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Enumeration of Legislative Powers in India

An Appraisal of the Seventh Schedule of the Indian Constitution

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Executive Summary

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Enumeration of legislative powers in the seventh schedule of the Constitution of India is an important yet neglected topic in the study of federalism in the country. Power is divided between different levels of government in a federal system to achieve unity on subjects of national interest while encouraging diversity and local responsiveness on other issues. The success of a federation depends on several factors but the accuracy of power distribution is an important one.

The purpose of this working paper is to outline the key events in the evolution of the seventh schedule of our Constitution and make an appraisal of its functioning in the last seventy five years. The paper hopes to highlight the key differences between the original constitutional scheme and the realities of governance today. We need to build public consensus on whether to reconcile the two paradigms or continue with the status-quo.

Legislative relations between union and state governments are covered in chapter I under part XI of the Indian Constitution (Articles 245-255). The seventh schedule is constituted under Article 246 and deals with enumeration of legislative powers. It contains three lists which allocate powers and responsibilities between union and state legislatures: List I (union list), List II (state list) and List III (concurrent list). Articles 73 and 162 of the Constitution say that the executive power of union and state governments is co-extensive with their legislative power as enumerated in the seventh schedule.

Part I of the report looks at the pre-independence history of the seventh schedule with a special focus on the distribution of legislative powers in the Indian efforts to prepare a constitution for independent India during the last three decades of British rule. A conscious choice was made in the constituent assembly to have a centralized federation and the reasons for this initial over-centralisation are understandable.

Alert to the fissiparous forces prevalent in the years leading up to independence that eventually caused the partition of the Indian subcontinent, the constituent assembly gave more power to the union government. The urgency with which its members pivoted from a “weak center” to a “strong center” after the partition was announced in June 1947 is captured in the paper. A strong union government was also felt necessary to complete the integration of over 500 princely states into India. Finally, the unitary bias in our Constitution reflected the desire of the Congress party under the leadership of Jawaharlal Nehru to build a socialist state with highly centralized planning after independence.

Part I of the paper also highlights the arguments given on the need for a concurrent list in the Indian Constitution. Finally, this section of the paper also records the attempts made by thought leaders in the pre-independence era to articulate certain principles that should guide the division of powers and responsibilities between union and state governments in India.

The centralizing tendency of the Constitution at the time of independence was further reinforced by the praxis of governance in the subsequent decades.

Part II provides an overview of the post-independence journey of the seventh schedule and highlights the gradual dominance of union government in subjects typically within the realm of states and local governments. The political dominance of Congress party in India's polity reduced substantive constitutional questions of union-state relations into intra-party issues that were resolved by a "High Command" of the party's central leadership.

Further, the indiscriminate use of centrally sponsored schemes under Article 282 and creation of the Planning Commission in 1950 as a parallel institution for devolution of funds from union to states was a case of creeping normality to justify the involvement of union in areas which were typically the responsibility of state and local governments - initially through executive decisions and later through legislative enactments. Next, Part II discusses the impact of the union government's unbridled treaty making powers under Article 253 (which has an overriding effect on the seventh schedule) and the judicial doctrine of implied powers in further constraining the legislative power of states.

Part II of the paper also records the political pushback against this trend towards centralization and makes note of key voices post-independence that requested a reconsideration of the seventh schedule. It then examines the union response to these demands by summarizing the relevant observations by various commissions on central-state relations that were set up by the union governments from time to time. Part II ends with an illustrative list of some union laws that (one may argue) were passed on subjects allocated to state and local governments in the Constitution.

Part III begins by noting the changed national context today in which states have increasing salience in ensuring socio-economic development. The present Prime Minister has previously served multiple terms as the Chief Minister of Gujarat and has first-hand knowledge of the challenges that states face in navigating their relationship with the union government. Which is why he has actively sought to strengthen the federal impulses of the Constitution and promote the spirit of cooperative federalism in policy-making since his tenure started in 2014, even in areas like foreign policy which the staunchest advocates of decentralization believe should remain exclusively within the purview of union government.

Part III then attempts to outline the current thinking on criteria that should govern the division of powers in a federation, especially the principle of subsidiarity. Power is divided between levels of government in a federation to achieve a healthy balance between unity for some purposes in national interest and diversity and local responsiveness for other issues. However, the success of a federal system depends on several factors and decentralization is not a panacea for good governance. The paper then recaps a few recommendations on improving the legislative relations that have been suggested by several commissions on centre-state relations over the years.

Part III finally makes the case for a conversation with all stakeholders on the suitability of seventh schedule (which has largely remained unchanged since independence) given the contemporary realities of a confident and aspirational New India on track to be a developed country by 2047. India's capabilities and

ambitions today are very different from the anxieties and fears that would have dominated the debates of our founding fathers and mothers in the constituent assembly. Therefore, the governance approach needed in the previous epoch of political consolidation cannot be the same one our country needs in the next epoch of economic transformation.

Part I: Pre-Independence History of the Seventh Schedule of the Indian Constitution

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Depending on the pre-existing political conditions, a federation may be formed in one of the following two ways: by a voluntary agreement between sovereign and independent geographic units for the administration of certain affairs of general concern (a "coming together" federation like the USA) or by the transformation of the provinces of a unitary state into a federal union (a "holding together" federation like Canada). India is an example of a "holding together" federation.

British India was a unitary state until 1937, when the Government of India Act, 1935 ("1935 Act") came into force. While provincial councils with Indian representation had been set up as early as the Indian Councils Act 1861 ("1861 Act") and Lord Ripon's 1882 resolution introduced elected municipal councils and rural district boards, all provincial institutions were essentially agents of the central government. Through the 1935 Act, which was a culmination of the discussions that started in the Round Table conferences, the British parliament set up a federal system in India "by creating autonomous units and combining them into a federation by one and the same Act"[1] as it had done earlier for Canada under the British North America Act 1867.

Legislative Lists - A Brief History

Given India's diversity of continental proportions, British administrators understood the need for provincial autonomy as the basis for a more efficient and stable form of government. Accordingly, British rule saw a gradual deepening of the principles of power-sharing under the doctrine of paramountcy. This was a recognition on their part of the instinct for decentralization that has remained a persistent feature of the Indian subcontinent for most of its history. The strategy found expression in the Government of India Act, 1909 which further empowered the provincial councils created under the 1861 Act, enabling more Indian representation.

In relation to the creation of the seventh schedule of the Indian Constitution, the Government of India Act, 1919 ("1919 Act") is an important milestone. The 1919 Act was based on the Montague-Chelmsford Report and for the first time divided the field of administration into two spheres: the central and the provincial. Section 45-A of the 1919 Act read with section 129-A empowered the Governor-General in Council with the sanction of the Secretary of State in Council to make rules providing for the classification of subjects, in relation to the functions of government, as central and provincial subjects. There was no provision for a concurrent list and residuary powers were given to the centre.

The matters which were of all India concern requiring uniform treatment (defence, communication, foreign relations, customs, income tax, criminal law, etc.) were put on the central list; and those which were predominantly of provincial

[1] Report of the Centre State Relations Enquiry Committee 1971, page 11. See here:

interest (education, medicine, public health, public works, land tenures, etc.) were listed as provincial subjects[2].

At the provincial level, a limited form of self-government was introduced through the concept of "diarchy" (dual government) that created "transferred" and "reserved" subjects. While the transferred subjects were given to the Indian ministers responsible to the elected state legislatures, the reserved subjects were retained by the provincial governor and his executive council. Sources of revenue were also divided between the center and provinces under the 1919 Act[3].

The trend of granting greater provincial autonomy culminated in the enactment of the 1935 Act, which abolished diarchy. For the first time, provinces were legally recognised as exercising legislative and executive powers in their own spheres, which is a basic feature of a federation. Further, it laid down the scheme of distribution of legislative powers into three lists, which has been retained in the Indian Constitution. Residuary powers were vested in the hands of the Governor General.

Nehru Report of 1928

The 1935 Act built upon similar ideas discussed in various reports over the previous decade. The 1930 report of the Indian Statutory Commission (infamously known as the Simon Commission) to revise the 1919 Act recommended the evolution of India into "a federation of self-governing units" with complete autonomy in the provinces including the department of law and order.

Meanwhile, in response to the absence of any Indian representation in this commission and a challenge by British administrators like Lord Birkenhead for Indians to draft a nationally acceptable Constitution on their own, leaders of the independence movement drafted the Nehru Report of 1928 ("1928 Report"). The committee to draft the 1928 report was chaired by Motilal Nehru and included Subash Chandra Bose, Sir Ali Imam, Tej Bahadur Sapru, M.R. Jayakar and Annie Besant. Jawaharlal Nehru was appointed as the secretary to the Committee.

The 1928 Report created a system of two lists for division of subjects between the two tiers of government - schedule I under clause 13 for parliament and schedule II under clause 34 for the provincial legislature. Interestingly, schedule I only had 47 subjects while schedule II had 63 subjects and there was no provision for a concurrent list. The supremacy of the central government and parliament was assured with the inclusion of clause 14A which allowed them to "suspend or annul the acts, executive and legislative, of a Provincial Government" in case of an emergency or a conflict between provinces[4].

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[2] Report of the Commission on Centre-State Relations, volume I: Evolution of Centre-State Relations in India, March 2010 (Punchhi Commission Report), page 31. See: http://interstatecouncil.nic.in/wp-content/uploads/2015/06/volume1.pdf

[3] N.K Singh, *Fiscal Federalism in India,* Chapter 8 of *Local Public Finance and Capacity Building in Asia: Issues and Challenges*, J. Kim and S. Dougherty (eds.), OECD Fiscal Federalism Studies, OECD Publishing (2020), https://www.oecd-ilibrary.org/sites/940cc5ee-en/index.html?itemId=/content/component/940cc5ee-en

[4] Nehru Report (Motilal Nehru, 1928). See: https://www.Constitutionofindia.net/historical_Constitutions/nehru_report__motilal_nehru_1928__1st%20January%201928

The 1934 Report of the Joint Committee on Indian Constitutional Reforms ("JCR") that led to the 1935 Act explained the rationale for distribution of legislative powers as "an essential feature of Provincial Autonomy and as being itself the means of defining its ambit". An exhaustive statutory allocation was considered necessary to ensure that the provinces remained truly autonomous and could determine their jurisdiction independently. Given the acrimonious debates at the time about the relative strengths of union and provincial governments, there was belief that an elaborate enumeration scheme would reduce disputes over the scope of centre-state jurisdiction.

Justification for Concurrent List

The JCR justified the creation of a concurrent list on the need for union government to intervene on the following three grounds[5]:

(i) Establish uniformity in main principles of law (criminal law and procedure, marriage and divorce)

(ii) Encourage local effort by laying down the policy and guidelines, thereby promoting further efforts by the States

(iii) Solving problems whose effects extend beyond the state where they occur (preventive detention, vagrancy, nomadic & migratory tribes, commercial & industrial monopolies)

To quote the JCR on the rationale for creating concurrent lists:

"Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a central or to a Provincial legislature and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the central legislature should also have a legislative jurisdiction enable it, in some cases to secure uniformity in the main principles of law throughout the country, in others, to guide and encourage provincial effort and in others, again, to provide remedies for mischief arising in the provincial sphere, but extending, or liable to extend beyond the boundaries of a single province"[6]

In the constituent assembly, Dr. B R Ambedkar explained the need to create a concurrent list to overcome two "inherent weaknesses of federalism"[7], which he had identified to be rigidity and legalism. He referred to the precedent of the Australian Constitution which reduced the disadvantages of rigidity and legalism by creating a large concurrent list and making some of the provisions of the Australian Constitution only for a temporary duration. The Indian Constitution similarly had a long list of concurrent subjects and went further than the Australian

[5] P M Bakshi, Background Paper for the National Commission to Review the Working of the Constitution, *Concurrent Powers of Legislation under List III of the Constitution of India* See: https://legalaffairs.gov.in/sites/default/files/Concurrent%20Power%20of%20Legislation%20under%20List%20III%20of%20the%20Indian%20Constitution.pdf

[6] Ibid

[7] Constituent Assembly Debates. See http://164.100.47.194/Loksabha/Debates/Result_Nw_15.aspx?dbsl=144&ser=&smode=

Constitution in expanding the Union list to 91 subjects. This was done so that the Constitution could have "the greatest possible elasticity in its federalism which is supposed to be rigid by nature." [8]

Transformation from a "Weak Centre" to a "Strong Centre"

The Indian Constitution was framed by the constituent assembly under the Cabinet Mission Plan ("CMP"). The CMP had outlined a broad federal structure for India, allocating only defence, foreign affairs and communication to the Union, with all residuary powers vested in state governments. The constituent assembly initially intended to implement this structure. Jawahar Lal Nehru's Objectives Resolution which was adopted by the Constituent Assembly on the 22nd January 1947 declared that the residuary powers would vest in the states, and the union was to exercise limited enumerated powers.

However, an overwhelming majority of the members of the constituent assembly preferred a "centralized republic with a strong Centre"[9]. The compromise of a weak centre with limited powers was accepted only to prevent the partition of India and facilitate a smooth integration of the princely states with the Indian union. Records suggest that Dr. B.R. Ambedkar was cheered by the constituent assembly when he declared that so far as he was personally concerned, he would like to have a strong centre as envisaged in the 1935 Act[10].

As destiny would have it, the tenor of deliberations completely changed once partition was confirmed. The Mountbatten Plan of the June 3, 1947 announced partition of the country and a separate constituent assembly for the proposed state of Pakistan. After the decision to partition the country was announced, the Union Constitution Committee under the chairmanship of Jawahar Lal Nehru met on June 5, 1947 and decided that the Constitution of India should be federal with a strong centre. It was also decided that there should be three legislative lists and residuary powers should go to the union and not to states. This view was affirmed by the constituent assembly.

Meanwhile, the Union Powers Committee ("UPC"), also chaired by Jawaharlal Nehru, stated that the Cabinet Mission Plan was no longer operative in light of partition and the committee was not bound any more by the "limitations on the scope of Union Powers". The committee now unanimously took the view that a weak central authority would be injurious to the interests of the country and declared that the "soundest framework for our Constitution is a Federation, with a strong Centre". In distributing legislative powers between the union and the states, the constituent assembly heavily relied upon the reports of the UPC. The UPC also recommended that the system of three lists as contained in the 1935 Act was the most satisfactory arrangement but residuary powers should remain with the union, unlike the CMP proposal. Thus, the pain of partition played a decisive role in the choice of constituent assembly to create a strong unitary bias in the Constitution of India.

[8] Ibid
[9] Punchhi Commission Report, page 38
[10] Ibid

Guiding Principles for the Division of Subjects

In November 1944, a 30-member committee under the chairmanship of Tej Bahadur Sapru ("Sapru Committee") was appointed by the Non-Party Conference to prepare a report on India's constitutional future. The Non-Party Conference was a group of individuals who represented a variety of interests except those of the dominant political parties i.e. Indian National Congress, Muslim League and the Communist Party.

