INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 3 | Issue 6 [2025] | Page 06 - 27

DISTRIBUTION OF POWER BETWEEN CENTRE AND STATE UNDER INDIAN CONSTITUTION WITH SPECIAL REFERENCE TO THE POWER OF THE PRESIDENT TO GIVE ASSENT IN CASE OF INCONSISTENCY

- Adv. Sunil Kumar [1]

ABSTRACT

This paper examines the constitutional framework governing the distribution of legislative and executive powers between the Union and the States in India, with particular emphasis on the Governor's authority to reserve State Bills for the consideration of the President and the implications of Article 254 concerning repugnancy. It outlines the territorial and subject-matter limits of legislative competence under Articles 245 and 246 and explains the three-list scheme of the Seventh Schedule. The study analyzes exceptional circumstances in which Parliament may legislate on State List subjects, including national interest, emergency provisions, inter-State agreements, treaty obligations, and imposition of President's Rule. It explores key constitutional doctrines—territorial nexus, colourable legislation, pith and substance, and repugnancy—supported by significant judicial precedents such as *State of Bombay v. RMDC*, *M.R. Balaji*, *F.N. Balsara*, *Deep Chand*, and *M. Karunanidhi*. Special focus is given to the process and constitutional effect of Presidential Assent under Article 254(2), which allows State laws inconsistent with Central laws to operate within that State, subject to Parliament's overriding power. The paper concludes by highlighting how the doctrine of repugnancy shapes Centre–State legislative relations, reinforcing the Constitution's federal structure with a centralizing bias, and noting the practical and political implications of the President's role in validating or negating State legislation.

[1] Practicing Advocate

1. INTRODUCTION

1.1 DISTRIBUTION OF POWER UNDER INDIAN CONSTITUTION

Part XI of the Indian Constitution deals with relations between the Union and the State. In this chapter-1 section 245-256 which are deals with legislative power and chapter-2 section 256-260 which are deals with administrative power. The distribution of power, a core concept in constitutional law, refers to the allocation of authority and influence within a government, typically between different branches or levels of government. In a federal system like that of India, this primarily involves the division of legislative, executive, and judicial powers between the central government and the state.

The framers of the constitution have created a federation where cooperation between the Union and the States is very essential. This is called cooperative federalism. The parliament and state legislature have plenary powers of legislation in their jurisdiction which is limited by the distribution of Legislature pattern of federation.

There can be no quarrel with the proposition that the Indian model is broadly based on a federal form of governance but with a tilt towards the centre. All authority and power must be exercised in conformity with the Constitution. Neither the Union nor the State should encroach upon the power or jurisdiction, which is exclusively bested in the other unit of the federation. All constitutional and statutory powers must be exercised for the purpose for which they are intended.[2]

1.2 THE SCHEME OF DISTRIBUTION OF LEGISLATIVE POWERS

As has been pointed out at the outset, a federal system postulates a distribution of powers between the federation and the units. Though the nature of distribution varies according to the local and political background in each country, the division, obviously, proceeds on two lines-

(a) The territory over which the Federation and the Units shall, respectively, have their jurisdiction.

(b) The subjects to which their respective jurisdiction shall extend[3]

[2] Dr. P.K Aggarwal & Dr. K.N Chaturvedi. *Commentary on The Constitution of India*(New Delhi: Prabhat Prakshan, 2017) p259

[3] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p327

1.3 TERRITORIAL EXTENT OF UNION AND STATE LEGISLATION.

As regards the territory with respect to which respect to which the Legislature may legislate, the State Legislature naturally suffers from limitation to which Parliament is not subject, namely, that the territory of the Union being divided amongst the States, the territory. When, therefore, a State Legislature makes a law relating to subject within its competence, it must be read as referring to State Legislature can make laws for the while or any party of the State concerned. A which it belongs [Art.245(1)]. It is not possible for a State Legislature to the enlarge its territorial jurisdiction under any circumstance except when the boundaries of the State itself are widened by an Act of Parliament.

Parliament has, on the other hand , the power to legislate for the whole or any part of the territory of India, which includes not only the States but also the Union Territories or any other area, for the time being, included in the territory of India [Art. 246(4). It also possesses the power of extra territorial legislation [Art.245(2)], which no State Legislature possesses. This property within the territory of India but also Indian subjects resident and their property situated anywhere in the world. No such power to affect person or property outside the borders of its own State can be claimed by a State Legislature in India.[4]

2. LIMITATIONS TO THE TERRITORIAL JURISDICTION OF PARLIAMENT

The plenary territorial jurisdiction of Parliament is, however, subject to some special provisions of the Constitution—

(i) As regards some of the Union Territories, such as the Andaman and Lakshadweep group of Islands, Regulations may be made by the President to have the same force as Acts of Parliament and such Regulations may repeal or amend a law made by Parliament in relation to such Territory [Art. 240(2)].

