a concurrent field, section 109 resolves inconsistency in favor of Commonwealth law, and Parliament can also gain competence by state referral under section 51(xxxvii). Judicial practice treats many section 51 powers as concurrent until displaced by inconsistency, producing pragmatic coexistence that ends upon demonstrable conflict with a valid Commonwealth scheme<sup>390</sup>.

### 10.2 CANADIAN MODEL

Canada’s approach foregrounds pith and substance to assign the “true nature” of the law to section 91 or 92, tolerates incidental encroachment, and employs double aspect to let both levels legislate from distinct vantage points (e.g., criminal law versus property and civil rights), with paramountcy resolving direct operational conflict or frustration of federal purpose. Where the doctrine of paramountcy deals this kind of matters<sup>391</sup>. This toolkit allows robust provincial space while sustaining national schemes on banking, bankruptcy, criminal law, and trade and commerce, moderated by judicially crafted limits.

### 10.3 U.S. MODEL

In the United States, preemption flows from valid federal action under enumerated powers, with express, field, and conflict preemption doctrines enforcing supremacy while anti-commandeering (e.g., *New York, Printz*) preserves state autonomy against federal conscription of state officials. The analysis focuses on congressional intent and statutory scope, not formal lists, balancing national uniformity with reserved state police powers under the Tenth Amendment, and ensuring federal law regulates individuals rather than commandeering states<sup>392</sup>.

Overall, Australia’s section 109 and Canada’s paramountcy doctrine resemble

<sup>390</sup>[https://en-au.oxbridgenotes.com/revision\\_notes/law-university-of-new-south-wales-federal-constitutional-law/samples/the-high-court-and-characterisation?utm](https://en-au.oxbridgenotes.com/revision_notes/law-university-of-new-south-wales-federal-constitutional-law/samples/the-high-court-and-characterisation?utm)

<sup>391</sup> <https://www.constitutionalstudies.ca/2019/07/doctrine-of-paramountcy/>  
<sup>392</sup> <https://law.justia.com/constitution/us/article-6/06-supremacy-clause-versus-tenth-amendment.html?utm>

India's Article 254 conflict rule, while Canada's pith and substance and double aspect closely parallel Indian characterization and incidental encroachment techniques; the U.S. preemption–anti-commandeering synthesis mirrors India's caution against coercive centralization in concurrent domains, yet with a stronger emphasis on congressional intent and constitutional structure.

## 11. CONCLUSION

Across the Seventh Schedule framework, courts have sustained a principled division of powers by anchoring analysis in pith and substance, tolerating incidental encroachment, and reserving repugnancy for genuine, irreconcilable conflicts in Concurrent subjects. This has produced a calibrated pattern: Union predominance where Parliament legislates within List I or enacts comprehensive codes (e.g., higher-education standards, insolvency, nationwide tax harmonization), and meaningful State space preserved in List II fields (public order, police, betting/gambling) and compatible areas of List III (education administration) through careful characterization and severability.

Sectoral vignettes show that education tends toward central coordination of standards with room for State administration; gambling/lotteries preserve State police powers while accommodating Union fiscal schemes; and taxation/digital economy disputes are resolved by accurate entry characterization and narrow conflict findings.

Comparative perspectives affirm these instincts: Canada's pith and substance, double aspect, and restrained paramountcy mirror India's approach; Australia's characterisation with a strong inconsistency rule resembles India's Article 254 template; and U.S. preemption/anti-commandeering parallels India's resistance to coercive centralization. The overall trajectory reflects cautious centralization in harmonization-sensitive domains and a continued judicial commitment to cooperative federalism that protects State autonomy where

constitutional text, history, and practical governance justify it.

## Recommendations

1. Parliament and State legislatures should include explicit statements of purpose, entry-head mapping, and non-obstante/compatibility clauses calibrated to avoid unnecessary overlap, paired with severability and savings provisions to minimize repugnancy risk.

2. For List III sectors (e.g., education, health, digital economy), adopt standing Centre–State coordination boards with model rules and opt-in baselines, enabling uniform standards while preserving State customization and reducing litigation.

3. When seeking Presidential assent under Article 254(2), States should furnish precise conflict charts and targeted saving scopes; periodically review assented laws against subsequent Central codes to update or sunset provisions, preventing inadvertent conflicts and ensuring doctrinal coherence over time.

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