The Sapru Committee submitted its report in 1945 and it had a section titled 'Leading Principles of a New Constitution' which was drafted as a constitution with provisions related to executive, legislature, judiciary and other public institutions. Clause 10 of this document laid out certain principles that a constitution-making body should follow for distribution of powers between centre and state governments. It may be helpful to reproduce the clause in full[11]:

> *"Lists of the matters, in respect of which the power of making laws for peace, order and good government and the functions pertaining to the administration of those laws shall fall within tile spheres respectively of the Centre and the Units, shall be embodied in the Constitution Act. The detailed drawing up of these lists should be left to the Constitution-making Body. The Committee however, would recommend that the following principles, among others, should guide the Constitution-making Body in the distribution of powers and functions between the Centre and the Units:---*
>
> *(a) The powers and functions assigned to the Centre should be as small in number as possible provided that they shall in any case include*
>
> *(i) matters of common interest to India as a whole, such as Foreign Affairs, Defence Relations with Indian states, Inter-unit communications, Commerce, Customs, Currency, Posts and Telegraphs.*
>
> *(ii) settlement of inter-unit disputes;*
>
> *(iii) co-ordination where necessary of the legislation and administration of different Units;*
>
> *(iv) such other matters or action as may be required for ensuring the safety and tranquility of India or any part thereof or for the maintenance of the political integrity and economic unity of India or for dealing with any emergencies.*
>
> *(b) While all matters not assigned to the Centre exclusively or concurrently must be declared to fan within the sphere of the Units, a list of these should, for greater certainty be given in the Constitution Act with the rider that all residuary powers - those not included in either of the two lists - shall vest in the Units.*

[11] Sapru Committee Report (Sir Tej Bahadur Sapru, 1945). See https://www.Constitutionofindia.net/historical_Constitutions/sapru_committee_report__sir_tej_bahadur_sapru__1945__1st%20December%201945

(c) All customs barriers between one Unit and another shall be abolished and there shall be free trade within the Union, provided that, where the abolition of existing customs barriers affects prejudicially the finances of a Unit it shall be entitled to adequate compensation out of the revenues of the Union."

However, like the constituent assembly later, the Sapru Committee acknowledged that on merits they did not agree with the recommendation to have a weak centre and the vesting of residuary powers in the units. It was primarily recommended in the hope that the compromise would prevent the partition of India[12].

Constituent Assembly

As the constituent assembly began the deliberations on the seventh schedule, Bishwanath Das (member from Odisha) proposed a discussion at the outset on the general principles upon which the subjects had been divided into three lists. His recommendation was rejected for lack of time and most of the discussions in the constituent assembly were on the language of specific entries in the three lists without any reference to the overarching governance principles for legislative allocation.

The founding fathers and mothers of the Indian republic had the unenviable task of drafting the Constitution while being parallelly engaged in securing Indian independence and dealing with the violent fallout of partition. This meant that their limited energies were dispersed between these three objectives and often that resulted in important provisions of the Constitution being incorporated without a substantial debate in the constituent assembly. This seems to have been the case with deliberations on the seventh schedule.

A few members attempted to provide some principles for the classification of subjects during the entry-wise discussion of lists. V S Sarwate (member from Madhya Bharat), in a discussion on whether "coordination and determination of standard in institutions of higher education" should be in the Union list critiqued the tendency to allocate a subject to union list on the ground that it is of "national importance":

"The other point that was made was that because education is of national importance, therefore it should be transferred to the Centre. If this argument is to be taken to its logical sequence, then practically every sphere of activity at present entrusted to the provinces would have to be transferred to the Centre. Medicine is of national importance, hygiene is of national importance, and practically all social services which are at present in the domain of the provinces will have to be transferred to the Centre."[13]

Instead he proposed the following three-pronged test to decide which subjects should be included in the union list:

[12] Ibid

[13] Constituent Assembly Debates. See: https://indiankanoon.org/doc/1225111/

"To me it appears that the best should be that the subject besides being a subject of national importance, it should satisfy either of the three things which I shall just mention. Firstly, it should have a direct and immediate bearing on defence. Secondly, it should be of such a nature that it can best be managed only by the Centre. For instance, geological survey of the whole country can be best undertaken only by the Centre. Thirdly, it should be of such a nature that uniformity is the desideratum and is necessary in the interests of the nation. For instance, standards of weights and measures should be laid down by the Centre because it is in the national interest to do so. If in any sphere uniformity is not necessary but on the other hand there should be diversity and variety, it is the sphere of education."

Similarly, Kaka Bhagwant Roy (member from Patiala and East Punjab States Union), when talking about control of industries in union list, emphasized the need for province-specific industrial policy given their unique challenges:

"It appears from the amendment which the Honourable Doctor has introduced in the original entry that he wants to hand over all the powers regarding industries to the Centre. It is very good; the Centre ought to be strong, and during transition, the Centre should be vested with such powers as are essential for the Industrial development of the country. But in normal times, the Centre should not be vested with such authority. India is a very big country. She has many provinces. These Provinces have their own difficulties and can understand their problem much better than the Centre.

The problem of Industries is very complicated. Therefore, so far this question is concerned every province should be given facilities to solve its own problems. If you make the Provinces responsible for industrial development and do not give them powers to deal with the situation, then the problem of Provinces cannot be solved and it will retard the industrial progress of the country. Although I am somewhat deviating from the point, yet I must say that the present Industrial policy of the Centre will prove a stumbling-block in the path of the Country's progress."[14]

Voices of Dissent Against Over-centralization

Even as the constituent assembly agreed to create a federation in India with a strong centre, there were dissenting voices within its chambers that argued for greater decentralisation and state autonomy, with many members arguing for the establishment of a third tier of government. These arguments rested on three pillars: decentralization of powers enabled more meaningful participation of the local population, ensured greater accountability and allowed for customized policy suited to local conditions.

[14] Constituent Assembly Debates. See: http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C31081949.pdf

One of the most prominent critics of the consensus view was K Santhanam who later served as the Chairman of the 2nd Finance Commission. He believed that an expansive concurrent list would inevitably lead to gradual erosion of a state government's legislative powers:

> *"In the course of time it is an inevitable political tendency of all Federal Constitutions that the Federal list grows and the Concurrent List fades out, because when once the Central Legislature takes jurisdiction over a particular field of legislation, the jurisdiction of the provincial legislature goes out."*[15]

In the motion to discuss the 2nd UPC Report of July 1947 he criticized the creation of "almost a unitary Centre" and instead advocated for a union government that was not "made responsible for everything":

> *"The initial responsibility for the well-being of the people of the provinces should rest with the Provincial Governments. It is only in strictly all-India matters that the Central Government should have responsibility and should come into play. Therefore, the strength of a Centre consists not only in adequate powers in all-India subjects but freedom from responsibility for those subjects which are not germane to all-India but which really should be in the Provincial field…Take for instance, 'vagrancy'. I cannot understand why 'vagrancy' has been taken away from the Provincial list and put in the concurrent list. Do you want all India to be bothered about, vagrants? There is almost an obsession that by adding all kinds of powers to the Centre, we can make it strong."*[16]

In fact, Mr. Santhanam continued to oppose the constitutional scheme long after independence. He presented a paper at the National Convention on Union-State Relations in April 1970 where he reiterated his view on a small union list consisting only of essential all-India matters:

> *".....a strong Centre is indispensable if India is 'not to disintegrate and dissolve in chaos. But do not agree with those who equate strength with the range of formal Constitutional powers. On the other hand, I am emphatically of the opinion that by taking upon itself too many obligations in relation to the vast population spread over the length and breadth of India, the Centre will become incurably weak. It is only through concentration on essential All-India matters and by refusing to share the responsibility in such matters with the States, while giving complete autonomy to the States in the rest of the field of Government, the Parliament and the Central Government can be really strong. The tendency towards vague unhealthy paternalism which has come to envelop Indian Federalism as a result of the dominance of a single party during the first two decades of*

[15] Punchhi Commission Report, page 43

[16] Constituent Assembly Debates. See: https://www.Constitutionofindia.net/Constitution_assembly_debates/volume/5/1947-08-20

independence is as bad for the Centre 'as it is unpleasant and provocative to the States"

Several members emphasized that a strong centre did not necessarily need an expansive union list and the choice between provincial autonomy and central authority was not a zero-sum game. In the discussion on the 2nd report of UPC in July 1947, Himmat Singh Maheshwari (member from Sikkim and Cooch Behar Group) said, *"The desire of this House, Sir, to create a strong Centre is a very legitimate desire; but I fear it is sometimes forgotten that a strong Centre does not necessarily mean a weak Province or a weak State"*[17]. Later on, in the motion to discuss the draft constitution, Arun Guha (member from West Bengal) expressed a similar sentiment: *"I admit we require a strong Centre; but that does not mean that its limbs should be weak. We cannot have a strong Centre without strong limbs."*[18]

Rationale for a Unitary Bias in the Constitution

Despite these voices of dissent, the constituent assembly went ahead with a constitutional scheme which was a "federation with a strong Centre". As Jawahar Lal Nehru explained to the assembly when introducing the 2nd report of UPC, the choice was made in light of partition to secure the unity of India against fissiparous tendencies in the future:

"Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere"

In addition to concerns of preserving the unity and integrity of India in the aftermath of the partition, another factor which contributed to the choice of a strong union government by the constituent assembly was the question of integration of princely states. In 1947, India comprised 9 provinces under direct control of the British and over 500 princely states that were indirectly governed under the doctrine of paramountcy. The princely states accounted for 40% of the territory and 30% of the population, and were diverse in size, culture and institutions. Further, each princely state had its own unique understanding with British India[19]. Most of the princely states which had to be integrated did not have any effective governance systems in place and many were inimical to the idea of cooperating with the newly formed government of India[20]. The need to strengthen the hand of the union government to effectively tackle these issues, further made the case for a strong center.

[17] Constituent Assembly Debates. See: https://www.Constitutionofindia.net/Constitution_assembly_debates/volume/5/1947-08-20

[18] Constituent Assembly Debates. See: https://www.Constitutionofindia.net/Constitution_assembly_debates/volume/7/1948-11-06

[19] Supra note 3

[20] Sohini Chatterjee, Akshat Agarwal, Kevin James and Arghya Sengupta, *Cleaning Constitutional Cobwebs: Reforming the Seventh Schedule,* Vidhi Centre for Legal Policy (October 2019). See: https://fincomindia.nic.in/writereaddata/html_en_files/fincom15/StudyReports/Cleaning%20Constitutional%20cobwebs_Reforming%20the%20Seventh%20schedule.pdf

Finally, the precarious financial position of the Indian government during independence and an aspiration to create a state on socialist pattern also favoured centralisation. Only a centralized authority with effective control over economic and fiscal fields could undertake the gargantuan task of national reconstruction post- independence and partition. As the Constitution was being debated and drafted, India confronted a climate of economic uncertainty, food insecurity and stretched finances due to the after-effects of partition and a bruising war with Pakistan in 1947-1948. The country had lost about a quarter of its landmass to partition which included parts of Punjab and Bengal that were the food bowls of undivided India. In particular, the founding fathers and mothers were concerned about ensuring economic and social wellbeing and balancing regional disparities. It was believed that a strong union could facilitate equitable distribution of economic resources between provinces by using its supervisory powers *"not only to take care of its own responsibilities but to guide and coordinate the activities of the units."*[21]

However, the members did acknowledge that this choice was a function of the unique circumstances under which the Indian Constitution was drafted and finalized. A hope was expressed that the arrangement would be revisited at an appropriate future date when the Gandhian principle of decentralization would be adopted in the governance of India. As H V Kamath (member from Central Provinces and Berar) said in the final days of the assembly[22]:

> *"A time will arrive when India is stabilized and strong, and I hope we will then go back to the old plan of the Panchayat Raj or decentralised democracy, with village units self-sufficient in food, clothing and shelter and interdependent as regards other matters."*

[21] Punchhi Commission Report, page 46

[22] Constituent Assembly Debates. See: https://www.Constitutionofindia.net/Constitution_assembly_debates/volume/11/1949-11-19

Part II: Post-Independence Changes to Seventh Schedule

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"*Everyone asks the administration to do many things,*
But few ask themselves how they are best done."

-The First Administrative Reforms Commission and Its Work: A Brief Survey[23]

The post-independence era has seen a gradual but definitive expansion of the union and concurrent list at the expense of the state list. At the time of independence, the union list included 97 subjects and has since grown to 100. In the Government of India Act 1935, this list only had 59 entries. The concurrent list used to have 47 subjects in the original Constitution, but it now has increased to 52. In the 1935 Act, there were only 36 entries in the concurrent list. On the other hand, the state list included 66 subjects in 1950, but it is now down to 61. This expansion of union and concurrent list has happened through 9 constitutional amendments that have made substantive changes to the seventh schedule (see table below).

Interestingly, not one of these changes was subjected to a judicial challenge until 2021 when a MLA of the ruling DMK government in Tamil Nadu challenged the transfer of education from state to concurrent list[24] under section 57 of the Constitution (Forty-Second Amendment) Act, 1976. The Madras High Court has admitted the public interest litigation and constituted a 3-judge bench to adjudicate the case, as per media reports.

Table 1: List of Changes to Seventh Schedule

Sl. No	Amend-ment	Year	Content	Impact
1.	3rd	1955	Expanded the scope of entry 33 in the concurrent list which dealt with essential commodities. The production, supply and distribution of other goods was included in entry 27 of the state list before the amendment. The Amendment added "foodstuffs (including oils and oilseeds)", "cattle fodder", "raw cotton" and "raw jute" to entry 33 of concurrent list.	The amendment was made to increase the powers of the union government to control commerce in essential commodities in light of the prevailing situation of food scarcity in the country. The amendment shifted the balance of power in favour of the Union on regulating commercial activity in India
2.	6th	1956	Added a new entry 92A to the union list which empowered the Union government to levy	The amendment was needed to resolve

[23] *The Administrative Reforms Commission and Its Work: A Brief Survey*. See: https://darpg.gov.in/sites/default/files/A%20Brief%20Survey%20-%20First%20ARC%20Report.pdf (last accessed on February 16, 2023)

[24] *Aram Seyya Virumbu Trust v Union of India* (WP No. 19490 of 2021)

Sl. No	Amend-ment	Year	Content	Impact
			taxes on transaction of goods in the course of inter-state commerce. Also edited entry 54 of the state list which empowered state government to tax sale of goods to reflect the new entry 92A and exempt inter-state commerce	conflicting opinions of Indian courts on the state government's power to impose taxes on goods. The amendment enhanced the power to taxation on commercial activity in favour of the Union government
3	7th	1956	Removed entries relating to acquisition and requisitioning of property from union list (entry 33), state list (entry 36) and concurrent list (old entry 42) to include it in the concurrent list (new entry 42) as a comprehensive entry covering the whole subject Amended entry 67 of union list, entry 12 of state list and entry 40 of concurrent list which deal with the protection of historical monuments and archaeological sites. Replaced the phrase "declared by Parliament by law" with "declared by or under law made by Parliament". This allowed government to designate a site or monument as "nationally protected" without having to pass a law in the parliament Although the union list has two entries 7 and 52, relating to industries, the latter alone is referred to in entry 24 of List II. This oversight was corrected by addition of entry 7 in entry 24 of state list.	The amendment curtailed the power of state governments to make laws on acquisition and requisitioning of property by including it in the concurrent list.
4	15th	1963	In entry 78 of the union list, which deals with regulation of High Courts, added the words "including vacations" to allow the Union government the power to decide vacations in High Courts. The amendment was given retrospective effect	The amendment was in response to a Calcutta High Court judgment that "organization" of High Courts did not include vacations.
5	32nd	1973	The 32nd amendment was passed to give certain additional protections to regional rights in Telangana and Andhra regions of Andhra Pradesh. Accordingly, a central university was proposed to be established in Andhra Pradesh under Article 371E of the Constitution which was designated as an institution of national importance by amending entry 63 in union list	
6	42nd	1976	Added new Entry 2A in union list to give the union government the power to deploy any of its armed forces in states in aid of civil power. Entry 2 of state list dealing with police was accordingly read down to account for this	The net effect of the 42nd amendment, passed at the peak of Emergency, was to substantially dilute the