(ii) The application of Acts of Parliament to any Scheduled Area may be barred or modified by notifications made by the Governor [Para 5 of the 5th Schedule].

(iii) Besides, the Governor of Assam may, by public notification, direct that any other Act of Parliament shall not apply to an autonomous district or an autonomous region in the State of Assam or shall apply to such district or region or part thereof subject to such exceptions or modifications as he may specify in the notification [Para 12(l)(b) of the 6th Sch.]. Similar power has been vested in the

[4] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p328

President as regards the autonomous district or region Meghalaya, Tripura and Mizoram by Paras 12A, 12AA and 12B of the 6th Schedule. It is obvious that the foregoing special provisions have been inserted in view of the backwardness of the specified areas to which the indiscriminate application of the general laws might cause hardship or other injurious consequences[5]

2.1 DISTRIBUTION OF LEGISLATIVE SUBJECTS

As regards the subjects of Legislation, the Constitution adopts from the Government of India Act, 1935, a threefold distribution of legislature powers between the Union and the States [Art.246]. While in the United States and Australia there is only a single enumeration of powers, only the powers of the Federl Legislature being enumerated in Canda there is a double enumeration, and the Government of India Act 1935, introduced a scheme of threefold enumeration, namely , Federal, Provincial and Concurrent. The Constitution adopts this scheme from the Act of 1935 by enumerating possible subjects of legislation under three Legislative List in Schedule VII of the Constitution of India. [6]

List I or the State List includes in (in 2008) 100 subject over which the Union shall have exclusive power of legislation. These include defence, foreign affairs, banking, insurance currency and coinage, Union duties and taxes.

List II or the State List comprises 61 items or entries over which the State Legislature shall have exclusive power of legislation, such as public order and police, local government, public health and sanitation, agriculture, forest, fishers, State taxes and duties.

List III gives concurrent powers to the Union and the State Legislature over 52 items such as Criminal law and procedure, Civil procedure, marriage, contract, torts, trust, welfare of labour, economic and social planning and education.[7]

In case of overlapping of a matter as between the three list. Predominance has been given to the Union Legislature. In the concurrent sphere, in case of repugnancy between a Union and the Stat law relating to the same subject, the former prevails. If, however, the State law relating to the same subject, the President and has received such assent, the State law may prevail notwithstanding such repugnancy,

[5] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p328

[6] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p329

[7] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p329

but it would still be competent for Parliament to override such State law by subsequent legislation. [Art.254(2)].[8]

2.2 DISTRIBUTION OF EXECUTIVE POWER

The distribution of executive powers between the Union and the States is somewhat more complicated than that of the legislative powers.

In general, it follows the scheme of distribution of the legislative powers. In the result, the executive power of a State is, in the main, coextensive with its legislative powers, which means that the executive power of State shall extend only to its own territory and with respect to those subjects over which it has legislative competence (Art.162). Conversely, the Union shall have exclusive executive power over the matters with subject to which Parliament has exclusive power to make laws. (i.e. matters in List I of Sch. VII) and (b) the exercise of its powers conferred by any treaty or agreement (Art.73).On the other hand a State shall have exclusive executive power over matters included in List II (Art. 162)[9]

It is in the concurrent sphere that some novelty has been introduced As regards matters included in the Concurrent Legislative List the executive function shall ordinarily remain with the states, but subject to the provision of the Constitution or of any law of Parliament conferring such function expressly upon the Union. Under the Government of India Act,1935, the Centre had only a power a give directions to provincial executive to executive a central law relating to a Concurrent subject. But this power of giving directions proved ineffective, so the Constitution provides that the Union may, whenever it thinks fit, itself take up the administration of Union laws relating to any Concurrent subject.[10]

In the result, the executive power relating to concurrent subjects remains with the States, except in two cases-

(a) Where a law Parliament relating to such subjects vests some executive function specially in the Union, e.g. the Land Acquisition Act, 1894: the industrial Disputes Act, 1947[(Proviso to Art. 73(1)]. So far as these functions specified in such union law are concerned , it is the Union and

[8] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p329

[9] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p332

[10] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p332

not the States which shall have the executive power while the rest of the executive power relating to the subjects shall remain with the States.

(b) Where the provisions of the Constitution itself vest some executive functions upon the Union. Thus,

(i) The executive power to implement any treaty or international agreement belong exclusively to the Union, whether the subject appertains to the Union, State or Concurrent List.

