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FEDERALISM IN FLUX: A CRITICAL ASSESSMENT OF THE UNION'S LEGISLATIVE DOMINANCE IN CONCURRENT LIST SUBJECTS

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I. ABSTRACT

Indian federalism, often described as 'quasi-federal' or 'asymmetrical', is characterized by a constitutional framework that leans towards the Union. A primary instrument of this centralizing tendency is the Concurrent List (List III) of the Seventh Schedule, which delineates subjects where both the Union and the States may legislate. This article critically assesses the functioning of legislative concurrency in India. It argues that the Concurrent List, originally envisioned as a domain for cooperative federalism and legislative harmonisation, has progressively become a mechanism for the Union to assert its legislative dominance, thereby eroding state autonomy. Through an analysis of the constitutional provisions, particularly Article 254, and its judicial interpretation, the article traces the evolution of the doctrine of repugnancy. It contends that the Union's expansive interpretation of its powers, coupled with a judiciary that has often deferred to Parliament's legislative intent, has tilted the federal balance significantly. The article examines specific case studies in agriculture, education, electricity, and criminal law to demonstrate how recent Union legislation has encroached upon domains traditionally managed by the states. This trend signifies a shift from cooperative to coercive federalism, raising profound concerns about the viability of India's pluralistic governance structure. The article concludes by arguing that restoring federal balance requires specific interventions, including empowering the Inter-State Council to mediate legislative disputes, establishing a formal, non-negotiable process for state consent on key concurrent laws, and adopting a judicial review standard that presumes the validity of state autonomy, thereby ensuring the Concurrent List functions as a site of cooperation, not coercion.

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II. KEYWORDS

Article 254, Centre-State Relations, Concurrent List, Federalism, Legislative Dominance.

III. INTRODUCTION

The Indian constitutional experiment is, at its heart, an experiment in managing diversity. Federalism was the chosen political architecture to accommodate the subcontinent's vast linguistic, cultural, and geographical pluralism within a unified national framework. However, the framers of the Constitution, scarred by the trauma of partition and wary of fissiparous tendencies, designed a federal system with a pronounced centralist bias.[3] Granville Austin famously described it as "cooperative federalism," a system where the Union and the States are meant to function as partners in the grand enterprise of nation-building.[4] Yet, over seven decades later, the tenor of this partnership appears to be in a state of flux. The spirit of cooperation is increasingly being tested by a reality of legislative and executive centralisation, straining the delicate federal balance.

At the epicentre of this contemporary debate lies the Seventh Schedule of the Constitution, which distributes legislative powers between the Union and the States through three lists: the Union List (List I), the State List (List II), and the Concurrent List (List III).[5] While the Union and States enjoy exclusive powers over their respective lists, the Concurrent List represents a domain of shared jurisdiction. It contains 52 subjects of national and regional importance, such as criminal law, marriage and divorce, forests, education, and economic and social planning.[6] The rationale behind this shared space was to allow for uniformity where necessary, while also permitting states to legislate according to their specific local conditions. It was intended to be a field of collaboration, flexibility, and legislative innovation.

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[3] K.C. Wheare described the Indian Constitution as "quasi-federal," a system which is "federal in form but unitary in spirit." K.C. WHEARE, FEDERAL GOVERNMENT 27 (4th ed.17 1963).
[4] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 187 (1966).
[5] INDIA CONST. art. 246; INDIA CONST. sched. VII.
[6] INDIA CONST. sched. VII, list III.

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However, the constitutional design includes a crucial tie-breaker. Article 254 stipulates that in the event of a conflict or "repugnancy" between a Union law and a State law on a Concurrent List subject, the Union law shall prevail.[7] This supremacy clause, while seemingly a pragmatic tool to resolve legislative deadlocks, has evolved into the primary instrument of the Union's legislative dominance. In recent years, the Union government has demonstrated an increasing propensity to enact comprehensive legislation on Concurrent List subjects, effectively occupying the field and leaving little room for state-level legislative action. This trend was starkly illustrated by the controversy surrounding the three farm laws in 2020,[8] the enactment of the National Education Policy 2020, the proposed amendments to the Electricity Act, and the recent overhaul of the country's substantive and procedural criminal laws.[9] These legislative initiatives, pushed through with minimal state consultation, have sparked fierce resistance from several states, who view them as a direct assault on their constitutional autonomy and the federal structure.