Sl. No	Amend-ment	Year	Content	Impact
			power to the Union The phrase *"Administration of justice; Constitution and organisation of all courts, except the Supreme Court and the High Court"* was removed from entry 3 of state list which was added in the concurrent list as a new entry 11A In the state list, entries 11 (education, including universities), 19 (forests), 20 (protection of wild animals and birds) and 29 (weights & measures) were removed. All four entries were transferred to the concurrent list instead A new entry 20A was added to concurrent list relating to "population control and family planning". Entry 55 of State List (tax on advertisements except newspapers) was read down to exclude the power of state government to tax advertisements in radio and television	scope of state's legislative powers by transferring major subjects to the concurrent list
7	46th	1983	A new entry 92B was inserted in the union list to enable the levy of tax on the consignment of goods where such consignment takes place in the course of inter-State trade or commerce	The 46th amendment was passed to resolve conflicting judicial decisions on the scope of sales tax
8	88th	2003	A new entry 92C was added to union list "taxes on services"	The amendment created constitutional provision for levy of service tax by Union government
9	101st	2016	Entry 84 of union list (power to impose excise duty) was replaced with targeted list of items for imposition of excise duty by Union government (petroleum and tobacco products) Entry 92 (tax on newspaper sales) and Entry 92C (levy of service tax) from were deleted from union list In state list, entry 52 (tax on entry of goods in local area) and entry 55 (tax on advertisements) were deleted In state list, scope of entry 54 (tax on sale and purchase of goods) was reduced only to include alcoholic and petroleum products Entry 62 of state list (tax on luxuries, entertainment and amusements) was replaced with a more restrictive entry to allow only local bodies to collect additional taxes on entertainment and amusements.	The amendment revamped the indirect tax regime in India by introducing the GST

The union list in India is larger than other federations around the world and deliberately so. Reasons for initial over-centralisation in the original scheme are understandable. Conscious of the fissiparous forces prevalent in the years leading up to independence, the constituent assembly gave more power to the union. The following statement by Dr. Ambedkar in the constituent assembly sums up the prevailing mood in support of a strong union government:

> *"The country and the people may be divided into different states for convenience of administration, the country is one integrated whole, its people a single people, living under a single emporium, derive from a single source."*

The problems created by partition, the consolidation of freedom, the integration of princely states, the framing of the Constitution and the role of union government in ensuring a balanced economic development, convinced our national leaders to bear a disproportionate share of the burden of administration immediately after Independence. Satya Prakash Dash, in his article *Indian Federalism and The Distribution of Responsibilities*[25] quotes Balvir Arora and N. Mukarji as follows:

> *"The claims to superior wisdom of the Centre were based on the high caliber of administrative and technical expertise at its command; the non-availability of similarly qualified professionals in the states and their general neglect in developing matching skills led to a division of roles and responsibilities. The Centre knew the best policies required and the States had to concentrate their efforts on implementation."*
> [emphasis supplied]

Any attempt to question the wisdom of the union and ask for a greater role to states in national planning was construed as an attempt to weaken the country. See for example the following conclusion in the report of the States Reorganization Commission in 1955:

> *"Regionalism has a legitimate place in a country as large as India, but unless its limitations are recognised, - and the supremacy of the Union not merely in the political but also in the economic thinking of the country is fully accepted, it will be a source of weakness to us as a nation."*[26]

However, almost immediately after independence, the practical working of this legislative division began to cause friction between union and state governments. The creation of the Planning Commission, proliferation of centrally sponsored schemes under Article 282, the multi-subject nature of governing actions and the overriding effect of union's treaty-making powers over the seventh schedule meant that the legislative enumeration in our Constitution did not reflect the real power enjoyed by governments.

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[25] Satya Prakash Dash, *Indian Federalism and the Distribution of Responsibilities*, The Indian Journal of Political Science Vol. 68, No. 4 (OCT. - DEC., 2007), pp. 697-710

[26] Page 236, Report of the States Reorganisation Commission, 1955. Accessed here: https://www.mha.gov.in/sites/default/files/State%20Reorganisation%20Commisison%20Report%20of%201955_270614.pdf

Panchayats and Urban Local Bodies

This legislative confusion and consequent tension were further aggravated by the creation of the 3rd tier of government through the 73rd and 74th constitutional amendments which were promulgated in 1992 giving recognition to urban and rural local bodies. Article 243G and 243W of the Constitution task them with preparing plans and implementing schemes for "economic development and social justice" with specific areas of competence assigned to them under the 11th and 12th schedules of the Constitution. A cursory look at the items in both the schedules makes it evident that they are derivatives of the state list.

The creation of the 3rd tier was a landmark decision by the Narasimha Rao government to strengthen the federal spirit and decentralize the governance in India. But in the decades since then, this reform has not seen the commensurate enthusiasm from the political establishment in India. One reason could be the ill-conceived and ill-timed attempt to create the 3rd tier of government for the first time in 1989 by Rajiv Gandhi on the eve of general elections, without building national consensus on the reform. Local government is a state subject in the seventh schedule. Therefore, the union government had to introduce a constitutional amendment to legislate on a state subject, namely the 64th and 65th constitutional amendment bill in 1989.

The bill had several provisions which created an impression that the union government was trying to deal with local governments directly by circumventing the state governments. For example, their elections would be supervised by the central election commission, their accounts would be audited by CAG and initially there was a provision that the governor alone could dissolve a local body, although this was eventually deleted from the draft bill. As K K Tummala notes in his article: "Given the fact that so many state governments were controlled by opposition parties, the bill was attacked as a veiled attempt by the center not only to bypass the state governments but also directly control the village panchayats."[27] No attempt was made by the Congress party to engage with the opposition parties and reconsider the contentious provisions. Instead the bill was allowed to be defeated in the parliament to shift the blame on opposition parties in the general election soon after.

It is quite possible that the unfortunate politicization of a reform that had widespread national acceptance since independence has been a major factor in the underperformance of panchayats and local bodies. The intense political bickering in 1989 may have influenced the state governments to perceive the success of local bodies as a zero-sum game and created a trust deficit between them. The sub-optimal performance of the 3rd tier of government in India, the reasons for which are beyond the scope of this paper to discuss, has been a major stumbling block in the decentralization of governance and efficient delivery of public goods.

[27] Krishna K. Tummala, *India's Federalism under Stress*, Asian Survey, vol. 32, no. 6, 1992, pp. 538–53. JSTOR, See https://doi.org/10.2307/2645159. Last accessed 27 Feb. 2023

Planning Commission and the Misapplication of Article 282

American sociologist Dianne Vaughn used the term “normalization of deviance” to describe the process in which deviance from correct or proper behavior or rule becomes normalized in a government or corporate culture. This is especially prevalent in domains where the deviant behaviour does not cause immediate harm and is protected by an unspoken rhetoric on the agreement in the group. The indiscriminate use of centrally sponsored schemes (“CSS”) and creation of the Planning Commission in 1950 as a parallel institution for devolution of funds from union to states was a case of creeping normality to justify the interference of union in governance of subjects in the realm of states. Both these developments were deviations from the original Constitution and not contemplated in the constituent assembly.

Entry 20 of the concurrent list relates to economic and social planning. Under this entry, the union government constituted the Planning Commission in 1950 and National Development Council in 1952. Even at the time of its creation in March 1950, the Planning Commission was riddled with controversy as the then-Finance Minister Dr. John Mathai resigned in protest, claiming that a non-statutory body was “tending to become a parallel cabinet…it would weaken the authority of the Finance Ministry and gradually reduce the Cabinet to practically a registering authority.”[28]

Erstwhile scholars had described the role of Planning Commission as a “band-master which calls the tune of economic policy in the country”[29] and concluded that its stranglehold on the working of state governments reduced them “to the position of the units of local administration in a unitary system of government.”[30] In a scathing article against centralized planning as early as 1955, K V Rao says that “the center plans, the center decides, the center directs and the states are unable to do anything positive except wait at the door of the Planning Commission for doles.”[31]

The combination of one-party dominance in national polity by the Congress party and its “High Command" culture meant that important constitutional issues of centre-state relations were reduced to an intra-party discussion. States were made to agree to the view “by formal, even superficial consent” that the “work of planned development is possible only when the center undertakes the ambitious program of national reconstruction.”[32]

Further, the Foreign Exchange Regulation Act 1947 and the Industries (Development and Regulation) Act 1951 were enacted and implemented soon after independence. These measures gave the union government overarching control over all economic activity in the country. The state governments had no

[28] Amit Kapoor with Chirag Yadav, *The Age of Awakening: The Story of Indian Economy Since Independence*, January 2019, Penguin Portfolio

[29] B B Jena, *Contradiction of Equal Sovereignties in India*, Indian Journal of Political Science, Volume XXIII, No.1, Jan-March 1962, page 71

[30] Infra note 77

[31] K V Rao, *Planning and the Problem of Administration*, The Indian Journal of Political Science, vol. 16, no. 4, 1955, pp. 352–58. See http://www.jstor.org/stable/42742840. Las accessed 22 Feb. 2023

[32] Infra note 77

choice in deciding whether and where a new industry should open in their jurisdiction.

Centralized planning also meant that the union government assumed more responsibilities in the social sector even though most social sector subjects are included in the state list of the seventh schedule[33]. As Ajit Mozoomdar quotes in his popular article *The Rise and Decline of Development Planning in India*:

> *"If the Constitutional distribution of functions had to be followed in allocating planning responsibilities, only broad indicative planning would have been feasible, since the exclusive responsibility of the Centre was restricted to only small parts of the productive sectors of the economy, namely mines and minerals, railways, ports and shipping, post and telecommunications, banking and insurance. The states' exclusive areas of responsibility cover many more sectors including agriculture, irrigation, power and roads, besides health and education, urban development and all forms of social welfare."* [emphasis supplied]

Further, this system of centralised planning created a complicated system for transfer of funds to states through the Finance Commission (formula-based transfers and grants-in-aid) and Planning Commission (plan transfers and discretionary transfers). The genesis of CSS lies in the category of discretionary transfers by the Planning Commission.

Article 282 of the Constitution allows the union or state government to make "any grant for any public purpose" even if it relates to a subject that is not covered in their list under the seventh schedule. This is the provision under which CSS were launched soon after independence. In the original scheme of the Constitution, as evident in constituent assembly debates, this provision was to be used in the "rarest of rare" cases since institutional mechanisms like the Finance Commission already existed within the constitutional framework for devolution of funds.

The scheme-by-scheme allocation of funds until the Third Plan was replaced by a system of block transfers of plan funds under which the Planning Commission would propose a new programme in the state plan which would be financed wholly/partially by the union government. The block transfer system eventually came to be called CSS. They are essentially schemes funded by the union government but implemented by the state governments and usually require matching contributions from them.

In due course, the CSS began to proliferate and enjoyed a disproportionate share of central assistance to states. Several reports, including those of the Planning Commission itself, recommended a drastic reduction and rationalization of these schemes to no avail[34]. Politicians across party lines have criticized encroachment by the union government on state responsibilities through CSS and

[33] D. Shyam Babu, *Social Sector Schemes: A Brief Overview*, Chapter in *Agenda for Improving Governance* edited by Bibek Debroy (Academic Foundation, 2004)

[34] Bibek Debroy, Ashley Tellis & Reece Trevor, *Getting India Back on Track: An Action Agenda for Reform*, Carnegie Endowment for International Peace (2014)

even asking for their abolition[35]. At a conference of chief ministers in 1996 it was decided that all CSS relating to state subjects would be transferred to states but this decision was not implemented.

There were major concerns about the efficiency and delivery mechanism of CSS that were raised by several thought leaders in the past. CSS usually related to state subjects but contained rigid guidelines imposed by the union government which undermined state autonomy and skewed their development priorities. Further, they had serious financial implications on state finances due to matching requirements and the opportunity cost of losing untied funds that would otherwise be given to states. But most damagingly, they shifted the Overton Window on norms of acceptability around union interference in state subjects and made the soil fertile for the subsequent legislative overreach. Cognizant of these structural challenges, a sub-group of Chief Ministers to rationalize the CSS was constituted by Prime Minister Modi in the first meeting of the Governing Council of Niti Aayog in February 2015

Articles 73 and 162 of the Constitution of India state that the executive power of union and state governments is co-extensive with their legislative power as enumerated in the seventh schedule. In popular imagination, this implied that if executive intervention through CCS had blessings of the Constitution, so too would the practice of passing union laws on issues more suitable for state legislation through liberal use of residuary powers and a creative interpretation of entries in the central and concurrent list.

Multi-subject Character of Governing Actions

The title above is from a 2018 article by Laurence Claus (*Enumeration and the silences of constitutional federalism*) on the challenges of deciding whether a topic is within the legislative competence of the federal government. Despite the exhaustive enumeration of powers of both tiers of the government, seventh schedule of the Indian Constitution did not produce “neat mutually exclusive compartments because of innumerable overlaps in practice.” It is difficult to identify any topic in the state and concurrent lists on which some union legislation does not exist.

For example, the legal basis for regulation of pharmaceuticals in India is entry 6 of the state list (public health and sanitation; and hospitals and dispensaries). The governing law however is a union legislation, Drugs and Cosmetics Act 1940. It was passed in pre-independence India under section 103 of the Government of India Act, 1935 which was the equivalent of Article 252 of the Constitution of India in terms of legal effect (parliament’s power to make law on a state subject).

Similarly, in *State of Karnataka v. State of Meghalaya*[36], a March 2022 judgment on the power of the state government to impose a tax on lottery conducted by another state, the Supreme Court held that ‘lotteries’ is a species of gambling activity and hence covered under the ambit of ‘betting and gambling’ as

[35] Supra note 29 and 33
[36] 2022 SCC OnLine SC 350

mentioned in entry 34 of the state list. However, lotteries organized by the government of India or a state are regulated under Lotteries (Regulation) Act, 1998 passed under entry 40 of the union list in seventh schedule.

The Indian Treasure Trove Act, 1878 defines 'treasure' as "anything of any value hidden in the soil" worth more than 10 rupees. The Act requires the finder of any such treasure to inform the Collector of the "nature and amount or approximate value of such treasure and the place where it was found." However, "treasure trove" is explicitly stated as a state subject in entry 44 of state list.

Further, Articles 256 and 257 of the Constitution read with Article 365, make it binding on a state government to obey the directions of the union. As a result, state governments are always operating in the shadow of the union which creates ripe conditions for inconsistency and ambiguity.