(ii) The Union has the power to give direction to the State Government as regards the exercise of their executive power, in certain matters-

2.2.1 IN NORMAL TIMES

(a) To ensure due compliance with Union laws and existing laws which apply in that State (Art.256)[11]

(b) To ensure that the exercise of the executive power of the State does not interfere with the exercise of the executive power of the Union [Art.257(1).][12]

(c) To ensure the construction and maintenance of the means of communication of national or military importance by the State [Art.257(2)]

(d) To ensure protection of railway within the State [Art.257(3)]

(e) To ensure drawing and execution of schemes specified in the direction to be essential for the welfare of the Schedule Tribes in the State [Art. 339(2)]

(f) To ensure the development of the Hindi language [Art.351]

(g) To ensure that the government of a State is carried on in accordance with the provisions of the Constitution [Art.355][13]

[11] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p332

[12] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p3

[13] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p333

2.2.2 IN EMERGENCIES

(a) During a proclamation of Emergency, the power of the Union to give directions extends to the giving of directions as to the manner in which the executive power of the State is to be exercised, relating to any matter [Art.353(a)]

(b) Upon a proclamation of failure of constitutional machinery in a state, the president shall be entitled to assume to himself all or any of the executive powers of the State [Art.356(1)]

2.2.3 DURING A PROCLAMATION OF FINANCIAL EMERGENCY.

(a) To observe cannons of financial propriety, as may be specified in the direction [Art.360(3)]

(b) To reduce the salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and High Courts (Art.360(4)(b)]

(c) To require al Money Bills or other Financial Bill to be reserved for the consideration of the president after they are passed by the Legislature of the State [Art.360(4)][14]

3. PARLIAMENT'S POWER TO LEGISLATE ON THE SUBJECTS OF STATE LIST

Generally state legislature have exclusive power to legislate on items mentioned in the state list but under the following exceptions parliament can on the subjects of the State list-

3.1 In the National Interest (Art. 249) Rajya Sabha may, by passing a resolution with special majority of 2/3 members present and voting, authorize the parliament to make laws even on the subjects mentioned in the State list, when it necessary or expedient in the national interest to do so. After such a resolution is passed, Parliament can make laws for the whole or any part of the Indian territory. Such a resolution remains in force for a period of 1 year & can be further extended by one year by means of a subsequent resolution.[15]

3.2 Under proclamation of National Emergency (Art.250) Parliament can legislate on the subjects mentioned in the State list when the Proclamation of National Emergency is in operation. However,

[14] Dr. Durga Das Babu. *Introduction to the Constitution of India* (New Delhi: Lexis Nexis Butteerworths Wadhawa Nagpur Prabhat Prakshan, 2008) p333

[15] Retrieved from <https://youtu.be/RxUDAlvI1nY?si=Xg64DWWs4SyxU0GX > visited on 07th May 2025

the laws made by the Parliament under this provision shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate.[16]

3.3. By agreement between State (Art.252). The Parliament can also legislate on State subject if the legislatures of two or more states resolve that it is lawful of Parliament to make laws with respect to any matter enumerated in the State list relating to those State. Thereafter, any act passed by the Parliament shall apply to such states and to any other state which passes such a resolution. The parliament also reserve the right to amend or repeal any such act.[17]

3.4 To implement Treaties (Art.253) The Parliament can make law for the whole or any part of the Indian territory for implementing any treaty, international agreement or convention with any other country or countries or any decision made at any international conference, association or other body. [18]

Any law passed by the parliament for this purpose cannot be invalidated on the ground that it relates to the subject mentioned in the State list.

3.5 Under proclamation of President's Rule (Art. 356) The President can also authorize the Parliament to exercise the power of the State legislature during the Proclamation of President's Rule due to breakdown of constitutional Machinery in the state. But all such laws passed by the parliament cease to operate 6 Months after the Proclamation of President's rule comes to end. [19]

4. VARIOUS DOCTRINE ON DISTRIBUTION OF POWEER

4.1 DOCTRINE OF TERRITORIAL NEXUS

By virtue of Article 245(2) Doctrine of territorial nexus makes it clear that the authority to make laws with extra territorial operation lies only with parliament and not with the state legislature except when there is sufficient nexus between the subject matter of the Act and the State making the law. It means state can also make laws having extra territorial operation i.e. having operation outside the concerned State's territory.

