

Cleaning Constitutional Cobwebs Reforming the Seventh Schedule

Sohini Chatterjee

Akshat Agarwal

Kevin James

Arghya Sengupta

V | D | H | Centre for
Legal Policy

About the Authors

Sohini Chatterjee, Akshat Agarwal and Kevin James are Research Fellows at the Vidhi Centre for Legal Policy.

Dr. Arghya Sengupta is Research Director at the Vidhi Centre for Legal Policy.

Acknowledgments

The authors would like to thank Lalit Panda, Research Fellow, Vidhi Centre for Legal Policy for his inputs. We would also like to thank Abhijeet Singh Rawaley, Pranay Modi and Shubham Dutt for research assistance. Errors, if any, in the report are the authors' alone.

The Vidhi Centre for Legal Policy is an independent think-tank doing legal research to make better laws and improve governance for the public good.

For more information, see www.vidhilegalpolicy.in

Contents

Chapter 1: Introduction.....	7
A. Background to Indian Federalism.....	7
B. Federal Scheme of the Indian Constitution.....	7
C. Cleaning Constitutional Cobwebs.....	8
D. Chapters of the Report.....	8
Part I	10
Chapter 2: Tracing the Past – Pre-Independence History and Underlying Principles	10
A. Introduction: Analysing Constitutional Antecedents	10
B. Decentralisation as a Principle of State Formation in pre-colonial India.....	10
C. Colonial Rule and the Deepening Experience of power-sharing.....	11
D. Partition and the move towards a strong Centre	12
1. Predominant Considerations in the Constituent Assembly.....	13
2. The nature of federalism adopted in the Indian Constitution	14
3. Rationale behind the list system contained in the Seventh Schedule.....	14
4. Some dissenting voices in the Constituent Assembly	15
E. Conclusion: A break in the historical narrative	16
Chapter 3: Developments Since Independence and Making a Case for Cleaning Constitutional Cobwebs	17
A. Introduction: Reforming the Seventh Schedule	17
B. Robustness of Enumeration in Federal Constitutions	17
C. Constitutional Intent: Exhaustiveness as a Fundamental aspect of the Seventh Schedule	18
1. Historical Circumstances	18
2. Analysis of residuary powers.....	19
D. Continuing Exhaustiveness: The Need for Periodic Review and Cleaning Constitutional Cobwebs	20
E. Post-independence Developments as Justifying Reform	21
1. State demands for greater autonomy.....	22
2. Recommendations of Commissions appointed by the Central Government	22
F. Conclusion: Tying the Strands	24
Part II.....	25
Chapter 4: An Analytical model to assess the Seventh Schedule.....	25
A. Introduction	25
B. Old Principles	25
1. Ensuring the unity and integrity of India	25
2. Achieving balanced economic development.....	26
C. New Principles	27
3. Promoting Cultural Autonomy and Diversity	27
4. Enabling Responsive Governance	29

D. Conclusion: Four Pillars of the Principle-based Approach.....	31
Chapter 5: Analytical model for Appropriate Placement of Entries	32
A. Introduction: Laying down the Analytical model	32
B. Analytical model Explained	32
C. Analytical model Applied	35
D. Conclusion: Learnings from applying the Analytical model.....	48
Chapter 6: Rationalising the Seventh Schedule - Addition and Removal.....	50
A. Introduction: Scope of the exercise	50
B. Addition of Entries.....	50
1. Disaster Management.....	50
2. Consumer Protection	51
3. Emerging Technologies.....	51
4. Environmental Protection	53
5. Terrorism	54
C. Removal of entries.....	55
1. 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.....	56
2. Entry 34, List I: Courts of Wards for the estates of Rulers of Indian States	56
3. Entry 26, List I: Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.....	57
4. Entry 37, List III: Boilers.....	57
D. Conclusion: Towards an updated Seventh Schedule.....	58
Chapter 7: Conclusion and Recommendations.....	59
A. Conclusion	59
B. Recommendations.....	60
Annexure A: Categorisation of Entries in the Seventh Schedule	i
Annexure B: A New Seventh Schedule	iv

Chapter 1: Introduction

A. Background to Indian Federalism

The Constitution, enacted in 1950, has proven to be remarkably resilient. India's thriving democracy is testimony to the farsightedness of the Constituent Assembly and their choices. Centre-State relations in particular were a core aspect of the choices made by the framers. While the framework has survived the relentless march of time, the seventieth year of the Republic provides an opportune moment to reflect on the structure of Indian federalism. This is important so as to enable the framework to accommodate the changing needs of governance.

Unlike classical federations, India is a 'holding-together' federation i.e. the units did not come together to pool in their sovereignty; instead sovereignty was derived from a written constitution imposed from above. This key distinction, when compared to contractual federations, allowed the Constituent Assembly to opt for a centralised model of federal relations. Further, the existence of a written constitution, which is a fundamental feature of all federations, ensures that the different levels of government are co-equal in the sense that they derive their authority from the same source.

Thus the Indian constitutional scheme differs from the tradition of parliamentary sovereignty characterised by an unwritten constitution. This implies that the Parliament in India, like State Legislatures in States, is not sovereign by itself, but derives its authority from the relevant provisions of the Constitution. This underscores the salience of reviewing the provisions of the Constitution to ensure the continuing robustness of our democracy.

B. Federal Scheme of the Indian Constitution

India is a union of states, with the states lacking the right to secede from the Union. There are common institutions and instruments between the Union and States, such as a single constitution, single citizenship, common all-India services, common election commission and a single unified judiciary.

In terms of legislative power-sharing, Article 246 of the Constitution confers legislative powers on the Parliament and the State Legislatures on the subjects enumerated in the Seventh Schedule. This schedule contains three lists i.e. List I or the Union List over which the Parliament has exclusive competence, List II or the State List over which the State Legislatures have exclusive competence and List III or the Concurrent List over which both the Parliament and the State Legislatures have competence. It is significant to note that recent amendments to the Constitution have introduced Article 246A that makes special provisions for the levy of the Goods and Services Tax ('GST'), which falls outside the list framework in the Seventh Schedule.

Article 248 confers residuary powers on the Parliament while Article 254 also resolves issues of repugnancy in favour of the Parliament. Article 249 of the Constitution gives the Parliament the power to enter the legislative domain of states if it is necessary or expedient in national interest. Article 252 enables the Parliament to legislate for two or more States by consent, with the law applying to such States and to any other State by which it is adopted afterwards by resolution. Article 253 recognises the power of the Parliament to make law for giving effect to international agreements. Under Article 250, during an emergency, Parliament has the power to legislate with respect to any matter in the State List.

Due to this centre-heavy nature of the federal scheme, it can be argued that India does not follow a pure federal model. As a result, apart from being a holding-together federation, Indian federalism has often been characterised as quasi-federal or being federal only in form and unitary in spirit. These claims merit deeper scrutiny.

It is apposite to note that the 73rd and 74th Amendments introduced local self-government into the constitutional scheme by laying down provisions for the establishment of panchayats and municipalities. While studying the constitutional scheme of the third tier is an equally important endeavour, it is a second order question that we recommend should be appropriately dealt with in future studies. In this report, we solely focus on the scheme of distribution of powers between the Centre and the States in the Seventh Schedule of the Indian Constitution.

C. Cleaning Constitutional Cobwebs

Existing approaches which have studied legislative relations in India have largely focussed on functional shortcomings and have emphasised cooperation in federal relations.¹ Within the Seventh Schedule, legal scholars have focussed on the interpretation of individual entries and the interplay between entries.² While these approaches highlight issues of significance, they do not focus on structural features of the Schedule itself. In this light, our report outlines a novel approach on how to think about the Seventh Schedule holistically.

It adopts a principle-based approach for appropriate placement, addition of new entries and removal of outdated entries. Placement, addition and removal of entries from the Seventh Schedule are essential for maintaining continuing exhaustiveness which is a fundamental feature of the lists. Maintaining such exhaustiveness necessitates periodic review of the entries to ensure that legislative allocation of powers keeps up with India's changing needs of governance. This exercise can be thought of as a cleaning of constitutional cobwebs which is necessary to ensure the healthy functioning of our Constitution.

Needless to say, such cleaning cannot be arbitrary but must adhere to certain principles that can withstand the passage of time. The principles that have been identified include certain 'old' ones (unity and integrity and balanced economic development) that form the basis of the present system of allocation of legislative powers. Additionally, they also include certain 'new' principles (cultural diversity and enabling responsive governance), which emerge from an analysis of the post-independence working of federalism in India.

D. Chapters of the Report

In keeping with a broad thematic demarcation, the report has been divided into two parts. Part I of the report undertakes a historical study to justify the need for reform, while Part II lays down a concrete roadmap for such reform.

Part I consists of chapters 2 and 3. Chapter 2 examines pre-independence developments including the history of power-sharing in the sub-continent and debates in the Constituent Assembly. On this basis, it is argued that the enactment of the Constitution marked a break in the historical narrative from the otherwise deepening experience of federalism. The chapter further identifies 'unity and integrity' and 'balanced economic development' as two primary principles that guided the Constituent Assembly in its deliberations on power-sharing between the Centre and the States.

In chapter 3, on the basis of constitutional intent gleaned through the historical circumstances of enactment and the scheme of distribution of legislative powers, it is argued that continuing exhaustiveness is a fundamental feature of the lists of the Seventh Schedule. Building on continuing exhaustiveness, a case is made for the periodic review of the Seventh Schedule entries through the appropriate placement, addition of new entries and removal of antiquated entries. Such a proposal for reform is further backed by post-independence factual developments.

Part II of the report contains the roadmap for this reform. Chapter 4 lays down a principle-based framework by combining the two older principles of 'unity and integrity' and 'balanced economic development' with two newer principles of 'cultural diversity' and 'responsive governance'. Thus a balance is sought to be struck between the foundational principles of the Constitution and concerns that have arisen due to the changing needs of

¹ For example, see Report of the Commission on Centre-State Relations (1988) at chapter 2.

² For example, see M.P. Jain, 'Indian Federalism: A Background Paper' in Alice Jacob (ed), *Constitutional Developments Since Independence* (N.M. Tripathi, 1975).

governance. Chapter 5 operationalises these four principles into an analytical model that provides for an elegant means for the appropriate placement of entries. The model is further applied to thirteen entries of the Seventh Schedule to illustrate its functioning and replicability. The illustrative entries for the purposes of this chapter were selected by choosing an entry each from thirteen themes into which the two hundred and nine entries of the Seventh Schedule were classified by us.³

Finally, chapter 6 deals with addition of new entries and the removal of outdated entries. With regard to addition, five themes viz. disaster management, consumer protection, emerging technologies, environment protection and terrorism have been identified as subject matters under which new entries should be added. Further, the appropriate placement of any new entry should be determined through the analytical model. For removal, an approach that accounts for both the form and substance of entries has been outlined. On this basis four entries of the Seventh Schedule have been identified that are illustrative of how removal of entries should be considered. Both addition and removal are thus aspects of rationalising the entries of the Seventh Schedule, which should be undertaken as part of a periodic review to maintain continuing exhaustiveness. Chapter 7 contains the conclusion and final recommendations. Annexure A lists a thematic categorisation of all the entries of the Seventh Schedule and Annexure B contains a new Seventh Schedule, where all entries have been appropriately placed on the basis of the Analytical model, new entries have been added, and outdated entries have been removed.

On the whole, the adoption of a principle-based approach for appropriate placement along with periodic review of the entries will ensure continuing exhaustiveness of the Seventh Schedule. Such a process will make the lists reflective of the changing needs of governance and ensure that the Indian Constitution continues to remain resilient in times to come.

³ See Annexure 'A' to the report.

Part I

Chapter 2: Tracing the Past – Pre-Independence History and Underlying Principles

A. Introduction: Analysing Constitutional Antecedents

The modern Indian nation state was created in 1947, with independence being secured from the British. Several disparate British provinces and princely states were stitched together to create this nation. The enactment of the Indian Constitution in 1950 was a transformational moment, as it established a constitutional republic on principles such as rule of law, democracy, and federalism. The long and complex history of the subcontinent heavily influenced the drafting of the Constitution. Particularly, its provisions relating to power-sharing can be linked to colonial legislations as well as the socio-political context at the time of its drafting.

By studying pre-independence developments, this chapter analyses the various influences that have shaped the structure of Indian federalism. It covers the development of power-sharing and state formation over the pre-colonial and colonial periods, including the period in which the Constitution was drafted. It thus identifies the underlying principles behind the constitutional system of distribution of powers.

B. Decentralisation as a Principle of State Formation in pre-colonial India

In contrast to the European experience of state formation, characterised by highly centralised nation states, the history of the subcontinent reveals a segmentary conception of state power.⁴ Instead of centralisation of power, the subcontinent has always had multiple power centres which were contested between empires and regional kingdoms.⁵ This conception of power was not merely a recognition of a layered political and social order or a result of the technical limits on exercise of control over a large geographical area, but was in fact a conscious principle of state formation.⁶

Multi-national political units were intrinsic to the political experience of the subcontinent, and continue to remain significant. This is evidenced by the continuity of geographical political units such as Bihar and Bengal (into which the Mughal Emperor Akbar's empire was divided) into the 21st century.⁷ The principle of decentralisation has thus featured prominently in this region's history.

⁴Llyod Rudolph and Susanne Rudolph, 'Federalism as State Formation in India: A Theory of Shared and Negotiated Sovereignty' (2010) 31(5) *International Political Science Review* at pp. 556-559.

⁵Llyod Rudolph and Susanne Rudolph, 'Federalism as State Formation in India: A Theory of Shared and Negotiated Sovereignty' (2010) 31(5) *International Political Science Review* at pp. 556-559.

⁶Llyod Rudolph and Susanne Rudolph, 'Federalism as State Formation in India: A Theory of Shared and Negotiated Sovereignty' (2010) 31(5) *International Political Science Review* at pp. 556-559.

⁷Llyod Rudolph and Susanne Rudolph, 'Federalism as State Formation in India: A Theory of Shared and Negotiated Sovereignty' (2010) 31(5) *International Political Science Review* at pp. 556-559.

C. Colonial Rule and the Deepening Experience of power-sharing

Decentralisation and federalism continued to be relevant in state formation during the colonial period. The British first entered India through a group of merchants – the British East India Company – who were granted a Royal Charter for trading purposes in 1600.⁸ As its influence increased, subsequent charters conferred certain governance functions upon the Company. After emerging victorious in the Battles of Plassey and Buxar in the mid-1700s, it secured a basis for the exercise of sovereign powers.⁹ To deal with the increased responsibilities, the British Parliament enacted a Regulating Act in 1773 which placed the Madras and Bombay Presidencies under the control of the Bengal Presidency.

Although this was an instance of centralisation, the three presidencies developed different administrative approaches based on the understanding that the distinctive nature of each region's problems required unique solutions.¹⁰ The underlying assumption, that regional autonomy instead of central dominance would produce a more efficient and enduring political order, was an important principle of state formation during the British Raj. The measures undertaken by the British Crown, after it took over from the Company post-1857, formally institutionalised many aspects of the federal principle. The Indian Councils Act, 1861 ('ICA') brought about provincial legislative councils which had substantial Indian representation and Lord Ripon's 1882 resolution introduced elected municipal councils and rural district boards.¹¹ The Government of India Act, 1909 further empowered the provincial councils, enabling more Indian representation.

Constitutionally speaking, however, the Government of India Act, 1919 was more significant.¹² 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.

The trend of granting greater provincial autonomy culminated in the enactment of the Government of India Act, 1935 ('1935 Act'), which abolished diarchy. For the first time, provinces were legally recognised as exercising legislative¹³ and executive powers in their own spheres, which is a basic feature of a federation.¹⁴ Further, it laid down the scheme of distribution of legislative powers into three lists, which has been retained in the Indian Constitution.¹⁵

The Joint Committee Report of 1934 ('JCR') that preceded the enactment of the 1935 Act explains the rationale for distribution of legislative powers as "an essential feature of Provincial Autonomy and as being itself the means of defining its ambit".¹⁶ While such a scheme was unprecedented, an exhaustive statutory allocation was considered necessary to ensure that the provinces remained truly autonomous and could determine their jurisdiction independently. It was thought that exhaustive enumeration would prevent accretion of power by

⁸ See Rohit De, 'Constitutional Antecedents' in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press, 2016) at p. 19.

⁹ M. Ramaswamy, 'Constitutional Developments in India 1600-1955' (1956) 8(3) *Stanford Law Review*.

¹⁰ Llyod Rudolph and Susanne Rudolph, 'Federalism as State Formation in India: A Theory of Shared and Negotiated Sovereignty' (2010) 31(5) *International Political Science Review* at pp. 556-559.

¹¹ Although the objective was to educate the masses in participatory governance, this has also been viewed as a means of co-opting the local elite in order to protect colonial interests. H. Wheeler, 'Local Self Government in India' (1917) 17(1) *Journal of the Society of Comparative Legislation*; Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at p. 73.

¹² Its long-term goal was to develop self-government in India, in recognition of Indian sacrifices during the first world war. See Preamble to the Government of India Act, 1919; Richard Danzig, 'The Announcement of August 20th, 1917' (1968) 28(1) *The Journal of Asian Studies* at p. 19.

¹³ See Section 100, Government of India Act, 1935.

¹⁴ A.B. Keith, *Constitutional History of India, 1600-1935* (1936) at chapter X; The 1935 Act tilted the scales in favour of the Governor by granting his office several special powers that effectively entrenched gubernatorial supremacy. See Sections 50(1), 50(3), 86, 90 and 93, Government of India Act, 1935.

¹⁵ Unlike the present constitutional scheme, residuary powers under the 1935 Act were granted to the Governor-General of India, who could empower either the Federal or a Provincial Legislature with residual powers of legislation. See Section 104, Government of India Act, 1935.

¹⁶ Report of the Joint Committee on Indian Constitutional Reform (1934) at p. 142.

either the Centre or the provinces, and reduce the unspecified residue to negligible proportions.¹⁷ Exhaustiveness of enumeration was thus a fundamental feature of the list system. The concurrent list was justified on the grounds of promoting uniformity, guiding and encouraging provincial effort, and remedying mischiefs originating in a province but extending beyond its boundaries.¹⁸ It included entries for which a case could be made out for allocation to both legislatures.

The national movement also recognised federal principles, even though it opposed colonial reform measures. These reforms were seen as attempts at thwarting the national movement, or as being minor concessions in the larger struggle for independence.¹⁹ In 1920 for instance, the Pradesh Congress Committees were reorganised along linguistic lines indicating the Indian National Congress' recognition of sub-national loyalties and diversity.²⁰ Further, the Motilal Nehru Report of 1928 suggested greater autonomy in terms of both culture and religion to solve communal problems and advocated for decentralisation.²¹

The framing of the Constitution should be seen in light of this progressive deepening of principles of power-sharing, over the course of history.²² The next section will demonstrate how, despite this background, the Constituent Assembly opted for a centralised constitutional structure as opposed to a purely federated one.

D. Partition and the move towards a strong Centre

In accordance with the British Cabinet Mission plan, a Constituent Assembly was elected in 1946 by the provincial legislative assemblies. It also included representation from princely states.²³ The Indian Constitution drafted by the Constituent Assembly has a strong centralising tendency even though it formally establishes a federal polity. To understand how this came about, the specific historical circumstances surrounding the drafting of the Constitution need to be analysed.

The decision that British India was to be formally partitioned into India and Pakistan was announced in June 1947 and took effect a mere two months later. This led to widespread violence and forced migrations of nearly fifteen million people, which in turn led to the influx of a large number of refugees.²⁴ The prospect of communal tensions had dominated the thinking of nationalist leaders since the 1920s and earlier constitutional proposals advanced by the Congress had suggested federalism as a means for addressing such tensions.²⁵ However, in light of the tragic circumstances surrounding partition, a consensus view had emerged that only a strong central government could survive the communal frenzy and manage the increasingly complex administrative problems faced by the new nation.²⁶

In addition to this, most of the princely states which had to be integrated did not have any effective governance systems in place and many were hostile to the idea of cooperating with the newly formed Government of India.²⁷ This further strengthened arguments for establishing a strong Central Government for tackling these issues.

¹⁷ Restricting residuary powers in this way was meant to be a compromise between the Hindus who wanted residuary powers to lie with the federal government, and Muslims who wanted it to be allocated to the provincial governments. Report of the Joint Committee on Indian Constitutional Reform (1934) at pp. 33, 143.

¹⁸ The JCR cites the Indian Penal Code, labour reform legislation and legislation for the control and prevention for epidemics respectively as examples for each of these categories. Report of the Joint Committee on Indian Constitutional Reform (1934) at pp. 30-31.

¹⁹ Commenting on the 1935 Act, Jawaharlal Nehru observed, "The federal structure was so envisaged as to make any real advance impossible, and no loophole was left for the representatives of the Indian people to interfere with or modify the system of British-controlled administration." Jawaharlal Nehru, *The Discovery of India* (Oxford University Press, 1994) at p. 365.

²⁰ S.P. Sathe, 'Nehru and Federalism: Vision and Prospects' at p. 200.

²¹ B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing, 2012), Vol 1, at p. 58.

²² Llyod Rudolph and Susanne Rudolph, 'Federalism as State Formation in India: A Theory of Shared and Negotiated Sovereignty' (2010) 31(5) *International Political Science Review* at pp. 556-559.

²³ Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at p. 28; Shibani Kinkar Chaube, *Constituent Assembly of India: Springboard of Revolution* (2nd edn, Manohar Publishers & Distributors, 2000) at p. 45.

²⁴ Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at p. 77.

²⁵ Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at pp. 77-78.

²⁶ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966) at p. 236.

²⁷ Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at p. 78.

Against this backdrop, the deliberations of the Constituent Assembly will now be studied in detail, focusing on the predominant considerations, the unique nature of the federalism adopted in the Indian Constitution, the rationale behind the list system and certain dissenting voices.

1. Predominant Considerations in the Constituent Assembly

(a) Unity and Integrity of India

The British Cabinet Mission Plan had outlined a broad federal structure for India, allocating only defence, foreign affairs and communication to the Centre, with all residuary powers vested in State Governments.²⁸ The Constituent Assembly initially intended to implement this structure.²⁹

However, the tenor of deliberations completely changed once partition was confirmed. The Union Powers Committee, set up by the Constituent Assembly and 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”.³⁰ It claimed that this limited scope was a compromise accepted only to accommodate the Muslim League, and was otherwise inappropriate for the administrative needs of the country. The committee now unanimously took the view that a weak central authority would be injurious to the interests of the country.³¹ However, it stated that a fully unitary constitution would be a retrograde step and thus States should still have authority in many matters. Ultimately, it concluded that “the soundest framework for our Constitution is a Federation, with a strong Centre”.³²

Apart from this direct consequence on the framing of the Constitution, partition also led to a general fear of fissiparous tendencies and a concomitant emphasis towards ensuring unity and integrity. It was feared that giving greater powers to the provinces would lead to further disintegration.³³ There were also concerns that, in light of the weak and insecure state of national integration, a federal structure would be inadequate in times of war.³⁴ These factors favoured a strong Central Government.³⁵

(b) Balanced economic development

The unstable financial position of the new Indian state also favoured centralisation. At the time of independence, India confronted a climate of economic uncertainty and its finances were already being stretched by a range of hostile circumstances.³⁶ In particular, the framers were concerned about ensuring economic and social well-being and balancing regional disparities. A strong Centre vested with supervisory and coordinating powers was deemed necessary for this purpose.³⁷

Provincial autonomy was seen as a hindrance to equitable distribution of wealth and development. There were fears that it would perpetuate backwardness in some States and sustain the advantages of others, thereby

²⁸ See Points 15(1), (3) and (4), Cabinet Mission Plan, May 16, 1946, in B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing 2012), Vol 1, at p. 213.

²⁹ B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing 2012), Vol 1, at p. 208.

³⁰ This committee was appointed to consider the question of Union powers in greater detail. Initially, it had intended to logically extend and give effect to the broad structure outlined by the Cabinet Mission. Plan Proceedings/Minutes of the Union Powers Committee, March 2nd, 1947, in B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing, 2012), Vol 2, at p. 729.

³¹ Second Report of the Union Powers Committee, July 5th, 1947, in B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing 2012), Vol 2, at p. 778.

³² Second Report of the Union Powers Committee, July 5th, 1947, in B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing 2012), Vol 2, at p. 778.