This article provides a critical assessment of the Union's growing legislative dominance in Concurrent List subjects. It argues that the original vision of the Concurrent List as a crucible for cooperative federalism is being systematically undermined. Instead, it is being transformed into a constitutional backdoor for the Union to legislate on matters that profoundly impact the states' administrative and financial domains, often bypassing the need for consensus. This article will first delve into the constitutional framework of concurrency, exploring the intent of the framers and the mechanics of Article 254. Second, it will trace the judicial interpretation of repugnancy and the "occupied field" doctrine, analysing how the Supreme Court has shaped the contours of legislative power. Third, it will present detailed case studies from key sectors-agriculture, education, electricity, and criminal law-to illustrate the practical manifestations of Union dominance. Finally, it will weigh the arguments for and against centralisation and propose potential reforms to restore a healthier federal

[7] INDIA CONST. art. 254.
[8] The Farm Laws Repeal Act, 2021, No. 39 of 2021.
[9] The Bharatiya Nyaya Sanhita, 2023 (came into effect July 1, 2024); The Bharatiya Nagarik Suraksha Sanhita, 2023 (came into effect July 1, 2024); and The Bharatiya Sakshya Adhiniyam, 2023 (came into effect July 1, 2024).

equilibrium. The central thesis is that the current trajectory of legislative practices on the Concurrent List is pushing Indian federalism towards a critical inflection point, one that necessitates a serious recalibration to preserve its pluralistic and democratic soul.

A. Literature Review

This review of literature situates the proposed research within the existing scholarly discourse on Indian federalism. It is organized into three main sections: first, the foundational debates on the nature of Indian federalism; second, the specific constitutional and judicial interpretations of the Concurrent List and the doctrine of repugnancy; and third, contemporary analyses of legislative centralisation in key policy domains.

1. **The Contested Nature of Indian Federalism:** The characterisation of India's federal structure has been a subject of enduring academic debate since the inception of the Constitution. The foundational scholarship of K.C. Wheare famously described India as 'quasi-federal'-a system that is "federal in form but unitary in spirit" (Wheare, 1963). This perspective highlights the Constitution's inherent centralising features, such as the emergency powers of the Union, the office of the Governor, and the Union's overriding financial powers. This view has been foundational, shaping decades of analysis on Centre-State relations.
    - In contrast, scholars like Granville Austin (1966) offered a more nuanced interpretation, coining the term 'cooperative federalism'. Austin argued that the Indian model was not a classical competitive federation but one designed for interdependence between the Union and the States to achieve common national goals. The Concurrent List, in this view, was a primary instrument for such cooperation. Similarly, W.H. Morris-Jones (1964) described it as 'bargaining federalism', pointing to the complex political negotiations that characterise the relationship between the Centre and the states, particularly in an era of coalition politics.
    - More recent scholarship has built upon these foundations, often leaning towards a view of increasing centralisation. Balveer Arora (2012) has argued

that the institutions designed to foster inter-governmental cooperation, such as the Inter-State Council, have been systematically weakened, leading to a de-institutionalisation of federal relations. Louise Tillin (2013) has examined how the political economy of development has often driven centralising tendencies, with the Union using fiscal levers and centrally sponsored schemes to direct policy at the state level, thereby bypassing the formal divisions of power. This body of work provides the theoretical backdrop for the abstract's central claim that India is moving from a cooperative to a more coercive federal model.