[16] Retrieved from <https://youtu.be/RxUDAlvI1nY?si=Xg64DWWs4SyxU0GX > visited on 07th May 2025
[17] Retrieved from <https://youtu.be/RxUDAlvI1nY?si=Xg64DWWs4SyxU0GX > visited on 07th May 2025
[18] Retrieved from <https://youtu.be/RxUDAlvI1nY?si=Xg64DWWs4SyxU0GX > visited on 07th May 2025
[19] Retrieved from <https://youtu.be/RxUDAlvI1nY?si=Xg64DWWs4SyxU0GX > visited on 07th May 2025

The doctrine states that object to which the law is applied not be physically located within the territorial boundaries but it should have a sufficient territorial connection. In order for a stat law to have an extraterritorial operation, there must be a nexus between the object and the State.[20]

In State of Bombay vs. R.M.D.C. The respondent was not residing in Bombay but the conduct Competition with prize money through a newspaper printed and published from Bangalore having a wide circulation in Bombay. All the essential activity like filling up the form, entry fees etc. for the competition took place in Bombay. The State Govt. sought to levy tax the respondent for carrying on business in the state. It was held that as all activity of which the competitor is ordinarily expected to undertake took place most, if not in entirety, with Bombay. These circumstances constituted a sufficient territorial nexus which the entitled state of Bombay to impose a tax on the respondent (the organizer of the competition, who was outside the State of Bombay.[21]

4.2 DOCTRINE OF COLORABLE LEGISLATION

Means that if a legislature lacks the jurisdiction to enact laws on a specific subject directly, it cannot make laws on it indirectly. Despite this, if it is made, then it is called colorable legislation.

Colourable legislation comes into question when there is a question of competency of a particular legislation to enact a particular law included in the list as per Schedule 7 or for the limitation of Part III of the Indian Constitution or any other provision of the constitution. When the legislature indirectly disobeys the terms of the Constitution and claims any Act to be within its power then it is fraud on the Constitution.[22]

In the case of M.R. Bala Ji vs. The State of Mysore, an order of the Mysore Govt was challenged under Art. 15(4) for reservation seats for admission to the State medical and engineering colleges. The question was whether Art. 15(4) gives constitutional power to the States to pass such reservation power or not. The court held that the reservation is a fraud on the constitutional power conferred on the state by Art. 15(4)[23]

[20] Retrieved from <https://youtu.be/RxUDAlvI1nY?si=Xg64DWWs4SyxU0GX > visited on 07th May 2025
[21] 1957 AIR 699
[22] Retrieved from <https://youtu.be/RxUDAlvI1nY?si=Xg64DWWs4SyxU0GX > visited on 07th May 2025
[23] AIR 649, 1962 SCR Supl. (1) 439.

4.3 DOCTRINE OF PITH AND SUBSTANCE

Article 245 & 246 and Schedule VII List I, II & III- The doctrine of "Pith and Substance" first time emerged in the Canadian Constitution. It relates interpretation of statues to solve the problem of competing legislation in the same field. This doctrine states that within their respective spheres the state and the union legislatures are made supreme, they should not encroach upon the sphere of the other, the court will apply the Doctrine of Pith and Substance.

If the pith and substance i.e. true nature and character of the legislature pertains to a subject within the competence of the legislature that enacted it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature.

State of Bombay vs. F.N Balsara. Where the Supreme Court upheld the doctrine of pith and substance and observed that it was important to ascertain the true spirit and character of an enactment so that the list under which it come could be determined. [24]

5. AMENDMENTS IN THE 7TH SCHEDULE OF THE INDIAN CONSTITUTION

5.1 LIST I—UNION LIST

- Entry No- [2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.][25]
- Entry no. 33 of the Union List in the Constitution of India, which pertained to "Establishment of standards of weight and measure," was omitted by the Constitution (Seventh Amendment) Act, 1956. This amendment, specifically section 26 of the Act, removed this entry from the Union List[26]
- Entry No-63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the 1 [Delhi University; the

[24] **AIR 1951 SC 318**
[25] Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).
[26] omitted by the Constitution (Seventh Amendment) Act, 1956,

University established in pursuance of article 371E;] any other institution declared by Parliament by law to be an institution of national importance[27]

- Entry No-67. Ancient and historical monuments and records, and archaeological sites and remains, 2 [declared by or under law made by Parliament] to be of national importance.[28]
- Entry No-78. Constitution and organisation 1 [(including vacations)] of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts[29]
- Entry No-79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.][30]
- Entry No-84. Duties of excise on the following goods manufactured or produced in India, namely:— (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products.][31]
- Entry No-92A Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.] [32]
- Entry No-92B. Taxes on the consignments of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.][33]
- Entry No 92C[34]