³³ Constituent Assembly Debates, speech by Balkrishna Sharma, Vol 4, 15th July 1947, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/4/1947-07-15 > accessed 22 November 2018.

³⁴ See A note on some general principles of the Union Constitution by K.M. Panikkar (sent to the Union Constitution Committee), May 1947, in B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing, 2012), Vol 2, at pp. 539-40.

³⁵ However, some members of the Assembly argued against this proposition. Amiyo Kumar Ghosh for instance believed that over-centralisation would lead to constant friction between the Centre and States, which might endanger the whole structure of the Constitution. Constituent Assembly Debates, speech by Amiyo Kumar Ghosh, Vol 11, 21st November 1949, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/11/1949-11-21 > accessed 22 November 2018.

³⁶ Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at p. 78.

³⁷ See Constituent Assembly Debates, speech by Renuka Ray, Vol 7, 9th November 1948, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-09 > accessed 22 November 2018.

creating an obstacle for the progress of India as a whole.³⁸ There were thus calls for a strong Centre that could play an equalising role by facilitating the transfer of wealth from rich to poor States.³⁹

2. The nature of federalism adopted in the Indian Constitution

The intention of the drafters was to create a federal structure in India through the Constitution. However, the federal principle was considerably modified to meet the requirements of the time, as discussed above. This shift towards a strong Centre led to many allegations in the Assembly that the Draft Constitution was not federal at all. B.R. Ambedkar, chairman of the Drafting Committee and several other members opposed these allegations.

T.T. Krishnamachari addressed two arguments often cited as necessary features of any federal constitution. The first such argument was that a Constitution can be federal only if the component States are formed first and the Centre is created later. The second argument was that residuary powers must lie with the States and not with the Centre. Krishnamachari argued that although these two features were absent in the Draft Constitution, “the concept of this Constitution is undoubtedly Federal”.⁴⁰ According to him, a federal constitution is simply one that precisely lays down separate fields where the Centre and States are supreme.

Along the same lines, Ambedkar stated that the essential features of a federal constitution are that it must create a central polity and subsidiary polities side by side, and each should be sovereign in the field assigned to it. He argued that the Draft Constitution was a federal constitution as it created such a “Dual Polity”.⁴¹ Legislative and executive authority was partitioned between the Centre and the States, not by any law to be made by the Centre, but by the Constitution itself. In other words, the States were not to be dependent upon the Centre for their authority, being co-equal with the Centre in this matter.⁴²

Ambedkar also explained that the drafters had sought to overcome two “inherent weaknesses of federalism”,⁴³ which he had identified to be rigidity⁴⁴ and legalism.⁴⁵ The Draft Constitution attempted to overcome these issues by, *inter alia*, specifying certain powers as concurrent, and by granting exclusive powers to the Centre over as many as 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.” Thus, the distinguishing feature of the Constitution is that it is a “flexible federation”.⁴⁶

3. Rationale behind the list system contained in the Seventh Schedule

In distributing legislative powers between the Centre and the States, The Union Powers Committee believed that the system of three lists as contained in the 1935 Act was the most satisfactory arrangement.⁴⁷ As noted

³⁸ See Notes on Union Powers by Alladi Krishnaswami Ayyar (sent to the Union Powers Committee), in B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing 2012), Vol 2, at p. 720.

³⁹ Constituent Assembly Debates, speech by H. N. Kunzru, Vol 9, 5th August 1949, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-08-05 > accessed 22 November 2018; Constituent Assembly Debates, speech by Debi Prosad Khaitan, Vol 5, 21st August 1947, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/5/1947-08-21 > accessed 22 November 2018.

⁴⁰ Constituent Assembly Debates, speech by T.T. Krishnamachari, Vol 7, 30th December 1948, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-12-30 > accessed 22 November 2018.

⁴¹ See Constituent Assembly Debates, speech by Dr. B.R. Ambedkar, Vol 7, 4th November 1948, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-04 > accessed 22 November 2018.

⁴² Constituent Assembly Debates, speech by Dr. B.R. Ambedkar, Vol 9, 25th November 1949, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-11-25 > accessed 22 November 2018.

⁴³ Constituent Assembly Debates, speech by Dr. B.R. Ambedkar, Vol 7, 4th November 1948, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-04 > accessed 22 November 2018.

⁴⁴ Since federal constitutions have to be necessarily written, and written constitutions are naturally rigid, federalism always results in rigidity.

⁴⁵ Since it is the Constitution itself that divides sovereignty between the Centre and States, any invasion by one Government into another's field would be a violation of the Constitution, and such violation would be a justiciable matter to be determined by the Judiciary only.

⁴⁶ Constituent Assembly Debates, speech by Dr. B.R. Ambedkar, Vol 7, 4th November 1948, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-04 > accessed 22 November 2018.

⁴⁷ See Seventh Schedule, Government of India Act, 1935; Second Report of the Union Powers Committee, July 5th, 1947, in B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing, 2012), Vol 2, at p. 778.

above, the list system in that statute was derived from the JCR, which stated that the rationale behind it was securing provincial autonomy.⁴⁸ For this purpose, an unprecedented, exhaustive statutory allocation was considered necessary. Further, it was also felt that such a scheme would reduce disputes over the scope of Centre-State jurisdiction. However, the distribution of legislative powers reflects the dominance of the Parliament over the State Legislatures.⁴⁹ This was a reflection of the centralising tendencies in the Constituent Assembly, as discussed above.⁵⁰

4. Some dissenting voices in the Constituent Assembly

Having discussed the predominant considerations which prevailed among the majority in the Constituent Assembly, along with the nature of federalism adopted generally and in the list system in particular, the major points raised by some notable dissenting voices will now be discussed.

(a) Cultural-linguistic considerations

In the years before the making of the Constitution, there was a steady demand for reshaping the territorial boundaries of provinces based on language.⁵¹ In fact, the Congress party itself supported this idea since at least 1917.⁵² However, closer to independence and influenced by the communal violence experienced during partition, the Congress leadership became wary of igniting further disharmony on the basis of language.⁵³ Within the Assembly, the demand for linguistic division of provinces was emphatically rejected.⁵⁴

This decision was subjected to strong criticism. P.T. Chacko, for example, criticised the Draft Constitution for being federal only in form but unitary in substance, arguing that India had a clear case for establishing a proper federation as it had various cultural, religious, communal, racial and linguistic minorities, often with conflicting interests.⁵⁵ Similarly, T.J.M. Wilson argued that the Constitution should have provided more autonomy and freedom to the States, and States should have been distributed on a cultural and linguistic basis.⁵⁶

(b) Calls for greater decentralisation

Several members of the Assembly argued in favour of greater decentralisation, with many calling for the establishment of a third tier of government. They demanded that the traditional village panchayat be recognised as the basic unit of provincial government.⁵⁷ Several justifications were provided, including enabling effective participatory democracy, ensuring greater accountability and providing customised governance better suited to local conditions.⁵⁸

R.K. Sidhwa was of the view that by ignoring local authorities – the pivots of social and economic life in India – the Constitution had failed to uphold the very idea of democracy. Local bodies were necessary to enable villagers

⁴⁸ See Report of the Joint Committee on Indian Constitutional Reform (1934) at pp. 142-143.

⁴⁹ This is evident from the number of entries in the Union List compared to the other lists, the rule of repugnancy which gives Parliament precedence over State Legislatures, and the allocation of residuary powers to the Centre.

⁵⁰ Unity and integrity, balanced economic development and a desire to modify federalism to suit India's particular requirements. See also Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966) at pp. 198-99; Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at pp. 83-84.

⁵¹ Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at p. 183.

⁵² Ramachandra Guha, *India After Gandhi* (Picador India, 2007) at pp. 180-200.

⁵³ Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at p. 183.

⁵⁴ There were fears that such a division would cause the new nation to revert to the "centuries-old India of narrow loyalties, petty jealousies, and ignorant prejudices engaged in mortal conflict." Report of the Linguistic Provinces Commission (1948) at p. 13.

⁵⁵ Constituent Assembly Debates, speech by P. T. Chacko, Vol 11, 21st November 1949, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/11/1949-11-21 > accessed 22 November 2018.

⁵⁶ Constituent Assembly Debates, speech by T. J. M. Wilson, Vol 11, 23rd November 1949, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/11/1949-11-23 > accessed 22 November 2018; T.T. Krishnamachari also cautioned against the tendency towards "language imperialism" or "Hindi imperialism", and urged the members of the Assembly to recognise the fact that there are a number of people across India who do not understand Hindi. See Constituent Assembly Debates, speech by T. T. Krishnamachari, Vol 7, 5th November 1948, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-05 > accessed 22 November 2018.

⁵⁷ The Gandhians in the Assembly were particularly strong proponents of this view, as Mahatma Gandhi had favoured a state constituted by independent and self-sufficient village republics. Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at p. 78.

⁵⁸ Constituent Assembly Debates, speech by Mohammad Ismail Khan, Vol 7, 8th November 1948, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-08 > accessed 22 November 2018.

to understand their responsibility and the fact that they have a share in the administration of the country.⁵⁹ Similarly, it was argued that in the interests of real democracy, it was necessary to give as much power to as small a unit as practicable, so that the individuals therein have an easy remedy.⁶⁰ Observing that people have lesser voice in the Central Government compared to lower levels of government, Narayan Singh argued that it was important to consider the measure of control that people could exercise over a government.⁶¹

Despite these strong arguments, the overall circumstances which led to a centralising bias in the Constituent Assembly impacted demands for local government as well.⁶² Therefore, these concerns were not reflected in the Draft Constitution.⁶³ However, calls for third tier government became more fervent in post-independence India, to the extent of requiring constitutional amendments to that effect.⁶⁴

E. Conclusion: A break in the historical narrative

Power-sharing and decentralisation in some form or the other have been central to the historical experience of the subcontinent. This helps in explaining its continuing significance even in contemporary times. Along these lines, the period of colonial rule also witnessed a deepening federalism that was naturally influential in shaping the contours of our current constitutional framework. However, the socio-political context of independence that informed the constitutional choices made by the framers ultimately resulted in a more 'centralised' federation.

This represents a break from the incremental nature of colonial legislation, which was moving towards increased provincial autonomy. This dissonance can be seen, in a nutshell, in the framework of legislative power-sharing adopted in the Constitution – although the list system was supposed to be a safeguard for provincial autonomy, residuary powers were allocated to the Centre. This was a conscious deviation from the corresponding scheme under the colonial legislation from which it was derived (the 1935 Act). The centralising bias which characterised the choices of the framers also led to some prescient dissenting voices in the Constituent Assembly, with many post-independence developments reflecting these concerns. The later demands for greater State autonomy, which will be discussed in the next chapter, should be viewed through this historical lens.

⁵⁹ Constituent Assembly Debates, speech by R. K. Sidhwa, Vol 7, 6th November 1948, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-06 > accessed 22 November 2018.

⁶⁰ Constituent Assembly Debates, speech by B. P. Jhunjhunwala, Vol 7, 23rd November 1949, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/11/1949-11-23 > accessed 22 November 2018.

⁶¹ Constituent Assembly Debates, speech by Narayan Singh, Vol 5, 21st August 1947, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/5/1947-08-21 > accessed 22 November 2018.

⁶² Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at p. 78.

⁶³ There was only a "vague allusion" to the ideal of village panchayats in one of the Directive Principle of State Policy. Arun Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury, 2018) at pp. 78-79, 94; On this subject, Ambedkar remarked that "village republics have been the ruination of India", and famously condemned villages as a "sink of localism, a den of ignorance, narrow-mindedness and communalism". He noted with approval that the Draft Constitution had instead adopted the individual as its unit. Constituent Assembly Debates, speech by Dr. B.R. Ambedkar, Vol 7, 4th November 1948, available at < http://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-04 > accessed 22 November 2018.

⁶⁴ The 73rd and 74th Amendments to the Constitution introducing local self-government in both the urban and rural areas were passed in 1993.

Chapter 3: Developments Since Independence and Making a Case for Cleaning Constitutional Cobwebs

A. Introduction: Reforming the Seventh Schedule

While the Constitution of India has been amended multiple times since its enactment, the Seventh Schedule has never been comprehensively reviewed.⁶⁵ This chapter argues that comprehensively reforming the Seventh Schedule is justified in light of constitutional intent, taking into consideration the historical background of the current scheme of distribution of powers, especially the allocation of residuary powers. This historical background further builds on the historical trajectory of Indian federalism as detailed in the previous chapter. Additionally, reform is also justified owing to developments in the decades following its adoption.

The first part of the chapter defends the current scheme of enumeration in three lists as being philosophically robust and in consonance with historical developments in federal constitution-making. The second part argues that exhaustiveness of enumeration and the preservation of provincial autonomy are fundamental features of the Seventh Schedule. This is done by relying on constitutional intent demonstrated through the historical circumstances of constitution-making and the actual design of power allocation. On this basis, the third part argues for the need to ensure 'continuing exhaustiveness' of enumeration of legislative powers, which justifies the need for periodically reviewing the Seventh Schedule.

The last part of this chapter contextualises these theoretical and historical discussions by studying relevant post-independence developments including State demands for greater autonomy and the recommendations in this regard made by various Commissions. These developments provide a further justification for reforming the Seventh Schedule.

B. Robustness of Enumeration in Federal Constitutions

A federal constitution is characterised by the constitutional entrenchment of the autonomy of provincial units.⁶⁶ Thus, as opposed to the mere sharing of powers for administrative convenience, federations require formalisation of the principle of power-sharing. According to Delledonne, in order to effect this conceptual framework, historically, "federal government has been conceived as one of limited and enumerated powers."⁶⁷ Philosophically, the rationale for such enumeration has been twofold: (i) to limit the powers of the government

⁶⁵ Since the enactment of the Constitution the Seventh Schedule has been amended nine times. These include the, Constitution (Third Amendment) Act, 1954; Constitution (Sixth Amendment) Act, 1956, Constitution (Seventh Amendment) Act, 1956, Constitution (Fifteenth Amendment) Act, 1963, Constitution (Thirty-second Amendment) Act, 1973, Constitution (Forty-second Amendment) Act, 1976, Constitution (Forty-sixth) Amendment Act, 1982, Constitution (Eighty-eighth Amendment) Act, 2003, Constitution (One Hundred and First Amendment) Act, 2016.

⁶⁶ Giacomo Delledonne, 'Enumerated Powers' (2017) Max Planck Encyclopedia of Comparative Constitutional Law, available at < <https://ssrn.com/abstract=3036172> > accessed 5 December 2018 (forthcoming).

⁶⁷ Giacomo Delledonne, 'Enumerated Powers' (2017) Max Planck Encyclopedia of Comparative Constitutional Law, available at < <https://ssrn.com/abstract=3036172> > accessed 5 December 2018 (forthcoming).

to only those that are necessary to achieve the ends for which the people came together as a society and (ii) to prevent parliamentary omnipotence by limiting fields of legislation.⁶⁸

Thus, the concept of enumeration has been historically intrinsic to federal constitutions since it represents a limitation of powers. Such a limitation is essential to ensure that the different institutional layers in a federation are able to function autonomously in their own spheres of influence. Since the clear stipulation of specific powers prevents the powers of one institutional layer from overlapping with the powers of the other, the autonomy of each institutional layer is secured. The US Constitution, where the federal government has been allocated certain enumerated powers and residuary powers have been allocated to the provincial governments is considered the seminal model for federal constitutions.⁶⁹ This is known as federal enumeration.

Subsequent constitutions such as the Canadian Constitution represented both federal and provincial enumeration. Provincial enumeration implies allocation of specific powers to the provinces.⁷⁰ The most recent trend has been the introduction of multiple lists, such as a comprehensive concurrent list, as an expression of cooperative federalism.⁷¹ This is indicative of the complexity and intertwining of federal and provincial powers and competences.

The Seventh Schedule of the Indian Constitution with its three lists viz. Union, State and Concurrent is an expression of this latter category. This is indicative of the spirit of cooperation between the Union and the States that the founders wanted to inculcate. The need for such cooperation in a country as diverse as India is undeniable, since the Centre continues to play a key balancing role in the Indian context.

Delledonne's historical analysis suggests that enumeration has been central to federal constitutional design across jurisdictions. As an expression of power-sharing, enumeration thus represents one of the most cogent and resilient ways of ensuring that the Centre and the units are able to function in their own spheres through the clear delineation of limited powers. The philosophical plinths of enumeration of the Seventh Schedule are thus robust and, in the absence of better alternatives, offer the most suitable means of power-sharing.

C. Constitutional Intent: Exhaustiveness as a Fundamental aspect of the Seventh Schedule

1. Historical Circumstances

As discussed earlier, the scheme of distribution of legislative powers in the Indian Constitution was taken from the 1935 Act. According to Gwyer C.J., inspiration for the 1935 Act came from the Canadian Constitution which provided for dual enumeration.⁷² Responding to the historical circumstances of the time, however, the 1935 Act adopted a comprehensive and exhaustive enumeration of subjects under three lists.⁷³ The Constituent Assembly, which incorporated this scheme in the present Constitution, further expanded this enumeration with the intention of covering every perceivable subject of government functioning.⁷⁴

⁶⁸ As was characterised by the French Constitution. See Giacomo Delledonne, 'Enumerated Powers' (2017) Max Planck Encyclopedia of Comparative Constitutional Law, available at < <https://ssrn.com/abstract=3036172> > accessed 5 December 2018 (forthcoming).

⁶⁹ Instances of such constitutions include Australia, United States of Mexico, Belgium etc.

⁷⁰ Admittedly, the Constitution of Canada conferred limited concurrent powers with respect to agriculture and immigration. However, the same was not akin to a comprehensive enumeration.

⁷¹ Examples include Brazil, Malaysia and Nepal.

⁷² Per Gwyer C.J., in *Subrahmanyan Chettiar v Muthuswami Goundan*, (1940) F.C.R. 188; The Federal Constitution of Canada was enacted by the British North America Act, 1867, See Gérald A. Beaudoin, 'Distribution of Powers' (The Canadian Encyclopedia, 7 February 2006), available at < <https://www.thecanadianencyclopedia.ca/en/article/distribution-of-powers> > accessed 5 December 2018.

⁷³ H. M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing, 2008), Vol 2 at p. 2232.

⁷⁴ While List I in the Seventh Schedule of the 1935 Act contained 59 entries, the Union List in the Indian Constitutions enumerates 97 entries. Similarly, the provincial list and the concurrent list contained 54 and 36 entries respectively in the 1935 Act, the State List and Concurrent List in the Indian Constitution contain 66 and 47 entries respectively. Notwithstanding the conferral of residuary powers to the Parliament, Seervai specifically cites example such as entry 6, List I 'Atomic energy and mineral resources necessary for production' to demonstrate how the Constituent Assembly accounted for developments since the 1935 Act such as progress in science to ensure exhaustiveness of the lists. Similarly, by retaining entries such as entry 31 'Posts and telegraphs; telephones, wireless, broadcasting and

According to the JCR, as discussed in chapter 2, the rationale for such enumeration was to ensure both provincial autonomy and exhaustiveness. The intention was to render the residue so negligible that regardless of whom the residue was allocated to, there would be no accretion of powers to either the federal centre or the provinces. This scheme was also necessitated by the historical context in which the JCR was deliberating the provisions of the 1935 Act. The Hindu and the Muslim groups had held conflicting views on the conferral of residuary powers, with the Hindu groups favouring the federal government and the Muslim groups favouring the provinces. Therefore, exhaustive enumeration was seen as striking a compromise between the interests of these two major communities. As a result, the 1935 Act and eventually the Indian Constitution saw one of the most exhaustive enumerations of legislative powers, unprecedented until then.⁷⁵

Exhaustiveness of enumeration is thus a fundamental aspect of the lists of the Seventh Schedule. Such an understanding is inescapable once the historical context of the drafting of the 1935 Act is accounted for.

2. Analysis of residuary powers

Entry 97, List I read with Article 248 of the Indian Constitution grant residuary powers to the Parliament. Early cases on residuary powers held that if any legislation fell within the ambit of any entry under any list, the residuary powers could not be resorted to.⁷⁶ This changed in *Union of India v H.S. Dhillon*⁷⁷ ('Dhillon'), where the majority held that if a matter did not fall under List II or List III, then it could be considered as falling under List I by virtue of entry 97 of List I read with Article 248 of the Constitution. Thus, according to this interpretation, there is no need to examine entries 1-96 of List I before resorting to residuary powers which was an independent basis of legislation.

As a result, the Supreme Court gave an unduly expansive reading to the residuary powers in light of Article 248 which, having been framed in the "widest possible terms", was seen as providing an independent basis of power. Subsequent Supreme Court decisions such as *Sat Pal Co. v Lt. Governor of Delhi*⁷⁸ ('Sat Pal') relied on the majority opinion in *Dhillon* treating residuary powers as a plenary power. This position of law has remained unchanged since, and continues to hold the field.⁷⁹

The eminent jurist, Seervai has however critiqued this interpretation. According to him, the Supreme Court's decision in *Kesavananda Bharati v State of Kerala*⁸⁰ ('Kesavananda') impliedly overruled the majority in *Dhillon*, and therefore *Sat Pal* was incorrectly decided.⁸¹ This was because *Kesavananda* held that if a subject of legislation was present in the mind of the framers then they would not have left it for the courts to find it in the residuary powers.⁸² Given the exhaustive nature of the enumerated powers, the framers had intended that residuary subjects should only relate to matters not identifiable at the time of drafting.⁸³ Thus if it was identified and yet not included in the lists by the framers, then it could not be introduced via residuary powers.

One consequence of such an interpretation is that reliance on residuary powers could only be had once all existing entries in the three lists, including Entries 1-96 of List I, were found to be inapplicable. Seervai's analysis thus identifies exhaustiveness as a key aspect of the lists in the Seventh Schedule. While some commentators⁸⁴

other like forms of communication' the Constituent Assembly displayed its consciousness of future developments. See H. M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing, 2008), Vol 2 at p. 2232.

⁷⁵ M. Ramaswamy, *The Law of the Indian Constitution: A Legal Interpretation of the Government of India Act, 1935* (Longmans, Green & Co, 1938) at p. 217.

⁷⁶ For instance, see *Hari Krishna Bhargava v Union of India*, AIR 1966 SC 619. For a commentary, see M.P. Jain, *Indian Constitutional Law* (LexisNexis, 2013) Vol 1, at p. 806.

⁷⁷ *Union of India v H.S. Dhillon*, AIR 1972 SC 1061.

⁷⁸ *Sat Pal Co. v Lt. Governor of Delhi*, (1979) 3 S.C.R. 651.

⁷⁹ M.P. Jain, *Indian Constitutional Law* (LexisNexis, 2013) Vol 1, at p. 883.

⁸⁰ *Kesavananda Bharati v State of Kerala*, (1973) Supp. S.C.R 1.

⁸¹ H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing, 2008), Vol 2 at p. 2433.

⁸² See Hegde and Mukherjea JJ's opinion in *Kesavananda Bharati v State of Kerala*, (1973) Supp. S.C.R 1; H. M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing, 2008), Vol 2 at p. 2432.

⁸³ "In view ... of the exhaustive nature of the three Lists ... the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present identifiable and cannot therefore be included now in the Lists". See Second Report of the Union Powers Committee, July 5th, 1947, in B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Universal Law Publishing, 2012), Vol 2, 778.

⁸⁴ M.P. Jain, *Indian Constitutional Law* (LexisNexis, 2013) Vol 1, at p. 883.

have praised *Dhillon's* broad interpretation as being justifiable for avoiding any vacuum in legislation, such an interpretation defeats the original intent of a negligible residue so as to preserve autonomy of the units.

The Constituent Assembly's conferral of residuary powers on the Parliament was only to account for unforeseeable areas of exercise of legislative powers and cannot be extended to imply an infinite legislative domain for the Union. While the Indian Constitution admittedly opted for centralised federalism, the logic of centralised federalism cannot obliterate both the structure of the lists and the principle of state governments' autonomy, which is the very essence of federalism. This is however not to suggest that residuary powers should not have any application under any circumstances, but that their application should be appropriately restricted in order to ensure the continuing exhaustiveness of the lists, which is crucial and in line with the intention of the framers.