2. **The Concurrent List:** An Instrument of Cooperation or Domination: The constitutional framework for concurrency is primarily governed by Article 246 and Article 254 of the Constitution. The Constituent Assembly Debates reveal that the framers intended the Concurrent List to be a domain of uniformity and harmonisation on subjects of national importance where local variations were also desirable.
    - However, the legal interpretation of Article 254, which establishes the doctrine of repugnancy, has been critical in shaping the federal balance. Legal scholarship, most notably the commentaries by D.D. Basu (2018) and H.M. Seervai (2015), provides exhaustive analyses of this clause. The judiciary's role has been paramount. In landmark cases like *M. Karunanidhi v. Union of India* (1979), the Supreme Court laid down the conditions for repugnancy, holding that a state law would only be void if it was in direct, irreconcilable conflict with a Union law.
    - Despite this, critics argue that the judicial application of doctrines like 'pith and substance' has often favoured the Union. Sudhir Krishnaswamy (2009) notes that the judiciary has generally granted significant deference to Parliament's legislative competence, often allowing broad interpretations of Union entries in the Lists. This judicial deference, combined with Parliament's expansive use of its powers under the Concurrent List, forms a key area of inquiry. The reports of the Sarkaria Commission (1988) and the M.M. Punchhi Commission (2010) are seminal works in this context.

Both commissions critically examined the misuse of the Concurrent List, with the Sarkaria Commission explicitly recommending that the Union should exercise restraint and engage in "full and effective consultation" with states before legislating on concurrent subjects. The abstract's argument that the Union has asserted legislative dominance builds directly on the concerns raised in these reports.

3. **Contemporary Legislative Centralisation:** Sector-Specific Analyses: Recent scholarship has focused on specific legislative actions by the Union government that exemplify the trend of encroachment into state domains via the Concurrent List.
    - Agriculture: The now-repealed Farm Laws (2020) triggered a major debate on legislative competence. While 'agriculture' is a State List subject (Entry 14, List II), the Union enacted the laws using its power over 'trade and commerce in foodstuffs' (Entry 33, List III). Scholars like Mekhala Krishnamurthy and Shoumitro Chatterjee (2020) analysed this as a fundamental challenge to the federal division of powers, where the Union used a concurrent entry to effectively legislate on a state subject.
    - Education: 'Education' was moved from the State List to the Concurrent List via the 42nd Amendment. The rollout of the National Education Policy (NEP) 2020 and subsequent legislation have been critiqued by educationists and federalism scholars for promoting a homogenised, centrally-driven agenda that undermines the ability of states to cater to their specific linguistic and cultural needs (Govinda, 2021).
    - Electricity: 'Electricity' is a Concurrent List subject (Entry 38, List III). Proposed amendments to the Electricity Act have been consistently opposed by states. Analysts argue that these changes aim to centralise tariff determination and regulatory control, effectively stripping state electricity regulatory commissions of their autonomy and impacting state finances (Tongia, 2022).
    - Criminal Law: While 'Criminal Law' and 'Criminal Procedure' are on the Concurrent List, the recent enactment of three new criminal codes-the

Bharatiya Nyaya Sanhita, Nagarik Suraksha Sanhita, and Sakshya Adhiniyam-without extensive state consultation is seen as a prime example of legislative centralisation, raising concerns about the practical implementation challenges for state-level police and judicial systems.

B. The Research Gap

While the existing literature extensively covers the theoretical debates on Indian federalism, the legal interpretation of the Concurrent List, and specific instances of centralisation, a holistic and critical assessment that synthesises these threads is needed. The proposed research aims to fill this gap by systematically connecting the constitutional-legal framework of concurrency (Article 254) with the political reality of recent legislative actions across multiple, critical sectors. By tracing the shift from a cooperative to a coercive paradigm through these case studies, this study will provide a comprehensive and timely critique of the current state of India's federal balance and offer concrete recommendations for reform.

C. Research Objectives

1. To critically analyze the evolution and functioning of legislative concurrency in the Indian Constitution, emphasizing Article 254 and related provisions.
2. To assess judicial approaches towards conflicts between Union and State laws over Concurrent List subjects, identifying trends in repugnancy and occupied field doctrines.
3. To examine empirical case studies-agriculture, education, electricity, and criminal law-as evidence of Union legislative dominance.
4. To evaluate the strengths and limitations of current federal safeguards and propose specific, actionable reforms for restoring the cooperative federal balance.