5.2 LIST II—STATE LIST

- Entry No-1 Public order (but not including 5 [the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power)[35]

[27] Subs. by the Constitution (Thirty-second Amendment) Act, 1973, s. 4, for —Delhi University and‖ (w.e.f. 1-7-1974).
[28] Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 27, for —declared by Parliament by law‖ (w.e.f. 1-11-1956).
[29] Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 12 (with retrospective effect).
[30] Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956)
[31] Subs. by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(a)(i) (w.e.f. 16-9-2016).
[32] Entry 92 omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(a)(ii) (w.e.f. 16-9-2016
[33] . Ins. by the Constitution (Forty-sixth Amendment) Act, 1982, s.5(w.e.f. 2-2-1983)
[34] Entry 92C was inserted by the Constitution (Eighty-eighth Amendment) Act, 2003, s. 4. For the text of that Act, see Appendix-III.
[35] Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 57, for certain words (w.e.f. 3-1-1977).

- Entry No-2 Police (including railway and village police) subject to the provisions of entry 2A of List I.][36]
- Entry No-3 7 *** Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all all courts except the Supreme Court.[37]
- Entry No-19
- Entry No-11[38]
- Entry No-12 Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those 2 [declared by or under law made by Parliament] to be of national importance.[39]
- Entry No-19[40]
- Entry No-20[41]
- Entry-24 Industries subject to the provisions of 4 [entries 7 and 52] of List I.[42]
- Entry No 29[43]
- Entry No-36[44]
- Entry No-52[45]
- Entry No-54 Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.][46]
- Entry No-55[47]

---

[36] Subs. by ibid., for Entry 2.
[37] Certain words omitted by ibid.
[38] 1. Entry 11 omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 57(w.e.f. 3-1-1977).
[39] Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 27, for ―declared by parliament by law‖ (w.e.f. 1-11-1956).
[40] Entries19, omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).
[41] Entries 20 omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).
[42] Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 28, for ―entry 52‖ (w.e.f. 1-11-1956).
[43] Entries 29 omitted by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).
[44] Entry 36 omitted by the Constitution (Seventh Amendment) Act, 1956, s. 26 (w.e.f. 1-11-1956)
[45] Entry 52 omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(b)(i) (w.e.f. 16-9-2016)
[46] Subs. by the Constitution (Sixth Amendment) Act, 1956, s. 2, for entry 54 (w.e.f. 11-9-1956) and further substituted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(b)(ii) (w.e.f. 16-9-2016).
[47] . Ins.by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977) and omitted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 17(b)(iii) (w.e.f. 16-9-2016).

- Entry No-62[48]

5.3 LIST III—CONCURRENT LIST

- Entry No- 11A[49]
- Entry No-20A[50]
- Entry No-25[51]
- Entry No-33[52]
- Entry No-33A Weights and measures except establishment of standards.[53]
- Entry No-42 [42. Acquisition and requisitioning of property.][54]

6. INCONSISTENCY BETWEEN LAWS MADE BY PARLIAMENT AND LAWS MADE BY THE LEGISLATURES OF STATES

Given its adherence to the essential tenets of a federal constitution, the Indian Constitution can be appropriately classified as one. While the constitution does not specifically define "federal," Article 1 declares that "India, that is, Bharat, shall be a Union of States.". Why "State" rather than "Central" was the name used, Dr. Ambedkar stated in his speech to the Constituent Assembly. He emphasized that, unlike the United States of America, the Indian Federation is not the result of a consensus among the States. Moreover, it is imperative to acknowledge that the states lack the jurisdiction to break away

[48] 62 Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.]
[49] 2 [11A. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.]
[50] 2[11A. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.]
[51] Subs. by ibid., for entry 25.
[52] [33. Trade and commerce in, and the production, supply and distribution of,— (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products; (b) foodstuffs, including edible oilseeds and oils; 1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977). 2. Subs. by ibid., for entry 25. 3. Subs. by the Constitution (Third Amendment) Act, 1954, s. 2 (w.e.f. 22-2-1955). 221 (c) cattle fodder, including oilcakes and other concentrates; (d) raw cotton, whether ginned or unginned, and cotton seed; and (e) raw jute.]
[53] Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977)
[54] Subs. by s. 26, ibid.

from the union. This emphasizes the Center's supremacy over the individual states, and the justification for this is especially clear in a multicultural society like India.

The Constitution's Part XI discusses "relations between the Union and the States." Articles 245 to 254 emphasize the idea of central supremacy while focusing on the legislative relationships between the federal government and the states. It's critical to acknowledge the importance of this structural impulse when analyzing how the theory of repugnancy relates to Indian constitutional law.