Doctrine of Implied Powers

A major reason for the legislative confusion and consequent acrimony created under the seventh schedule between both tiers of government is the long shadow of doctrine of implied powers. It was first articulated by Chief Justice Marshall in an 1819 US Supreme Court case *McCulloch vs. Maryland*[37] as follows:

> *"Let ends be legitimate, let it be within scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consistent with the letter and spirit of the Constitution are Constitutional"*

The principle that where the end is required means are authorised, implies that the subjects enumerated under seventh schedule are the ***"centre, not the circumference of power"***. The lack of well-defined and self-contained categories of competence has led to confusion regarding allocation of legislative responsibility. Often, the union government has first decided to legislate on a topic before working out post-facto its legislative competence to do so.

The Medical Termination of Pregnancy Act, 1971 is a classic example of this post-facto calculus by the union government. A new entry 20A relating to population control and family planning was added to the concurrent list only in 1976 under the 42nd amendment. The 1971 law was therefore passed apparently by recourse to entry 1 of the concurrent list on "criminal law"[38].

We may note the distortionary effects of the multi-subject character of governing actions and doctrine of implied powers on the federal scheme of the Indian Constitution through the following four illustrations.

1. Disaster management:

   The Disaster Management Act 2005 ("DMA") was passed under entry 23 of concurrent list i.e. 'Social security and social insurance; employment and unemployment". There is no separate entry on disaster management

[37] 17 U.S. (4 Wheat.) 316 (1819)
[38] Supra note 5

despite the recommendation by Venkatachaliah Commission (2002) and 2nd Administrative Reforms Commission (2006) to add a new entry in concurrent list: “Management of Disasters and Emergencies, Natural or Man-made”. As a result, there are both union and state laws (Gujarat, Uttar Pradesh, Bihar, Uttarakhand to name a few) on this subject.

The competencies to legislate on disaster management are spread across the three lists. Public order and public health are Entries 1 and 6 respectively in the state list. Entries 14 and 17 of the state list refer to agriculture and water. Entry 6 of the union list relates to atomic energy and entry 56 deals with regulation of inter-state rivers.

The use of entry 23 in concurrent list to promulgate DMA led to certain creative interpretations by state governments during the covid pandemic. Several states which heavily depend on revenue from sale of alcohol (West Bengal, Maharashtra, Odisha, Jharkhand and Chhattisgarh) legalized the home delivery of alcohol to address a shortfall in tax revenues under the provisions of DMA. This means that a law which was passed in pursuance of social security and social insurance was invoked for liquor delivery[39].

2. Environment protection:

The Environment Protection Act 1986 defines “environment” in Section 2(a) of the Act as follows:

"environment" includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.”

If one looks at the key terms in this definition, water and land remain in the state list while forests used to be in the state list till 1976 when it was transferred to concurrent list in the middle of the Emergency. Even the definition of “hazardous substances” in Section 2(e) of the Act[40] suggests that policy-makers were looking at the environment through the lens of public health, which is a state subject.

In fact, the primary responsibility for environment protection seems to have been delegated to village panchayats and urban local bodies under Schedule XI (soil conservation, water management, social forestry and farm forestry) and XII (urban forestry, protection of the environment and promotion of ecological aspects) of the Constitution respectively.

In the absence of a unified entry expressly recognising environmental protection in the seventh schedule, legislative competence for enacting some of the major environmental laws had to be derived from elsewhere.

[39] Infra note 52

[40] "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plant, microorganism, property or the environment;

For instance, since “water” is a state subject[41], the Water (Prevention and Control of Pollution) Act, 1974 was enacted by the parliament under Article 252 of the Constitution, which enables it to make laws on state subjects for those states whose legislatures have consented to union legislation on a particular subject.

Similarly, Air (Prevention and Control of Pollution) Act, 1981 and the Environmental Protection Act, 1986 were passed under Article 253 of the Constitution which allows the parliament to legislate on any topic in pursuance of India’s international obligation irrespective of the legislative division of powers in the seventh schedule. Their preamble makes it clear that they were passed only to give effect to the United Nations Conference on Human Environment held at Stockholm in 1972[42].

Similarly, the National Environmental Tribunal Act 1995, National Environment Appellate Authority Act 1997 (both of which were repealed by the National Green Tribunal Act 2010) and Biodiversity Act 2002 were passed to give effect to the proceedings at the Rio Summit 1992.

In January 1980, the union government appointed a committee under the chairmanship of Shri. N.D. Tiwari, then Deputy Chairman of the Planning Commission (“Tiwari Committee”), to recommend legislative and administrative measures for environmental protection. The introduction of 'Environment Protection' in the concurrent list of the seventh schedule was recommended by the Tiwari Committee but till date there exists no unified entry on environmental protection.

3. Public order and police:

Public order and police are the first two entries in the state list. Even though they are state subjects, the duty to protect states from internal disturbance and ensure that its government functions according to the provisions of the Constitution is upon the union government as per Article 355 of the Constitution. The differing interpretations of the first two entries led to a constitutional crisis when the union government sent central paramilitary forces in Kerala (1968) and West Bengal (1969) without consulting the respective state governments to protect public property from violence by striking workers and employees.

Legislations to combat terrorism have competencies spread across all the three lists, for example - entries 1, 2 and 9 of union list; entries 1 and 2 of state list, entries 1, 2 and 3 of concurrent list. With the result that every law on the subject ends up in political quagmire. Both the Terrorist and Disruptive Activities (Prevention) Act, 1987 and Prevention of Terrorism Act, 2002 were challenged on grounds of legislative competence but upheld by the Supreme Court. The National Investigation Agency Act, 2008 was likewise challenged but upheld in 2013 although its constitutionality has yet

[41] Entry 17, state list: Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I

[42] See *S. Jagannath vs Union Of India & Ors* AIR 1997 SC 811

again been questioned by the Chhattisgarh government in 2020 with a petition pending in the Supreme Court, as per media reports.

4. Consumer protection:

   Consumer Protection Act 1986 was passed under residuary powers of the union government i.e. entry 97 of the union list. A perusal of the seventh schedule suggests that the power to legislate on this subject is scattered across several entries in a piecemeal manner. Examples include the union list entries on for carriage of passengers and goods by railways, ship or air, banking and insurance; state list entries on public health, industries, trade and commerce within the state, production and supply of goods, markets and fairs; concurrent list entries of food adulteration, drugs, legal, medical and other professions, electricity and newspapers.

Union's Treaty-making Power Overshadows Seventh Schedule

Article 73 read with Article 253 and entry 14 of the union list empowers the executive to enter into "treaties and agreements with foreign countries." Since there is no parliamentary law on treaty-making powers of the government, the executive has a free hand in international negotiations without the need for parliamentary approval.

However, a treaty entered into by India becomes law of the land only when the parliament passes a law under Article 253 for "...implementing of treaties, agreements and conventions with foreign countries." Article 253 of the Constitution has an overriding effect on the legislative scheme in the seventh schedule. It says that notwithstanding anything contained in Article 245-252, parliament has the power to make any law to implement a foreign treaty or obligation.

The language of Article 253 implies that the parliament can pass laws even on subjects in the state list in pursuance of an international agreement. The Constitution does not prescribe any formal consultation with the state governments before the passing of any such law and neither is it a norm to build national consensus before entering into a treaty. The Venkatachaliah Commission flagged this issue: "Of late, it has been observed that where a treaty is entered into by the Union Government concerning a matter in the State List vitally affecting the interests of the States no prior consultation is made with them."[43] Likewise, the Punchhi Commission Report (2010) notes[44]:

> *"An issue which has caused concern among the States in recent times is the impact of the Union executing international treaties and agreements involving matters in the State List…Some States in this context have approached the Supreme Court complaining that the area of legislative competence of States is being eroded indirectly by the Union Government entering into treaties with other countries…The*

[43] Venkatachaliah Commission Report, Chapter 8. See: https://legalaffairs.gov.in/sites/default/files/chapter%208.pdf

[44] Punchhi Commission Report, Volume II, page 26. See: http://interstatecouncil.nic.in/wp-content/uploads/2015/06/volume2.pdf

exercise of the power obviously cannot be absolute or unchartered in view of the federal structure of legislative and executive powers."

Article 253 was included in the Constitution without any meaningful debate on its wide sweep in the constituent assembly. A G Noorani explains its wide sweep as follows[45]:

"If the Government of India concludes an international convention on, say, health, Parliament will have the power to make any law to implement it despite the fact that the subject falls in the State List. Moreover, it applies not only to a treaty but covers any decision made at any international conference, association or other body."

The analogous provision of Article 253 in Government of India Act, 1935 was section 106. It prevented the federal government from making a law on a provincial subject in pursuance of an international obligation without the consent of the governor[46]. Article 253 was included in its present form to avoid the constitutional crisis created in Canada by a Privy Council decision in *Attorney General for Canada vs. Attorney General for Ontario and Others*[47]. The court invalidated certain enactments of the Canadian parliament regulating conditions of labour since it was a provincial subject. The union government attempted to justify it on the ground that the law was required to give effect to certain international conventions which had been ratified by Canada. The following quote by the court is instructive on the issue:

"The Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the Constitution which gave it birth. It must not be thought that the result of the decision is that Canada is incompetent to legislate in performance of treaty obligations. In totality of legislative powers, Dominion and provincial together, she is fully equipped. But the legislative powers remain distributed and if, in the exercise of her new functions derived from her new international status, Canada incurs obligations, they must, so far as legislation be concerned, when they deal with provincial classes of subjects, be dealt with by cooperation between the Dominion and the province."

Over the years, several state governments have flagged this issue, arguing that giving the union government a *carte blanche* is causing irreversible damage to India's federal balance. In *P.B.Samant v. Union of India*[48], the Bombay High Court had to adjudicate the validity of the union entering into the WTO framework without consulting the states. It was argued that the Dunkel proposals which were being debated by the union government as part of Uruguay Round of trade negotiations

[45] A G Noorani, *Treaties & States*, Frontline, February 2012 See: https://frontline.thehindu.com/the-nation/article30164185.ece

[46] Section 106(1) of Government of India Act, 1935:
"The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof."

[47] 1937 A.C. page 326

[48] AIR 1994 Bom 323.

under the aegis of GATT dealt with subjects like agriculture, irrigation, cotton and other matters which are within the exclusive domain of the states. Therefore, the PIL argued, unless the consent of the states is obtained, the union government cannot enter into any agreement on the said proposals. The court dismissed the petition and held that:

> *"In case the Parliament is entitled to pass laws in respect of matter in the State list in pursuance of the treaty or the agreement, then it is difficult to appreciate how it can be held that the Central Government is not entitled to enter into treaty or agreement which affects the matters included in the State list."*

This position of law was argued against in a public statement by three retired senior judges during the national debate on the Indo-US nuclear deal in 2007. The three judges included Justice V.R. Krishna Iyer and Justice P.B. Sawant from the Supreme Court and Justice H. Suresh from the Bombay High Court. The relevant extract of their statement is quoted in the Punchhi Commission Report as follows:

> *"Some argue that the provisions of Article 73(1)(a) give power to the Executive to act on subjects within the jurisdiction of Parliament, even if Parliament does not make a law on those subjects. This is both a distortion and a perversion of the said provision and a subversion of Parliament's supreme control over the Executive. If this interpretation is accepted then the Union Executive can act on all subjects on which Parliament has to make law, without there being any law made by Parliament. You can thus do away with Parliament and Parliament's duties to make laws. We will then have a lawless government."*[49]

Over the years, there have been several demands to democratize the process of treaty making in India. Accordingly, the Venkatachaliah Commission went on to recommend the following:

> *"The Commission recommends that for reducing tension or friction between States and the Union and for expeditious decision-making on important issues involving States, the desirability of prior consultation by the Union Government with the inter-State Council may be considered before signing any treaty vitally affecting the interests of the States regarding matters in the State List."*

Likewise, the Punchhi Commission also recommended that the parliament make a law to streamline the procedures for treaty-making by the union government with adequate safeguards to protect states' interests. It specifically stated that treaties which affect the rights and obligations of citizens as well as those which directly impinge on subjects in state list should be negotiated with greater involvement of states and parliament.[50]

[49] Punchhi Commission Report, Volume II, page 34. See: http://interstatecouncil.nic.in/wp-content/uploads/2015/06/volume2.pdf

[50] http://interstatecouncil.nic.in/wp-content/uploads/2015/06/volume2.pdf

In the aftermath of the nation-wide anti-corruption agitation led by Anna Hazare, the Lokpal and Lokayuktas Act 2014 was passed by the parliament. A union law creating a state-level ombudsman raised issues of legislative competence during the debate on this bill since state officials are covered under entry 41 of the state list[51]. The union government tried to justify this by arguing that its bill was introduced to implement the United Nations Convention Against Corruption, which the U.N. General Assembly adopted in October 2003 and India ratified it in May 2011. More seriously, Article 253 and entry 14 are sometimes used as a post-facto pretext to justify a union law on a state subject (see COTPA 2003 case study in the section below).

Net Effect: Abdication of State Responsibility and Over-dependence on Union

The net result of the four factors discussed above - creation of Planning Commission, proliferation of CSS, free hand for the union to legislate in pursuance of international obligations and doctrine of implied powers - was the gradual abdication of responsibility by state governments for delivering public goods. The union government on the other hand was saddled with these expectations in the eyes of the public. As Dr. Bibek Debroy notes:

> *"There is no dearth of instances in which states shirk their responsibilities for even the subjects covered under the state list. For instance, state highways are often classified as national highways so that they can be properly looked after. Similarly, if the pandemic has taught us something, it is that the Union government should be in a position to legislate more freely on some issues related to health (vaccination, for instance). Another example is of the police. While law and order is a state subject, states often ask for the help of paramilitary forces in times of crisis."*[52]

The dismal financial situation of electricity distribution companies across states is another illustration of this phenomenon. Even though electricity is a concurrent subject, the distribution of electricity is handled by states. Concerned by the precarious financial condition of state distribution utilities around the country that had been loss-making and debt-ridden for a long period of time, the union government had to launch the Ujwal Discom Assurance Yojana (UDAY) Scheme to aid their operational and financial turnaround.

COTPA 2003: Case Study on the Gaps in Seventh Schedule

The legislative history of Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 ("COTPA") which repealed the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 exemplifies the suboptimal status-quo under the seventh schedule, including the creeping acquisition of state's legislative power by the union government and retrofitting a

[51] Entry 41 of state list: State public services; State Public Service Commission. But Lokayukt created under a union law has jurisdiction over state officials

[52] Dr. Bibek Debroy and Aditya Sinha, *Revisit the Seventh Schedule to Improve Centre-State Relations,* Mint (May 1, 2022). See: https://www.livemint.com/opinion/online-views/revisit-the-seventh-schedule-to-improve-centre-state-relations-1165142 4987318.html (last accessed on February 28, 2023)

law to an entry. It also serves as a reminder that recourse to fulfillment of international obligations is often used as a post-facto pretext for the union's legislative overreach into state's domain.

Public health is entry 6 in the state list. Accordingly, 12 states had passed laws to ban public smoking[53] before the COTPA bill was introduced by the parliament in 2001. Therefore, the decision by the union government to promulgate a union law on the subject was suspect at the outset. Further, in the original 2001 bill, only the provisions relating to cigarettes were made applicable to entire India while provisions relating to other tobacco products were applicable only to those states that had passed a resolution to that effect under Article 252 of the Constitution[54]. The reason for this dichotomy was the inclusion of the cigarette industry in the list of "controlled industries" under entry 52 of the union list on which parliament may enact a law.