D. Methodology

1. Doctrinal/Legal Analysis: Systematic review of constitutional provisions (especially Articles 246 and 254) and leading Supreme Court judgments interpreting legislative powers and federal balance.

2. Case Study Approach: In-depth qualitative analysis of four key sectors-agriculture, education, electricity, and criminal law-using legislative texts, Parliamentary debates, notifications, and secondary scholarly literature for each.
3. Comparative Approach (if relevant): Brief comparison with federal systems like Australia or Canada to contextualize India's unique trends.
4. Normative and Reform Analysis: Evaluating the effectiveness of current safeguards (like Presidential assent, Inter-State Council) and recommending reforms based on comparative best practices and Indian needs.
5. Qualitative Data: Where available, include interviews, expert opinions, or government reports that document stakeholder perspectives (states, Union, judiciary, civil society) to enrich case study analysis.

IV. THE CONSTITUTIONAL FRAMEWORK OF CONCURRENCY

The architecture of legislative relations between the Union and the States is one of the most intricate aspects of the Indian Constitution. It is not a simple division of sovereignty, but a complex web of shared and exclusive powers designed to hold the nation together while respecting regional aspirations. The Concurrent List is the cornerstone of this shared power dynamic.

A. Historical Genesis and Framer's Intent

The concept of the Concurrent List in the Indian Constitution is directly inherited from the Government of India Act, 1935, which first introduced a threefold division of legislative powers into Federal (Union), Provincial (State), and Concurrent Lists to manage governance in British India. The Act envisaged a federal structure with provincial autonomy but maintained significant central control through the Viceroy and Governor powers. This structure laid the groundwork for the Indian Constitution's division of powers between the Union and the States, but with important modifications suited to an independent, democratic republic.

Comparison of Legislative Division: Government of India Act 1935 and Indian Constitution

Aspect	Government of India Act, 1935	Indian Constitution (Post-1950)
Three Lists	Federal List (Centre), Provincial List, Concurrent List	Union List, State List, Concurrent List
Powers Distribution	Concurrent List subjects legislated by both Central and Provinces; Central law prevailed in conflict	Concurrent List subjects legislated by both Union and States; Union law prevails with a special exception for state laws with Presidential assent
Provincial Autonomy	Provinces granted autonomy, but Governors retained overriding powers; residual powers with Viceroy	States have constitutional powers; Governor's role is more regulated but still represents Union; residual powers with Union government
Federal Structure	Proposed All-India Federation including princely states (not fully realized)	India is a federal republic with a strong Centre; princely states merged into Union
Conflict Resolution	Viceroy had discretion to resolve conflicts, with overriding powers	Article 254 of the Constitution provides mechanism for repugnancy and resolution favoring Parliament
Legislative Flexibility	Limited provincial flexibility with significant British control	States can legislate on Concurrent List subjects except when overridden by Union law or under special conditions

Intent and Objective	Designed under colonial framework emphasizing British control and limited provincial freedom	Designed for an independent India, balancing strong central authority with state autonomy for diverse regional needs
Administrators' Role	Governors had extensive powers, often overriding provincial legislatures	Governor's powers are more constitutionally defined but still act as Union's representative

Strengthening the Historical Analysis: The Government of India Act, 1935 can be viewed as an important constitutional precursor that informed the Indian Constitution framers about the difficulties of a rigid federal structure in India's diverse and complex socio-political landscape. While the 1935 Act was imposed as a colonial governance tool with significant central and Governor control to maintain British dominance, the Constituent Assembly appropriated the idea of dividing powers using legislative lists but re-envisioned it to suit a sovereign democratic republic's needs.

