

## **Centre State Relations in India**

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**Week 05: Legislative Relations: Interpretation of Lists, Pith and Substance, Territorial  
Nexus and Related Areas**

### **Lecture 18: Interpretation of Lists under Schedule VII of the Constitution**

Greetings to all of you. So, in module 4 we have been discussing legislative relations and in that we have discussed the jurisdiction of Parliament to make law and competence of the State Legislative Assembly and Legislative Council to make law on the State subject. We have also studied that what are the situations in which Parliament can make a law on the State subject. Now, in today's session we will be studying on interpretation of lists. As we know very well that the framers of the Constitution they had attempted to give a very comprehensive Entries in the Lists indicating the subject matter on which law has to be made by Parliament or by the State Legislature. But even with the comprehensiveness with a kind of best attempted clarity in identifying individual domain, there is always a possibility of controversy on the matter of interpretation of the entries creeping in.

If you look at the Lists and the approach of the court in resolving the conflict, then you would find that the court has come up with different approaches on the reading of the Lists and how conflict is to be avoided. So, in today's session we will be talking about interpretation, we are talking about the areas of conflict and what general principles which generally the court has adopted for resolving the conflict. And as we know that Sarkaria Commission has in detail discussed on the Centre State relations, we will also see that what has been stated in the report on the lists matter. In the Constitution, we find that subject matters are detailed out in a very comprehensive manner.

And that comprehensiveness facilitates the law making power of Parliament or the State

Legislature. It clearly demarcates the domain which is identified for the Federal government and the domain which is identified for the State governments. So List is very exhaustive in India and generally when you look at the List you find that the matters pertaining to national importance those subject matters are interested with the Union, whereas the matters related to local interest are there with the States. One may say that this is a kind of broader principle followed for arranging the subjects either with the Centre or with the States. Now we have studied while discussing on the nature of the Indian Constitution that how the Indian Constitution has adopted a centralized tendency and that centralized tendency also has made influence on the reading of the Lists.

Because the centralized tendency stems out from the idea of unity and integrity which if you can recall we discussed it in the background of the partition which took place. Because prior to that the framers were of the opinion of a different constitutional arrangement between the Centre and the States, but post partition they change their view and the purpose will be decided to make the Centre all powerful. And that's why you find that subject matters of national interest like defense, atomic energy, citizenship, and railways they are featuring under List I of the Seventh Schedule of the Constitution. The centralized tendency of subject matters enshrined in Schedule 7 also gets substantiated on reading of the residue power in the Indian Constitution. Under the Indian Constitution we find that it is a Centre which has been given power to make laws on such subject matters which are not there with the Centre or with the States.

Article 248 read with Entry 97 which we have already discussed under the heading of residuary power of making laws. So, local subjects like public order, police, local government, water you would find the subjects are there with the State governments. So, demarcation has been done on this broader principle of giving matter of larger interest, national interest to the Centre, local interest to the State. Whereas in India we have also followed the scheme of shared responsibility, joint responsibility and the same gets reflected under List III of 7<sup>th</sup> Schedule where subject matters are enumerated on which both the Centre and the State can make law. The subject matters in List III are such where situation may arise in pan-India law is required, for example, on population control, on family planning, on preventive detention.

So, this is the kind of schema which is being followed an exclusive area for the Union to make

law, exclusive area for the States to make law and the area of shared or joint responsibility where both the States and the Centre can make law and we have studied that in cases of conflict is the Central law which prevails supremacy is been given to the Central law. This very arrangement of lists traces back to the Government of India Act 1935 where three Lists were existing and the framers of the Constitution they continued with the same arrangement. They take they took that as a baseline and they certainly started debating on allocating the subject matters to the Centre or the States primarily based on the very idea of giving more power to the Centre and for that a conference was also held of Premiers and the Finance Ministers of the Provinces to solicit their suggestions that what shall be the arrangement of the List and it appears that was agreed to give more legislative power to the Centre. It was agreed that let Centre be having a dominant role in making of the laws and also it was suggested that let the subject matters in the Concurrent List be enlarged so that as per the situation there can be a law made by the province or possibility of having a law at the central level. For example, matters pertaining to employment and unemployment were transferred to the Concurrent List from the State List. In fact there was a strong argument to transfer some of the subject matters which relate to social infrastructure or agrarian economy to the concurrent list so that both the Centre and the State should have joint responsibility. For example public health, education and agriculture it was suggested by Mr. H.V. Kamath let that these subjects be shifted to the Concurrent List. Obviously this was not agreed upon and the subject matters are within the exclusive domain of the State.

Though during pandemic a need was felt and was argued that public health should be made a concurrent subject so that the responsibility of the Centre to address the issues of public health can be defined in no uncertain terms. It has been observed that over a period of time the subject matters given in the State List has been shrinking. It has been shifted to the Concurrent List which in a way raises a question on application of federal structuring under the Indian Constitution that to what extent the Indian Constitution respects the autonomy of the State which is granted within the constitutional scheme. For example during pandemic we had seen that though public health was a state subject that Centre stepped in to contain the crisis by bringing in and enforcing the Disaster Management Act and same is the case when you look at highways where the Centre started declaring national highways and started taking up the responsibility of maintaining the same or as the case you find in relation to water where dam safety has been read

as a part of parliamentary domain and the Dam Safety Act was enacted in 2021 on the subject matter of dam safety. So when you see you find that in List II subject matters have got reduced from 66 it has now become 61 whereas in the Concurrent List the numbers have gone up from 47 to 52 and this number certainly flags the question of the status and autonomy of the State within the constitutional structure that how we should see this decision of revisiting the Lists given the Seventh Schedule which plays an instrumental role in conferring legislative power on the State Legislature or Parliament. Generally it is been suggested that one List is not ideally supposed to encroach upon another List there should not be any case of transgression.