One way to think of the theory of repugnancy is as a way to settle disputes that occur when there are two distinct legislative branches, each having the power to enact laws on different topics. When two statutes passed by two different legislatures within their separate domains of legislative authority contain provisions that cannot be reconciled, this concept is applied. The essential constitutional provisions for addressing concerns about repugnancy are found in Article 254 of the Constitution.[55]

According to Art.254 (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

[55] Retrieved from < Retrieved from https://youtu.be/RxUDAlvI1nY?si=Xg64DWWs4SyxU0GX > visited on 07th May 2025 > visited on 07th May 2025

6.1 DOCTRINE OF REPUGNANCY – LAW VS LAW

As per Wharton's Law Lexicon, "conflicting results are produced when both laws are applied to the same set of facts" when two statutes are incompatible. expands upon this stance and implies that abhorrent laws are those that are incompatible with one another, meaning they cannot coexist. This kind of situation occurs when the authority or provision of one law is in direct conflict with the authority or provision of another law. The legal definition of the word "inconsistent" is "mutually repugnant," meaning that accepting one condition results in the rejection of the other. Because "it is not possible to obey one law without disobeying the other," the grund-norm provides a framework for dealing with situations like these. The suggested solution could differ from one nation to the next. The nature of the federation usually dictates which laws are paramount and which ones take precedence.

As an example, consider federations such as the US or AU. Both the federal or Commonwealth (as in Australia) and provincial or state legislatures in these nations have the power to pass laws, but their respective constitutions specify which issues each house may address. Having said that, there are related issues where the laws frequently clash in an insurmountable way. Judges in every state are obligated to uphold the US Constitution's provisions, according to the "Supremacy Clause" in the US, while Article 109 in the Australian Constitution states that federal legislation takes precedence.

The phrase "existing laws" refers to statutes passed by competent legislatures prior to the Constitution's commencement, as stated in Article 366, clause 10. This article's provisions are derived from the Government of India Act, 1935, specifically Article 107. The widely held view on the scope, meaning, and implications of repugnancy has been fairly consistent from the cases of Zaverbhai Amaidas v State of Bombay to the famous M Karunanidhi v. Union of India. These cases have all arisen in India from conflicts between legislations of the sort envisaged in Article 254 of the Constitution.

An in-depth analysis of the provisions of Article 254, along with insights from Constitutional experts and significant court rulings, would greatly contribute to this paper and provide valuable insights into the longevity of the doctrine of repugnancy in Indian constitutional law.

To establish the incompatibility of state legislature legislation with the Central enactment, specific elements must be present as required by Article 254. Constitutional experts hold differing opinions on a wide range of issues concerning the extent and implementation of Article 254. In this paper, we will delve into the examination of these disputes at a later point. For now, let's focus on summarizing the key scope and elements of Article 254 as explained by the Supreme Court in its judgments. Following that, we will discuss the implications of repugnancy, repeal, severability, and the exception clause.[56]

7. WHEN AND HOW ARTICLE 254 APPLIES

7.1 LAWS ARE REPULSIVE WHEN THEY COMPLETELY CONTRADICT EACH OTHER

When two statutes are completely incompatible with each other, the requirements of Article 254 are only drawn into play. In the case of Om Prakash v. State, the Rajasthan High Court determined that in order for two laws to be considered repugnant, they must be completely at odds with each other and the ridiculous consequences of applying them simultaneously would be impossible. So long as the provisions are inconsistent, the contradiction must be so severe that it hinders any chance of harmonious construction; this does not imply that the laws must be discordant in every single word and provision.[57]

It is a well-established concept of process and an interpretative principle that laws are presumed to be constitutional, and the burden of proof for repugnancy is on the party challenging the law. Laws can only be invalidated due to their incompatibility in the way outlined in Art. 254(1) if "the laws are fully inconsistent and absolutely irreconcilable," but even in such cases, the harmonious construction doctrine states that courts must interpret the laws in a way that prevents repugnancy and allows competing laws to coexist peacefully.

[56] Retrieved From < Retrieved From Https://Youtu.Be/Rxudalvi1ny?Si=Xg64DWWs4SyxU0GX > Visited On 07th May 2025 > Visited On 07th May 2025

[57] Criminal Appeal No. 651 of 2012

7.2 EXPLORING CONFLICTS IN CONCURRENT LISTS

According to Art. 254 (1), "no repugnancy emerges when a law created by the Parliament and the law created by the legislature of the state occupies the same domain." This means that any laws passed on items on the Concurrent List are only those that can be considered repugnancy. No repugnancy occurs if they deal with different and distinct domains that are related and allied.