In this context, the Sarkaria Commission had identified nine central laws as having been passed solely under the residuary power of Parliament, as determined in Supreme Court and High Court cases.⁸⁵ However, it noted that the number of cases in which entry 97, List I was used for sustaining the validity of a central law as an alternative or additional ground, due to *Dhillon's* interpretation, was "not insignificant".⁸⁶

The Sarkaria Commission's study covered cases decided in the period from 1950 to 1987. According to our study from 1987 onwards, twenty-one central laws, including several significant legislations, were found to have derived competence from entry 97, List I, among other entries.⁸⁷ However, such studies are necessarily limited to only those statutes which have been subject to the scrutiny of courts. The limitation is that legislations in India do not mention the entry under which the Parliament or State Legislatures have derived competence to enact them thereby leaving a study of judicial challenges the only viable methodology for determining parent entries.

Therefore, it is certainly possible that a greater number of statutes are attributable wholly to entry 97, List I, but are not captured in our study as they have not come before courts. This shows that despite the intention of the framers to have an exhaustive enumeration of powers in the Seventh Schedule, numerous laws have been passed under entry 97, List I. Thus, Constitutional practice indicates that use of residuary powers has been at the cost of provincial autonomy, even though the principle of continuing exhaustiveness remains key to the structure of the Seventh Schedule.

D. Continuing Exhaustiveness: The Need for Periodic Review and Cleaning Constitutional Cobwebs

Exhaustiveness of enumeration being a fundamental aspect of the lists in the Seventh Schedule implies that the lists should also remain exhaustive over time. This is the only logical conclusion if the use of residuary powers is to be kept to a minimum in accordance with the constitutional intent. The framers of the Constitution while ensuring exhaustiveness not only deliberated on including all of the possible legislative fields but also focused on the precise placement of entries under the three legislative lists. Broadly, entries that related to national importance were allocated to the Union and entries of local concern were allocated to the States.

⁸⁵ The Commission identified the following laws, from a study of case laws from the period 1950-87: Gift Tax Act, 1958, Himachal Pradesh Assembly (Constitution and Proceeding Validation) Act, 1958, Sugarcane Cess (Validation) Act, 1961, Punjab Excise (Delhi Amendment) Ordinance 1979, Section 12(2) of the Rubber Act 1947 as amended by the Rubber Amendment Act, 1960, Emblems and Names (Prevention and Improper use) Act 1980, Auroville (Emergency Provision) Act 1980, Section 24 of the Finance Act, 1969 amending the Wealth Tax Act, 1957. Report of the Commission on Centre-State Relations (1988) at chapter 2, Annexure II.1.

⁸⁶ Report of the Commission on Centre-State Relations (1988) at chapter 2, para 2.6.05.

⁸⁷ Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, Building and Other Construction Workers' Welfare Cess Act, 1996, Finance Act, 1994, Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Central Excises and Salt Act, 1944, Terrorist Affected Areas (Special Courts) Act, 1984, Terrorist and Disruptive Activities (Prevention) Act, 1985, and Terrorist and Disruptive Activities (Prevention) Act, 1987, Prevention of Terrorism Act, 2002, Section 11AA of the SEBI Act, Interest-tax Act, 1974, Private Security Agencies (Regulation) Act, 2005, Goods and Services Tax (Compensation to States) Act, 2017, Consumer Protection Act, 1986, Cess and other Taxes on Minerals (Validation) Act, 1992, Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, Unlawful Activities (Prevention) Act, 1967, Expenditure-Tax Act, 1987, Water (Prevention and Control of Pollution) Cess Act, 1977, Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; Out of these, 15 statutes were determined to be solely derived from entry 97, List I.

Exhaustiveness thus not only entailed enumeration of all conceivable subjects of governmental interest, but also their appropriate placement. Further, on a related note, such exhaustiveness *a priori* meant that all entries in the lists were relevant to the exercise of legislative power and were not outdated.

The needs of governance are not static and are bound to change over time. A subject that was vital for legislative allocation in 1935 may no longer be relevant in the present. Concerns such as climate change and emerging technologies amongst others, while not conceivable at the time of constitutional drafting have now become imperatives of governance. Further, the practical experience of federalism may make us reconsider the appropriateness of allocation of particular legislative powers. Neglecting these issues is akin to turning a blind-eye to these constitutional cobwebs.

Clearing these constitutional cobwebs is the only means of ensuring continuing exhaustiveness of the entries of the Seventh Schedule. Continuing exhaustiveness through periodic review would also ensure that the use of residuary powers is minimised and the autonomy of the units is preserved. This would entail the following:

- (a) Removal: Ensuring that entries in the Lists which have ceased to remain relevant are removed, since redundancies would obfuscate the true nature of the exhaustive enumeration of the Lists.
- (b) Addition: Ensuring that the Lists are continuously updated by adding new entries so that the so-called 'unforeseeable legislative domains'⁸⁸ for which residuary powers are called upon are reduced to a minimum. The need for addition of new entries is inevitable due to the inherent limits of human endeavour in ensuring that a particular enumeration may remain exhaustive for all times to come.
- (c) Appropriate placement: Ensuring that existing entries or new entries that are sought to be added are appropriately placed under the three legislative lists. The changing needs of governance and other priorities may require changes in classification of existing entries.

To this end, we recommend that in order to maintain continuing exhaustiveness the Constitution should be amended to include a provision requiring the periodic review of the Seventh Schedule along the lines of the Finance Commission. Such a Commission can be appointed once every ten years. These proposals are also supported by developments since the enactment of the Constitution as demonstrated in the next section.

E. Post-independence Developments as Justifying Reform

Federal tensions in post-independence India further highlight the need for reforming the Seventh Schedule through the addition, removal and appropriate placement of entries. In academic literature however, legislative relations have been viewed as a benign aspect of the otherwise complex centre-state relationship.⁸⁹ In fact, the constitutional scholar M.P. Jain has asserted the resilience of the lists,⁹⁰ a sentiment echoed by the Venkatachaliah Commission.⁹¹

We however argue that on the contrary, there have been multiple demands made by various States over the years, usually calling for greater powers to be vested in them via transferring entries to the State List, or even a complete restructuring of the Seventh Schedule. Responding to these demands, the Centre has appointed various Commissions to look into the question of centre-state relations. As opposed to the radical nature of some of the State demands, the Central Commissions have generally taken a conservative view of the matter, not recommending any major changes in the existing framework.

⁸⁸ *Sat Pal Co. v Lt. Governor of Delhi*, (1979) 3 S.C.R. 651.

⁸⁹ Mahendra P. Singh, 'India's Federalism: Structure and Issues', (1987) *Cochin University Law Review* at p. 260; M.P. Jain, 'Indian Federalism: A Background Paper' in Alice Jacob (ed), *Constitutional Developments Since Independence* (N.M. Tripathi, 1975) at p. 220.

⁹⁰ M.P. Jain, 'Indian Federalism: A Background Paper' in Alice Jacob (ed), *Constitutional Developments Since Independence* (N.M. Tripathi, 1975) at p. 224.

⁹¹ Report of the National Commission to Review the working of the Constitution (2002), Vol 1, at chapter 8, para 8.2.12.

1. State demands for greater autonomy

Several States have demanded transfer of powers from the Centre to the States, arguing that there is an imbalance in constitutional arrangement which requires rectification.⁹² The DMK Government of Tamil Nadu appointed a Centre-State Relations Inquiry Committee, popularly known as the Rajamannar Committee, in 1969. In its 1971 report, the Rajamannar Committee recommended transferring several entries to the State List, both from the Union⁹³ and Concurrent Lists,⁹⁴ and vesting residuary powers in the States.⁹⁵ It further recommended that a High Power Commission should be constituted for the redistribution of the three lists.⁹⁶ In addition to this, the Committee also recommended that State Governments should be consulted regarding the legislative proposals of the Centre with respect to Concurrent List matters.⁹⁷ The Rajamannar Committee Report failed to attract much attention, and has been criticised as “one sided narrow thinking” and for being an “overstatement of the States’ case”.⁹⁸ In fact, the Union Government strongly disapproved the State Government’s decision to form the Committee itself.⁹⁹

Similarly, in Punjab, the Shiromani Akali Dal passed the Anandpur Sahib Resolution in 1973, which demanded that the Centre confine itself only to defence, foreign relations, communications, railways and currency as far as the State of Punjab was concerned, and that all residuary powers should be vested in the State.¹⁰⁰ The State of West Bengal in 1977 adopted a memorandum on centre-state relations, recommending reformulation of the lists contained in the Seventh Schedule, affording greater control over industries to States and also transferring residuary powers. There were some demands along these lines from Orissa as well where the then Chief Minister, Biju Patnaik, particularly desired more State autonomy and decentralisation in the matter of finance.¹⁰¹

Analysing the nature and contents of these demands made by various States, it is evident that this aspect of centre-state relations has not been without controversy either. A few common grievances appear to be regarding the allocation of residuary powers with the Centre, and a general sentiment that the State List needed to be bolstered. It appears that at least till the 1980s, these demands were not taken seriously by the Central Government.

2. Recommendations of Commissions appointed by the Central Government

The Central Government appointed a Commission under the chairmanship of Justice R.S. Sarkaria in 1983 to review the existing arrangement between the Centre and the States with respect to powers, functions and responsibilities in all spheres.¹⁰² In its 1988 landmark report, the Sarkaria Commission dedicated an entire chapter on legislative relations, recording the grievances raised by various State Governments and political parties.¹⁰³ Many of these grievances match with the recommendations of the Rajamannar Committee Report of 1971, indicating that there was a consistency in the issues that dominated State concerns in the intervening period.

⁹² M.P. Jain, ‘Indian Federalism: A Background Paper’ in Alice Jacob (ed), *Constitutional Developments Since Independence* (N. M. Tripathi, 1975) at p. 226.

⁹³ For example, Entries 48 (futures market), 53 (mineral and oil resources), 54 (mines and minerals), and 67 (historical monuments and records) of the Union List. See Report of the Centre-State Relations Inquiry Committee (1971) at pp. 25-56.

⁹⁴ For example, Entries 5 (marriage, adoption, succession, etc.), 17 (prevention of cruelty to animals), 23 (social security and employment), and 40 (archaeological sites) of the Concurrent List. See Report of the Centre-State Relations Inquiry Committee (1971) at pp. 25-56.

⁹⁵ Report of the Centre-State Relations Inquiry Committee (1971) at pp. 25-56.

⁹⁶ Satya Prakash Dash, ‘Indian Federalism and Distribution of Responsibilities’, (2007) 68(4) *Indian Journal of Political Science* at p. 706.

⁹⁷ Mangal Chandra Jain Kagzi, ‘A Critique of the Rajamannar Committee Report’ in Alice Jacob (ed), *Constitutional Developments Since Independence* (N. M. Tripathi, 1975) at pp. 265-66.

⁹⁸ Report of the Centre-State Relations Inquiry Committee (1971) at pp. 25-56; Mangal Chandra Jain Kagzi, ‘A Critique of the Rajamannar Committee Report’ in Alice Jacob (ed), *Constitutional Developments Since Independence* (N. M. Tripathi, 1975) at pp. 279-80.

⁹⁹ Satya Prakash Dash, ‘Indian Federalism and Distribution of Responsibilities’, (2007) 68(4) *Indian Journal of Political Science* at p. 706.

¹⁰⁰ Satya Prakash Dash, ‘Indian Federalism and Distribution of Responsibilities’, (2007) 68(4) *Indian Journal of Political Science* at p. 707.

¹⁰¹ Satya Prakash Dash, ‘Indian Federalism and Distribution of Responsibilities’, (2007) 68(4) *Indian Journal of Political Science* at p. 708.

¹⁰² Satya Prakash Dash, ‘Indian Federalism and Distribution of Responsibilities’, (2007) 68(4) *Indian Journal of Political Science* at p. 707. The appointment of this Commission can be viewed as a positive response to the demand for greater State autonomy made by the Akali Dal in particular, via the Anandpur Sahib Resolution, but also to ease the pressure created by similar demands from non-Congress Governments in a number of States, including West Bengal, Jammu and Kashmir, Andhra Pradesh, Karnataka and Tamil Nadu. See ‘Sarkaria Commission’s Questionnaire’, (1984) 19(7) *Economic and Political Weekly* at p. 280.

¹⁰³ See Report of the Commission on Centre-State Relations (1988) at chapter 2.

A wide range of criticism was levelled at various aspects of legislative relations, with many States demanding functional and/or structural changes in the list system as contained in the Seventh Schedule. They alleged that there was an undue centralisation in the practical working of the arrangement (e.g. through the Centre misusing inter-linked entries and occupying needlessly excessive fields in Concurrent List entries),¹⁰⁴ apart from a structural imbalance in favour of the Centre.¹⁰⁵

Despite this, the Sarkaria Commission took the view that the Centre should remain strong and transferring subjects like labour, electricity, education, etc. to the States would disturb the basic scheme of the Constitution.¹⁰⁶ Accordingly, it did not recommend any major structural overhaul.

Its major recommendations were threefold. First, that residuary powers be transferred from the Union List to the Concurrent List, except for the residuary power to impose taxes which should be retained in the Union List.¹⁰⁷ Second, that the States should be consulted by the Centre before the latter exercises its power over Concurrent List entries. Third, that the Centre should limit the field it occupies with respect to Concurrent List entries to only as much as is necessary for ensuring uniformity in basic issues of national policy, with the details being left for State action.

The National Commission to Review the working of the Constitution ('Venkatachaliah Commission'), in its 2002 report observed that the framework for legislative relations had stood the test of time.¹⁰⁸ Instead the problems with respect to the concurrent list were attributed to the manner in which the Union has exercised its powers thereunder, i.e. without consulting the States.¹⁰⁹ Accordingly, the Commission recommended institutionalising consultation on these matters.¹¹⁰

Similar to the Sarkaria Commission, the Puncchi Commission (2010) also records reservations expressed by some State Governments and political parties regarding the existing system of division of legislative powers.¹¹¹ However it did not recommend any major changes either,¹¹² mainly reiterating the need for consultation and restraint by the Central Government when occupying a field in the Concurrent List.¹¹³

A general tension is apparent when the above Commission reports are read in the context of the demands made by the States. On one hand, there appears to be a consistency in the nature of demands raised by the States across decades – increase the legislative powers of the States vis-a-vis the Centre, primarily by transferring entries to the State List (particularly residuary powers). On the other hand, there is also a consistency in the observations and recommendations made by centrally-appointed Commissions – preserve the existing framework contained in the Seventh Schedule, with some functional improvements such as increasing consultation.¹¹⁴ This tension is noteworthy, as it represents the factual context of the working of the Seventh Schedule in post-independence India. It further justifies the theoretical argument of periodically reviewing the Seventh Schedule.

¹⁰⁴ Report of the Commission on Centre-State Relations (1988) at chapter 2.

¹⁰⁵ Report of the Commission on Centre-State Relations (1988) at chapter 2, paras 2.4.01 - 2.4.06.

¹⁰⁶ Satya Prakash Dash, 'Indian Federalism and Distribution of Responsibilities', (2007) 68(4) Indian Journal of Political Science at p. 707.

¹⁰⁷ Report of the Commission on Centre-State Relations (1988) at chapter 2, paras 2.6.18 and 2.43.01.

¹⁰⁸ Report of the National Commission to Review the working of the Constitution (2002), Vol 1 at chapter 8, para 8.2.12.

¹⁰⁹ Report of the National Commission to Review the working of the Constitution (2002) Vol 1, chapter 8 at para 8.2.6; Regarding the status of consultation at the time, the Commission observed that the institutional arrangements for consultation were not adequate, even though consultation did occur to an extent (for instance in Chief Ministers' Conferences on specific issues). See Report of the National Commission to Review the working of the Constitution (2002) Vol 1 at chapter 8, para 8.2.7.

¹¹⁰ Report of the National Commission to Review the working of the Constitution (2002) Vol 1 at chapter 8, para 8.2.12.

¹¹¹ Particularly, they argued that since the case for centralisation that existed at the time of framing the Constitution is not relevant in the contemporary period, a conscious policy for strengthening the States by "enriching the State List" should be pursued, in accordance with the principle of Subsidiarity. See Report of the Commission on Centre-State relations (2010), Vol 2 at chapter 3, para 3.3.01.

¹¹² By and large, it concurred with the observations and recommendations of the Sarkaria and Venkatachaliah Commissions. See Report of the Commission on Centre-State relations (2010), Vol 2 at chapter 3, para 3.3.02.

¹¹³ Report of the Commission on Centre-State relations (2010), Vol 2 at chapter 3, paras 3.3.02, 3.4.04, 3.8.01 and 3.8.02.

¹¹⁴ As noted by the Venkatachaliah Commission Report, published 14 years after the Sarkaria Commission Report, the institutional arrangements for consultation were not adequate despite the latter's recommendations in this regard. Even the Puncchi Commission Report (22 years after the Sarkaria Commission Report) reiterates this suggestion. This indicates that even this relatively modest recommendation has not been implemented in practice.

F. Conclusion: Tying the Strands

In general, a scheme of enumerated powers is a hallmark of federal constitutions, particularly as a means to enshrine the autonomy of the units. Accordingly, the Indian Constitution adopts a system of enumeration characterised by three lists. However, the special feature of this enumeration in the Seventh Schedule is the exhaustiveness that it seeks to achieve. From a historical analysis, it is evident that exhaustiveness is fundamental to our system of enumeration. This ought to inform the interpretation of residuary powers as well, such that entry 97, List I should be used sparingly, only as a last resort, and not as the primary means for ensuring that the lists remain exhaustive.

In chapter 2, we concluded that the enactment of the Constitution with a centralising bias was a break from the deepening experience of federalism that characterised pre-constitutional history. However, as this chapter has demonstrated, the logic of exhaustive enumeration continued from the 1935 Act while being cast in a centre-heavy framework.

The most appropriate way to ensure that continuing exhaustiveness is maintained to the greatest possible degree is to undertake a periodic review of the lists, focusing on removal of outdated entries, addition of new entries, and appropriate placement of existing entries. The need for such a periodic exercise is bolstered by an examination of post-independence developments revealing tensions in legislative relations between the Centre and the States. Accordingly, the Constitution should be amended to mandate the periodic review of the Seventh Schedule. Since allocation of residuary powers has been a source of constant tension, ensuring that the residue remains a minimum would largely account for such concerns. We propose an Analytical model for appropriate placement and outline an approach for addition and removal of entries in the next part of the report.

Part II

Chapter 4: An Analytical model to assess the Seventh Schedule

A. Introduction

We posit that a novel framework based on the four principles set out under this chapter should inform the determination of federal relations in India. The Analytical model presented is useful to study the appropriate placement of legislative entries in the Seventh Schedule of the Constitution. It consists of two older *a priori* principles derived from the Constituent Assembly Debates, as well as two new principles that have emerged from India's post-independence experience. Checklists associated with each of the principles have been provided to achieve a degree of granularity for practical application of the model.

The old principles that favour the allocation of legislative power to the Union Government are as follows:

- i. Ensuring the unity and integrity of India;
- ii. Achieving balanced economic development.

The new principles that favour the allocation of legislative power to the State Governments are as follows:

- i. Promoting cultural autonomy and diversity;
- ii. Enabling responsive governance.

B. Old Principles

The preceding discussion in chapter 2 has highlighted that the principles of unity and integrity of the nation and ensuring balanced economic development played a predominant role in guiding the Constituent Assembly. Considering their entrenchment in Indian federalism, these principles have been treated as *a priori* to federal relations in India.

1. Ensuring the unity and integrity of India

The strong central bias in the Constituent Assembly's vision of a federation was characterised by its emphasis on the principle of unity and integrity of India.¹¹⁵ Due to partition, there was an emphasis on national integration. This was accompanied by a resolve to keep at bay centrifugal forces that could weaken national unity.

National integration is an innate function of a federation, and involves bringing together previously disparate units and creating a coherent system that is a whole in itself.¹¹⁶ Myron Weiner has outlined some aspects of integration, which include "the process of bringing culturally and socially discrete groups into a single territorial unit and the establishment of national identity", the institution of a "national central authority over subordinate political units or regimes which may or may not coincide with distinct cultural or social growth", the attainment

¹¹⁵ A.K. Ghosal, 'Union-State Relations in India and National Solidarity' (1961) 22 ½ The Indian Journal of Political Science.

¹¹⁶ Ranbir Singh & Anupama Arya, 'Nehru's Strategy of National Integration' (2006) LXVII (4) The Indian Journal of Political Science; Kavita Navlani, 'National Integration and the Dynamics of Coalition and Federalism in India' (2006) 67(1) The Indian Journal of Political Science.

of a “minimum value consensus necessary to maintain social order” by upholding shared values, and structuring society for common purposes so that programmatic goals may be carried out.¹¹⁷

The federal system with its unitary bias has contributed to the preservation of the stability of India, despite the emergence of national security threats from outside and within the country.¹¹⁸ India has protected itself against potential external threats from neighbouring countries and fissiparous forces within. Further, the central government has conducted foreign relations with foreign governments and international organisations. In the meantime, cooperative relations between the Union and the States have also been nurtured, with the units coming together for various developmental activities like agriculture, health, education and social welfare.¹¹⁹

It should be noted that national integration does not mean blanket uniformity, and neither does it have to be blind to diversity.¹²⁰ In a diverse and pluralist country like India, unity may be achieved only through federal solutions that accommodate diversity. Central attempts at assimilation may prove to be counter-productive by stoking divisive tendencies. This will be further discussed later in the chapter under principle 3.

(a) Checklist for Analytical model

Ensuring unity and integrity is naturally a federal function, and the application of the principle favours legislative allocation to the Union Government. In light of the above, for the purpose of our Analytical model, the principle will mean the following:

1. Protecting against external threats and invasions;
2. Maintaining international relations;
3. Preventing disintegration of the country;
4. Ensuring a reasonable degree of consensus on core shared values, and bringing about political and socio-cultural integration of the people.

2. Achieving balanced economic development

The principle of achieving balanced economic development arose from India’s economic reality during Independence. As discussed in Chapter 2, the drafters were acutely aware that the fledgling Indian state was not on a strong financial footing. Some members of the Constituent Assembly argued in favour of centralisation, as they believed that only the coordinating power of the Centre could navigate the prevalent climate of economic uncertainty.

The partition exacerbated India’s economic troubles, producing a shortage of necessary raw materials.¹²¹ In response, the Centre was equipped with powers of coordination, planning and regulation. It also engaged in central planning.¹²² The large public sector economy was also intended to advance balanced economic development. This has led Granville Austin to observe that the power relationship between the Central Government and the State Governments was unequal from the outset.¹²³

Another aspect of the Centre’s economic powers is its role as a coordinator amongst states to encourage socio-economic development. While early decades of governance focussed on overall economic growth, the focus has now shifted to overall human development with factors such as access to nutrition, potable water, education and housing becoming increasingly salient in the nation’s growth manifesto. This is also in keeping with the

¹¹⁷ Myron Weiner, ‘Political Integration and Political Development’ (1965) 358 *The Annals of the American Academy of Political and Social Sciences*, as cited in Kavita Navlani, ‘National Integration and the Dynamics of Coalition and Federalism in India’ (2006) 67(1) *The Indian Journal of Political Science*.

¹¹⁸ K.H. Cheluva Raju, ‘Indian Federalism and Integrity of the Nation’ (1988) 49(1) *The Indian Journal of Political Science*; See Douglas V. Verney, ‘From Executive to Legislative Federalism? The Transformation of the Political System in Canada and India’ (1989) 51(2) *The Review of Politics*.

¹¹⁹ K.H. Cheluva Raju, ‘Indian Federalism and Integrity of the Nation’ (1988) 49(1) *The Indian Journal of Political Science*.

¹²⁰ Kavita Navlani, ‘National Integration and the Dynamics of Coalition and Federalism in India’ (2006) 67(1) *The Indian Journal of Political Science*; B.C. Upreti, ‘Dynamics of National Integration in India: Challenges and Constraints of a Plural Society’ in Baltej Singh Maan (ed), *National Integration in Communal Harmony*, (Publication Bureau, Punjabi University Patiala, 2004) at p. 59.

¹²¹ See Jerome B. Cohen, ‘Economic Development in India’ (1953) 68(3) *Political Science Quarterly*.

¹²² See Lloyd Rudolph and Susanne Rudolph, ‘The Old and the New Federalism in Independent India’ in Paul Brass (ed), *The Routledge Handbook of South Asian Politics* (Routledge, 2010).

¹²³ Granville Austin, *Working a Democratic Constitution* (OUP, 1999), at p. 33.

constitutional promise of a welfare state in the Directive Principles of State Policy. The Centre thus has an important role in maintaining parity across states on these indicators.