The Concurrent List under the 1935 Act introduced shared legislative jurisdiction, which in itself recognized the inadequacy of a strict binary division of powers. The Constituent Assembly members, including B.R. Ambedkar and K.M. Munshi, reworked this model to emphasize cooperation, flexibility, and uniformity rather than merely central dominance. Unlike the colonial structure that enforced control through Governor's overriding powers, the Indian Constitution provided clearer conflict resolution mechanisms but accepted Union supremacy in cases of conflict, thereby allowing the Concurrent List to serve as a true "twilight zone" for legislative collaboration on subjects requiring both national uniformity and local adaptability.

This continuity from the Government of India Act, 1935 to the Constitution signifies an evolution from an instrument of imperial control to a framework aiming for democratic federal harmony, balancing strong centre with regional diversity through the Concurrent List mechanism.

Thus, the Government of India Act, 1935's three-list system was retained but significantly repurposed by the Indian Constitution's framers to reflect democratic

federalism, cooperative legislation, and constitutional mechanisms for balancing Centre-State relations, with the Concurrent List as a constitutional innovation that tempered rigid federal distinctions with practical legislative overlap and unity in diversity.

B. The Constitutional Mechanics: Article 246 and Article 254

The power to legislate from the three lists flows from Article 246 of the Constitution.[10] Clause (1) gives Parliament exclusive power to legislate on subjects in the Union List. Clause (3) gives State Legislatures exclusive power over subjects in the State List. The crucial provision for our purpose is Article 246(2), which states:

"Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List')."[11]

This clause establishes the shared legislative space. The non-obstante clause ("Notwithstanding anything in clause (3)") clarifies that the power of Parliament to legislate on a concurrent subject is not limited by the exclusive power of states over the State List. This brings us to the pivotal question: what happens when both Parliament and a State Legislature exercise their power on the same subject, and the resulting laws are incompatible?

The answer lies in Article 254, the "supremacy clause," which codifies the doctrine of repugnancy:

Article 254: Inconsistency between laws made by Parliament and laws made by the Legislatures of States: -

1. If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made

[10] INDIA CONST. art. 246.
[11] INDIA CONST. art. 246, cl. 2.

by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

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

   Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.[12]

   Article 254(1) lays down the general rule: Union law prevails over State law in case of a clash. The State law is rendered void, but only "to the extent of the repugnancy." This means the entire State Act does not fall unless it is inextricably linked to the repugnant provisions.

   Article 254(2) provides a crucial, albeit limited, exception for states. If a State law on a Concurrent List subject is repugnant to an *earlier* Union law, the State law can still be valid within that state's territory if it is reserved for and receives the assent of the President of India. This was intended as a safeguard for states, allowing them to enact legislation tailored to their needs even if it conflicted with an existing central framework.

   However, the proviso to Article 254(2) swings the pendulum of power decisively back to the Centre. It empowers Parliament to subsequently enact another law on the same matter, and this new law can amend, vary, or even completely repeal the Presidentially-assented State law. This ultimate power of override means that the protection offered by Article 254(2) is transient and can be nullified by a determined Union Parliament. Furthermore, since the President acts on the aid and advice of the Union Council of Ministers,[13] the grant of assent under Article 254(2)

[12] INDIA CONST. art. 254.
[13] INDIA CONST. art. 74, cl. 1.

is itself an act controlled by the Union executive. This transforms the intended safeguard into a tool of political negotiation and, often, central control.

This constitutional architecture, therefore, while creating a space for concurrency, ultimately embeds a hierarchical structure. The Union is not just a partner; it is the senior partner with the final say. The manner in which the judiciary has interpreted the key concepts of "repugnancy" and when a field is "occupied" by a Union law has been critical in defining the operational reality of this power imbalance.

V. JUDICIAL INTERPRETATION OF CONCURRENT POWERS

The judiciary, as the ultimate interpreter of the Constitution, has played a monumental role in delineating the boundaries of legislative power on the Concurrent List. Through a series of landmark judgments, the Supreme Court has evolved doctrines and tests to determine when a state law must give way to a Union law. While aiming for legal certainty, this jurisprudence has, over time, arguably facilitated the expansion of Union legislative power.