In M. Karunanidhi, one of the most significant cases on repugnancy, the Supreme Court talked about the different ways that repugnancy can happen and made the following comment about how Article 254 only applies to conflicts that happen because of laws that are in effect at the same time:
"Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy."

The Court seems to have intentionally highlighted that the mechanism under Article 254 would support the Central law in cases where there is a conflict between "the provisions of a Central Act and a State Act in the Concurrent List." However, it seems to have ignored the first part of that article, which states that "laws that the Parliament is competent to enact" and is clearly distinct from the second part, which refers to the Concurrent List.[58]

In the case of JB Educational Society v. Government of Andhra Pradesh, the Supreme Court provides some clarity regarding the reasons why conflict settlement on concurrent legislation should be invoked solely through the use of Article 254. The following are some of the terminologies that should be used when illustrating how discrepancies might occur between two laws and what principles need to be used in order to reconcile them:
Firstly, the issue arises when legislation, albeit implemented inside their designated domain, intersects and clashes with one another. Secondly, in cases where both legislations pertain to subjects listed in the Concurrent List, there is a clash between them. Parliamentary legislation will prevail in both cases. In the first situation, this is due to the non-obstante clause in Article 246(1), while in the second situation, it is because of Article 254(1).[59]

[58] [1979] 3 S.C.R. 254
[59] Civil Appeal No. 3026 Of 1999

7.3 DETERMINATION OF REPUGNANCY

The standard for identifying repugnancy has also been established by the Supreme Court. In cases of clear contradiction, such as when one statute states "do" and another states "don't," the first principle of determination applies. Additionally, it's conceivable that both laws may be followed, even though there would be discrepancies if they both applied to the same field. This might happen if two statutes define the same crime but impose different penalties. No repugnancy would arise, however, if the identical conduct is criminalized under two separate statutes.

In the case of M. Karunanidhi, the Supreme Court underscored this position. The accused, a former Chief Minister of the State, was accused of corruption for allegedly favoring a particular firm in exchange for financial gain. The case involved the state's purchase of wheat from Punjab and was booked under the Prevention of Corruption Act. The court determined that the provisions of the Central Act do not conflict with the State's Public Men Criminal Misconduct Act because the two acts created distinct offenses that differ in procedure and substance. In a situation where two laws can be obeyed at the same time, repugnancy does not exist. It also appears when an attempt is made by the central law to establish a comprehensive code that addresses all aspects of a subject area. One possible explanation is that when a competent legislature makes it clear that it intends to cover all bases, any attempt by another legislature to touch the same ground would be in direct contradiction to that. It was revolting that the State's Assam Act 8 of 1962 attempted to regulate the area of appointment to the same industrial tribunal in Assam, while the Centre's Industrial Disputes Act attempted to encompass the entire field of appointment to the Industrial Tribunal.

In cases where the Criminal Procedure Code states that "provisions of this code would not affect any special form of procedure prescribed by any special form of procedure prescribed by any law for the time being in force, the provision for arrest without warrant that is included in the Police Act, Arms Act, Explosives Act, Indian Railways Act, or Public Safety Act is not null and void because it is in conflict with the Criminal Procedure Code.[60]

[60] [1979] 3 S.C.R. 254

7.4 CONSEQUENCES OF REPUGNANCY

The Central legislation shall take precedence over the state legislation and render the state legislation null and invalid to the "extent of the repugnancy" where its provisions conflict with a Central legislation or an existing law pertaining to a subject in the concurrent list. What follows is an explanation of severability, a notion that the Indian Constitution has adopted by incorporating the words "to the extent of the repugnancy." The courts are responsible for preserving as much of the challenged conduct that has been deemed objectionable as they can.

The doctrine of repugnancy and the doctrine of eclipse, as outlined in Article 251, differ fundamentally. Article 251 makes an inconsistent law ineffective, but it becomes effective again once the overriding legislation expires. On the other hand, Article 254 declares a conflicting law void, and it can only be enforced again if it is re-enacted after the existing law is repealed. This also applies to Central Laws when a State Law becomes superior under Article 254(2).