(a) Checklist for Analytical model

Since a coordinating role can only be performed by the Union in a federal polity, the attraction of the principle of ensuring balanced economic development will favour the allocation of legislative power to the Union Government. For the purpose of our Analytical model, the principle will mean the following:

1. Ensuring economic development at the national level in a coordinated manner;
2. Ensuring parity in socio-economic development across states.

C. New Principles

Federalism in India has shown itself to be amenable to change. It has evolved as a dynamic process, despite built-in constraints such as the emergency provisions and the vesting of residuary powers with the Centre.¹²⁴ The old and centralised federalism of the first four post-independence decades gradually gave way to a new and decentralised federalism from 1990 onwards.¹²⁵

The new federal model is characterised by the replacement of the planned economy with a market economy, a waning role for centralised institutions like the Planning Commission, a growing role for Chief Ministers of states and a shift in the focus of fiscal federalism to market-based measures in the allocation of funds.¹²⁶ We submit that it is time for Indian federalism to attune to the demands of two novel principles that emerge from our post-independence experience. Both of these principles favour the allocation of legislative powers to the State Governments due to the need for respecting cultural identity, and ensuring decentralised governance and participatory policymaking.

3. Promoting Cultural Autonomy and Diversity

Federal circumstances in India are unique with respect to its geographical area, population and the number of languages spoken.¹²⁷ Ramachandra Guha has posited that India's societal contestations can be studied across five often-intersecting axes, namely religion, caste, language, class and gender.¹²⁸

A tension may be observed in the earlier objective of securing the unity and integrity of India and the presence of sub-national identities held by citizens. The introduction of the present principle into the Analytical model attempts to reconcile this tension.

We argue that promoting cultural autonomy and diversity should inform the allocation of legislative power to the State Governments because that unit is best placed to appreciate the cultural context of its residents. Further, it should be given equal weightage as the Union-facing principles that guided the framers at the time of drafting the Constitution. This entails a shift in approach from viewing regionalism as an antithetical force to federalism, to one that is complementary and constructive to India's federal project.

(a) Resolving the Inherent Tension

Consociational theory provides a useful lens to assess India's federal performance. It postulates that democracy can exist in deeply divided societies, but only if the democracy is of a consociational nature. Such an arrangement would have the following features:¹²⁹

¹²⁴ Noor Ahmad Baba, 'Federalism and the Indian Experience with Nation Building: An Appraisal' (2013) 18(1) South Asian Survey.

¹²⁵ Lloyd Rudolph and Susanne Rudolph, 'The Old and the New Federalism in Independent India' in Paul Brass (ed), *The Routledge Handbook of South Asian Politics* (Routledge, 2010).

¹²⁶ Lloyd Rudolph and Susanne Rudolph, 'The Old and the New Federalism in Independent India' in Paul Brass (ed), *The Routledge Handbook of South Asian Politics* (Routledge, 2010).

¹²⁷ B.N. Srikrishna, 'Beyond Federalism, India International Centre Quarterly' (2011-12) 38 (3/4) *The Golden Thread: Essays in Honour of C.D. Deshmukh*.

¹²⁸ Ramachandra Guha, *India After Gandhi* (HarperCollins, 2007).

¹²⁹ Arend Lijphart, 'The Puzzle of Indian Democracy: A Consociational Interpretation' (1996) 90(2) *American Political Science Review*.

- “(1) grand coalition governments that include representatives of all major linguistic and religious groups,
- (2) cultural autonomy for these groups,
- (3) proportionality in political representation and civil service appointments, and
- (4) a minority veto with regard to vital minority rights and autonomy.”

India has presented a puzzling case for scholars of the consociational theory of power sharing, since the constitutional scheme does not meet all these factors. Scholars have shed light on the tussle between the trend of the Centre concentrating powers on one hand, and the growing force of regionalism on the other.¹³⁰ There have been conflicting ethnic claims by people residing in the same territory, as well as competing claims for more territorial rearrangement, for example demands for Gorkhaland, Vidarbha and Telangana.¹³¹ These have posed challenges to the legitimacy of Indian federalism.

The only sustainable way to reconcile this tension is to view regionalism as a *complementary* force, as opposed to one antithetical to federalism. Regionalism must be seen as part of the democratic process, where it can serve as a *constructive* agent for both the Union and the States.¹³²

It should be noted that the grouping of states at the time of independence was done on the basis of political and historical concerns, to the neglect of cultural or linguistic concerns. The Constituent Assembly followed the advice of its Linguistic Provinces Commission and did not agree to conduct linguistic organisation.¹³³ The subsequent policy volte face in the 1950s was caused by state demands and pressure from below.

Following the division of the state of Madras into the Tamil-speaking state of Tamil Nadu and the Telugu-speaking state of Andhra Pradesh in 1953, the States Reorganisation Commission accepted the linguistic basis of organising states.¹³⁴ This led to proposals to radically revise state boundaries on linguistic lines in 1955. Even though India’s lived experience accommodated language as a basis for state reorganisation, linguistic federalism has not completely satisfied the minority desire for autonomy.¹³⁵

Rajni Kothari has noted that the Indian polity has become increasingly multi-centric, leading to states asserting themselves vis-à-vis the centre.¹³⁶ In this regard, Kothari has highlighted two relevant shifts.¹³⁷ First, there have been demands for decentralisation of power, not just to the states, but also to the third tier. Second, there has been an upsurge of ethnic identities that are claiming more autonomy for themselves. The battle for federalism in India can be viewed as a battle for greater democracy.¹³⁸

This is a relatively neglected perspective in federalism studies. The traditional perspective has portrayed the debate on federalism as that of a strong centre versus the rights of states. Kothari finds this to be an artificial binary as it is not adequately reflective of the plurality in Indian culture. Every push for autonomy should not be viewed as a divisive force that may fragment the Union.

This principle seeks to vest legislative power with the State Governments, because the State Government is more capable of responding to cultural differences due to its proximity to and better representation of various

¹³⁰ Lloyd Rudolph and Susanne Rudolph, ‘The Old and the New Federalism in Independent India’ in Paul Brass (ed), *The Routledge Handbook of South Asian Politics* (Routledge, 2010); K.H. Cheluva Raju, ‘Indian Federalism and Integrity of the Nation’ (1988) 49(1) *The Indian Journal of Political Science*.

¹³¹ Katharine Adeney & Harihar Bhattacharyya, ‘Current Challenges to multinational federalism in India’ (2018) 28(4) *Regional and Federal Studies*.

¹³² Kavita Navlani, ‘National Integration and the Dynamics of Coalition and Federalism in India’ (2006) 67(1) *The Indian Journal of Political Science*.

¹³³ Arend Lijphart, ‘The Puzzle of Indian Democracy: A Consociational Interpretation’ (1996) 90(2) *American Political Science Review*; But see India has been categorised as an ‘assymetric federation’, due to the special cultural and historical prerogatives for particular member units that are embedded within the Constitution. For example, Article 370 has limited the power of the Indian Parliament to legislate for the state of Jammu and Kashmir as specified by the Instrument of Accession. Likewise, Article 371A delineates special provisions for the state of Nagaland, requiring the consent of the State Legislature to be taken for any law of Parliament that seeks to apply to Nagaland.

¹³⁴ Arend Lijphart, ‘The Puzzle of Indian Democracy: A Consociational Interpretation’ (1996) 90(2) *American Political Science Review*.

¹³⁵ Arend Lijphart, ‘The Puzzle of Indian Democracy: A Consociational Interpretation’ (1996) 90(2) *American Political Science Review*.

¹³⁶ Rajni Kothari, ‘The Problem’ (1989) 357 *Seminar*.

¹³⁷ Rajni Kothari, ‘The Problem’ (1989) 357 *Seminar*.

¹³⁸ Rajni Kothari, ‘The Problem’ (1989) 357 *Seminar*.

cultural groups. This proximity further enables the state to negotiate with these cultural groups due to better information symmetry compared to a central authority.

(b) Checklist for Analytical model

The attraction of the principle of promoting cultural autonomy and diversity will favour the allocation of legislative power to the State Governments. For the purpose of our Analytical model, the principle will mean the following:

1. Accepting interstate asymmetry and providing accommodationist concessions where required;
2. Promoting the autonomy of cultural groups to enable the pursuit of self-determination, potency and self-respect;
3. Promoting the diversity of cultural groups in keeping with the tradition of multinational federalism.

4. Enabling Responsive Governance

(a) Improving Public Representativeness and Responsiveness

'Responsive governance' is a multi-dimensional concept, which includes the following dominant aspects. First, government policies, strategies and programmes are pegged to the expectations of the public, keeping in mind local variations.¹³⁹ Second, it seeks to engage people in the process of decision and policymaking, implementation, monitoring and evaluation.¹⁴⁰ Under the present principle, we argue that decentralisation at the level of the state government is key to enabling responsive governance.

A critical consequence of increased decentralisation is an improvement in the representation of the public.¹⁴¹ The edifice of representative democracy is reliant on public responsiveness to policies. As argued by Wlezien and Soroka, the stronger the public responsiveness, the greater the basis for representation.¹⁴² Thus, the lower rungs of a federal structure of government can better represent the interests of the people and pursue policies aligned with regional variances.¹⁴³

(b) Decentralisation: The Key to Responsive Governance

Small governments are seen as encouraging political participation, the shared accommodation of various views, political compromise and communitarian values.¹⁴⁴ Additionally, they are supposed to bolster the rights of minorities by protecting the rights of the individual against majoritarian impulses.¹⁴⁵ It has been contended that small governments are more politically fluid, and more responsive to voting cycles.¹⁴⁶

Traditional economic theories of federalism have emphasised two benefits. The first revolves around Hayek's argument that information does not exist in a concentrated and integrated form. He has highlighted the constraints in acquiring full information, as information is dispersed, incomplete, fragmented, frequently

¹³⁹ United Nations, World Public Sector Report 2015, available at < https://read.un-ilibrary.org/democracy-and-governance/world-public-sector-report-2015_eb2395c8-en#page27 > accessed 26 December 2018.

¹⁴⁰ United Nations, World Public Sector Report 2015, available at < https://read.un-ilibrary.org/democracy-and-governance/world-public-sector-report-2015_eb2395c8-en#page27 > accessed 26 December 2018.

¹⁴¹ Christopher Wlezien & Stuart N. Soroka, 'Federalism and Public Responsiveness to Policy' (2011) 41(1) *Publius*.

¹⁴² Christopher Wlezien & Stuart N. Soroka, 'Federalism and Public Responsiveness to Policy' (2011) 41(1) *Publius*.

¹⁴³ J.S. Mill, *Considerations on Representative Government* (Cambridge, 1991).

¹⁴⁴ Robert P. Inman and Daniel L. Rubinfeld, 'The Political Economy of Federalism', in Dennis C. Mueller ed., *Perspectives on Public Choice: A Handbook* (Cambridge, 1997).

¹⁴⁵ Robert P. Inman and Daniel L. Rubinfeld, 'The Political Economy of Federalism', in Dennis C. Mueller ed., *Perspectives on Public Choice: A Handbook* (Cambridge, 1997).

¹⁴⁶ Robert P. Inman and Daniel L. Rubinfeld, 'The Political Economy of Federalism', in Dennis C. Mueller ed., *Perspectives on Public Choice: A Handbook* (Cambridge, 1997).

contradicting and constantly changing.¹⁴⁷ In this light, Hayek has seen the economic problem of society as the problem of utilisation of knowledge which is not given to anyone in its totality.¹⁴⁸

We can extend this argument to point out the better access to local information enjoyed by smaller governments and individual consumers. The allocation of all public goods (local, regional and national goods) for all citizens cannot be decided by a single authority such as the Central Government. It would be impractical and unwise for a single assembly to decide the levels of each bundle of goods for each community.¹⁴⁹ Thus, it is desirable for regional governments to make decisions on the allocation of public goods, as they will have better information on local preferences and conditions.

The second benefit flows from Tiebout's contention that competition among jurisdictions enables citizens to arrange themselves in such a manner that their preferences match with a particular menu of public goods on offer.¹⁵⁰ Such competition among jurisdictions makes governments take note of citizens' interests, reduce predatory behaviour and preserve markets. These theories demonstrate that with the appropriate degree of decentralisation of state power and information, federalism can increase efficiency and decrease encroachment by the state.¹⁵¹

India has forgone several benefits arising from Hayek's information decentralisation and Tiebout's inter-jurisdictional competition. However, the liberalisation of markets in 1991 has led to favourable outcomes for State Governments, by giving them greater political and fiscal autonomy. Liberalisation allowed State Governments to take advantage of private investment and partially wrest control over their economic policy agendas from the Central Government.¹⁵² However, this trajectory was not followed through by examining how the political system can enable responsive governance.

Reorienting the emphasis towards responsive governance will lead to better delivery of public services like health, education and infrastructure. As observed above, responsive governance is context sensitive, and is influenced by factors such as cultural traditions and public opinion. Due to the proximity that a State Government enjoys with its residents, it will be able to anchor its policies and resources to the real needs of people.

To this end, the state government may leverage ICT (information and communications technology) infrastructure and e-governance, as well as form collaborations with the private sector and civil society. The improved delivery of services can boost trust in the public sector.¹⁵³ Further, the governance structure may be more flexible and have the ability to reshape itself as considered expedient.

By decentralising governance to the hands of local governments, development can be fostered at the local level. Local governments that engage with their communities and are in touch with regional needs are likely to achieve better results and find local solutions that would evade a central government or planner. Thus, the need to enable responsive governance should inform the allocation of legislative power to State Governments.

(c) Checklist for Analytical model

The attraction of the principle of enabling responsive governance will favour the allocation of legislative power to the State Governments. For the purpose of our Analytical model, the principle will mean the following:

1. Responding effectively and efficiently to the needs of people;

¹⁴⁷ Hayek, 'The Use of Knowledge in Society' (1945) *The American Economic Review*; See also Lawrence J. Conlin, 'Hayek, Liberalism and Social Knowledge' (1990) 23(2) *Canadian Journal of Political Science*.

¹⁴⁸ Hayek, 'The Use of Knowledge in Society' (1945) *The American Economic Review*.

¹⁴⁹ Dennis C. Mueller ed., 'Federalism', *Public Choice III* (Cambridge, 2003).

¹⁵⁰ Yingqi Qian & Barry Weingast, 'Federalism as a Commitment to Preserving Market Incentives' (1997) 11(4) *Journal of Economic Perspectives*.

¹⁵¹ Yingqi Qian & Barry Weingast, 'Federalism as a Commitment to Preserving Market Incentives' (1997) 11(4) *Journal of Economic Perspectives*.

¹⁵² Amaresh Bagchi, 'Rethinking Federalism: Changing Power Relations Between the Centre and the States' (2003) 33(4) *Publius*.

¹⁵³ OECD, *Trust in Government- Responsiveness*, available at <<http://www.oecd.org/gov/trust-responsiveness.htm>> accessed 26 March 2019.

2. Engage the public in the making of the policy, and its implementation, monitoring and evaluation.

D. Conclusion: Four Pillars of the Principle-based Approach

The four principles of unity and integrity, balanced economic development, cultural diversity and responsive governance form the pillars of our proposed Analytical model to study the placement of entries in the Seventh Schedule. The principles are a combination of the old and new and therefore represent continuity with existing constitutional practice as well as respond to changing needs of governance. The next chapter will operationalise these principles through an Analytical model which will aid future legislators in determining appropriate placement and thereby contribute to continuing exhaustiveness.

Chapter 5: Analytical model for Appropriate Placement of Entries

A. Introduction: Laying down the Analytical model

As explained previously, there is no principle of universal application to determine the appropriate placement of legislative entries under the three lists of the Seventh Schedule. In this regard, chapter 4 laid the foundation of a principle-based approach by identifying four principles viz. unity and integrity, balanced economic development, cultural diversity and responsive governance as being key in determining federal relations in India today.

This chapter builds on these principles by creating an Analytical model, through which individual entries of the Seventh Schedule can be appropriately placed in the three lists. The model therefore is not only useful in redistributing the existing entries of the Seventh Schedule but will also determine the appropriate placement of any new entry that may require inclusion in the lists. Thus, such a model is replicable and can be suitably relied upon for analysing the wide range of legislative subjects that exist currently or may be introduced in the future. The chief advantage of such an Analytical model is that it provides a principle-based approach to determine the ambit of legislative powers of the different layers of government.

The first part of this chapter explains the Analytical model that applies the four principles of legislative distribution, essentially creating a doctrinal device. Individual entries can be tested through this device to determine their appropriate allocation to the Union, State or Concurrent Lists. In the second part of the chapter, by way of illustration, several entries of the Seventh Schedule are tested by the Analytical model and thereby their appropriate placement is determined. The entries were classified into thirteen broad themes and one entry from each theme is analysed in this chapter to demonstrate the exhaustiveness and replicability of the Analytical model. Annexure 'B' contains an entirely new Seventh Schedule, where every single entry has been put through the model, with changes in placement made accordingly.¹⁵⁴

B. Analytical model Explained

On the basis of the historical foundations of federalism and India's present needs of governance, the following principles, along with detailed checklists, were identified:

a) Unity and Integrity

- Protecting against external threats and invasions;
- Maintaining international relations;
- Preventing disintegration of the country;
- Ensuring a reasonable degree of consensus on core shared values, and bringing about socio-cultural, political and emotional integration of the people.

b) Balanced Economic Development

- Ensuring economic development at the national level in a coordinated manner;

¹⁵⁴ Apart from subjecting the existing entries of the Seventh Schedule to analysis by the Analytical Model, outdated entries have been removed and new entries have been added in the new Seventh Schedule in Annexure 'B', See Chapter 6.

- Ensuring parity in socio-economic development across states.

c) Cultural Diversity

- Accepting interstate asymmetry and providing accommodationist concessions where required;
- Promoting the autonomy of cultural groups to enable the pursuit of self-determination, potency and self-respect;
- Promoting the diversity of cultural groups in keeping with the tradition of multinational federalism.

d) Responsive Governance

- Responding effectively and efficiently to the needs of people;
- Engaging the public in the making of the policy, and its implementation, monitoring and evaluation.

While analysing a particular entry, the first step would be to undertake an analysis to see which of the above principles the entry has the potential to attract. While determining this, if any of the listed items in the checklist are attracted then the principle will apply to that particular entry. It is however imperative to test all the principles against a particular entry. Upon undertaking such an analysis, the following three situations may arise:

(i) a) and/or b) are attracted but not c) and d)

Since both a) and b) are principles that go to the Union, if either of them is attracted by a particular entry then the same will be placed under the Union List. However, it should be borne in mind that the entry will only be placed in the Union List if a) and/or b) are attracted to the exclusion of both c) and d). In case either c) or d) are attracted then the entry cannot be placed in the Union List at this stage.

(ii) c) and/or d) are attracted but not a) and b)

Both c) and d) are principles that go to the States, thus if either of them is attracted then the entry should normally be placed in the State List. In this case too while determining the allocation to states it should be ensured that neither a) nor b) are attracted. However, before placing the entry in the State List a further 'Concurrence Analysis' will have to be undertaken.

The Concurrence Analysis determines if the entry will be placed in the Concurrent List or the State List. The rationale for carrying out the analysis at this stage is the underlying assumption that while the entry may be naturally suited for allocation to the States, due to certain overarching considerations, the same also requires the concurrent jurisdiction of the Parliament on certain grounds.

The JCR identifies uniformity of laws (for instance, the great codes that had already been in existence such as the Indian Penal Code, the Civil Procedure Code etc.), encouragement of state effort for innovation (for instance, social sector reform) and covering subjects that may have effects outside the state (for instance, epidemics) as reasons for placing any entry in the Concurrent List.

The Sarkaria Commission has largely adopted these justifications, while also arguing that such matters are neither exclusively of national concern nor of local concern and hence occupy a constitutional 'grey' area.¹⁵⁵ While this suggests an independent justification for the Concurrent List, viewing concurrent entries as naturally belonging to the State with legislative competence being extended to the Parliament due to overarching considerations seems to be a more logical and appropriate approach. This is especially so because a concurrent list is indicative of cooperative federalism where the Union and States share competencies over certain matters due to overlapping interests in legislation. In the Analytical model, the following considerations will form part of the Concurrence Analysis:

- Interests of uniformity

¹⁵⁵ Report of the Commission on Centre-State Relations (1988) at chapter 2.

In certain subjects of legislation, there may be an interest in maintaining a degree of uniformity across the Union. For instance, laws that set universal standards may fall into this category. Such uniformity may be desirable due to concerns of efficiency, costs associated with displacing the existing legal framework etc.

➤ **Encouraging state effort or innovation**

There is a valid presumption that States, when compared to the Union have a relatively lesser area under their administration and respond better to local needs when given autonomy in governance. However, this does not preclude the possibility of the Union nudging the States, by mandating minimum standards or broad frameworks for instance, in order to encourage effort and innovation in governance. Instances where the Union may play such a role would include measures of social reform and welfare.

➤ **Matters that may have an impact outside the State**

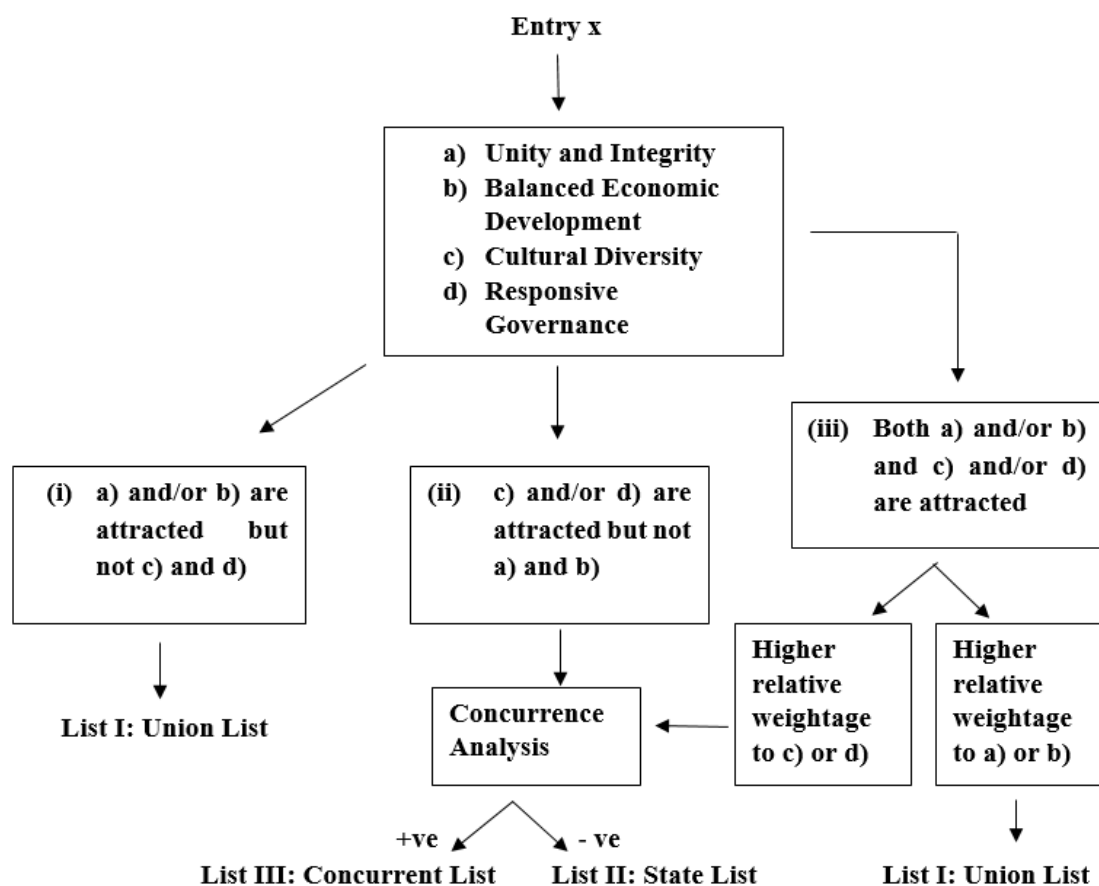
Often situations of governance may arise that have an impact outside the boundaries of a particular state. In such circumstances the State Legislature may be unable to operate outside its territorial jurisdiction. In such cases, the Union may have to intervene to ensure that there is no vacuum in governance.