The law relating to production, supply and distribution of industrial products can be made under entry 26 of the state list or entry 33 of the concurrent list. Under entry 33, parliament may enact a law in respect of those industries which are controlled industries under entry 52 of the union list. Cigarette industry has been included as item 38(1) of the first schedule of Industries (Development and Regulation) Act, 1952. Parliament is, therefore, competent to enact a law relating to cigarettes and not for other forms of tobacco products which are within the jurisdiction of the state legislature.

The Department-related Parliamentary Standing Committee on Human Resource Development was tasked with submitting the 111th report on COTPA 2001. A different view emerged during the deliberations in this committee which suggested that parliament has given the union government jurisdiction over all tobacco products by virtue of section 2 of the Tobacco Board Act, 1975. The relevant provision reads as follows:

> *"It is hereby declared that it is expedient in the public interest that the Union should take under its control the tobacco industry."*

The committee's attention was also drawn to the case of *ITC and Others Vs. State of Karnataka and Others*[55] where the supreme court had ruled that the entire tobacco industry stands under the control of the union as a consequence of the Tobacco Board Act, 1975.

Since legal issues regarding the legislative competence of parliament relating to the bill were raised during the discussions, the standing committee decided to seek the opinion of the Department of Legal Affairs in the Ministry of Law, Justice & Company Affairs (DoLA). The Department of Legal Affairs in its opinion dated 24th August, 2001 stated as under:

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[53] Prof. (Dr.) Ashok R. Patil, *Report on Tobacco Control Laws in India: Origin and Reform (2020)*, Submitted to the Ministry of Health and Family Welfare, Government of India, New Delhi, India. See: https://www.nls.ac.in/wp-content/uploads/2020/11/Tobacco-Control-Book-Final-proof-to-print.pdf

[54] Hundred Eleventh Report of the Department-Related Parliamentary Standing Committee on Human Resource Development on COTPA Bill, Submitted on 5 December 2001. See http://164.100.47.5/rs/book2/reports/HRD/111threport.htm

[55] 1985 (Supp) SCC 476

"... it would appear that all the objectives of the present Bill are not covered by the Tobacco Board Act, 1975. The contents and scope of the Tobacco Board Act and the present Bill are different. In the absence of a separate declaration as envisaged under entry 52 of the Union List, it may be open to challenge, if the applicability of the proposed law as regards other tobacco products is extended to the whole of India."[56]

Accordingly, a similar and separate declaration was advised by DoLA to be incorporated in the COTPA Bill also. In accordance with this advice, the following declaration was issued in section 2 of COTPA Act 2003 (under entry 52 of union list of seventh schedule) as had been done under the Tobacco Board Act 1975, to make the legislation effective all over India:

"Declaration as to expediency of control by the Union – It is hereby declared that it is expedient in the public interest that the Union should take under its control the tobacco industry".

Using international obligations as a post-facto justification

As discussed earlier, under Article 253 of the Constitution, parliament has the special power to legislate and pass laws in order to implement international agreements and treaties, even on topics which are otherwise in the state list. With reference to the COTPA 2003, there is a popular belief that it was passed as a union law in order to give legal effect to India's commitment at the international stage on WHO forum and its long running campaign against tobacco consumption.

However, the 2001 Bill was passed by the parliament on 30th April 2003 and received President's assent on 18th May 2003. The main provisions of the Act came into force from 1st May 2004. It is true that India was one of the founding parties to the World Health Organization Framework Convention on Tobacco (FCTC) adopted under the 52nd World Health Assembly Resolution. However, FCTC was signed only on 16th June 2003 and ratified on 14th June 2004. The treaty entered into force on 27 February 2005, long after the COTPA Act was passed in 2003.

By way of background, the World Health Assembly meeting held in Geneva in May 1996 had passed a resolution calling for an international framework convention on tobacco control. That resolution also urged the member states to implement tobacco control strategies through legislative means and increased public awareness. However, in the original 2001 COTPA bill no WHO or other international resolutions were invoked, a fact even noted by DoLA in their memo to the standing committee studying the bill. Official justification and motivation to pass the COTPA Bill did not include any reference to the international developments in this sphere.

However, once serious doubts were raised about the legislative competence of union government to pass a national law to ban public smoking, DoLA ingeniously recommended that it would be expedient to utilize the existing

[56] Supra note 54

WHO resolutions "so as to avoid any possible attack on Parliament's competence to make law relating to aspects concerning health which are otherwise covered under entry 6 of the State List."[57]

Accordingly, the preamble to the bill was amended to include references to the 39th World Health Assembly in May 1986 and 43rd World Health Assembly in May 1990 to create a post-facto justification for passing a union law on a state subject. Interestingly, when this issue was being discussed, Department of Health contended that World Health Assembly resolutions cannot be treated as international obligations since they are merely recommendatory in nature[58].

Judicial Eagerness to Intervene in Policy Issues

Finally, as a quick side note, the developments leading to the promulgation of COTPA Act also give a glimpse into the eagerness of the Indian judiciary to intervene on issues of public policy that are typically within the realm of the elected government in a democracy. In 2002, a PIL[59] was admitted before the supreme court to highlight the inaction of the government in regulating the use of tobacco. The petitioner sought the relief of banning smoking in public places.

Interestingly the court acknowledged the introduction of COTPA Bill and noted that statutory provisions were being made to prohibit smoking in public places and the bill introduced in the parliament was pending consideration before a select committee. Despite the concrete action underway in the legislature to solve the problem, the court in its wisdom decided to intervene and directed the union of India and state governments to take effective steps to ensure prohibiting smoking in public places, till the statutory provision was made and implemented by the legislative enactment.

Post-independence Voices for Reconsideration of Seventh Schedule

Since independence, there has been a persistent demand from several state governments that there needs to be a radical restructuring of the seventh schedule. The two main concerns that have been highlighted are as follows:

(i) There is a structural imbalance in favour of the union government

(ii) This structural imbalance has been reinforced due to the inordinate centralization in the praxis of seventh schedule because the union governments in the past have relied on inter-linked entries to overstretch their legislative powers[60]

At the outset, even the language of Article 246 of the Constitution which lays out the scheme for distribution of powers emphasizes the unitary bias. States can legislate on items in the state list "subject to" the powers of the parliament in

[57] Supra note 55

[58] Ibid

[59] *Murli S. Deora v. Union of India and Ors*, AIR 2002 SC 40

[60] Sohini Chatterjee, Akshat Agarwal, Kevin James and Arghya Sengupta, *Cleaning Constitutional Cobwebs: Reforming the Seventh Schedule,* Vidhi Centre for Legal Policy (October 2019). See: https://fincomindia.nic.in/writereaddata/html_en_files/fincom15/StudyReports/Cleaning%20Constitutional%20cobwebs_Reforming%20the%20Seventh%20schedule.pdf

relation to subjects in union and concurrent list. On the other hand, the powers of the parliament are "notwithstanding" any power vested in the state legislatures[61].

These differences exacerbated after the 1967 elections which saw the rise of several non-Congress parties in India. Congress party received a reduced majority in the lower house of the parliament which is directly elected and lost governments in 9 states across the country. In this backdrop of the rise of non-Congress parties in Indian polity, several voices were raised by state leaders around the country to revisit the distribution of legislative power in the seventh schedule.

After coming to power in the 1967 elections, the DMK government in Tamil Nadu set up the Central-State Relations Inquiry Committee in 1969 ("Rajmannar Committee"). It recommended the removal of Articles 256, 257 and 339(2) of the Constitution relating to the power of the union government to issue binding directions to states. The committee also asked for the creation of an inter-state council to institutionalize consultations and transfer of residuary powers to state governments. Most importantly for the purposes of our discussion, the Rajmannar Committee also asked for a High Power Commission to redistribute the entries of the three lists with recommendation to transfer several entries to the state list. Finally, it recommended that state governments should be consulted before the union government proposed legislation on any topic under the concurrent list.

In 1973, the Shiromani Akali Dal in Punjab passed the Anandpur Sahib Resolution asking the union government to confine its legislative powers only to the following subjects: defence, international relations, communication, railways and currency. It also demanded that residuary powers be transferred to states.

That same year Biju Patnaik, chief minister of Odisha from 1961-1963, made a public statement for greater state autonomy on industrialization, by mobilizing foreign aid if necessary This statement generated a vigorous national debate on the role of state governments in delivering economic prosperity. While he had to clarify his statement in deference to public sentiment after accusations of being "anti-national" and "unpatriotic" were levelled against him by the Congress party, he repeated this plea when he became the chief minister again in 1990. In an interview given to Indian Express in September 1991, he suggested a radical restructuring of the seventh schedule with the union government keeping only defence and currency while sharing its competency on foreign policy with states. He even demanded that states should have the power of trade and commerce with foreign countries[62].

After the 1977 elections in West Bengal, a Left Front led by Communist Party of India (Marxist) came to power. The new dispensation published a 15-point memorandum on centre-state relations and sent it to the union government. Like the Anandpur Sahib Resolution earlier, it recommended the reformulation of lists in the seventh schedule with greater control over industries to state governments and transfer of residuary powers to states.

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[61] Satya Prakash Dash, *Indian Federalism & Distribution of Responsibilities*, The Indian Journal of Political Science, vol. 68, no. 4, 2007, pp. 697–710. See http://www.jstor.org/stable/41856368 (Last accessed 28 Feb. 2023)

[62] Ibid

The individual voices raised by regional leaders and state governments in the 1960s and 1970s gained collective momentum in early 1980s when non-Congress parties began a series of meetings to coordinate their demand for improving the federal structure in India.

In March 1983, four chief ministers of southern states - M G Ramachandran of Tamil Nadu, Rama Krishna Hegde of Karnataka, N T Rama Rao of Andhra Pradesh and D Ramachandran of Pondicherry - came together to form a Council for the Southern Region to jointly advocate for restructuring centre-state relations. Among other demands, the "Four Ramas", as Times of India called them, asked for greater flexibility in making laws on state and concurrent lists[63].

This was followed by a Vijayawada Conclave in May 1983, organized by N T Rama Rao to initiate a non-Congress united opposition front at which 24 leaders from 14 political parties shared a common platform. As a follow-up, subsequent conclaves were held at Srinagar in 1983 and Kolkata in 1984 along with several meetings in New Delhi over the next few years which ultimately culminated in the formation of the V P Singh government in 1989[64].

53 leaders from 17 parties attended the Srinagar Conclave in October 1983 at which a 31-point exhaustive resolution was passed suggesting large-scale changes in centre-state relations[65]. At the core of its proposals was the idea that the union government should confine its powers to limited subjects such as defence, foreign affairs, currency and communications. It was proposed that legislative and executive power on all other subjects should be vested in state governments[66].

Union's Response: Commissions on Centre - State Relations

Even in the epoch of single-party dominance by the Congress party in India's polity from 1947-1967, they had to contend with regional assertion and pushback against an overbearing union. The demand for creation of states on a linguistic basis in the first decade of independence was an example of this assertion by regional forces. The States Reorganisation Commission sought to reaffirm the supremacy of the union and concluded in its 1955 report:

> *"It is the Union of India which is the basis of our nationality…States are but limbs of the Union, and while we recognize that the limbs must be healthy and strong…it is the strength and stability of the Union and its*

[63] Ibid

[64] Jayatri Nag, *Trinamool Plans Oppn CMs' Conclave on Lines of NTR's 1983 Meeting*, Economic Times (7 March 2022). See: https://economictimes.indiatimes.com/news/politics-and-nation/trinamool-plans-oppn-cms-conclave-on-lines-of-ntrs-1983-meeting/articleshow/90037920.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Last accessed Feb 28, 2023)

[65] Manuraj Shunamugasundaram, *How Voices for Federalism Aim to Strengthen Country*, Times of India (26 August 2019) See https://timesofindia.indiatimes.com/city/chennai/how-voices-for-federalism-aim-to-strengthen-country/articleshowprint/70833729.cms (Last accessed Feb 28, 2023)

[66] Ibid

capacity to develop and evolve that should be governing consideration of all changes in the country."[67]

Despite vociferous and consistent opposition from several quarters on the scheme of distribution of powers, the union governments of the past had been firm in their view that the substance of this constitutional scheme need not be tinkered with and instead the roadmap for better centre-state relations lies in its better implementation. The law is good, its implementation is bad. See for example the following quote from Report of Administrative Reforms Commission on Centre-State Relations in 1969 on the issue:

> *"It is not in the amendment of the Constitution that the solution of the problems of Centre-State relationship is to be sought, but in the working of the provisions of the Constitution by all concerned in the spirit in which the founding fathers intended them to be worked. There is no other way of ensuring cordial and fruitful Centre-State relations."*

In response to the tremendous and coordinated pressure from state governments and non-Congress leaders in early 1980s, the ruling Congress party constituted the Sarkaria Commission in June 1983 to address their concerns about federalism in India. Certain public intellectuals raised doubts about the ability of the commission to do justice to states given its composition.[68]

Predictably, the commission did not propose any major structural overhaul of the existing legislative scheme in the Constitution. It was of the view that the union government should remain strong in national interest and transferring subjects like preventive detention, education, labour and electricity to the states "would cause fundamental damage to the Constitution". However, it did make three substantial recommendations on legislative relations between union and state governments:

(i) Residuary powers should be transferred to concurrent list

(ii) States should be consulted before the union government exercises powers under the concurrent list

(iii) When making laws on concurrent subjects, the union should legislate with a light touch i.e. as is necessary to ensure uniformity in basic issues of national policy, while leaving the details for state governments

Another commission to investigate centre-state relations was set up in 2010 under the chairmanship of Justice Madan Mohan Punchhi, former Chief Justice of India ("Punchhi Commission"). Even the Punchhi Commission suggested no major changes to the legislative scheme of the seventh schedule except that the union government should consult states and exercise restraint when occupying the field in concurrent list.

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[67] Page 236, Report of the States Reorganisation Commission, 1955. See: https://www.mha.gov.in/sites/default/files/State%20Reorganisation%20Commisison%20Report%20of%201955_270614.pdf

[68] A.G. Noorani, *Governor: A Colonial Relic*, Frontline, June 2021. See https://frontline.thehindu.com/the-nation/governor-a-colonial-relic-abuse-of-power-by-central-governments-wrecking-parliamentary-system-in-states/article34798718.ece

This broadly corroborated the conclusions of the 2002 National Commission to review the working of the Constitution under the chairmanship of Justice M N R Venkatachaliah ("Venkatachaliah Commission"). On the issue of legislative relations between centre and states, the Venkatachaliah Commission also came to the conclusion that the seventh schedule had stood the test of time and the only problem was that the union government exercised power under the concurrent list without consulting states. Therefore, the commission's only substantial recommendation was to institutionalize the consultation between centre and states.