So whatever has been done has been done with a clear understanding that everything related to that subject matter must be brought within the ambit of what is specifically spelled out. So it is suggested that the Assembly or Parliament should not engage into a kind of over ambitious approach on transgressing the power of the other Legislature. In order to examine the approaches of the Legislature we have seen that the court has applied different doctrines for scrutinizing the competence of the Legislature to make a law by referring to subject matters given in Seventh Schedule which will be discussing in the next session. So there is an understanding that Lists are comprehensive though we know very well that language has its own limitation. Therefore it is not possible to come up with very detailed and comprehensive lists of subject matter, but then it is to be presumed that List has been prepared with an idea to give exhaustiveness on a subject matter. For example, on local government, education, water, agriculture and land, the subject matters which are there in the List it starts with the general expression and followed by specific expressions. For example, when you look at Entry 25 education and then it talks about a specific technical education, medical education or university.

It is also suggested that the ordinary meaning of a word should be given and unnecessarily the meaning of a word should not be curtailed. The natural meaning of a word must be indicated so that the law making exercise should not be declared as unconstitutional only on the ground of narrower reading of the List that is something to be discouraged. It is suggested that pedantic meaning should not be given and widest possible meaning should be given and in that process even the ancillary matters are to be read. For example, when you read water given in List II you find water supplies, irrigation, canals, drainage, embankments, water storage and water power. The subject matters clearly indicate that the attempt is been given to include everything which

connects with the main subject of water and therefore, when a situation arises of reconciling the competing Entries attempt should be made to harmonize the meaning. It should not be seen that one should prevail at the cost of other.

So each Entry has to be interpreted very broadly that is what the court says in Navinchandra Mafatlal, Bombay v. Commissioner of Income-Tax, Bombay City case. The court says “*word appearing in a Constitution Act must not be construed in any narrow and pedantic sense. In construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.*” Because when those expressions were used by the framers it was used with that intent that everything connected with the same must be within the jurisdiction of the Legislature it must be read as within the competence of the legislature. That’s what you see that the court saying in Godfrey Phillips India Ltd. v. State of Uttar Pradesh that legislative entries are to be interpreted very liberally so that even ancillary subjects are to be included. It is not that a reading should be done where jurisdiction of a Legislature is to be rejected or to be not brought into play only for a meaning of the word used in the Entries. It connects with the legislative power and law making power.

Also it is suggested that Entries in a List are not mutually exclusive. They are to be read together and there is a no bar or embargo of reading two Entries of a List together. For example in State of Rajasthan v. G Chawla, the regulations were made for regulating the timings for playing short amplifier. The court validated it on the ground of public health. It was not only in relation to running an electronic gadget it is also to do with public health. So it is not mutually exclusive and broadest possible meaning is to be given and whatever is reasonably read within the ambit of the law should be considered. Youth for Equality v. State of Bihar, is an interesting case where the question was raised with regard to caste based census in the State of Bihar where the validity of such caste based census was challenged on the ground that it may be validity of Articles 15 and 16 which talks about non-discrimination on the ground of caste.

The court says that the legislative competence of the State to undertake caste based census is to be read along with the lines of subject matters given in List III or List II. For example Entry 20 of List III talks about economic and social planning, and Entry 23 of List III talks about social

security and social insurance. The court said that the fundamental right which relates with non-discrimination has to be read along with the law making power conferred upon the State Legislature or Parliament on Article 246. Thus there is no question of reading non-competency of the State government to not to carry on caste based census. Now in Sarkaria Commission report it is suggested that the Lists are of this six broad categories. For example there is a category of subject matters which are of local concern others are of national importance that has been categorized it as Group I. Then you have a Group II which says that some subjects of legislation which belong exclusively to the States are made explicitly subject to certain entries in the Concurrent List. So that in situation of conflict Parliament can very well make law.

Then Group III says that the legislative power conferred upon the State by reading of the List II is made subject to List I where if the subject matter is of pan India importance then Parliament should be allowed to interfere, for example inter-State water. Group IV is a group where it says that certain Entries of List II are made subject to the law made by Parliament. So situation may arise where parliamentary intervention is suggested and then Group V is about allowing Parliament to make a law on the State subject on which State is having exclusive jurisdiction which we have studied in previous sessions where the Council of State passing a resolution and authorizing Parliament to make a law on the State subject or two of the States coming together and authorizing Parliament to make law on the State subject. The last one Group VI is where it says certain Entries in List III being made subject to the Entries in List I or a law made by Parliament.

So these are broad categories which are identified in the Sarkaria Commission report to understand the scheme of Entries given in List I, List II or List III under the 7<sup>th</sup> Schedule. Sarkaria Commission report suggested that is not desirable to transfer the subject matter from the State List to the Concurrent List because it raises a doubt on the federal structuring. It also says that the making of the law by the Centre on the Concurrent List may be justified on the grounds where there is a need to make a uniform laws across the countries, for example labour laws or subject matter of legislation may have international ramification may have national ramification and something which is beyond the boundary of an individual State, it may have to do with the protecting fundamental rights or connected with the coordination between the Union the States

and among the States. So in such situations Union shall make a law on the Concurrent List. These are the references for this session. Thank you very much.