Thus, if principles c) and/or d) are applicable to any entry, and not a) and b), then it will be subject to a further Concurrence Analysis which will assess whether the entry meets any of the above three criteria. In case any of the criteria are found to be applicable (a +ve result), the entry will be placed under the Concurrent List. If all three criteria are found to be inapplicable (a -ve result) then the entry will remain in the State List.

(iii) Both a) and/or b) and c) and/or d) are attracted

Since a) or b) and c) or d) go to the Union and the States respectively, in such a situation a tie-breaker will be applied to determine the list under which the entry should be placed. This tie-breaking exercise would involve assigning relative weightages to each of the principles on a case-by-case basis, keeping the best interests of the citizens in mind. Whichever principle is found to have the most relative weight will determine the list i.e. the Union or the State under which the entry is placed. In case it is the State List, a further Concurrence Analysis will be undertaken to determine if the entry is more appropriately placed under the Concurrent List or the State List.

The Analytical model can also be understood by the following diagrammatic representation:



C. Analytical model Applied

The Analytical model will now be applied to various entries of the Seventh Schedule to demonstrate how the model will work in operation. The two hundred and nine entries of the Seventh Schedule were classified across thirteen themes and one entry from each of these themes is studied through the model in this chapter. This methodology was preferred over randomised selection due to the qualitative nature of this exercise. Randomised selection while intuitively attractive, is more suitable for quantitative data and may in this case lead to inadequate demonstration if only a certain class of entries gets randomly selected. Instead, to indicate the breadth of the model and hence establish its replicability and exhaustiveness in application, an entry from each of the thirteen identified themes has been analysed here.

The thirteen themes are broad-ranging in nature and span across the three lists. They are as follows:¹⁵⁶

1. Defence
2. Foreign Affairs
3. Communications and Transport
4. Matters vital for the existence and functioning of Union or State
5. Duties and Taxes
6. Economic Planning, Regulation, Trade and Commerce
7. Public Order, Law Enforcement, Police and Courts
8. Public Health
9. Agriculture and Animals
10. Land and Property
11. Civil Relations

¹⁵⁶ Since residuary powers i.e. entry 97 List I is a separate category in itself, it has not been classified into any of the themes above.

- 12. Environment
- 13. Social Planning

Annexure ‘A’ of this report has exhaustively outlined the details of these themes and the entries that have been classified under each of them.

A representative entry has been chosen from each of these themes to be analysed through the model. In some cases, the model does not recommend any change; in other cases, it recommends another list as appropriate placement. Thus, what may have been considered appropriate legislative allocation at the time of Constitution-making may no longer be appropriate. This is indicative of the dynamic nature of federalism. Changing imperatives of governance may require reallocation of legislative competencies. Further, such reallocation ensures that the lists remain exhaustive.

1. Theme: Defence

Entry Analysed: Entry 2 List I - Naval, military and air forces; any other armed forces of the union

This entry reads as “Naval, military and air forces; any other armed forces of the union.” Entry 2 along with the first seven entries of List I can broadly be classified as defence entries that are traditionally allocated to the federal government.¹⁵⁷ Instead of a single entry on defence, the entries have been sub-categorised for abundant caution. Entry 2 specifically deals with the three chief wings of the regular army as well as with special forces such as the Central Reserve Police Force, the Border Security Force and the Central Industrial Security Force etc.¹⁵⁸

Entry 2 List I: Naval, military and air forces; any other armed forces of the union

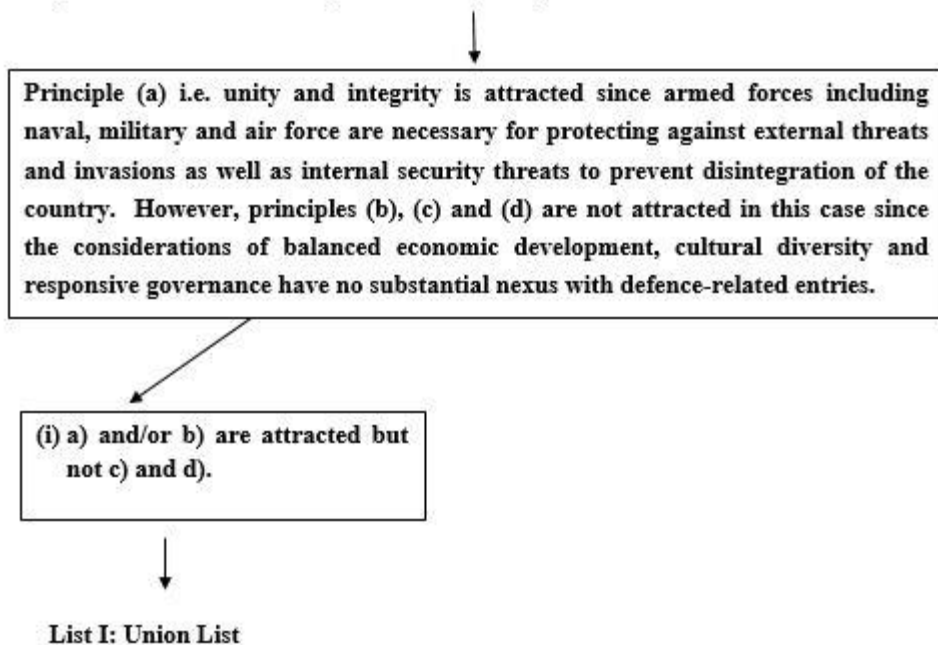


Fig. (i)

Thus, upon analysis through the Analytical model, entry 2 is most appropriately placed in List I i.e. under the jurisdiction of the Parliament. Therefore, in this case there will not be any change in the existing placement.

2. Theme: Foreign Affairs

¹⁵⁷ M.P. Jain, *Indian Constitutional Law* (LexisNexis, 2013) Vol 1, at p. 806., at p. 709.

¹⁵⁸ M.P. Jain, *Indian Constitutional Law* (LexisNexis, 2013) Vol 1, at p. 709. Currently laws such as the Army Act have been enacted under this entry, see *Prithi Pal Singh v Union of India*, AIR 1982 SC 1413.

Entry Analysed: Entry 14 List I - Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries

Entry 14 deals with, “Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.” This entry forms part of a group of entries from ten to twenty-one that deal with foreign affairs in List I. Like defence, subjects falling under foreign affairs have been traditionally allocated to the Union Government. The ability to enter into treaties and agreements is an intrinsic aspect of the sovereign power of any state. The entry further empowers the Parliament to legislate on matters on which it has entered into treaties. This power to enact legislation in pursuance of treaties also extends to subjects that would otherwise fall within the domain of the states under the legislative allocation in the Seventh Schedule. This power is further reflected in Article 253 of the Constitution.¹⁵⁹

Entry 14 List I: Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries

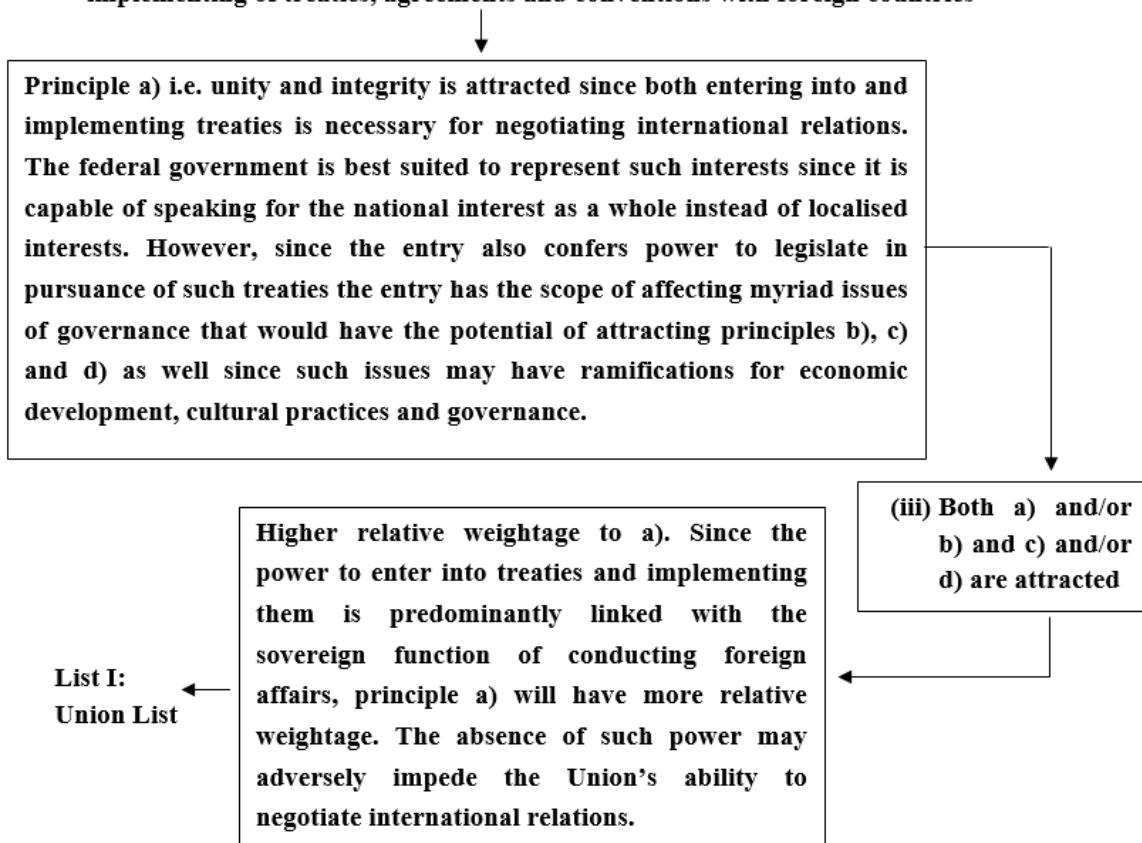


Fig. (ii)

Thus, upon analysis through the Analytical model, entry 14 is most appropriately placed in List I i.e. under the legislative competence of the Parliament. Therefore, in this case there will not be any change in the existing placement.

3. Theme: Communications and Transport

Entry Analysed: Entry 60 List I - Sanctioning of cinematograph films for exhibition

¹⁵⁹ Article 253, Constitution of India - “Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body”.

Entry 60 deals with, “Sanctioning of cinematograph films for exhibition” which grants the Parliament the power to legislate on granting certification to films. Significantly, entry 60 limits the State Legislature’s powers under entry 33, List II. The latter reads as “Theaters and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.”

Thus, apart from sanctioning of cinematograph films, all other aspects related to films fall within the exclusive domain of the State Legislatures. The Sarkaria Commission had considered and rejected a proposal from the states to shift the entry to the State List.¹⁶⁰ The states had argued that since exhibition of films was an issue involving cultural sensitivities, it was more appropriate for the states to legislate on. The Commission instead argued that films could be instruments of fostering national integration and that it would be impractical to make filmmakers seek sanction in different states.

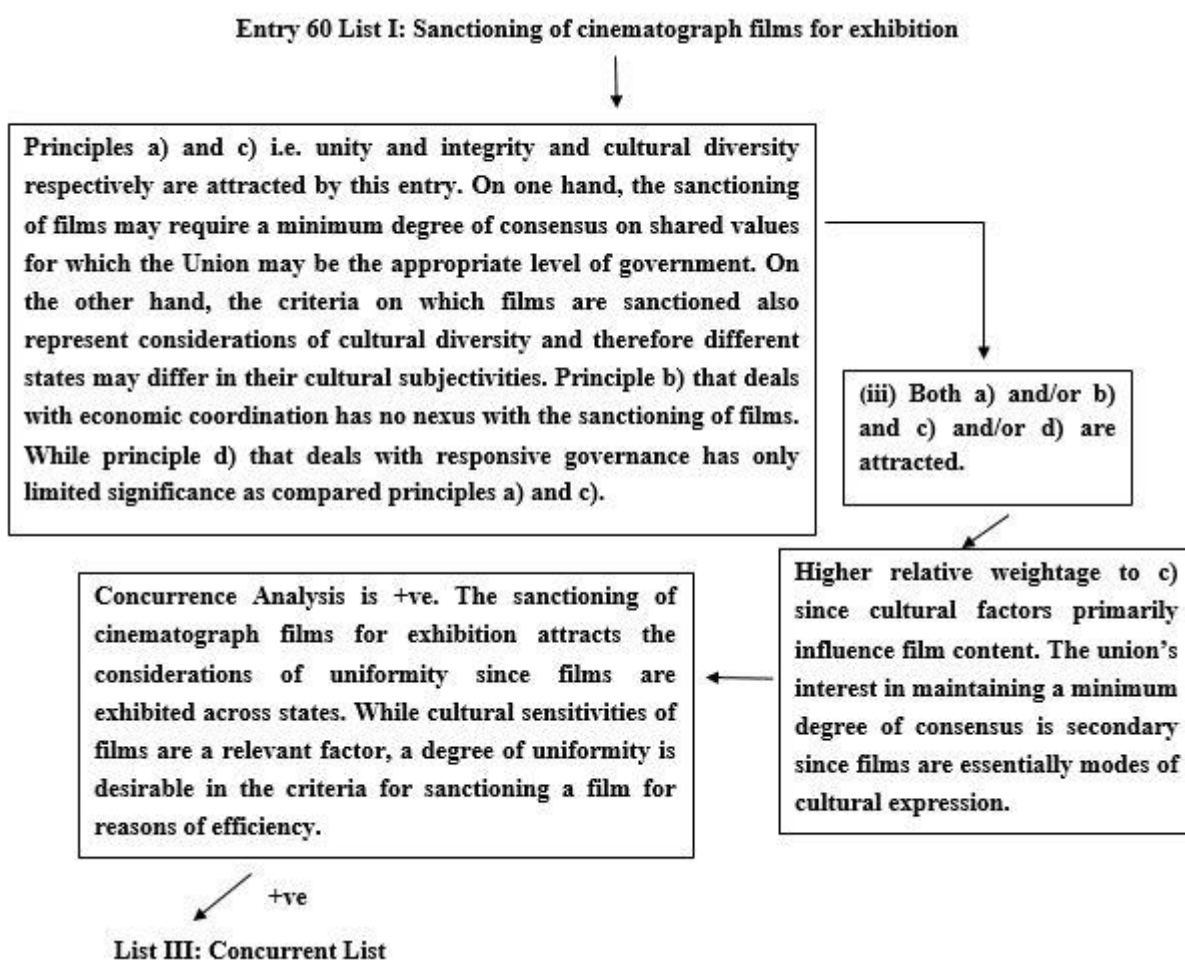


Fig. (iii)

Thus, upon analysis through the Analytical model, entry 60 is most appropriately placed in List III i.e. under the Concurrent List. Therefore, in this case we recommend a change in the existing placement.

4. Theme: Matters vital for the existence and functioning of Union and States

Entry Analysed: Entry 38 List I - Reserve Bank of India

Entry 38 deals with, “Reserve Bank of India” which confers the Union with power to regulate the central bank. While the Reserve Bank of India Act, 1934 was enacted prior to the enactment of the Constitution, entry 38 gives the Parliament legislative competence over such a law.

¹⁶⁰ Report of the Commission on Centre-State Relations (1988) at chapter 2.

Entry 38 List I: Reserve Bank of India



Principle b) i.e. balanced economic development is attracted by this entry. The Reserve Bank of India which is India's central bank is responsible for several key economic activities such as the issue of currency, regulating monetary policy, managing foreign exchange amongst others. These activities, apart from being attributes of sovereignty, are key to national economic development thereby making the Union the appropriate institutional level for this function. Principles a), c) and d) however are not attracted by this entry since concerns of unity and integrity, cultural diversity and responsive governance have no substantial nexus with the functioning of the central bank.

(i) a) and/or b) are attracted but not c) and d)



List I: Union List

Fig. (iv)

Thus, upon analysis through the Analytical model, entry 38 is most appropriately placed in List I i.e. under the legislative competence of the Parliament. Therefore, in this case there will not be any change in the existing placement.

5. Theme: Duties and Taxes

Entry Analysed: Entry 62 of List II - Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council

Entry 62 of List II¹⁶¹ deals with "Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council". It was substituted by the Constitution (One Hundred and First Amendment) Act, 2016. The previous entry 62 of List II read as "[t]axes on luxuries, including taxes on entertainments, amusements, betting and gambling." This tax currently applies over and above the GST. Some states have enacted laws that authorize the levy and collection of this tax. The rationale for the tax is to compensate the states for the expense incurred in providing infrastructure for entertainment and amusement.

¹⁶¹ Currently, local self-government falls within the ambit of the states and therefore the taxing power has also been conferred upon the states. Since, we have not undertaken a separate analysis of appropriateness of allocation to the local government, the analysis is with respect to allocation to state.

Entry 62 of List II: Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council

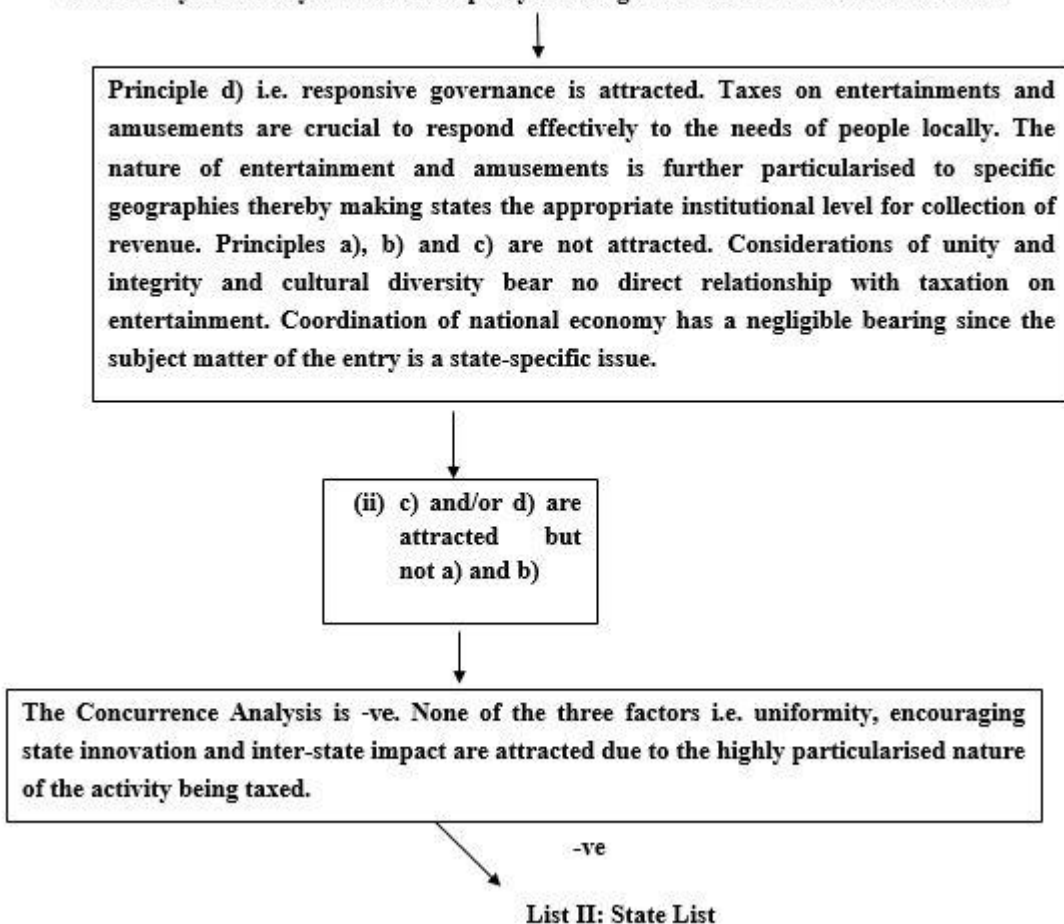


Fig. (v)

Thus, upon analysis through the Analytical model, entry 62 is most appropriately placed in List II i.e. under the competence of the State Legislature. Therefore, in this case there will not be any change in the existing placement.

6. Theme: Economic Planning, Regulation, trade and commerce, industries

Entry Analysed: Entry 40 of List I - Lotteries organized by the Government of India or the Government of a State

Entry 40 of List I deals with “lotteries organized by the Government of India or the Government of a State”. This entry should be read with entry 34 of List II. The Parliament has passed the Lotteries (Regulation) Act, 1998 under entry 40 in order to regulate lotteries run by State Governments. Its object is to “suppress the mischief of lottery”.¹⁶² The law imposes conditions on which a lottery may be conducted by a State Government, and enables a state to prohibit the sale of lottery tickets by other states. The Central Government has the power to ban a lottery that has been organized in contravention of the conditions laid down under the law. Further, the Supreme Court in *B.R. Enterprises v. State of Uttar Pradesh*¹⁶³ has held that a lottery does not amount to trade and commerce under Articles 301 to 303 of the Constitution.

¹⁶² All Kerala Online Lottery Dealers Association v State of Kerala, (2016) 2 SCC 161.

¹⁶³ AIR 1999 SC 1867.

Entry 40 List I: Lotteries organized by the Government of India or the Government of a State

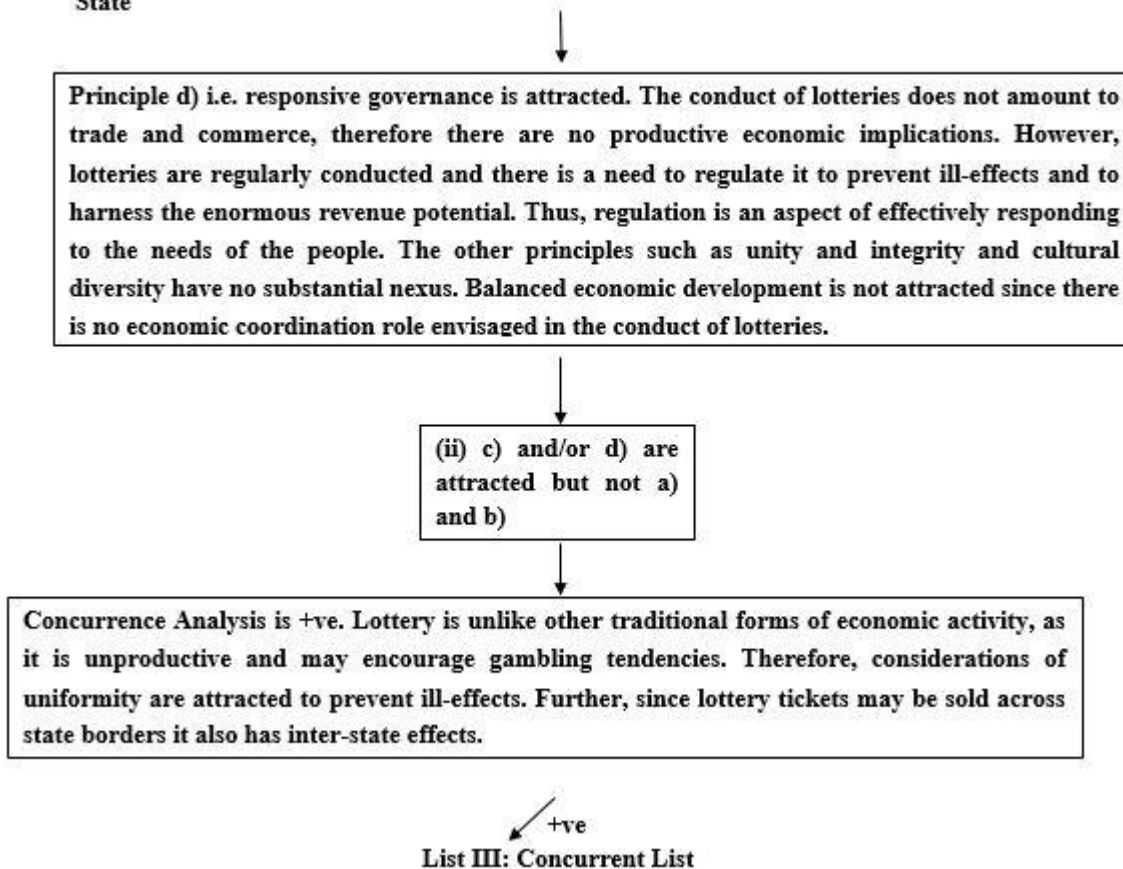


Fig. (vi)

Thus, upon analysis through the Analytical model, entry 40 is most appropriately placed in List III i.e. under the Concurrent List. In this case we recommend a change in the existing placement. Further, considering the overlap of this entry with entry 34 of List II which covers betting and gambling, entry 34 of List II should be rationalised to exclude the domain covered by entry 40 of List I (recommended to be moved to List III).