However, there was a notable dissent on this issue by Dr. Abid Hussain, member of the Venkatachaliah Commission. He prepared a background paper titled "Some Ideas on Governance" in which there was a section on reallocation of subjects in the seventh schedule. It may be helpful to quote verbatim from the paper:

> *"Reallocation of subjects from the three Lists given in the Seventh Schedule is a prerequisite in this context, to make governance come closer to the people. The Central List of subjects should contract drastically, confining the Centre to subjects of national importance such as defence, National Security, foreign policy, Interstate-rivers, communication, macro-economic, planning, environment, etc. The list of subjects meant for the States and for other layers of government will have to be augmented with the Centre refraining from involvement in matters best addressed at the lower levels."*[69]

On the issue of rationalisation of the size of the union government and devolution of its functions, the paper emphasized the pivotal role of state governments in delivering public goods with the union government remaining a clearing house of ideas to ensure greater accountability:

> *"There is no reason why the central government should have large and unwieldy ministries handling subjects like education, health, agriculture, rural development, social welfare, industry, power, etc. when these areas can more conveniently and appropriately be handled at the state, regional or district levels. The centre can at best be a clearing house of ideas and knowledge but for it to be actually involved in shaping policy and in allocation of resources is an overlapping of jurisdiction. Downsizing of the Government should also follow. Big Governments are not always conducive to efficiency and promptness. People should know where the buck stops."* [70]

Union Laws on Subjects Allocated to States and Local Bodies - Illustrative List

Apart from the formal changes made to the seventh schedule through constitutional amendments that were discussed earlier in this paper, there are other ways in which the original demarcations of legislative power have been

[69] Dr. Abid Hussain, *Some Ideas on Governance*, Background Paper prepared for Venkatachaliah Commission. See ohttps://static.mygov.in/rest/s3fs-public/mygov_161520707250710931.pdf
[70] Ibid

whittled down and often interpreted in favor of the union government. In India, a legislative bill does not have to mention the entry under which parliament or state legislature derives the competence to enact it. Thus, there is a lack of clarity on which entry was used to make a law and the union government often has to retrofit the law to an entry.

This has led to an indiscriminate use of residuary power under entry 97 of the union list in the past to justify the passing of legislation which did not fall under a particular entry. Secondly, the lacuna was often leveraged to pass union laws on issues like education, employment, land and food security which were intended to be in the domain of states.

For example, take the case of Right of Children to Free and Compulsory Education Act, 2009. It was the consequential legislation to implement the newly created fundamental right to education under Article 21A of the Constitution. Education was a state subject till 1976 when the 42nd amendment, passed at the height of the national emergency, moved it to the concurrent list. By contrast, in other mature federations like the USA, Canada and Australia, education is the legislative responsibility of the provincial government. In 1978, the Lok Sabha agreed to shift 'education' back to state list but it did not get the approval of Rajya Sabha[71]

During the national debate on whether there was a need for a national-level legislation when most states in India already had compulsory education laws, a committee of state education ministers was constituted under the chairmanship of Muhi Ram Saikia in August 1996, soon after the conference of chief ministers in July 1996 to discuss the issue. In its report submitted in January 1997, the committee noted:

> *"In a diverse federal polity as ours and with the State being the main provider of elementary education, there is no need to enact a Central Legislation making elementary education compulsory. States should either amend their existing legislation or enact fresh legislation to give effect to the proposed Constitutional amendments."*[72]

However, the Parliamentary Standing Committee on Human Resource Development to which the Constitution amendment bill was referred to, was in favour of "not leaving too much to the states"[73] and recommended the framing of a national legislation. The same union-centric approach was visible in the passing of National Council for Teacher Education Act, 1993 which prescribes uniform standards for training of school teachers (including physical education teachers) all over India without regard for regional differences.

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[71] Mohamed Imranullah, *42nd Constitutional Amendment shifting education from State to Concurrent list is 'a poisonous tree', HC told* , The Hindu (7 November 2022). See: https://www.thehindu.com/news/national/tamil-nadu/42nd-Constitutional-amendment-shifting-education-from-state-to-concurrent-list-is-a-poisonous-tree-hc-told/article66107627.ece (Last accessed Feb 28, 2023)

[72] Report of the Committee of State Education Ministers on Implications of the Proposal to Make Elementary Education a Fundamental Right, Ministry of Human Resource Development, Government of India (January 1997). See http://14.139.60.153/handle/123456789/388

[73] Nalini Juneja, *Constitutional Amendment to Make Education a Fundamental Right: Issues for a Follow-up Legislation*, NIEPA Occasional Paper (March 2003). See: http://niepa.ac.in/new/download/Publications/Occasional%20Paper-33njuneja.pdf

There have been other attempts by the parliament to legislate on state subjects which have not been successful. The National Health Bill 2009, National Sports Development Bill 2013 and Communal Violence Bill 2013 are some recent examples of the same. However, in most cases, the tendency of the union government to legislate on subjects traditionally within the realm of states and local governments has gone unchallenged in the parliament. An illustrative list of union laws on issues which are typically the responsibility of state and local governments is given below.

Table 2: Union Laws on Subjects Allocated to States and Local Bodies – An Illustrative List

Sl.No	Legislation	Relevant Entry
1	Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014	**7th Schedule**: ● Entry 26 of state list - Trade and commerce within the State subject to the provisions of entry 33 of List III ● Entry 28 of state list: Markets and fairs **12th Schedule**: ● Entry 9 - Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded ● Entry 11 - Urban poverty alleviation
2	Unorganised Workers' Social Security Act, 2008	**11th Schedule**: ● Entry 26 - Social welfare, including the welfare of the handicapped and mentally retarded ● Entry 27 - Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes **12th Schedule**: ● Entry 9 - Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded ● Entry 11 - Urban poverty alleviation
3	The Mahatma Gandhi National Rural Employment Guarantee Act, 2005	**11th Schedule**: ● Entry 16 - Poverty alleviation programme ● Entry 26 - Social welfare, including welfare of the handicapped and mentally retarded
4	National Food Security Act, 2013	**11th Schedule**: ● Entry 28 - public distribution system
5	Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 **Note**: A case challenging the constitutionality of this Act on grounds of legislative competence,	**7th Schedule**: ● Entry 18 of state list - Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

Sl.No	Legislation	Relevant Entry
	inter-alia, is currently pending in the Supreme Court[74]	
6	Maintenance and Welfare of Parents and Senior Citizens Act, 2007	**11th Schedule**: ● Entry 24 - Family welfare; ● Entry 26 - Social welfare, including welfare of the handicapped and mentally retarded ● Entry 27 - Welfare of the weaker sections **12th Schedule**: ● Entry 9 - Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded
7	Gram Nyayalayas Act, 2008	**7th Schedule**: ● Entry 5 of state list - Local government, that is to say, the Constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self government or village administration
8	Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 **Note**: The earlier law i.e. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was passed under Article 252 of the Constitution on the assumption that the subject was in state list	**7th Schedule**: ● Entry 6 of state list: Public health and sanitation **12th Schedule**: ● Entry 6 - Public health, sanitation conservancy and solid waste management
9	Prevention and Control of Infections and Contagious Diseases in Animals Act, 2009	**7th Schedule**: ● Entry 15 of state list - Preservation, protection and improvement of stock and prevention of animal diseases **11th Schedule**: ● Entry 4 - Animal husbandry, dairying and poultry
10	Rehabilitation Council of India Act, 1992 **Note**: The website of the Ministry of Social Justice and Empowerment, Government of India acknowledges that disability is a state subject. It declares: “Though the subject of "Disability" figures in the State List in the Seventh Schedule of the Constitution, the Government of	**7th Schedule**: ● Entry 9 of state list - Relief of the disabled and unemployable **11th Schedule**: ● Entry 26 - Social welfare, including the welfare of the handicapped and mentally retarded **12th Schedule**: ● Entry 9 - Safeguarding the interests of weaker sections of society, including the handicapped

[74] *Wildlife First v Ministry of Forest and Environment* WP (C) 109/2008 See: https://www.scobserver.in/cases/wildlife-first-v-ministry-of-forest-and-environment-eviction-of-forest-dwellers-background/

Sl.No	Legislation	Relevant Entry
	India has always been proactive in the disability sector."[75]	and mentally retarded
11	Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 **Note**: The Act was passed ostensibly under Article 253 of the Constitution since the Statement of Objects and Reasons refers to the need to implement *Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region* - adopted at Beijing in December, 1992	**7th Schedule**: ● Entry 9 of state list - Relief of the disabled and unemployable **11th Schedule**: ● Entry 26 - Social welfare, including the welfare of the handicapped and mentally retarded **12th Schedule**: ● Entry 9 - Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded
12	National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 **Note**: Entry 16 of concurrent list relates to "Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients"	**7th Schedule**: ● Entry 9 of state list - Relief of the disabled and unemployable **11th Schedule**: ● Entry 26 - Social welfare, including the welfare of the handicapped and mentally retarded **12th Schedule**: ● Entry 9 - Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded
13	Private Security Agencies (Regulation) Act, 2005	**7th Schedule**: ● Entry 1 of state list - public order ● Entry 26 of state list - Trade and commerce within the State subject to the provisions of entry 33 of List III
14	Rani Lakshmi Bai Central Agricultural University Act, 2014 **Note**: It may be argued[76] that agricultural education is excluded from the ambit of entries 63-66 of the union list	**7th Schedule**: ● Entry 14 of state list: Agriculture, *including agricultural education and research* (emphasis supplied), protection against pests and prevention of plant diseases. ● Entry 32 of state list: Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
15	Dr. Rajendra Prasad Central Agricultural University Act, 2016	**7th Schedule**: ● Entry 14 of state list: Agriculture, including agricultural education and research (emphasis supplied), protection against pests and

[75] https://disabilityaffairs.gov.in/content/page/brief-history.php

[76] R Ramakumar, *The threat to federalism in agricultural education*, The Hindu, 21 November 2022. See link here: https://www.thehindu.com/opinion/op-ed/the-threat-to-federalism-in-agricultural-education/article66162004.ece (Last accessed on February 1, 2023)

Sl.No	Legislation	Relevant Entry
		prevention of plant diseases. ● Entry 32 of state list: Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies

Division of Labour or Distribution of Power?

From 1773 to 1947, India was unitarily governed and therefore has a strong unitary memory. Even the federation proposed under the 1935 Act could not be operationalized due to the lack of support from the princely states and its establishment was postponed indefinitely after the second world war started. As M G Khan says in his article *Coalition Government and Federal System in India*, "Indeed, the whole body of administrative folklore of India was unitary and thus strongly favourable to the central government."[77] The structural bias in favour of the union was further strengthened by the trifecta of one-party dominance of the Congress in the decades after independence, establishment of the planning commission and proliferation of centrally sponsored schemes. The union government's treaty making powers under Article 253 and the doctrine of implied powers further consolidated this centralizing tendency.

The Indian experience of centralized federalism led to the union government bearing a disproportionately high responsibility for socio-economic development of the country. In both its executive and legislative actions, the union got involved in issues best left for state governments. As chapter 8 of the Venkatachaliah Commission report notes:

> *"The Commission feels that there is no dichotomy between a strong Union and strong States. Both are needed. The relationship between the Union and the States is a relationship between the whole body and its parts. For the body being healthy it is necessary that its parts are strong. It is felt that the real source of many of our problems is the tendency of centralisation of powers and misuse of authority."*

The approach began to show its limitations as the national polity and economy experienced structural transformations in the last three decades. While we discuss these trends in greater detail in the next part of the report, a brief mention is in order below.

The epoch of one-party rule in the union and states that managed the inevitable friction generated by a centralized federation, is now over. Parties at centre and state both compete and cooperate with each other. Further, the twin forces of liberalization of the Indian economy in 1991 and decentralization in 1993 with creation of panchayats and urban local bodies with the mandate to ensure

[77] M G Khan. *Coalition Government and Federal System in India*, The Indian Journal of Political Science, vol. 64, no. 3/4, 2003, pp. 167–90. JSTOR, http://www.jstor.org/stable/41855780. Last accessed 22 Feb. 2023.

"economic development and social justice" also reconfigured the responsibility between union, state and local governments in socio-economic planning.

However, the allocation of legislative and executive power in the Indian Constitution has not kept pace with these developments. Therefore, personal equations rather than constitutional principles and norms have become the lubricants of smooth union-state relations in the country. This discrepancy between our constitutional scheme and realities of governance which is manageable in the ordinary course of administering the country often gets painfully highlighted in times of a crisis and the covid pandemic was one such unfortunate instance.

Lessons from the pandemic - decentralization in a VUCA world

James Allen, author of *As A Man Thinketh* and pioneer of the modern self-help movement, famously said that adversity does not build character, but reveals it. The covid pandemic revealed the weaknesses of a union-centric federal structure and forced us to recalibrate several political constructs in India[78]. The 7th schedule of the Constitution has pandemic-related entries in all three lists:

Union list – inter-state migration & quarantine (entry 81)

State list – public order (entry 1); police (entry 2); public health, hospitals & sanitation (entry 6), sports & entertainment (entry 33)

Concurrent list – social security & insurance; employment (e 23), prevention of the extension of contagious diseases or pests affecting men, plants or animals (entry 29)

The government primarily relied on Disaster Management Act, 2005 and Epidemic Diseases Act, 1897 to impose lockdowns. Earlier in this report, we have already discussed the gap in seventh schedule in relation to the legislative competency for passing the Disaster Management Act 2005. There was a national discussion about the applicability of the Act to the pandemic and whether a notification could be issued under it which affected several entries of state list, including hospitals (entry 6), communications (entry 13), industries (entry 24), markets and fairs (entry 28)[79].

The 1897 Act is a colonial era legislation that was placed under the category of laws recommended for repeal by various commissions but not undertaken for repeal by the government in the 248th Report by Law Commission of India (2014)[80]. Under this law, primary responsibility for managing epidemics is on the states, not the union. However, given the unprecedented nature of the crisis, the union government had no option but to take the initiative in the early days of the outbreak.

[78] Ramanath Jha, *Impact of the COVID-19 Pandemic on India's Federalism*, ORF Expert Speak, November 2021. See https://www.orfonline.org/expert-speak/impact-of-the-covid-19-pandemic-on-indias-federalism/

[79] Sarthak Sethi, *Covid-19 and Indian Federalism: Through the Lens of the Disaster Management Act, 2005 and Fiscal Federalism*, India Law Journal. See https://www.indialawjournal.org/covid-19-and-indian-federalism.php

[80] Parikshit Goyal, *The Epidemic Diseases Act, 1897 Needs An Urgent Overhaul,* Economic and Political Weekly (Vol. 55, Issue No. 45, 07 Nov, 2020) See: https://www.epw.in/engage/article/epidemic-diseases-act-1897-needs-urgent-overhaul

Eventually, the pandemic revealed the critical role of state governments in times of crisis. After a unified national approach in the initial phase of the pandemic, the union government ceded adequate space and autonomy to the states to respond to the varied challenges of the pandemic. The states, on their part, empowered the local bodies. This included strengthening their healthcare facilities, managing the localised lockdowns, and implementing social security measures to mitigate the impact of the pandemic[81]. The union government also increased the borrowing limit for states and pre-paid their share of central taxes as part of the covid relief package.

On the other hand, the pandemic also highlighted the weak institutional capacity of state governments and their dependence on union government even in areas like public health which come within their responsibility. National Centre for Disease Control and the Indian Council for Medical Research had to take a lead in our covid response partly because state governments had not invested in developing such expertise in their health agencies[82].