A. The Doctrine of Pith and Substance: The First Hurdle

Before the question of repugnancy under Article 254 even arises, a court must first determine whether the impugned law is, in fact, a law "with respect to" a matter in the Concurrent List. This is where the doctrine of "pith and substance" comes into play. The doctrine requires the court to look at the "true nature and character" of the legislation to ascertain its essential subject matter.[14] If the pith and substance of a law falls within one of the lists assigned to that legislature, the law is considered intra vires (within its powers), even if it incidentally trenches upon or touches upon a matter in another list.[15]

For instance, if a State enacts a law on public health (Entry 6, State List), which has incidental provisions relating to medical professions (Entry 26, Concurrent List), the law would likely be upheld as a state law. Repugnancy under Article 254 is not attracted if a state law, in its pith and substance, relates to a State List subject and a

[14] State of Bombay v. F.N. Balsara, A.I.R. 1951 S.C. 318.
[15] Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna, A.I.R. 1947 P.C. 60.

Union law relates to a Union List or Concurrent List subject. The conflict must be between two laws that are both, in their pith and substance, legislations on a Concurrent List matter. However, the courts' application of this doctrine has sometimes enabled the Union to legislate on matters that seem to fall substantively in the State domain by linking them to a broad entry in the Concurrent List. The farm laws controversy, where the Union justified its legislation under 'trade and commerce in foodstuffs' (Entry 33, Concurrent List) while states claimed it was an encroachment on 'agriculture' (Entry 14, State List), is a prime example of this interpretive battleground.[16]

B. Defining Repugnancy: The Three Tests

Once it is established that both the Union and State laws are on a Concurrent List subject, the court applies the test of repugnancy. The Supreme Court, drawing from precedents in Australia and Canada, has laid down three conditions under which repugnancy can arise. The landmark case of *Deep Chand v. State of U.P.*[17] and its refinement in *Tika Ramji v. State of U.P.*[18] and *M. Karunanidhi v. Union of India*[19] have established the following tests:

1. Direct Conflict or Collision: This is the most straightforward test. Repugnancy arises when one law says "do" and the other says "don't." There is a clear and direct inconsistency between the two provisions, making it impossible to obey both. For example, if a Union law sets the maximum interest rate for moneylenders at 10% and a state law sets it at 15%, there is a direct conflict, and the Union law will prevail.
2. The "Occupied Field" Doctrine (Implied Repeal): This is the most potent and frequently invoked ground for repugnancy. Repugnancy can arise even if there is no direct conflict. If a competent legislature (i.e., Parliament) enacts a comprehensive law on a subject, creating an exhaustive code, it is said to have

[16] The Supreme Court took cognizance of the challenge to the farm laws in Rakesh Vaishnav v. Union of India, (2021) 1 S.C.C.20 591, but did not deliver a final verdict on the legislative competence issue before the laws were repealed.
[17] Deep Chand v. State of U.P., A.I.R. 1959 S.C. 648.
[18] Tika Ramji v. State of U.P., A.I.R. 1956 S.C. 676.
[19] M. Karunanidhi v. Union of India, (1979) 3 S.C.C. 431.

"occupied the field." This implies an intention to cover the entire subject matter and leave no room for state legislation. If Parliament has expressed its intention to be exhaustive, any State law on that subject, whether passed before or after the Union law, becomes void for being repugnant. The Supreme Court in *Zaverbhai Amaidas v. State of Bombay* held that the question of implied repeal arises when the "subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together."[20]

3. Identity of Subject Matter: The court must be satisfied that the Union law and the State law are with respect to the same matter in the Concurrent List. As the court clarified in *M. Karunanidhi*, "the repugnancy must exist in fact, and not depend upon a possibility."[21]

More recent Supreme Court judgments continue to refine and, in some cases, re-examine the contours of federal power. While the foundational doctrines remain the same, their application in new legislative contexts like the Goods and Services Tax (GST) regime and national emergencies like the COVID-19 pandemic reveals a dynamic and sometimes contradictory judicial approach. The trend often leans towards accommodating national interests through central legislation, but not without occasionally reinforcing the states' constitutional authority.