7. Theme: Public Order, Law Enforcement, Police and Courts

Entry Analysed: Entry 2 List II - Police (including railway and village police) subject to the provisions of entry 2A of List I

Entry 2 of List II deals with "Police (including railway and village police) subject to the provisions of entry 2A of List I". This entry should be read with entry 2A of List I, which is concerned with deployment of armed forces of the Union, any other force subject to the control of the Union or any contingency or unit under a State in the aid of civil power. The State can legislate on its police power over any offence committed within its territory. Extraterritorial jurisdiction may be exercised by the state if a part of the offence has been committed outside the state. This would entail the police of multiple states working together.

Entry 2, List II: Police (including railway and village police) subject to the provisions of entry 2A of List I

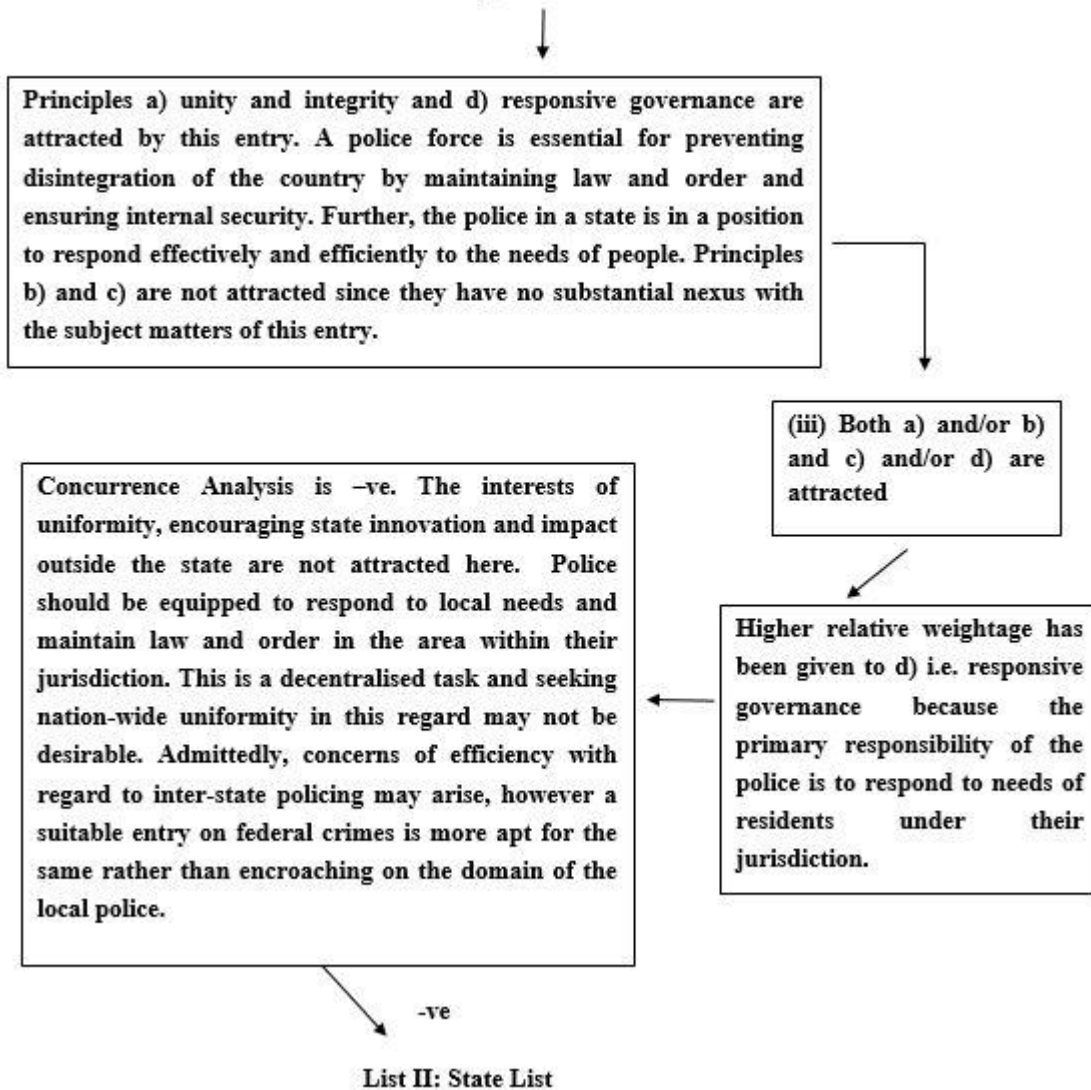


Fig. (vii)

Thus, upon analysis through the Analytical model, entry 2 is most appropriately placed in List II i.e. under the State List. Therefore, in this case there will not be any change in the existing placement.

8. Theme: Public Health

Entry Analysed: Entry 18 List III - Adulteration of foodstuffs and other goods

Entry 18 of List III deals with “Adulteration of foodstuffs and other goods” and confers the power to legislate on both the Union and the states. The effects of food adulteration may be widespread across state borders. The Prevention of Food Adulteration Act, 1954 has been enacted by the Parliament in pursuance of this entry. The objective of the legislation is to curb the public health impact of consuming adulterated food.

Entry 18, List III: Adulteration of foodstuffs and other goods

Principle d) i.e. responsive governance is attracted. The consumption of adulterated foodstuffs is a public health hazard that may have widespread effect. People have a need to consume safe and quality food, and thus food adulteration requires regulation. Principles a) and b) have no substantial nexus. While principle c) i.e. cultural diversity is not attracted since the entry is only concerned with adulteration and not food habits *per se*.

(ii) c) and/or d) are attracted but not a) and b)

Concurrence Analysis is +ve. There exists an interest in maintaining a degree of uniformity in food safety regulation across the union for maintaining universal quality standards and for reasons of efficiency.

↙ +ve
List III: Concurrent List

Fig. (viii)

Thus, upon analysis through the Analytical model, entry 18 is most appropriately placed in List III i.e. under the Concurrent List. Therefore, in this case there will not be any change in the existing placement.

9. Theme: Agriculture and animals

Entry Analysed: Entry 17 List III - Prevention of Cruelty to Animals

Entry 17 of List III deals with "Prevention of cruelty to animals". Parliament has enacted the Prevention of Cruelty to Animals Act, 1960 in pursuance of this entry to prevent the infliction of unnecessary pain or suffering on animals. Recognising the interplay between preventing animal cruelty and religion, the Act makes an exception with respect to the killing of animals required by the religion of any community.

Local cultural practices may be tied to animals. For example, *jalikattu* is a traditional spectacle held in Tamil Nadu as part of Pongal celebrations. It involves a bull race with human participants trying to grab and hold onto the animals. Other such practices held in parts of India include *kambala* (annual buffalo race), *bail gadi shariat* (bullock cart races), camel race and bulbul fight for *makar sankranti*. Animal rights activists have protested that such practices encourage cruelty to animals through whipping, intimidating and castrating. Further, different animals are considered sacred by different religious groups.

Entry 17 List III: Prevention of cruelty to animals

Principles c) cultural diversity and d) responsive governance are attracted by this entry. Since several religious and cultural practices involve animals, respecting cultural diversity would entail accepting interstate asymmetries and enabling the pursuit of self-determination by communities. Further, animal rights activists have agitated for the prevention of cruelty to animals in the form of unnecessary suffering or the infliction of pain. Thus, principle d) is also attracted. Principles a) and b) are not attracted because the prevention of cruelty to animals is not relevant to ensuring the unity and integrity of India nor does it have nation-wide economic significance.

(ii) c) and/or d) are attracted but not a) and b)

Concurrence Analysis is -ve. This entry does not attract the interests of uniformity, encouraging state innovation or impact outside the state. States can legislate on prevention of cruelty to animals in keeping with local cultural and religious practices. This would ensure that cultural autonomy and diversity is respected. Attempts to enforce uniformity in this regard would have the danger of being majoritarian, which is undesirable in a multinational federation like India. Further, there is no inter-state impact and negligible scope for innovation in the present context.

- ve

List II: State List

Fig. (ix)

Thus, upon analysis through the Analytical model, entry 17 is most appropriately placed in List II i.e. under the State List. Therefore, in this case we recommend a change in the existing placement.

10. Theme: Land and property

Entry Analysed: Entry 6 List of III - Transfer of property other than agricultural land; registration of deeds and documents

Entry 6 of List III deals with "Transfer of property other than agricultural land; registration of deeds and documents". The Transfer of Property Act, 1882 was enacted prior to independence and is considered one of the great codes drafted at the time. Further, laws relating to registration such as the Indian Registration Act, 1908 also deal with subject matters under this entry.

Entry 6, List III: Transfer of property other than agricultural land; registration of deeds and documents

Principles c) and d) i.e. cultural diversity and responsive governance are attracted. Many aspects of property law in India are intimately connected to personal laws and local customs and are therefore linked to cultural diversity. Further, law regulating transfer of property and registration of deeds and documents are essential to respond to the needs of the people to conduct commercial transactions and therefore also attract responsive governance. Principle a) of unity and integrity has no bearing on the subject matter of the entry while principle b) i.e. balanced economic development is not attracted as the union does not have coordinating role with regard to property.

(ii) c) and/or d) are attracted but not a) and b)

Concurrence Analysis is +ve. Two factors i.e. the need to ensure uniformity and encouraging state innovation are attracted in this case. Aspects of property and registration are ubiquitous since people undertake transactions throughout India and therefore for reasons of efficiency uniformity is desirable. Further, aspects of property and registration have scope for innovation towards simplification and rationalisation, that the Union is best-suited to centrally initiate.

+ve
List III: Concurrent List

Fig. (x)

Thus, upon analysis through the Analytical model, entry 6 is most appropriately placed in List III i.e. under the Concurrent List. Therefore, in this case there will not be any change in the existing placement.

11. Theme: Civil legal relations

Entry Analysed: Entry 5 List III - Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law

Entry 5 of List III deals with "Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law". In India, personal laws are generally based on religious identities. Under this entry the Union and States have concurrent jurisdiction to legislate on laws regulating families. For instance, the laws enacted as part of the Hindu law reforms and the Special Marriage Act, 1954 have been enacted under this entry.

Entry 5, List III: Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law

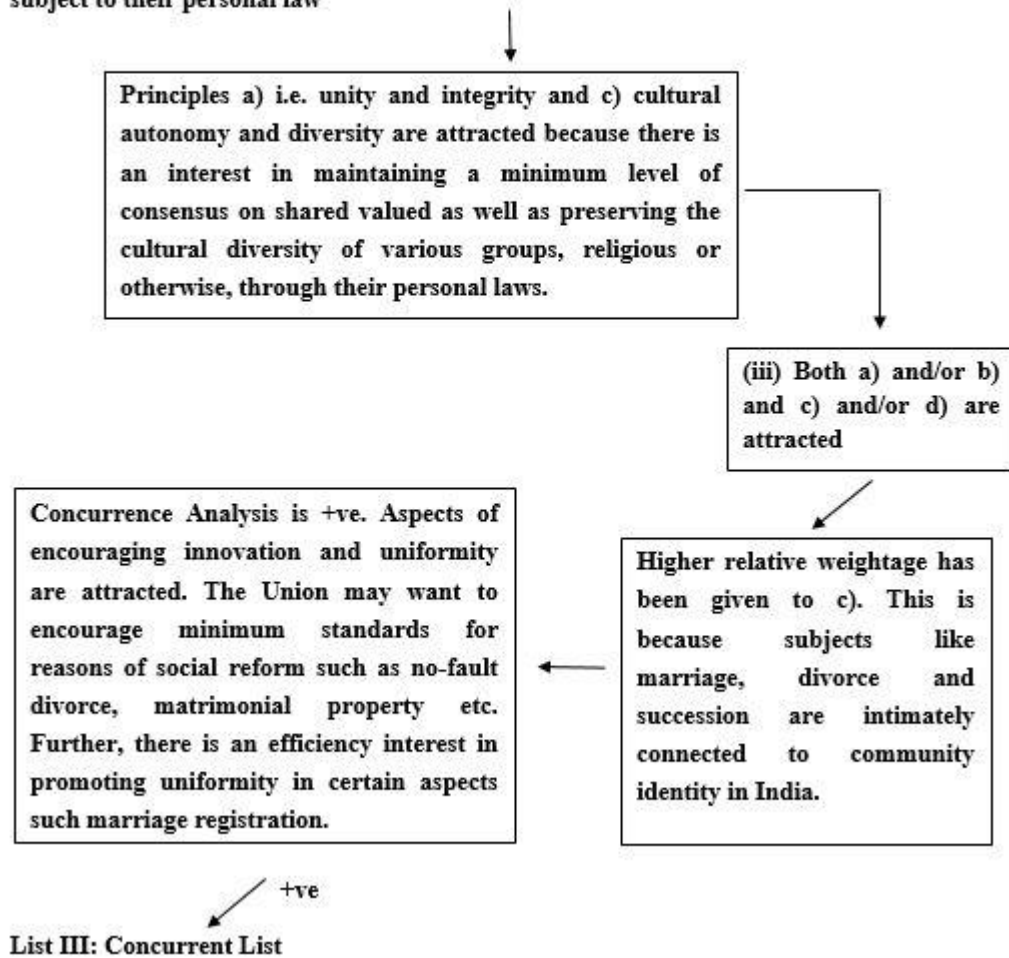


Fig. (xi)

Thus, upon analysis through the Analytical model, entry 5 is most appropriately placed in List III i.e. under the Concurrent List. Therefore, in this case there will not be any change in the existing placement.

12. Theme: Environment

Entry Analysed: 17A of List III - Forests

Entry 17A deals with “forests” and has been inserted in the Concurrent list by the Constitution (Forty-second Amendment) Act, 1976. Previously, the entry was enumerated in the State list. The extent of forest cover in the country has been on the decline due to deforestation and thus the preservation of forests is a priority. In 1980, the Forest (Conservation) Act was enacted by Parliament to prevent deforestation and environmental deterioration.

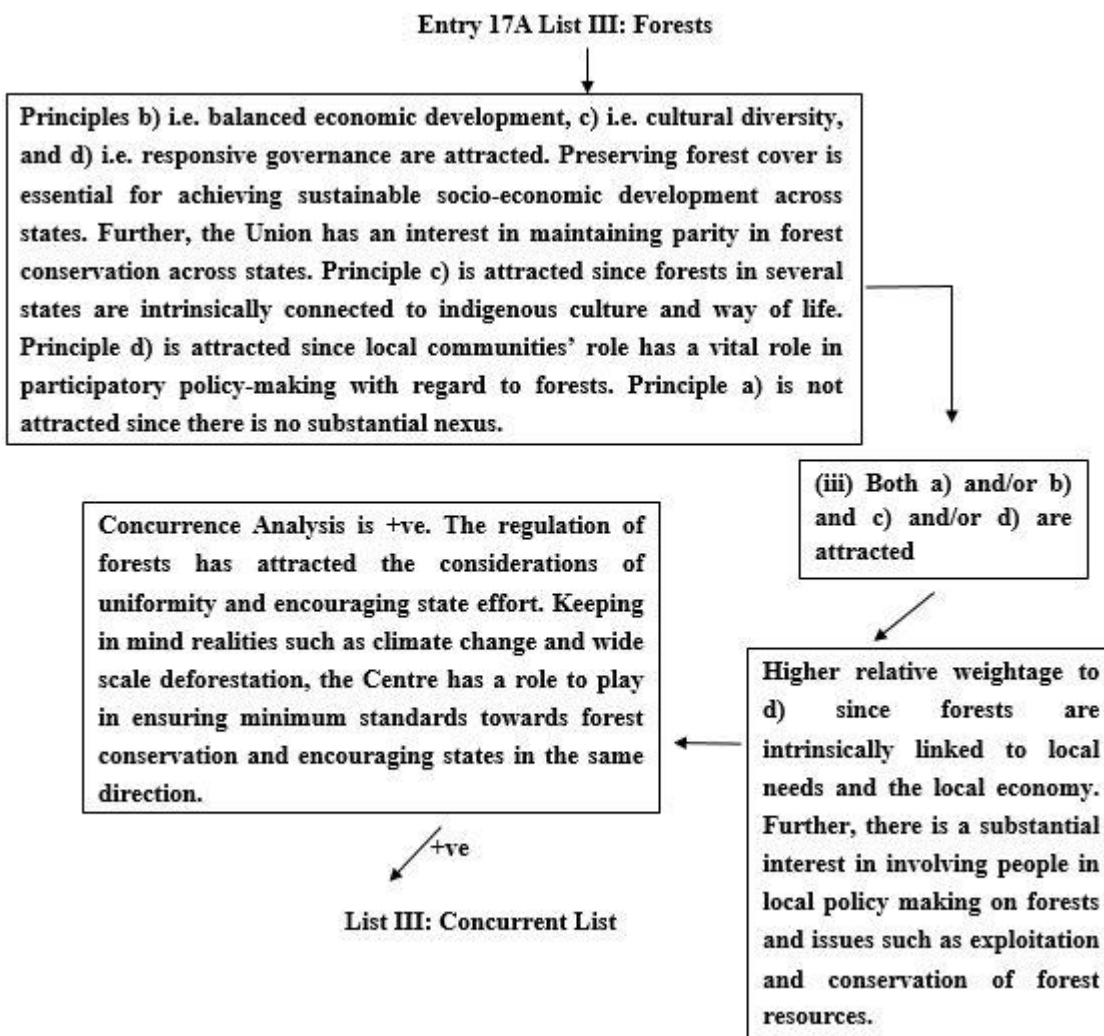


Fig. (xii)

Thus, upon analysis through the Analytical model, entry 17A is most appropriately placed in List III i.e. under the Concurrent List. Therefore, in this case there will not be any change in the existing placement.

13. Theme: Social Planning

Entry Analysed: Entry 12 of List II - Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.

Entry 12 of List II deals with “Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance”. States have the exclusive power to legislate over the institutions mentioned. The concept of a monument of national importance was introduced by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 which was enacted by Parliament. However, the factors on which such declaration is to be based are not specified in the legislation.

On a related note, entry 67 of List I covers ancient and historical monuments and records declared to be of national importance. Additionally, entry 40 of List III deals with “archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance”.

Entry 12, List II: Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance

Principles c) cultural diversity and d) responsive governance are attracted because the subject matter of the entry concerns institutions which have significance for local populations, and therefore necessitate their involvement in regulation. Further, the preservation of local heritage in the form of ancient and historical monuments and records are essential for preserving the autonomy of cultural groups. Principles a) unity and integrity and b) balanced economic development are not attracted because there is no substantial nexus.

(ii) c) and/or d) are attracted but not a) and b)

Concurrence Analysis is -ve. The regulation of such institutions (libraries, museums, etc.) and ancient and historical monuments and records (not of national importance) do not attract the considerations of uniformity, encouraging state effort or innovation, or matters that may have an impact outside the State. The concerned state is equipped to legislate on such institutions as it deems fit.

- ve
List II: State List

Fig. (xiii)

Thus, upon analysis through the Analytical model, entry 12 is most appropriately placed in List II i.e. under the State List. Therefore, in this case there will not be any change in the existing placement. However, the Centre should avoid encroaching on the domain of the states under entry 12 of List II by outlining the criteria based on which an ancient and historical monument or record is declared to be of national importance.

D. Conclusion: Learnings from applying the Analytical model

The Analytical model is thus a principle-based means of determining appropriate placement of entries in the Seventh Schedule. Since it is based on the principles that were earlier identified by us, it accounts both for the founding principles of the Constitution as well as the new principles that have emerged from the present day needs of governance. It thus provides an elegant way of thinking about legislative allocation to the different levels of government.

Applying the model to the different entries selected from the thirteen themes into which the entire Seventh Schedule was classified demonstrated its replicability and exhaustiveness. It is however important to bear in mind that in keeping with the idea of periodic review to maintain continuing exhaustiveness, the model is

temporal in its application. Therefore, analysis of entries through the model over different periods of time may yield different results. This may be due to reasons such as changes in needs of governance, the relative performance of the institutional levels, among other things. Hence, the above analysis of entries is illustrative in nature and the primary purpose of the exercise was to demonstrate the working of the model and not give final recommendations with respect to the entries examined.

Certain other caveats need to be kept in mind, when applying the model. First, several entries are incidental to other entries or to substantive constitutional provisions, which makes it difficult to directly apply the principles to them. In such cases, the model should be applied to the main subject matter to which the entry pertains, instead of the incidental aspect which is covered in the entry itself. A second caveat is necessary for some entries of the State List where the subject matter is either explicitly made subject to law made by Parliament or to an entry in the Union or Concurrent Lists. In such cases, although the entry is placed in the State List, the considerations of the concurrence analysis such as interests of uniformity and inter-state effect can be accommodated through this mechanism without requiring a shift to the Concurrent List. In other words, the concurrence analysis which may otherwise have been +ve, would not be so in the case of such entries.

A third caveat is concerning entries which are related to the Goods and Services Tax (GST). The non-obstante clause in Article 246A, which is a special provision for the GST, clearly gives it precedence over Article 246, and thereby, over the lists of the Seventh Schedule itself. Entries which pertain to the GST thus need to be read with Article 246A, which constitutes an overriding consideration. Hence, for these entries, the model is not applicable. Finally, the model cannot be applied to entry 97 of List I, which covers residuary powers. By its very nature, the residuary power can potentially be used for a wide range of subjects which are distinct and unrelated to each other. Thus, an entry covering residuary powers itself cannot be adequately put through the model.

A necessary implication of this principle-based model of legislative allocation is the reversal of the rule of repugnancy as contained in Article 254 of the Constitution. Presently, if a central law which the Parliament is competent to enact under an entry in the Concurrent List conflicts with a law made thereunder by the States, the central law prevails and the state law, to the extent of such repugnancy, is void. However, in our model, legislative powers are allocated to the Concurrent List due to certain overarching considerations, although they are naturally suited for allocation to the States. There is no other independent justification for such placement. Logically, it follows that the rule of repugnancy for entries in the Concurrent List should favour state laws instead of central laws.

Therefore, we recommend an amendment to Article 254, to reflect the reversal of the rule of repugnancy. Accordingly, the exception to the rule of repugnancy contained in Article 254(2) should also be reversed and a central law on a Concurrent List entry which conflicts with an existing state law should only be applicable to that state with the state's consent.

The Analytical model therefore can be used in the future to determine both the appropriate placement of existing entries and the placement of new entries that may be included. Some of the new themes under which addition of entries may be considered have been discussed in the next chapter.

Chapter 6: Rationalising the Seventh Schedule - Addition and Removal

A. Introduction: Scope of the exercise

As discussed in chapter 3, exhaustiveness is a fundamental feature of the enumeration of powers in the Seventh Schedule, which implies that the lists should remain exhaustive over time. Moreover, the residuary power contained in entry 97, List I is to be used sparingly. Therefore, a periodic review of the Seventh Schedule is required for:

- i. The removal of irrelevant and outdated entries;
- ii. The addition of new entries.

This is essential to stay attuned to present-day needs of governance. Chapters 4 and 5 laid down a principled framework for determining appropriate placement. This chapter will discuss addition and deletion of entries, exploring the rationale for the same and identifying particular areas and entries which serve as suitable candidates for these exercises.

B. Addition of Entries

For the Seventh Schedule to remain exhaustive, a primary exercise which needs to be carried out periodically is adding new entries. This part will identify certain themes and subject areas under which new entries can be considered. The general basis behind the identification of these themes is that, bearing in mind the present day needs of governance, they represent important areas that require regulation, or may require the same in the near future. Based on this list, appropriate entries have been added to the new Seventh Schedule in Annexure 'B' of this report. The appropriate placement of the entries was determined on the basis of the Analytical Model outlined in chapter 5. The list is by no means exhaustive and on the basis of further research new entries can be added to the Seventh Schedule.

A related question while considering the addition of new entries in the Seventh Schedule is the issue of rationalisation of entries. In certain cases, the inclusion of new entries may be hindered due to overlaps with similar or approximate existing entries. Similarly, while certain entries may appear outdated, they may still have limited relevance in conferring legislative powers. Thus, an exercise of rationalisation ensuring the presence of the most accurate entries that best reflect the present days needs of governance has to be undertaken while considering addition. Such an exercise has been undertaken by us while drafting the new Seventh Schedule in Annexure 'B'.