However, India's response to covid did not just illustrate the gaps in our federal structure but also reinforced the spirit of cooperative federalism. Health is a subject in the state list and infectious disease control is a subject in the concurrent list but the union and state governments rose to the occasion and worked together in response to a once-in-a-century challenge[83]. The regular video conferences between the Prime Minister and chief ministers was a visible manifestation of this spirit.

Another key lesson that the pandemic emphasized was the importance of decentralized governance in a VUCA (volatile, uncertain, complex and ambiguous) world. The highly centralized management of the pandemic in the initial phase was replaced by an increasingly decentralized handling during the subsequent phase with the union government playing a supervisory and coordinating role. In the aftermath of this crisis, there is now a national appetite to have a conversation on the seventh schedule and ascertain whether it is fit for purpose given contemporary realities. Depending on the outcome of this national conversation, we may either decide to continue with the status-quo or devolve greater responsibility for social development and economic planning to states and local governments.

[81] Ambar Kumar Ghosh, *The Paradox of 'Centralised Federalism': An Analysis of the Challenges to India's Federal Design*, ORF Occasional Paper. See https://www.orfonline.org/research/the-paradox-of-centralised-federalism/#_ftnref34

[82] Shashank Atreya, *Health a state subject, but Covid proved how dependant India's states are on Centre*, ThePrint (18 June, 2020). See https://theprint.in/opinion/health-a-state-subject-but-covid-proved-how-dependant-indias-states-are-on-centre/442602/ (Last accessed on Febraury 28, 2023)

[83] Rukmini Bhattacharjee, *Cooperative Federalism in India and Covid 19*, IIPA Digest (June-September 2021) See https://www.iipa.org.in/cms/public/uploads/524201643364876.pdf

Part III: The Future of Seventh Schedule

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> "Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment…But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times."
>
> - Thomas Jefferson

Federations create a balance between regional aspirations and national needs. This equilibrium is dynamic because the institutions of governance inevitably align to political processes in a country. Therefore, to remain fit for purpose, the plumbing of federations must undergo periodic inspection and repair (if required). The allocation of legislative and executive power on the basis of the three lists of the seventh schedule of the Indian Constitution is in need of such periodic inspection.

In its present form, the seventh schedule is based largely on the Government of India Act 1935, a law of the British parliament which understandably sought to minimize the devolution of power to Indians and concentrate in the hands of colonial administrators. As Dash (2007)[84] quotes from Brij Mohan Sharma's book *The Republic of India*, "This extreme form of centralization was dictated by the unwillingness of foreign rulers to allow Indians to exercise too much power in the provinces over which central control, and therefore British control, was to come to an end."

However, what was appropriate allocation in 1950 may not be so anymore. In their submissions to the Puncchi Commission, several state governments made the point that since the case for centralization that existed at the time of framing the Constitution of India did not exist anymore, there should be a conscious policy of strengthening the state list. India's capabilities and ambitions today are very different from the anxieties and fears that would have dominated the debates of our founding fathers and mothers in the constituent assembly. Therefore, the governance approach needed in the previous epoch of political consolidation cannot be the same one our country needs in the next epoch of economic transformation.

Changing National Context - Increasing Salience of States

The evolving political system and economic realities of India have given strength to the federal impulses of the Constitution and corrected the over-centralisation of the first few decades after independence. Some of these trends include: the rise and dominance of non-Congress parties since 1989 which saw a 25-year period of coalition governments at the national stage, the shift away from

[84] Satya Prakash Dash, *Indian Federalism and the Distribution of Responsibilities*, The Indian Journal of Political Science Vol. 68, No. 4 (OCT. - DEC., 2007), pp. 697-710

centralised economic policymaking and the diminishing role of Indian state in the country's economic life post the 1991 reforms, Supreme Court's intervention to protect the stability of state governments by heavily circumscribing the powers under Article 356 and recognizing federalism as a part of the "basic structure" of the Constitution of India.

Decentralization in India's States

73rd and 74th constitutional amendments were promulgated in 1992 giving recognition to rural and urban local bodies with specific functions assigned to them under 11th and 12th schedule of the Constitution. This democratic decentralization was premised on making development planning more responsive and adaptable to regional and local needs of the population.

Each state has now become a federation with three layers below it - district, block and village. This has created five levels of government in the country. Indian federal polity is currently witnessing a churn to find a proper balance in allocation of responsibility and resources between the five sets of authorities starting from the gram sabha (village assembly) to Lok Sabha (parliament).

In the realm of social development, the union government is keen to have a more equitable burden sharing with state and local governments. Despite the challenges alluded to in Part II of the report on the functioning of local governments in India, rural and urban local bodies have a primary role in the delivery of public goods. For example, the success of national schemes for sanitation, waste management and supply of clean drinking water depend to a large extent on the third tier of government. A field guide prepared by the Ministry of Jal Shakti, Government of India says the following[85]:

> *"Success of these initiatives is directly linked to the capacity and motivation of Gram Panchayat (GP) level functionaries, that is, the Sarpanch, GP secretaries and Swachhagrahis. It is important to strengthen the capacities of these functionaries to achieve desired results from, and acquire relevant information on, ODF Plus and JJM activities."*

Role of States in Socio-Economic Development

There is national consensus today that states are the real engine of growth and implementers of reforms. The 1991 reforms acted as a catalyst to reshape the rules of economic engagement between union and states in two major ways:

> *"First, the dismantling of controls exercised by the central state have created greater scope for State governments to elaborate their own policies, for instance with regard to economic development initiatives. Second, the reforms themselves require cooperation from State governments to succeed, especially the so-called "second generation*

[85]Resource Material for Field Trainers : Sujal and Swachh Gaon, Department of Drinking Water and Sanitation, Ministry of Jal Shakti, Government of India. See: https://swachhbharatmission.gov.in/sbmcms/writereaddata/Portal/Images/pdf/Sujal%20and%20Swachh%20Gaon_5-day%20Manual%20(6%20Sept).pdf

reforms", and hence State-level politics and governance take on greater importance for India's overall development trajectory."[86]

The focus of economic growth and social development has today shifted to states. For example, states today spend collectively more than the union government. The share of the union government's spending in total government spending fell below 50% for the first time in 1999-2000 and the gap has only increased in recent years. The union government has also been providing additional fiscal incentives to states to push reforms and raise their capital expenditure.

Further, state governments today are competing to improve their business environments and attract private investment by using policy measures available at their disposal. The zeal of state governments to improve their performance in DIPP's 98-point *Assessment of State Implementation of Business Reforms* (an index to rank states' relative competitiveness) bears witness to this fact. Another illustration of this phenomenon is the comparatively better performance of non-major ports (which are under the control of state government) over major ports (which are under the aegis of union government) in the last two decades.

Finally, to explain the changing national context, special mention must be made about the new parameters of electoral competition in India. While considerations of caste and community remain important factors in winning elections, there is a relative decline in their importance compared to the visible markers of economic development, including job creation. This has fuelled competition between political parties in states to improve the provisioning of public goods and attract investment to boost their electoral prospects.

Strengthening Federal Impulses post 2014

The inclusion of economic and social planning in the concurrent list meant that state governments had to plan socio-economic development in line with the programmes and policies of the union government in the past. This trend has seen a reversal with a push for greater state autonomy and cooperative federalism under Prime Minister Modi since 2014. He has drawn upon his experience as a long-serving chief minister of Gujarat to further democratize the union-state relationship and institutionalize the culture of "competitive, cooperative federalism"[87]. A statement from the Prime Minister's website explains:

"In a unique departure from the past, PM Modi has stressed on the need to leverage co-operative & competitive federalism to achieve all round growth. For a long time, we have seen a Big Brother relationship between the Centre & States. A 'One Size Fits All' approach had been

[86] Loraine Kennedy, Kim Robin and Diego Zamuner, *Comparing State-level policy responses to economic reforms in India*, Regulatory Review [Online], 13 | 1st semester / Spring 2013. See http://journals.openedition.org/regulation/10247 (last accessed February 27, 2023)

[87] The Prime Minister, Shri Narendra Modi addressed the nation from the ramparts of the Red Fort on the 76th Independence Day. See https://pib.gov.in/PressReleasePage.aspx?PRID=1852024

used for years, not taking into account the heterogeneity of different states and their local requirements."[88]

Steps in this direction include more fiscal devolution to states from the divisible pool of taxes, abolishing the Planning Commission and replacing it with Niti Aayog to free states from the shackles of centralized planning and give them space to develop policy initiatives on their own. At the launch of NITI Aayog on January 1, 2015 the Prime Minister tweeted, "Having served as a CM in the past, I am very much aware of the importance of actively consulting the states."[89] On the same occasion he went on to say, "Through NITI Aayog, we bid farewell to a 'one size fits all' approach towards development. The body celebrates India's diversity & plurality."

Other steps include the rationalization of the centrally sponsored schemes, building consensus for major reforms like GST, greater incentives for states to compete for capital and investment, revitalization of the zonal councils, joint monitoring of important national projects by union and state governments under the PRAGATI platform. The net effect of these decisions is to encourage states to take initiatives based on local requirements and do their share of the heavy-lifting for socio-economic development of India[90].

Recognizing the critical role of state governments in fulfilling national goals, the union government has organized institutional interactions between senior officials of union and state government on specific issues. See for example the recent conference of water ministers in January 2023 (Bhopal), home ministers in October 2022 (Surajkund), environment ministers in September 2022 (Ekta Nagar), labor ministers in August 2022 (Tirupati) and the Centre-State Science Conclave in September 2022 (Gandhinagar) which saw the participation of science & technology ministers and secretaries of states and union territories. The choice of hosting these consultations with respective state ministers outside Delhi also sends a message about creating a culture of shared responsibility between union and states in tackling India's challenges.

In a similar vein, the present government has conceptualised an annual Chief Secretaries Conference that is headlined by the Prime Minister to ensure seamless coordination between union and states. Likewise, the Prime Minister is invested in the proceedings of the annual DGP/IGP conference with senior police officials from all states and participates in all the sessions. Other examples of platforms to deepen the involvement of states in national goals include the creation of National Ganga Council and regular meetings between the prime minister and chief ministers to tackle the covid pandemic.

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[88] https://www.pmindia.gov.in/en/government_tr_rec/empowering-different-states-equally-with-boost-to-federalism/

[89] *PM Modi brings in NITI Aayog to replace Planning Commission*, India Today (January 1, 2015). See: https://www.indiatoday.in/india/story/narendra-modi-brings-niti-aayog-replace-planning-commission-233705-2015-01-01 (last accessed on 6 March, 2023)

[90] An India Economic Strategy to 2035: Navigating from Potential to Delivery, A report to the Australian Government by Mr Peter N Varghese AO. See: https://www.dfat.gov.au/publications/trade-and-investment/india-economic-strategy/ies/chapter-14.html

Cooperative Federalism in Foreign Policy

In the realm of foreign policy also, a subject that even the staunchest advocates of greater decentralization believe should remain with the union, the present government is keen to make room for participation of states. The Ministry of External Affairs set up a States division in 2014 to coordinate their initiatives. A land border agreement between India and Bangladesh that had been pending for 41 years was signed in 2015 with active support from the government of West Bengal and its chief minister Mamta Banerjee accompanied the Prime Minister at the signing ceremony in Dhaka.

The union government has facilitated many twinning agreements between states/cities in India with their counterparts in partner nations. Several visiting foreign dignitaries have been hosted in cities outside Delhi and flagship initiatives like Pravasi Bharatiya Divas are organised all over India. States are encouraged to send their delegations at global investment forums and host investor summits to attract foreign capital.

Other countries have begun to take notice of this trend towards decentralization of foreign policy. To quote a report by the Australian government:

> *"Prime Minister Modi has encouraged this decentralisation since he took office. In 2015, the India-China Forum of State/Provincial Leaders was formed, the first bilateral forum of its kind for India. In 2017, Prime Minister Modi attended the first collective meeting of 16 Russian regional governors. In April that year, financially sound state governments were empowered to borrow directly from ODA partners. More broadly, there has been an increasing emphasis on sister city and sister state agreements in India's East Asian relationships, in particular. And there is great symbolism in Prime Minister Modi's hosting of foreign leaders in Indian states"*[91].

In December 2022, soon after India assumed the mantle of G20 presidency, a meeting of all governors, chief ministers and lieutenant governors was convened by the prime minister to discuss India's agenda for its presidency and coordinate the preparations. He emphasized that the presidency belonged to the entire nation and sought cooperation of the states in organizing G20 events all over the country[92].

The Way Forward

These developments suggest that there is broad national consensus today on the fact that India's economic future depends on the performance of its states. Accordingly, we need to have a national debate on the seventh schedule which has largely been left as it was at the time of independence and reconsider the distribution of power in our Constitution from first principles, in light of the present circumstances.

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[91] Ibid

[92] PM chairs Video meeting of Governors, CMs and LGs to discuss aspects of India's G20 Presidency. See: https://pib.gov.in/PressReleasePage.aspx?PRID=1882263

Any such exercise will necessarily need a national consensus since the mode of amending the seventh schedule is covered in the proviso to Article 368(2) of the Constitution for topics fundamental to the federal scheme. It states that any change to the seventh schedule needs to be approved not just by the parliament but also by at least half the state legislatures of India.

Before debating the specific placement of entries, we need to agree on the general principles that should govern the allocation of responsibility to union, state and local governments. The specific subject that a constitution assigns to each level of government in a federation depends on the local context and preferences, the overall design of the federation and the institutional capacity of each level of the government. For example, in Australia, criminal law is a state subject, in Canada and Malaysia it is a union power and in India it is the concurrent list. In the USA, marriage and divorce are state subjects, in Australia they are union powers while in India they are again in the concurrent list[93].

Despite the best efforts of the constituent assembly, given the limited time they had for deliberations while simultaneously securing independence of India and managing the challenges of partition, there seems to have been inadequate attention given to the rationale for including each entry in a particular list. An example of this ad-hoc allocation is the issue of protection of cultural heritage which is spread across all three lists.[94] This absence of a principle-based approach to assess the seventh schedule has made any conversation on its suitability even more difficult.

After deciding the general principles, several design choices must be made to codify the division of powers in the constitution. For instance, fields of legislation could be categorized as exclusive, concurrent or residual. Other questions one needs to consider is whether the powers of both levels of government are enumerated (Canada) or just the federal level (USA, Switzerland). It is an interesting counter-factual question to ask whether enumerating powers of just union or state government in our Constitution and keeping everything else for the other government would have reduced the contestations around legislative competency in India. Other issues to consider are the level of granularity in the language used to enumerate powers; processes to resolve the conflicts between union and state laws and the scope for flexibility in the division of powers[95].

Most importantly, one must remember that division of powers is more a practical and less a philosophical question. The question of allocation of legislative power is simply a matter of deciding which functions, instruments and expenditure responsibilities are best centralized and which are best placed in the hands of

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[93]Cheryl Saunders, *The Division of Powers in Federations - Constitution Brief*, International Institute for Democracy and Electoral Assistance (August 2019). See: https://www.idea.int/sites/default/files/publications/divisions-of-powers-in-federations.pdf

[94] Entry 67, List I: Ancient and historical monuments and records, and archaeological sites and remains, [declared by or under law made by Parliament] to be of national importance.
Entry 12, List II: ancient and historical monuments and records other than those [declared by or under law made by Parliament] to be of national importance
Entry 40, List III: Archaeological sites and remains other than those [declared by or under law made by Parliament] to be of national importance

[95] Supra note 93

lower levels of government. There are two advantages of taking this approach: it makes the provisioning of public goods more efficient and governance more participative. This approach is also in tune with the concept of the welfare state enshrined in the preamble and the directive principles of state policy in the Constitution of India.