1. GST and the Ideal of "Cooperative Federalism": The introduction of the Goods and Services Tax (GST) through the 101st Constitutional Amendment created a unique framework of overlapping powers. Both Parliament and State Legislatures now have concurrent power to legislate on GST under the newly inserted Article 246A. The judiciary's role in interpreting this new federal fiscal arrangement has been crucial. The landmark judgment in *Union of India v. Mohit Minerals Pvt. Ltd.* (2022) provided a profound clarification on this front. The Supreme Court held that the recommendations of the GST Council, the joint forum of the Centre and the states, are not binding on either the Union or the

[20] Zaverbhai Amaidas v. State of Bombay, A.I.R. 1954 S.C. 752.
[21] M. Karunanidhi, (1979) 3 S.C.C. 431, at ¶ 35.

State legislatures.[22] The Court reasoned that a binding interpretation would disrupt fiscal federalism. It championed the concept of "cooperative federalism," asserting that the GST Council is a space for dialogue and recommendation, not a body that can supplant the legislative sovereignty of Parliament or the State Assemblies. This judgment is a significant affirmation of states' rights within the concurrent taxation sphere, pushing back against the notion that the Council's decisions would create a single, centrally dictated GST law.

2. COVID-19 and the Expansion of the "Occupied Field": The COVID-19 pandemic saw the Union government invoke the Disaster Management Act, 2005 (DM Act) to issue nationwide lockdowns, travel restrictions, and health directives. The DM Act was enacted under Entry 23 of the Concurrent List ("Social security and social insurance; employment and unemployment") and Entry 29 of the Concurrent List ("Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants"). This presented a classic federalism challenge. 'Public health and sanitation' is Entry 6 on the State List, giving states primary authority. However, by enacting the DM Act, a comprehensive law dealing with disasters of a national scale, Parliament effectively "occupied the field" of disaster management. During the pandemic, the executive orders issued by the National Disaster Management Authority (NDMA) under the DM Act were treated as having overriding authority over state-specific orders. While there wasn't a singular landmark repugnancy case striking down a state law, the operational reality was that the Union's directives prevailed. This episode serves as a powerful real-world example of how a broad Union law, rooted in the Concurrent List, can functionally supersede state legislative and executive power in an area traditionally considered within the state's domain.
3. Reaffirming State Executive Power – The Delhi Model: While not a traditional Concurrent List dispute, the case of *Govt. of NCT of Delhi v. Union of India* (2023)

[22] Union of India & Anr. v. M/s Mohit Minerals Pvt. Ltd., Civil Appeal No. 1390 of 2022, Supreme Court of India.

is a pivotal recent judgment on federalism.[23] The Supreme Court ruled decisively that in the unique asymmetrical federal model of Delhi, the elected government has executive control over all services, except for the explicitly excluded areas of land, public order, and police. The judgment is significant because it reinforces the principle that in a democratic setup, executive power must reside with the elected representatives of the people. While applying specifically to Delhi, its reasoning has broader implications for Centre-State relations. It signals a judicial check on the Union's ability to erode the executive authority of constituent units, emphasizing that the legislative and executive power of a state (or a union territory with a legislature) is co-extensive and must be respected to uphold the federal structure. This case provides a jurisprudential counterweight to the centralizing trend seen in other areas.

C. The "Occupied Field" Doctrine: A Tool of Centralisation?

The "occupied field" doctrine is the most critical element in the assertion of Union legislative dominance over the Concurrent List. Its application hinges on judicial interpretation to determine whether Parliament intended for a law to be an exhaustive code on a particular subject. In making this determination, courts scrutinize a statute's preamble, overall scheme, and specific provisions to ascertain legislative intent; however, this interpretive exercise can be highly subjective.