The following five themes have been identified as illustrations for suitable addition of entries:

1. Disaster Management

Presently, there is no specific entry on 'Disaster Management' in the Seventh Schedule. As noted in chapter 3, the Venkatchaliah Commission in 2002 recommended the addition of a new entry in the Concurrent List – "Management of Disasters and Emergencies, Natural or Man-made".¹⁶⁴ The Second Administrative Reforms Commission (2006) reiterated the need for such an entry.¹⁶⁵

¹⁶⁴ Report of the National Commission to Review the working of the Constitution (2002) Vol. 1 at chapter 8, para 8.2.14.

¹⁶⁵ Third Report of the Second Administrative Reforms Commission (2006) at chapter 4, para 4.1.5.

There are both central and state laws which cover this subject.¹⁶⁶ At the central level, Parliament enacted the Disaster Management Act, 2005 by invoking entry 23, List III, that is 'Social security and social insurance; employment and unemployment'.¹⁶⁷ Despite disaster management traditionally being considered as falling within the States' domain, gradual encroachment by the Central Government has not led to any centre-state friction. On the contrary, States have been receptive of Central endeavours in this regard, especially the financial, technical and logistical support provided by the latter.¹⁶⁸ Therefore, functionally, disaster management has been operating as a concurrent subject.¹⁶⁹

Disaster management encompasses preparedness, early warning systems, rescue, relief and rehabilitation. When seen in this light, it can be observed that various existing entries in the three lists deal with areas that are relevant for disaster management. Several entries of the Seventh Schedule thus become relevant.¹⁷⁰ Such a dispersed basis of competence will lead to confusion regarding allocation of legislative responsibility and hence resources.

Thus, to provide a robust constitutional basis for disaster management efforts, it is important to have a specific entry pertaining to disaster management. On the basis of the Analytical Model, the entry on 'Disaster Management' has been placed in the Concurrent List.

2. Consumer Protection

Similar to disaster management, there is no specific entry in the Seventh Schedule which deals with consumer protection. The Consumer Protection Act, passed by Parliament in 1986, enforces the rights of consumers and provides for redressal of complaints at the district, state and national levels.¹⁷¹

Presently, power to legislate over this subject is discernible, but scattered across several entries in a piecemeal manner. Examples include the Union List entries for carriage of passengers and goods by railways, ship or air, banking and insurance, and the Concurrent List entries of food adulteration, drugs, legal, medical and other professions, electricity and newspapers.

Overall, considering its contemporary relevance, a separate entry on consumer protection must be added. On the basis of the Analytical Model, the entry on Consumer Protection has been placed in the Concurrent List.

3. Emerging Technologies

The emergence of new technologies represents one of the biggest differences between the past and the present. Thus, various technologies which are now well-established and widespread still do not find mention in the Seventh Schedule. Additionally, by its very nature, the full scope of technologies that may still emerge in the future is impossible to delimit at any given point of time. Therefore, if new entries are to be incorporated then the degree of specificity has to be accounted for to meet the dual aims of current regulation and enabling the inclusion of allied innovation in the future.

(a) Artificial Intelligence

Artificial Intelligence (AI) is a prominent example of an emerging technology. AI can be defined as the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual

¹⁶⁶ Examples of State-level laws on disaster management include Gujarat State Disaster Management Act, 2003, Bihar Disaster Management Act, 2004, Uttarakhand Disaster Mitigation, Management and Prevention Act, 2005, and The Uttar Pradesh Disaster Management Act, 2005.

¹⁶⁷ Third Report of the Second Administrative Reforms Commission (2006) at chapter 4, para 4.1.2.

¹⁶⁸ See Rajendra Kumar Pandey, 'Legal Framework of Disaster Management in India', (2016) ILI Law Review at pp. 189-90.

¹⁶⁹ Rajendra Kumar Pandey, 'Legal Framework of Disaster Management in India', (2016) ILI Law Review at p. 178.

¹⁷⁰ For instance, public order and public health are Entries 1 and 6 respectively in the State List, and Entries 14 and 17 therein pertain to agriculture and water respectively. Entry 56 of the Union List covers regulation of inter-state rivers, and entry 6 deals with atomic energy. Entry 23 in the Concurrent List, as aforesaid, deals with social security, Third Report of the Second Administrative Reforms Commission (2006) at chapter 4, para 4.1.3; See Rajendra Kumar Pandey, 'Legal Framework of Disaster Management in India', (2016) ILI Law Review at p. 179.

¹⁷¹ The Consumer Protection Bill, 2018, available at < http://www.prsindia.org/billtrack/consumer-protection-bill-2018#_ednref1 > accessed 14 January 2019.

perception, speech recognition, decision-making, and translation between languages.¹⁷² Technologies based on AI have evolved rapidly in recent decades, with remarkable advances in data collection, processing and computation power. AI can now be deployed to take over a variety of tasks, enable connectivity and enhance productivity.

In recognition of AI's potential to transform economies and the need to adopt a strategic approach, the Finance Minister in his budget speech for 2018-19 stated that the Government think-tank Niti Aayog would lead the National Programme on AI, with a view to guiding the research and development in new and emerging technologies.¹⁷³ AI has the potential to revolutionise several fields including healthcare, agriculture, education, smart cities, smart mobility and transportation, retail, energy, etc.¹⁷⁴ However, there are certain barriers that India will need to overcome in order to reap the benefits of this new technology. This includes concerns regarding privacy and security, including a lack of formal regulations around data protection,¹⁷⁵ and the problem of applying stringent and narrowly focused patent laws to AI applications.¹⁷⁶

In order to harness India's potential, an entry relating to AI has been added to the new Seventh Schedule. On the basis of the Analytical Model, the entry has been appropriately placed in the Concurrent List.

(b) Distributed Ledger Technology

Blockchain Technology refers to a particular way of organising and storing information and transactions, and first emerged as the underlying technology for a cryptocurrency (Bitcoin).¹⁷⁷ Subsequently, other ways of organising information and transactions for asset transfers in a Peer-to-Peer manner were devised, leading to the term DLT to refer to the broader category of such technologies.¹⁷⁸ In other words, Blockchain Technology can be considered as falling under the broad head of DLT, and cryptocurrencies are an example of a particular application of Blockchain.

Apart from the financial sector, the ability of a system to act as a distributed ledger has applications in a variety of fields ranging from identity, agriculture, governance and healthcare.¹⁷⁹ The advantages include greater transparency and easier auditability, gains in speed and efficiency, cost reduction and enhanced cybersecurity resilience.¹⁸⁰ The all-encompassing nature of DLT thus has the potential to affect areas falling under various entries across the lists of the Seventh Schedule. This will have implications for both the Union and the States in regulating the technology's impact.

¹⁷² English Oxford Living Dictionary, 'Artificial Intelligence', available at < https://en.oxforddictionaries.com/definition/artificial_intelligence > accessed 10 December 2018.

¹⁷³ Sharmila Nair, 'Why we need to have regulation and legislation on AI and quick', (Indian Express, 31 July 2018), available at < <https://indianexpress.com/article/technology/opinion-technology/why-we-need-to-have-regulation-and-legislation-on-artificial-intelligence-quick-5151401/> > accessed 10 December 2018.

¹⁷⁴ Niti Aayog, 'National Strategy for Artificial Intelligence', (2018) Discussion Paper at p. 20, available at < http://niti.gov.in/writereaddata/files/document_publication/NationalStrategy-for-AI-Discussion-Paper.pdf > accessed 10 December 2018.

¹⁷⁵ Challenges include data usage without consent, risk of identification of individuals through data, data selection bias and the resulting discrimination of AI models, and asymmetry in data aggregation. See Niti Aayog, 'National Strategy for Artificial Intelligence', (2018) Discussion Paper at p. 20, available at < http://niti.gov.in/writereaddata/files/document_publication/NationalStrategy-for-AI-Discussion-Paper.pdf > accessed 10 December 2018.

¹⁷⁶ Niti Aayog, 'National Strategy for Artificial Intelligence', (2018) Discussion Paper at p. 20, available at < http://niti.gov.in/writereaddata/files/document_publication/NationalStrategy-for-AI-Discussion-Paper.pdf > accessed 10 December 2018.

¹⁷⁷ World Bank, FinTech Note No. 1, 'Distributed Ledger Technology (DLT) and Blockchain' (2017) at p. 1, available at < <http://documents.worldbank.org/curated/en/177911513714062215/pdf/122140-WP-PUBLIC-Distributed-Ledger-Technology-and-Blockchain-Fintech-Notes.pdf> > accessed 11 December 2018.

¹⁷⁸ DLT is a novel and fast-evolving approach to recording and sharing data across multiple data stores (ledgers), each of which have the exact same data records and are collectively maintained and controlled by a distributed network of computer servers, called as nodes. See World Bank, FinTech Note No. 1, 'Distributed Ledger Technology (DLT) and Blockchain' (2017) at p. 1, available at < <http://documents.worldbank.org/curated/en/177911513714062215/pdf/122140-WP-PUBLIC-Distributed-Ledger-Technology-and-Blockchain-Fintech-Notes.pdf> > accessed 11 December 2018.

¹⁷⁹ See generally World Bank, FinTech Note No. 1, 'Distributed Ledger Technology (DLT) and Blockchain' (2017) at p. 1, available at < <http://documents.worldbank.org/curated/en/177911513714062215/pdf/122140-WP-PUBLIC-Distributed-Ledger-Technology-and-Blockchain-Fintech-Notes.pdf> > accessed 11 December 2018.

¹⁸⁰ See generally World Bank, FinTech Note No. 1, 'Distributed Ledger Technology (DLT) and Blockchain' (2017) at p. 1, available at < <http://documents.worldbank.org/curated/en/177911513714062215/pdf/122140-WP-PUBLIC-Distributed-Ledger-Technology-and-Blockchain-Fintech-Notes.pdf> > accessed 11 December 2018.

Applications based on DLT could attract entries as disparate as currency¹⁸¹ and land records,¹⁸² with further innovation likely in the future. Considering, the significant implication of DLT, an entry relating to the applications of blockchains has been added to the new Seventh Schedule. On the basis of the Analytical Model, the entry has been appropriately placed in the Concurrent List.

(c) Gene Editing

Gene editing is the process by which genes are altered, which in some cases may lead to changes in the characteristics of the cell or organism.¹⁸³ It has the potential to address India's food security issues and create novel treatments to cure and prevent genetic disorders.¹⁸⁴ However, this technology can also have an adverse impact on the environment¹⁸⁵ and raise ethical questions.¹⁸⁶

In India, GMOs such as Bt cotton are already being cultivated on a large scale.¹⁸⁷ In 2014, the Department of Biotechnology, Ministry of Science & Technology, constituted a dedicated Task Force on "Genome Engineering Technologies and their Applications" in order to foster innovation and promote development of these technologies to make them accessible and affordable for wider use.¹⁸⁸ This shows that the India has taken steps towards harnessing the potential of this new technology.¹⁸⁹

As far as the Seventh Schedule is concerned, State List entries pertaining to agriculture (entry 14) and public health (entry 6) will be attracted with respect to gene editing in those fields. At the same time, the environmental component of gene editing must also be taken into account, which is reflected in the current scenario as GMOs are regulated under environmental legislation. Given the immense potential of this technology and the concomitant risks, an entry on 'Gene Editing' has been added to the new Seventh Schedule. On the basis of the Analytical Model, the entry has been appropriately placed in the Concurrent List.

4. Environmental Protection

The Seventh Schedule does not contain any specific entry for 'Environmental Protection'. This omission may have been because, at the time of drafting, the primary concern was to achieve economic development, and environmental issues had not yet assumed the serious proportions that they have today.¹⁹⁰

However, in the post-independence period, environmental protection was inserted into the Constitution as a Directive Principle of State Policy (Article 48A) via the 42nd Amendment.¹⁹¹ This shows that the Constitution does recognise the importance of environmental protection, even though a specific entry for the same is

¹⁸¹ However, the existing entry pertaining to currency, "currency, coinage and legal tender; foreign exchange", that is entry 36, List I, may not be sufficient to cover cryptocurrency, because of the fundamentally different nature of cryptocurrencies compared to existing currency such as bank notes. Section 22 of the RBI Act, 1934 confers upon the RBI the sole right to issue bank notes in India, and by virtue of Section 26, such bank notes are legal tender in India. Cryptocurrencies on the other hand, as aforesaid, do not require any centralised institution at all.

¹⁸² Entry 45 of List II covers maintenance of land records.

¹⁸³ One way of classifying different types of gene editing is to divide them on the basis of the organism that is edited – whether plant, animal, or human. See Chandavarkar, Kanisetti, Naik and Patri, 'A Framework For Governing Gene Editing', (Takshashila Discussion Document, 2017-04) at pp. 3, 9, available at < <http://takshashila.org.in/wp-content/uploads/2017/10/TDD-Governing-Genes-Editing-MC-AK-SN-AP-2017-061.pdf> > accessed 8 December 2018.

¹⁸⁴ Chandavarkar, Kanisetti, Naik and Patri, 'A Framework For Governing Gene Editing', (Takshashila Discussion Document, 2017-04) at pp. 3, 9, available at < <http://takshashila.org.in/wp-content/uploads/2017/10/TDD-Governing-Genes-Editing-MC-AK-SN-AP-2017-061.pdf> > accessed 8 December 2018.

¹⁸⁵ Chandavarkar, Kanisetti, Naik and Patri, 'A Framework For Governing Gene Editing', (Takshashila Discussion Document, 2017-04) at pp. 3, 9, available at < <http://takshashila.org.in/wp-content/uploads/2017/10/TDD-Governing-Genes-Editing-MC-AK-SN-AP-2017-061.pdf> > accessed 8 December 2018.

¹⁸⁶ Chandavarkar, Kanisetti, Naik and Patri, 'A Framework For Governing Gene Editing', (Takshashila Discussion Document, 2017-04) at pp. 3, 9, available at < <http://takshashila.org.in/wp-content/uploads/2017/10/TDD-Governing-Genes-Editing-MC-AK-SN-AP-2017-061.pdf> > accessed 8 December 2018.

¹⁸⁷ K.V. Kurmanath, 'Bt cotton: how it flowered and is losing lustre now' (The Hindu Business Line, 22 March, 2016), available at < <https://www.thehindubusinessline.com/economy/agri-business/bt-cotton-how-it-flowered-and-is-losing-lustre-now/article8386090.ece> > accessed 10 December 2018.

¹⁸⁸ Vibha Ahuja, 'Regulation of emerging gene technologies in India', (2018) 12 (Suppl 8) 14 BMC Proceedings, available at < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6069684/> > accessed 10 December 2018.

¹⁸⁹ Chandavarkar, Kanisetti, Naik and Patri, 'A Framework For Governing Gene Editing', (Takshashila Discussion Document, 2017-04) at pp. 3, 9, available at < <http://takshashila.org.in/wp-content/uploads/2017/10/TDD-Governing-Genes-Editing-MC-AK-SN-AP-2017-061.pdf> > accessed 8 December 2018.

¹⁹⁰ Raja Mohan Satthu, Environmental Administration, (APH Publishing Corporation, 2004) at p. 17.

¹⁹¹ The 42nd Amendment also made it a fundamental duty of every citizen to "protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures". See Article 51A(g), Constitution of India.

conspicuously lacking in the Seventh Schedule. Existing entries pertain to certain aspects of environmental protection.¹⁹²

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. For instance, the Water (Prevention and Control of Pollution) Act, 1974 was enacted by Parliament through Article 252, which enables it to make laws on State subjects for those States whose legislatures have consented to central legislation.¹⁹³

For an area as crucial as the environment, it is far from desirable that laws need to be passed under such extraordinary powers which depend on many extraneous circumstances. A more direct and straightforward route is preferable, especially given the increasing urgency of environmental protection in light of the challenges posed by climate change.

In 1980, the Tiwari Committee set up by the Central Government recommended that a new entry – ‘environmental protection’ – be introduced in the Concurrent List, but this has not fructified.¹⁹⁴ For all the reasons discussed above, environmental protection appears to be a suitable candidate for addition into the Seventh Schedule. Accordingly, an entry on ‘Environmental Protection’ has been added to the new Seventh Schedule. On the basis of the Analytical Model, it has been appropriately placed in the Concurrent List.

5. Terrorism

Despite terrorism being a matter of grave national concern, the legal architecture governing terrorism is complex and overlapping. The Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973, which are applicable to all crimes, find application in terrorism cases as well.¹⁹⁵ However, given the nature and gravity of terrorism, various central and State-level laws have been enacted to deal with this subject. Currently, the Unlawful Activities (Prevention) Act, 1967 (UAPA) is the primary anti-terrorism law in India.¹⁹⁶ There are multiple state laws related to terrorism as well, including the Maharashtra Control of Organised Crime Act, 1999 and the Karnataka Control of Organised Crime Act, 2000.

Apart from substantive laws, terrorism cases also often involve multiple investigating agencies,¹⁹⁷ particularly because the Seventh Schedule does not provide for federal crimes or investigation of the same as a separate entry. In 2000, the Padmanabhaiah Committee had suggested that certain crimes (including terrorism) be declared as federal crimes to enable a Central Agency to undertake investigation in such cases without any loss of time.¹⁹⁸ Along the same lines, in 2003, the Malimath Committee recommended that a federal law to deal with crimes of inter-state, international or transnational ramification be included in the Union List of the Seventh Schedule.¹⁹⁹ The enactment of the National Investigation Agency (NIA) Act in 2008 was an attempt to address

¹⁹² Entries 56, 53, 54 and 52, List I; Entries 6, 14, 17 and 21, List II; Entries 17A, 17B and 20A, List III.

¹⁹³ The Water (Prevention and Control of Pollution) Act, 1974 was enacted by Parliament under Article 252 after 12 State Legislatures had passed consent resolutions to that effect. See Aruna Venkat, *Environmental Law and Policy*, (PHI Learning, 2011) at p. 80.

¹⁹⁴ See Report of the Committee Recommending Legislative Measures and Administrative Machinery for Ensuring Environmental Protection (1980).

¹⁹⁵ Terrorism cases, such as the Parliament attack case, Kasab's trial, and the Malegaon blasts case, have all involved charges under the IPC. See Sen, Das, Gupta and Bhandari, 'Anti-Terror Law in India: A Study of Statutes and Judgments, 2001 – 2014', (2015) Vidhi Centre for Legal Policy, at p. 6, available at <

https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/5575b428e4b08898ef56bc60/1433777192655/150531_Vidhi+Terrorism+Report_Final.pdf > accessed 11 December 2018.

¹⁹⁶ Initially, this statute was targeted at unlawful activities of a general nature, with provisions on terrorism only being added later through various amendments, from 2004 onwards, following POTA's repeal. See Sen, Das, Gupta and Bhandari, 'Anti-Terror Law in India: A Study of Statutes and Judgments, 2001 – 2014', (2015) Vidhi Centre for Legal Policy, at p. 6, available at <

https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/5575b428e4b08898ef56bc60/1433777192655/150531_Vidhi+Terrorism+Report_Final.pdf > accessed 11 December 2018.

¹⁹⁷ The 2007 Hyderabad Mecca Masjid bomb blast case, for example, involved the transfer of investigation multiple times, from the police to the CBI, and then to the NIA. *NIA, Hyderabad v Devendra Gupta*, 2013 SCC OnLine AP 136 (Andhra Pradesh High Court).

¹⁹⁸ See Report of the Committee on Police Reforms (2000), at chapter 17.

¹⁹⁹ See Report of the Committee on Reforms of Criminal Justice System (2003), at p. 294.

some of these concerns. However, in the absence of any specific entry for terrorism or for investigation of cases related to the same, this statute has to be traced to the Union List entry of defence of India.²⁰⁰

Generally, in the context of the Seventh Schedule, all of the above laws can be traced to multiple entries across the three lists.²⁰¹ Further, the legislative competence of these laws has been judicially challenged. For instance, in *Kartar Singh v State of Punjab*,²⁰² the constitutional validity of TADA was challenged, and it was contended that it falls within the public order entry of the State List. But the Court upheld Parliament's legislative competence, reasoning that public order under the State List is confined to disorders of lesser gravity having an impact within the boundaries of the State. Terrorism was considered to be of a more serious nature, threatening the security and integrity of the country as a whole, and therefore within the ambit of defence of India under the Union List.²⁰³ The same reasoning was applied to uphold POTA in the case of *PUCL v Union of India*.²⁰⁴

From the above discussion, it can be concluded that for Parliament to be competent in this field, any law passed by it will have to, in pith and substance, relate to graver issues of defence of India. For State Legislatures to be competent, any law passed by them should primarily deal with criminal activities by unlawful associations (organised crime), even if they incidentally cover terrorism cases as well. There are several examples where the accused in terrorist cases are charged under numerous provisions of central as well as state laws, for instance in the Malegaon blast case.²⁰⁵

However, explicitly adopting provisions on terrorism in state laws seems to be beyond the legislative competence of States. For example, when Karnataka tried to amend its law to explicitly include provisions on terrorism, the amendments did not receive Presidential assent.²⁰⁶ This complex framework evidently suffers from a lack of clarity, which needs to be remedied.

Given the nature of the problem, and how terrorism is likely to remain relevant in the foreseeable future, it is necessary to add a new entry dedicated to the different aspects of terrorism. Accordingly, an entry termed as 'Offences that threaten the unity and integrity of the nation and their investigation' has been added to the new Seventh Schedule. On the basis of the Analytical Model, the entry has been appropriately placed in the Union List.

C. Removal of entries

To ensure continuing exhaustiveness would also imply that entries in the Seventh Schedule are relevant to the exercise of legislative powers and are not outdated. This is especially so since a number of entries were carried forward from the 1935 Act to the Indian Constitution. Further, considerations at the time of the drafting of the Constitution may no longer be relevant today, thereby influencing the pertinence of entries. This may be in terms of both the substantive content of the entry itself or the form in which the entry exists currently. Therefore, removal of outdated entries is also an important aspect of periodic review.

²⁰⁰ Ashutosh Varshney, 'How has Indian Federalism Done?' (2013) 1(1) *Studies in Indian Politics* at p. 60; The lack of a firmer constitutional footing for such a central investigating agency has led to federal tensions. See Sengupta, Kumar, Sharma, et al., 'Cooperative Federalism: From Rhetoric to Reality', (2015) Vidhi Centre for Legal Policy, available at < http://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/56038f6be4b0743e1c0abbe3/1443073899197/Cooperative+Federalism_Vidhi+Briefing+Book.pdf > accessed 11 December 2018.

²⁰¹ Entries 1, 2 and 9, List I; Entries 1 and 2, List II; Entries 1, 2 and 3, List III.

²⁰² *Kartar Singh v State of Punjab*, (1994) 3 SCC 569.

²⁰³ The Court also observed that the subject would come under Parliament's residuary power in any case, by virtue of Article 248 read with entry 97 of the Union List.

²⁰⁴ *PUCL v Union of India*, AIR 2004 SC 456.

²⁰⁵ *Sadhwi Pragya Singh Thakur v NIA*, (2014) 1 SCC 258.

²⁰⁶ Sen, Das, Gupta and Bhandari, 'Anti-Terror Law in India: A Study of Statutes and Judgments, 2001 – 2014', (2015) Vidhi Centre for Legal Policy, at p. 6, available at <

https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/5575b428e4b08898ef56bc60/1433777192655/150531_Vidhi+Terrorism+Report_Final.pdf > accessed 11 December 2018; Gujarat, Rajasthan and Madhya Pradesh attempted to pass terror legislations as well, but owing to explicit terrorism-related provisions, these bills did not receive presidential assent either. See Srijoni Sen, 'After Four Unsuccessful Attempts, the Controversial Gujarat Anti-Terror Bill is Sent for Presidential Assent Again' (The Caravan, 5 February 2017), available at < <https://caravanmagazine.in/vantage/controversial-gujarat-anti-terror-bill-presidential-assent-again> > accessed 11 December 2018.

While identification of outdated entries should be regularly undertaken, this part examines a few illustrative outdated entries which are no longer relevant to the present needs of governance. In the new Seventh Schedule in Annexure 'B' however all outdated entries have been removed. To identify the removal of such entries we propose the following inquiry:

- Entries that are obsolete due to their substantive content with the passage of time or changed needs of governance;
- Entries that are obsolete due to the form of the entry being antiquated and not having kept up with the passage of time.