Principle of Subsidiarity

Federations are organized on the principle of subsidiarity. It believes in dealing with economic, social and political issues at the most proximate (or local) level of governance that is consistent with their resolution[96]. The principle is based on the proposition that local governments are more sensitive to the needs and preferences of citizens than higher levels of government. Therefore, public goods and services should be provided by the lowest possible level of government. There is a robust corpus of literature on the benefits of decentralization across countries. For example, subsidiarity has become the governing principle of EU institutions through its formal incorporation in Article 5 of the Treaty of European Union.

Governmental functions are best carried out by the smallest unit of governance possible, which is closest to citizens, and delegated upwards when the local entities cannot perform the task efficiently. Under this paradigm, the division of powers requires that while items of national importance should be allotted to the union government for the sake of national security and administrative efficiency and economy, the subjects of local importance should be given to the governments of the units. The debates in India's constituent assembly, some portions of which are captured earlier in this paper, suggest that our founding fathers and mothers were hinting at this principle in the design of the seventh schedule.

In the Indian context, both Mahatma Gandhi and Pandit Deen Dayal Upadhyay were strong votaries of decentralization in governance as a means to strengthen democracy in India. Their conception of an ideal administration was one of village panchayats and self-governing local bodies forming the base and the union government the apex of a pyramid. It was in essence foreshadowing the principle of subsidiarity by trusting the lower levels of the administration to shoulder responsibilities, avoiding over-centralization with its inevitable consequences of delay and inefficiency. Even the current Prime Minister alluded to this principle in an interview with national daily Economic Times in April 2014 saying, "I also believe in delegation, decentralization and empowerment. We should work with the principle that what can be done at a lower level should never be escalated to a higher level."[97]

Size of the area under jurisdiction of a government also decides the powers allocated to it. Federal government has jurisdiction over every citizen of the country. Therefore, matters of national importance and common interest must be

[96] N K Singh with Select Insights from P K Mishra, *Recalibrate: Changing Paradigms*, Rupa Publications (August 2022)

[97] D P Bhattacharya and Partha Ghosh, *Narendra Modi interview: Ready to work with Congress; on FDI, policy continuity top priority*, Economic Times (22 April 2014). See https://economictimes.indiatimes.com/opinion/interviews/narendra-modi-interview-ready-to-work-with-congress-on-fdi-policy-continuity-top-priority/articleshow/34066873.cms?from=mdr

allocated to it. This means that policies concerning security, defence, foreign policy, macroeconomic stabilization and redistribution should be left to higher levels of government. Scholars often make a distinction between necessary (defence, international relations, foreign trade, interstate commerce and communication) and desirable powers in the interest of efficiency and economy (currency, coinage, weights and measures, procedural law).

In practice, there is scope for considerable debate on how the principle of subsidiarity applies in particular cases. Matters of purely local interest must be vested in local units. However, it is difficult to classify subjects of governance into such need categories as “local interest” and “national interest”. This distinction is even more subjective in the case of social legislation which have both local and national implications. The division of subjects must therefore be resolved in the background of social, economic and psychological factors in India.

The International Institute for Democracy and Electoral Assistance is an intergovernmental organization that published a series of Constitution briefs to help with the democratic transition of Myanmar. In an August 2019 note on division of powers in federations, they summarized the experience of several federal Constitutions around the world on the topic as follows[98]:

> *“Considerations that typically guide the allocation of powers to the union level include whether a power:*
>
> - *relates to the exercise of the country’s external sovereignty (for example, international relations, defence, foreign investment, international trade);*
> - *spills over state and region borders and cannot effectively be handled by states and regions acting individually (for example, trade between states and regions, interstate river systems, aviation); and*
> - *requires uniform regulation across the country (for example, currency or corporations law).*
>
> *Considerations that typically guide the allocation of powers to the state and region level include whether a power:*
>
> - *can be handled within the borders of a state or region (for example, school education, local roads, abattoirs)*
> - *deals with matters of local concern (e.g. culture, local infrastructure); and*
> - *involves matters on which diversity, innovation, or constructive competition between states and regions would be useful (e.g. waste reduction, tourism).*
>
> *In applying these considerations, two points should be borne in mind. First, such guidelines do not determine whether a power should be exclusive or concurrent (i.e. exercisable by both levels of government).*

[98] Supra note 93

For example, a general power over the 'environment' could be conferred on either level of government, in accordance with the above principles, and so usually would be a concurrent power.

Second, governments in a federation often cooperate with each other in the exercise of their powers. The possibility of cooperation is a factor that may be taken into account in allocating legislative powers. For example, in Australia, the provision and management of hospitals is a state and region power, but medical insurance is a union power. In both cases, the allocation of power is consistent with the principles outlined earlier, but some collaboration between the two levels of government has been necessary in practice for the effective exercise of both powers."

To summarize the discussion above, the foremost principle for division of powers should be the capacity of a government institution to serve the needs of society. Adequacy should be the sole criterion.[99] Broadly speaking, powers should be assigned to the lowest level of government at which they can effectively be exercised so that the process of governing takes place as closely as possible to the people affected by it. This incentivizes public engagement and responsive decision-making which consequently deepens democracy in a society.

An Illustrative List of Suggested Changes

At a suitable time, we need to have a national discussion on the continuing relevance of the seventh schedule in its present form. Accordingly, the recommendation of the Rajmannar Committee to constitute a high power commission for item-wise discussion of the seventh schedule may be worth considering at an appropriate moment in the near future after building political consensus on the issue. This section makes certain specific suggestions that may be considered by any such committee. The suggestions are merely illustrative and serve as a reminder of the need for a broader overhaul of the seventh schedule based on the needs of contemporary India.

At the outset, since most government intervention and public expenditure are in the social sectors which are typically responsibilities of the state governments and local bodies, the state list in seventh schedule could be expanded[100]. A report by the Vidhi Centre for Legal Policy titled *Cleaning Constitutional Cobwebs: Reforming the Seventh Schedule*[101] suggests that entries in the concurrent list may be thought of as naturally belonging to the state list but for which legislative competency has been extended to the parliament because of certain overarching conditions. At some point in future, we may also want to

[99] V. Jagannadham, *Division of Powers in the Indian Constitution*, The Indian Journal of Political Science, vol. 8, no. 3, 1947, pp. 742–51. *JSTOR*, See: http://www.jstor.org/stable/42743171. (Last accessed 2 Mar. 2023)

[100] Bibek Debroy, Ashley Tellis & Reece Trevor, *Getting India Back on Track: An Action Agenda for Reform*, Carnegie Endowment for International Peace (2014)

[101] Sohini Chatterjee, Akshat Agarwal, Kevin James and Arghya Sengupta, *Cleaning Constitutional Cobwebs: Reforming the Seventh Schedule,* Vidhi Centre for Legal Policy (October 2019). See: https://fincomindia.nic.in/writereaddata/html_en_files/fincom15/StudyReports/Cleaning%20Constitutional%20cobwebs_Reforming%20the%20Seventh%20schedule.pdf

reconsider the viability of a concurrent list and instead replace it with a local body list[102].

Certain entries have become redundant (either in substance or language) due to the passage of time and are fit to be removed. The following entries may be considered as suitable candidates for the same:

- Entry 26, List I: Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft
- Entry 28, List I: Port quarantine, including hospitals connected therewith; seamen's and marine hospitals
- Entry 34, List I: Courts of wards for princely states
- The word "telegraph" in Entry 31, List I
- Entry 58, List I: Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies
- Entry 30, List II: Money-lending and money-lenders; relief of agricultural indebtedness
- Entry 31, List II: Inns and inn-keepers
- Entry 44, List II: Treasure trove
- Entry 27, List III: Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan
- The word "men" in Entry 29, List III and replace it with "humans"
- Entry 37, List III: Boilers
- Entry 41, List III: Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property

Next, there are certain entries which need to be added in light of recent technological developments and national experience in dealing with various challenges like pandemics and climate change. The following entries may be considered under this category:

- Disaster management, and if required, a separate entry on pandemics
- Environment protection
- Consumer protection
- Emerging technologies, including gene editing, artificial intelligence and distributed ledger technology[103]
- Intellectual property rights (instead of the more restrictive language in entry 49 of the union list - Patents, inventions and designs; copyright; trade-marks and merchandise marks)

[102] Supra note 100
[103] Supra note 101

Finally, there are other modifications in the schedule that India's policymakers may want to consider. These include answering the following questions:

- Should we replace the phrase "borstal institutions" in entry 4, list II with "juvenile detention centres" or another suitable term? The borstal system on which the phrase is based has been abolished and the term discontinued in both the UK (1982) and Ireland (1960)

- In light of the recent legal developments discussed in part II of this report, do we need separate entries for "betting and gambling" in the state list on one hand and "lotteries" in the union list on the other hand?

- Do we need a separate entry on "cultivation, manufacture, and sale for export, of opium" (entry 59, list I)

- Do we need a separate entry on "gas and gas-works" (entry 25, list II) in light of entry 53, list I (Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable) and the Supreme Court's decision in *Association of Natural Gas vs Union Of India*[104]

- Should we replace the language of entry 16 of list III (lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients) with more progressive phrasing like "mental healthcare"

- Should we carve out federal crimes and/or terrorism from entry 1 of list II which refers to "public order" to strengthen the constitutional mandate of NIA and anti-terrorism laws?

- Given that the Planning Commission has been abolished, do we still need entry 20 of list III (economic and social planning)? The entry is so encompassing that it can render several specific entries in the three lists redundant

Complementary Functional Changes

Apart from modifications to the specific entries, there is also a need to reform the process of making legislation in India. Suggestions on this issue have been well documented in the various reports on centre-state relations over the years. For example, the union government must effectively consult with state governments and win their confidence before introducing legislation on subjects in the concurrent list or using Article 253 to give effect to an international obligation in relation to a subject that belongs to the state list[105].

[104] (2004) 4 SCC 489

[105] See the Venkatachaliah Commission on the topic: "The principal critique of concurrency is not that it is not required, but that it is used without consultation, that it is not exercised to deepen inter-dependence and cooperation but to stress dominance of the Union point of view."

An Inter-State Council was established under Article 253 in 1990 but it met for the first time only in 1996. The Venkatachaliah Commission recommends that individual and collective consultation with the states should be undertaken through the Inter-State Council. The National Development Council (NDC) created in 1952 to oversee the work of the Planning Commission and approve their five-year plans lies comatose since the Niti Aayog's Governing Council has replaced it. NDC is slated to be abolished but no proposal has been made to this effect so far.

Further, any law passed by the parliament or state legislatures must clearly mention the entry of the respective list under which it is being promulgated. Next, as a general principle, states should have enough flexibility to adapt union legislation to local conditions on a number of industry related subjects that are currently in the concurrent list. These include topics like trade unions, industrial and labour disputes, welfare of labour, provident funds, employer's liability, workmen's compensation, social security and social insurance. There also needs to be a national debate on whether residuary power (except on taxation) should remain with the union or handed over to states[106].

Other fora for consultation between union and state governments need to be reinvigorated. These include the five zonal councils set up under the States Reorganization Act, 1956 and the North Eastern Council set up under the North-Eastern Council Act, 1971. There have been encouraging signs in this direction under the present Prime Minister as the union government has been regularly organizing meetings of these zonal councils with the highest levels of participation and the number of these interactions have seen a three-time increase in the last eight years[107].

[106] Supra notes 100 and 101

[107] *Amit Shah to open southern zonal council meet in Kerala's Kovalam on Saturday,* Hindustan Times (2 September 2022). See: https://www.hindustantimes.com/india-news/amit-shah-to-open-southern-zonal-council-meet-in-kerala-s-kovalam-on-saturday-101662122324508.html (Last accessed on 2 March 2023)

Conclusion

> "The worst historian has a clearer view of the period he studies than the best of us can hope to form of that in which we live. The obscurest epoch is today"
>
> - Robert Louis Stevenson

In 2020, two economists - John Kay and Mervyn King - published a widely acclaimed book called *Radical Uncertainty: Decision-making for an Unknowable Future*. It is a wise and witty reminder about the limits of conventional economic models to help us make important decisions in real life where radical uncertainty dominates. The quote above by R L Stevenson starts chapter two of the book in which the authors distinguish between the two kinds of uncertainties that individuals and institutions face - puzzles and mysteries. Puzzles have well-defined rules and a single solution. We know when we have solved a puzzle and even if we fail, there is assurance that a right answer exists. Mysteries on the other hand don't offer this comfort and pleasure of figuring out the "right" answer. They are vague, ill-defined and often don't have an objectively correct solution. To quote the authors:

> *"A mystery cannot be solved as a crossword puzzle can; it can only be framed, by identifying the critical factors and applying some sense of how these factors have interacted in the past and might interact in the present or future. Puzzles may be more fun, but in our real lives the world increasingly offers us mysteries - either because the outcome is unknowable or because the issue itself is ill-defined."*[108]

The success of a federation and an ideal distribution of powers between different levels of government is one such mystery that federal systems around the world grapple with. What makes a federation successful depends on several factors of which the distribution of powers is just one, albeit important, factor. Therefore, we must resist the temptation to conclude that the centralizing tendency in our polity is the only reason that has prevented state and local governments from making a more meaningful contribution to India's development process.

The diagnosis of India's weak state capacity as one of inadequate decentralization is too simplistic. By way of illustration, the dismal financial condition of power distribution companies across the states is a sober reminder of the inefficiencies that exist in state governments[109]. Greater autonomy and power to states (along with urban and rural local bodies) is a necessary but not a sufficient condition to improve their performance.

In the Indian context, it may be helpful to conceptualize federalism ultimately as a tool to better deliver public goods. Seen this way, the distribution of powers becomes simply a practical concern instead of a philosophical problem. Beyond the formal allocation of subjects, all three levels of government need to

[108] John Kay and Mervyn King, *Radical Uncertainty: Decision-making for an Unknowable Future*, page 21, The Bridge Street Press (2020)

[109] While electricity is a concurrent subject in the seventh schedule, the responsibility for distribution lies with states

take responsibility for the exercise of their powers in ways that are accountable to its constituents. They will also need to consistently work together for the public good by coordinating their efforts, pooling their limited resources for synchronized expenditure and exchanging timely information.[110]

The composition of an ideal enumeration of powers in a federation will remain a mystery and not a puzzle with clear right and wrong answers. The long-term success of any revisions in the seventh schedule of the Indian Constitution will depend on whether our polity can respond to the changing times. The union government will have to relieve itself from the burden of certain subjects. Likewise, India's states will have to improve their institutional capacity and develop expertise to discharge their new responsibilities. India's status-quoist bureaucracy will need to recalibrate their priorities and processes. The norms and procedures in the union and state legislatures will also have to change. India's judiciary will need to revisit principles of legislative interpretation that are anachronistic. Finally, the citizens of India will have to appreciate the importance of an efficient division of powers in improving their wellbeing.

[110] Supra note 93