The Supreme Court on May 4th 2021 in *Forum for Peoples Collective Efforts v State of West Bengal*, ruled on the constitutional validity of the West Bengal Housing Industry Regulation Act, 2017 (WB-HIRA). The Bench of Justice DY Chandrachud and Justice MR Shah heard the challenge on the grounds that the WB-HIRA heavily overlapped with, and often simply included identical provisions from, the parallel Central legislation: Real Estate (Regulation and Development) Act, 2016 (RERA). As both Acts dealt with subjects from the Concurrent List, the petitioner claimed that the State enactment (WB-HIRA) was constitutionally impermissible. The Court agreed with the petitioner and ruled that the entire WB-HIRA was unconstitutional.[61]

The judgment then applied the rules of interpretation based on Article 254 in order to determine 'repugnancy' between State and Central legislations. A statute is deemed 'repugnant' when it covers the same subject area as another statute but contains contradictory provisions.
The Court considered Professor Nicholas Aroney's 'three tests of repugnancy' (relied on in Tika Ramji) since the Australian Constitution identifies repugnancy in similar terms to the Indian Constitution. The three-pronged test formulated by Professor Aroney was adjusted for the Indian context in *Deep Chand v State of U.P.* by Justice K Subba Rao:-

[61] Writ Petition (C) No. 116 of 2019

"*Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:*

1. *Whether there is direct conflict between the two provisions;*
2. *Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and*
3. *Whether the law made by Parliament and the law made by the State Legislature occupy the same field…*"[62]

8. THE PRESIDENT'S ROLE IN LAWMAKING (PRESIDENT'S ASSENT) ARTICLE 254 (2)

When a state's legislature passes a bill that is completely at odds with central law, the President's signature is inevitable. Notifying the President of the reason for seeking assent is a necessary step in the process, which is far from idle. The president's signature fixes real repugnancy, not just the potential for it.

For a state law to survive after the Central Law has passed, the President's consent is required. In accordance with the Proviso to the Article, Parliament has the power to either invalidate the State Act by repealing, amending, or modifying it, or by enacting \another law that is incompatible with the State Act. With the President's approval, the state can pass laws that contradict federal law in side its borders, according to Clause 2 of the Article. The President must have been aware of the conflict between the State law and the previous law passed by Parliament on the same issue in order to "assent" to it in Clause 2.[63]

CONCLUSION

An examination of the notion of repugnancy's applicability has shown some important points. According to Indian court precedent, the notion of repugnancy only applies when two bodies of law are completely at odds with one another. The courts, according to the harmonious construction theory, have an obligation to interpret statutes in a way that prevents repugnancy and protects the power that legislates.

[62] AIR 1959 SC 648 4

[63] Retrieved From < Retrieved From Https://Youtu.Be/Rxudalvi1ny?Si=Xg64DWWs4SyxU0GX > Visited On 07th May 2025 > Visited On 07th May 2025

Repugnancy is limited to enactments on the Concurrent List exclusively, according to the popular opinion. When discrepancies arise outside of this domain, we apply the pith and substance doctrine to figure them out, and when we get to the vires question, we use the non-obstante clause of Article 246 to settle it.

To address inconsistencies that may be challenged on grounds of repugnancy, it is possible to demonstrate, in accordance with the principle of harmonious construction, that the State law in pith and substance is part of the State list, and that any interference from the Concurrent List is little and incidental.

Over the years, the Supreme Court has established definitive criteria to ascertain repugnancy. In M. Karunanidhi, the Supreme Court summarized the cases before it and established the following criteria for finding repugnancy:

- "That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field"
- "That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes"
- "That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy result"
- "That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

Repugnancy, in contrast to the doctrine of eclipse outlined in Article 251, renders a conflicting law void and inoperative to the extent of the inconsistency while the superior legislation is in effect. The repugnant law does not regain validity even after the overpowering statute is repealed, unless the invalid act is re-enacted and validated. In the case of M. Karunanidhi v. Union of India, it was determined that a Union law would have the same outcome in a State when the State legislation prevails due to the Presidential Assent under Article 254(2).

There are a number of political ramifications to the current court stance on repugnancy. The State Legislature is free to pass laws pertaining to matters on the State list because those laws are not subject

to review for repugnancy. However, due to the Centre's dominance, the Centre has taken the position that it has a tendency to claim entire fields in the Concurrent List as its own. Instead of relying on discretion based on policy prudence and the spirit of the constitution, there has been a trend toward using the provision of the President's assent to advance federal policy in the states, even when such laws are repugnant but locally essential.

The most contentious aspect, nevertheless, has been the push to broaden the scope of Art. 254's interpretation, to include situations where there are contemporaneous field conflicts; this would make even Articles 252(1) and 253 susceptible to its application.

According to the reasoning put forth, the provisions' wording permits a far broader applicability; specifically, the phrase "in the Concurrent List" is understood to qualify only pre-existing laws, and the words "which the Parliament is competent to enact" are applied to post-Constitutional laws. Another suggestion is that Article 246 should just serve as a framework, and that Article 254 should include a more thorough system for resolving disputes.