We submit, that there is no universal principle of determining the out-datedness of particular entries since the subjects that each entry deal with are highly contextual. Applying the 'Anna Karenina principle'²⁰⁷ to the Seventh Schedule, while the reasons for which existing entries should remain are broadly similar, the reasons for exclusion will always be disparate. Thus, an approach to weeding out of outdated entries will be on a case-by-case basis and will require an independent appraisal for each entry. On this basis this chapter demonstrates a few illustrative entries for removal from the Seventh Schedule. Further stakeholder consultation may however still be desirable.

Illustratively, on the basis of the above dual inquiry, we have identified the following entries for removal:

1. 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 partition of India in 1947 led to a mass exodus from India to Pakistan and vice versa. Laws such as the Displaced Persons Claims Act 1950 and the Displaced Persons (Compensation and Rehabilitation) Act, 1954 were enacted to provide for the rehabilitation of displaced persons from Pakistan to India.

Several states had sought the repeal of these laws due to wide misuse for illegal acquisition of land.²⁰⁸ The laws were repealed by the Displaced Persons Claims and other Laws Repeal Act, 2005.

The entry has outlived the reason for its inclusion, i.e. the partition of India in 1947. The language of entry 27 List III makes it evident that it only concerns itself with the displacement caused in the immediate aftermath of the creation of the Dominions of India and Pakistan in 1947. This can also be inferred by the action of the Parliament in repealing the said provisions.²⁰⁹ The issue of rehabilitation of persons displaced due to partition has attained resolution. Thus, it is no longer relevant for the purpose of making legislation. The continued presence of entry 27, List III in the Seventh Schedule therefore holds no relevance in *substance*, and has thus been omitted.

2. Entry 34, List I: Courts of Wards for the estates of Rulers of Indian States

Entry 34 List I which deals with the courts of wards of the rulers of princely states is antiquated now since this form of land holding under princely states does not exist in India anymore. Thus, by efflux of time the entry has become irrelevant. Further, various commissions²¹⁰ in the past have recommended the repeal of laws such as the Central Provinces Court of Wards Act, 1899 and the Government Management of Private Estates Act, 1892

²⁰⁷ "Happy families are all alike; every unhappy family is unhappy in its own way", See Leo Tolstoy, *Anna Karenina* (1878); See generally, Lutz Bornmann and Werner Marx, 'The Anna Karenina principle: A concept for explanation of success in science', (2011), available at < <https://arxiv.org/ftp/arxiv/papers/1104/1104.0807.pdf> > accessed 14 December 2018.

²⁰⁸ Department-Related Parliamentary Standing Committee on Home Affairs, *One Hundred and Fourteenth Report on The Displaced Persons Claims and Other Laws Repeal Bill, 2004* (2005), available at < http://164.100.47.5/rs/book2/reports/home_aff/114threport.htm#a3 > accessed on 14 January 2019.

²⁰⁹ The Displaced Persons Claims and Other Laws Repeal Act, 2005, Act 38 of 2005 (India).

²¹⁰ See Report of the Commission on Review of Administrative Laws (1998); Law Commission of India, '249th Report on Obsolete Laws: Warranting Immediate Repeal' (2014); Report of the Committee to identify the central acts which are not relevant or no longer needed or require repeal/re-enactment in the present socio-economic context (2014).

which can be attributed to this entry. Hence, the entry has become irrelevant in *substance* and has been removed from the Seventh Schedule.

3. Entry 26, List I: Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft

The rationale for this entry was the significance of providing aids for navigation for the purpose of both marine and aerial navigators. The Parliament derives its competence over legislations such as the Indian Lighthouse Act, 1927 under this entry. This Act, among other things prescribes the levy of light dues²¹¹ from vessels for the maintenance of navigation infrastructure. While the entry deals with a subject matter that continues to be of relevance, the emphasis on lightships and beacons represents an antiquated understanding of what aids of navigation are in vogue today. The focus has shifted to radio and/or electronic methods of navigation such as GPS rather than purely visual modes.²¹² In fact, in recent times there have been proposals to develop lighthouses as tourism hotspots.²¹³

Therefore, the entry in its current *form* has been removed and instead, it has been modified to focus on aids of navigation and provisions for the safety of shipping and air crafts to keep up with developments in navigation technology over time and account for future improvements.

4. Entry 37, List III: Boilers

Entry 37 in the Concurrent List covers boilers, the regulation of which has a long history. In 1863, a serious boiler accident occurred in Calcutta, leading to many deaths.²¹⁴ Responding to this, a Boiler Act was passed in Bengal in 1864. Other provinces began to adopt similar legislations as well.²¹⁵ A 1921 report by a Boilers Law Committee recommended that there should be uniformity in boiler legislation throughout India. This is what led to the enactment of the Indian Boilers Act, 1923.²¹⁶ Subsequently, the 1935 Act included Boilers in its Seventh Schedule, and from there, it was adopted in the Constitution's Seventh Schedule as well.

In a 2014 letter to all State Governments, the Commerce and Industry Minister asked all Chief Ministers to allow self-certification of boilers, similar to Gujarat and Rajasthan. This indicates the vast changes in relevant technology since the colonial period, when the boiler accident had first led to its detailed regulation. Given the advances in technology, it is safe to say that boilers do not warrant a dedicated entry any more. The Lok Sabha debate on the 2007 amendment to the Boilers Act, 1923 also cited technological advancements as a ground for making inspections more flexible.²¹⁷ The larger question of industrial safety can easily be covered by the existing entries, for instance the Union List and State List entries relating to industry, and the Concurrent List entry relating to factories.²¹⁸ Therefore the entry is outdated in substance and has been removed from the new Seventh Schedule.

²¹¹ Section 10, Indian Lighthouse Act, 1927.

²¹² See RK Bhanti, Indian Lighthouses: An Overview (2000) available at < [http://www.dgll.nic.in/WriteReadData/Publication/Publication_Pdf_File/LighthousesofIndia\(2\).pdf](http://www.dgll.nic.in/WriteReadData/Publication/Publication_Pdf_File/LighthousesofIndia(2).pdf) > accessed on 12 January 2019.

²¹³ 'Government to Develop 78 lighthouses in India as tourist spots' (NDTV, 14 October 2015) available at < <https://www.ndtv.com/india-news/government-to-develop-78-lighthouses-pan-india-as-tourist-spots-1231878> > accessed 12 January 2019.

²¹⁴ Lloyd's Register Energy, 'Understanding the Indian Boiler Regulations (1950): A Lloyd's Register Guide' (2014), available at < <http://www.lrqe.es/Images/26912-understanding-the-indianboiler-regulations-1950.pdf> > accessed 12 December 2018.

²¹⁵ Bibek Debroy, 'Industrial Boiler Inspections: Scrap 1923 mindset for self-certification to cut corruption' (The Economic Times, 3 June 2014) available at < <https://economictimes.indiatimes.com/blogs/policy-puzzles/industrial-boiler-inspections-scrap-1923-mindset-for-self-certification-to-cut-corruption/> > accessed 12 December 2018.

²¹⁶ See Bibek Debroy, 'Industrial Boiler Inspections: Scrap 1923 mindset for self-certification to cut corruption' (The Economic Times, 3 June 2014) available at < <https://economictimes.indiatimes.com/blogs/policy-puzzles/industrial-boiler-inspections-scrap-1923-mindset-for-self-certification-to-cut-corruption/> > accessed on 12 December 2018.

²¹⁷ Lok Sabha Debates, (2007) Parliament of India, at pp. 133-137, available at < <http://164.100.47.194/debatetext/14/30-11-2007.pdf> > accessed 11 January 2019.

²¹⁸ See Entries 7 and 52 in the Union List, entry 24 in the State List, and entry 36 in the Concurrent List.

D. Conclusion: Towards an updated Seventh Schedule

Addition and removal of entries is therefore intrinsic to ensuring the continuing exhaustiveness of the Seventh Schedule and must be considered during the periodic review of the lists. Through this chapter a roadmap for thinking about these issues has been provided. Further, by way of illustration, new themes for addition as well as candidates for removal have been highlighted. Accordingly, the lists have been rationalised so as to meet India's needs of governance in the 21st century. This is contained in Annexure B.

Chapter 7: Conclusion and Recommendations

A. Conclusion

The commitment of the framers of the Indian Constitution to federalism is evident. The Seventh Schedule of the Constitution and its three constituent lists form the backbone of legislative power allocation between the Centre and the States. However, the lack of a principle-based approach to assess the Seventh Schedule has hindered reform efforts. In this report, we have proposed a novel Analytical model consisting of four principles that should advise the determination of federal relations in India generally, and inform the appropriate placement of entries specifically.

The first part of the report provided a historical justification for the commitment to federalism in India. Initially, we have demonstrated that power-sharing was a prominent feature in the history of the Indian sub-continent, through the pre-colonial as well as the colonial periods. Some of the tensions in Centre-State relations that have been observed in the post-independence period can be traced to the historical break which the Constitution represents, with its centralising bias.

Further, enumeration of powers in the three lists has enshrined the autonomy of the units. The scheme of exhaustive enumeration as adopted in the Constitution is a fundamental feature of the Indian brand of federalism. This should inform the interpretation of residuary powers under entry 97 of List I as well, such that it is used sparingly, and not as the primary means for ensuring that the lists remain exhaustive.

Part I concluded that the most appropriate way of ensuring continuing exhaustiveness is to undertake a periodic review of the lists. Such a review should focus on removal of outdated entries, addition of new entries, and appropriate placement of existing entries. The need for a periodic review is underlined by the tensions in legislative relations in post-independence India, with States having agitated for greater autonomy over the years.

The second part of the report has proposed an Analytical model for appropriate placement and outlined an approach for the addition and removal of entries in the Seventh Schedule. The framework is supported by four pillars, namely unity and integrity, balanced economic development, cultural diversity and responsive governance. The principles have melded the old and new and therefore represent continuity with existing constitutional practice as well as respond to changing needs of governance. It has thus provided an elegant way of thinking about legislative allocation to the different levels of government.

Subsequently, the Analytical model has been put in operation to aid future legislators in determining appropriate placement and thereby attain continuing exhaustiveness. All entries in the Seventh Schedule were categorised under thirteen broad themes, including themes like defence, land and property, and public health. One entry from each theme was analysed to indicate the replicability and exhaustiveness of the Analytical model.

Additionally, Annexure 'B' contains a new Seventh Schedule, where all entries are appropriately placed as per the model. Further, new entries have been added and outdated entries have been removed. The updated Union List contains seventy-seven entries; the updated State List contains fifty-eight entries; and the updated Concurrent List contains sixty entries. Cumulatively, six new entries have been added and twenty entries have been removed. Further, eight entries have been transferred from the Union List to other lists, and five entries have been transferred from the Concurrent List. Incidentally, certain entries were rationalised to reflect the changes caused by the aforesaid addition, removal and transfers. This has also led to certain inter-linked entries being rationalised. Certain entries were also split into different parts, with each part going to different lists in some cases.

However, the application of the model is temporal in nature. The analytical results produced by the framework may vary over different periods of time. This may be attributed to factors such as changes in needs of governance and the relative performance of the institutional levels, among other things. Thus, the analysis of entries contained in chapter 5 is illustrative. The primary motivation of the exercise was to exhibit the working of the model and not to give final recommendations with respect to the individual entries. Therefore, going forward, the Analytical model should be used at regular intervals to determine both the appropriate placement of existing entries and the placement of new entries. For this purpose, a constitutional amendment should be introduced to require the periodic review of the Seventh Schedule once every ten years. Also, a necessary implication of adopting this principle-based model of legislative allocation is that Article 254 also needs to be amended, to reverse the rule of repugnancy in favour of the States for entries in the Concurrent List.

Furthermore, chapter 6 has provided a roadmap for thinking about the addition of new entries and removal of outdated entries. New themes for addition have been provided as illustrative examples, namely disaster management, consumer protection, emerging technologies, environmental protection and terrorism. Entries that are ripe for removal have been identified on the basis of whether they are obsolete due to their substantive content or form, for example boilers and courts of wards for the estates of rulers of Indian states.

This report has endeavoured to provide a principle-based framework for the Seventh Schedule which has otherwise been a conspicuously neglected field of study. However, as has been demonstrated, the need for reform is pressing and it is hoped that the Analytical model and other recommendations will guide future reform efforts on Centre-State relations in India.

B. Recommendations

- Clean constitutional cobwebs by conducting a periodic review of the Seventh Schedule every ten years to ensure continuing exhaustiveness. This mechanism should be laid down through an appropriate constitutional amendment.
- The periodic review entails the following:
 - i. Determination of appropriate placement of existing entries and future placement of new entries using the Analytical model based on the four principles viz. unity and integrity, balanced economic development, cultural diversity and responsive governance and related checklists.
 - ii. Addition of new entries on the lines of the illustrative themes identified, namely disaster management, consumer protection, emerging technologies, environmental protection and terrorism.
 - iii. Removal of outdated entries on the criteria of whether the form or substance is outdated due to the efflux of time on the lines of illustrative entries identified namely relief and rehabilitation due to partition-related displacement, courts of wards for princely states, lighthouse and other provision for safety of shipping and aircraft and boilers.
- Entry 97, List I should be used sparingly, only as a last resort, and not as the primary means for ensuring that the lists remain exhaustive.
- Article 254 of the Constitution should be amended to reverse the rule of repugnancy, such that state laws override central laws in case of repugnancy. Further, the exception to the rule of repugnancy contained in Article 254(2) should also be reversed such that a central law on a Concurrent List entry which conflicts with an existing state law should only be applicable to that state with the state's consent.

Annexure A: Categorisation of Entries in the Seventh Schedule

All entries in the Seventh Schedule may be categorised into the following thirteen broad themes. Each entry has been examined to determine which theme it bears nexus to. For entries in List I, the categorisation suggested by the Sarkaria Commission has been taken into consideration. Where an entry is appropriate for more than one theme, it has been placed in both such themes.

Entry 97 of List I (“any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists”) has not been included in our categorisation due to its residuary nature. Entry 97 does not conceptually fit into the scope of our Analytical model because laws enacted under this entry may potentially cover issues under any of the themes mentioned below.

The themes identified are as follows:

1. Defence
2. Foreign Affairs
3. Communications and Transport
4. Matters vital for the existence and functioning of Union or States
5. Duties and Taxes
6. Economic Planning, Regulation, Trade and Commerce
7. Public Order, Law Enforcement, Police and Courts
8. Public Health
9. Agriculture and Animals
10. Land and Property
11. Civil Relations
12. Environment
13. Social Planning

1. Defence

- List I entries – 1, 2, 2A, 3, 4, 5, 6, 7, 9, and 15.

2. Foreign Affairs

- List I entries – 10, 11, 12, 13, 14, 16, 18, 19, 21, 37, 41, and 57.

3. Communication and Transport

- List I entries – 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 56, and 60.
- List II entries – 7, 13, and 33.
- List III entries – 31, 32, 35, and 39.

4. Matters vital for the existence and functioning of Union or States

- List I entries – 17, 32, 34, 38, 61, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 94.

- List II entries – 22, 37, 38, 39, 40, 41, and 42.
- List III entries - 45

5. Duties and Taxes

- List I entries – 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92A, 92B, and 96.
- List II entries – 45, 46, 47, 49, 50, 51, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63, and 66.
- List III entries – 35, 43, 44, and 47.

6. Economic Planning, Regulation, trade and commerce, industries

- List I entries– 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 58, 59, and 61.
- List II entries – 8, 17, 21, 23, 24, 25, 26, 27, 28, 30, 31, 32, 34, 43, and 44.
- List III entries – 9, 20, 21, 22, 23, 26, 33, 33A, 34, 36, 37, and 38.

7. Public order, law enforcement, police and courts

- List I entries – 8, 65, 80, 93, and 95.
- List II entries – 1, 2, 3, 4, 64, and 65.
- List III entries – 1, 2, 3, 4, 11A, 12, 14, and 46.

8. Public health

- List II entries – 6, 9, and 10.
- List III entries – 16, 18, 19, and 29.

9. Agriculture and animals

- List II entries – 14, 15, 16, and 17.
- List III entries – 17.

10. Land and property

- List I – 32.
- List II entries – 18 and 35.
- List III entries – 6, 41, and 42.

11. Civil legal relations

- List III entries – 5, 6, 7, 8, 10, 11, and 13.

12. Environment

- List III entries – 17, 17A, and 17B.

13. Social Planning

- List I entries – 62, 63, 64, 66, 67, 68, 69, and 81.
- List II entries – 5 and 12.
- List III entries – 15, 20, 20A, 23, 24, 25, 27, 28, 30 and 40.

Annexure B: A New Seventh Schedule

List I

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
2. Naval, military and air forces; any other armed forces of the Union.
3. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.
4. Naval, military and air force works.
5. Arms, firearms, ammunition and explosives connected with Defence.
6. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
7. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.
8. Foreign affairs; all matters which bring the Union into relation with any foreign country.
9. Diplomatic, consular and trade representation.
10. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
11. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.
12. War and peace.
13. Foreign jurisdiction.
14. Extradition.
15. Admission into, and emigration and expulsion from, India; passports and visas.
16. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
17. Foreign loans.
18. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.
19. Fishing and fisheries beyond territorial waters.
20. Pilgrimages to places outside India.
21. Railways.
22. Highways declared by or under law made by Parliament to be national highways.
23. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.
24. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.
25. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
26. Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides.
27. Reserve Bank of India.
28. Industrial disputes concerning Union employees.
29. Union Public Service; All-India Services; Union Public Service Commission.

30. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.
31. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.
32. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.
33. Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.
34. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor General.
35. Audit of the accounts of the Union and of the States.
36. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.
37. Constitution and organisation, including vacations, of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.
38. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.
39. Citizenship, naturalisation and aliens.
40. Currency, coinage and legal tender; foreign exchange.
41. Inter-State trade and commerce.
42. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies.
43. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.
44. Banking.
45. Bills of exchange, cheques, promissory notes and other like instruments.
46. Insurance.
47. Stock exchanges and futures markets.
48. Establishment of standards of weight and measure.
49. Census.
50. Taxes on income other than agricultural income.
51. Duties of customs including export duties.
52. Duties of excise on the following goods manufactured or produced in India, namely:-
 - (a) Petroleum crude;
 - (b) High speed diesel;
 - (c) Petrol;
 - (d) Natural gas;
 - (e) Aviation Turbine Fuel; and
 - (f) Tobacco and tobacco products.
53. Corporation Tax.
54. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
55. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.
56. Taxes other than stamp duties on transactions in stock exchanges and futures markets.
57. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.
58. Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.
59. Fees in respect of any of the matters in this List, but not including fees taken in any court.
60. Public debt of the Union.
61. Post Office Savings Bank.

62. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.
63. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products.
64. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
65. Regulation of labour and safety in mines and oilfields.
66. Cultivation, manufacture, and sale for export, of opium.
67. Bankruptcy and insolvency.
68. Central Bureau of Intelligence and Investigation.
69. Union agencies and institutions for— (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.
70. Offences against laws with respect to any of the matters in this List.
71. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.
72. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.
73. Acquisition and requisitioning of property.
74. Survey of India.
75. Offences that threaten the unity or integrity of the nation and their investigation.
76. Inquiries, surveys and statistics for the purpose of any of the matters in this List.
77. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists.

List II

1. Pilgrimages, other than pilgrimages to places outside India.
2. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I and List III; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.
3. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 List III; entertainments and amusements.
4. Ports.
5. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.
6. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.
7. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.
8. Salaries and allowances of Ministers for the State.
9. State public services; State Public Service Commission.
10. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.
11. Estate duty in respect of property including agricultural land.
12. Duties in respect of succession to property including agricultural land.
13. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
14. Taxes on agricultural income.
15. Taxes on lands and buildings.

16. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
17. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—
 - (a) alcoholic liquors for human consumption;
 - (b) opium, Indian hemp and other narcotic drugs and narcotics;but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
18. Taxes on the consumption or sale of electricity.
19. Taxes on the sale of petroleum crude, high speed diesel motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.
20. Taxes on goods and passengers carried by road or on inland waterways.
21. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 7 of List III.
22. Tolls.
23. Taxes on professions, trades, callings and employments.
24. Capitation taxes.
25. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.
26. Stamp duty including rates of stamp duty in respect of documents (including fees collected by judicial or non-judicial stamps).
27. Fees in respect of any of the matters in this List, but not including fees taken in any court.
28. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
29. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 6 of List III.
30. Fisheries.
31. Regulation of mines and mineral development subject to the provisions of entry 64 of List I with respect to regulation and development under the control of the Union.
32. Industries subject to the provisions of entry 6 of List I.
33. Trade and commerce within the State subject to the provisions of entry 20 of List III.
34. Production, supply and distribution of goods subject to the provisions of entry 20 of List III.
35. Markets and fairs.
36. Money-lending and money-lenders; relief of agricultural indebtedness.
37. 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.
38. Betting and gambling.
39. Public debt of the State.
40. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).
41. Police (including railway and village police) subject to the provisions of entry 69 of List I.
42. Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.
43. Public health and sanitation; hospitals and dispensaries.
44. Relief of the disabled and unemployable.
45. Burials and burial grounds; cremations and cremation grounds.
46. Offences against laws with respect to any of the matters in this List.
47. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

48. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
49. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
50. Pounds and the prevention of cattle trespass.
51. Prevention of cruelty to animals.
52. 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.
53. Works, lands and buildings vested in or in the possession of the State.
54. Ancient and historical monuments and records, and archaeological sites and remains.
55. 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.
56. Libraries, museums and other similar institutions controlled or financed by the State.
57. Religious endowments and institutions.
58. Inquiries and statistics for the purposes of any of the matters in this List.

List III

1. Provision for the safety of shipping and aircraft.
2. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.
3. Posts; telephones, wireless, broadcasting and other like forms of communication.
4. Regulation and development of inter-State rivers and river valleys.
5. Sports.
6. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of entry 23 of List I with respect to national waterways.
7. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.
8. Newspapers, books and printing presses.
9. Inquiries and statistics for the purposes of any of the matters in this List.
10. Patents, inventions and designs; copyright; trade-marks and merchandise marks.
11. Inter-state migration in the interests of the general public or for the protection of the interests of any Scheduled Tribe.
12. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.
13. Fees in respect of any of the matters in this List, but not including fees taken in any court.
14. Lotteries subject to provisions of entry 38 of List II.
15. Liquids and substances declared by law to be dangerously inflammable.
16. Commercial and industrial monopolies, combines and trusts.
17. Trade unions; industrial and labour disputes.
18. Social security and social insurance; employment and unemployment.
19. Legal, medical and other professions.
20. Trade and commerce in, and the production, supply and distribution of, — (a) foodstuffs, including edible oilseeds and oils; (b) cattle fodder, including oilcakes and other concentrates; (c) raw cotton, whether ginned or unginned, and cotton seed; and (d) raw jute.
21. Weights and measures except establishment of standards.
22. Price control.
23. Factories.
24. Electricity.
25. Prisons, reformatories, juvenile justice homes and other institutions of a like nature, and persons detained therein; arrangement with other States for the use of prisons and other institutions.

26. Adulteration of foodstuffs and other goods.
27. Drugs and poisons, subject to the provisions of entry 66 of List I with respect to opium.
28. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting persons, animals or plants.
29. Criminal law, including all matters included in the Indian Penal code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
30. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.
31. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.
32. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in the provisions of this List.
33. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.
34. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
35. Contempt of court, but not including contempt of the Supreme Court.
36. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
37. Forests.
38. Protection of wildlife.
39. Transfer of property other than agricultural land; registration of deeds and documents.
40. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
41. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
42. Actionable wrongs.
43. Trust and Trustees.
44. Administrators-general and official trustees.
45. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.
46. Institutions of literary, cultural, historical and artistic importance that are financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
47. Educational institutions declared by Parliament by law to be institutions of national importance.
48. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
49. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
50. The Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.
51. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
52. Education, including technical education, medical education and universities, subject to the provisions of entries 24, 25 and 48 of List I; vocational and technical training of labour.
53. Charities, charitable institutions and charitable endowments.
54. Vital statistics including registration of births and deaths.
55. Disaster Management.
56. Consumer Protection.
57. Blockchain including applications of blockchain such as bitcoins and cryptocurrency.
58. Gene Editing

59. Environmental Protection.
60. Sanctioning of Cinematograph films for exhibition.
61. Artificial Intelligence.

www.vidhilegalpolicy.in

Vidhi Centre for Legal Policy
D-359, Defence Colony
New Delhi - 110024

011-43102767/43831699

[**vcip@vidhilegalpolicy.in**](mailto:vcip@vidhilegalpolicy.in)