This approach has significant international parallels and divergences that provide a broader doctrinal context. The Indian doctrine is strikingly similar to the "covering the field" test employed in Australia. Under Section 109 of the Australian Constitution, if a Commonwealth law demonstrates an intention to be a complete and exhaustive statement on a topic, any state law within that same field becomes inoperative.[24] In contrast, Canada applies a narrower doctrine of "federal paramountcy," which typically invalidates a provincial law only when there is a direct

[23] Government of NCT of Delhi v. Union of India, Civil Appeal No. 2357 of 2017, Supreme Court of India (decided on May 11, 2023).
[24] Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466.

operational conflict (i.e., it's impossible to comply with both federal and provincial laws) or when the provincial law frustrates the purpose of the federal act.[25]

In several Indian cases, particularly concerning industrial disputes or essential commodities, the judiciary has adopted a broad interpretation akin to the Australian model.[26] Courts have often concluded that central legislation is exhaustive, thereby striking down State laws even when they were complementary and not in direct contradiction.[27] This practice incentivizes the Union to frame its laws in a comprehensive manner to signal its intent to occupy the entire field. Consequently, the Concurrent List, envisioned as a domain of shared jurisdiction, risks becoming a sphere of potential Union monopoly. This effectively centralizes policy-making and curtails the legislative space for states to innovate or respond to unique local conditions, shifting the constitutional balance from co-existence toward Union pre-emption.

D. Presidential Assent: An Illusory Safeguard?

The provision for Presidential assent under Article 254(2) was designed as a constitutional safety valve for states. In theory, it allows a state to enact a law tailored to its specific needs, even if it deviates from an existing central law. However, its effectiveness has been severely diluted by two factors.

First, as mentioned, the President acts on the aid and advice of the Union Council of Ministers. This means the decision to grant or withhold assent is a political one made by the very same central government whose law the state is seeking to override. Assent is often granted or withheld based on political considerations, such as the party ruling the state, rather than on the constitutional merits of the proposed state legislation. There are numerous instances of state bills being kept pending for years, effectively exercising a pocket veto.[28]

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[25] Multiple Access Ltd. v. McCutcheon, [1982] 2 S.C.R. 161.
[26] See, e.g., State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 S.C.C. 106 (discussing repugnancy in the context of Chit Fund legislation).
[27] For an example of a broad interpretation, see State of Kerala & Ors v. Mar Appraem Kuri Co. Ltd. & Anr. (2012) 7 SCC 106, where the Supreme Court held that the Parliament had occupied the field with respect to chit funds, making a state law inoperative.
[28] M.P. Singh, Securing the States' Share in Legislation, THE HINDU, Oct. 20, 2020.

Second, the Supreme Court's interpretation has not strengthened this provision as a robust check on Union power. In *Kaiser-I-Hind Pvt. Ltd. v. National Textile Corp.*, the Court held that Presidential assent cures any repugnancy with *earlier* central laws, but it does not protect the state law from a *subsequent* parliamentary law, as per the proviso to Article 254(2).[29] This reinforces the ultimate supremacy of Parliament. The judiciary has not delved into the substance of the President's decision-making process, treating it largely as a non-justiciable political question. Consequently, what was intended as a shield for state autonomy has been rendered a largely procedural and politically contingent hurdle, further cementing the Union's dominant position.

The cumulative effect of this jurisprudential landscape is a clear tilt in favour of the Union. While paying lip service to federalism, the operational doctrines of pith and substance and, more critically, the occupied field, have provided the constitutional justification for an ever-expanding Union legislative footprint on the Concurrent List.

VI. THE PRACTICE OF CONCURRENCY – CASE STUDIES IN UNION DOMINANCE

The theoretical and judicial framework of concurrency finds its true test in legislative practice. An examination of key sectors on the Concurrent List reveals a consistent pattern of the Union government using its legislative powers to create national-level frameworks that override or marginalize state authority. This section analyzes four such case studies that exemplify the trend of creeping centralisation.

A. Case Study 1: Agriculture and the Farm Laws Controversy

The controversy surrounding the three farm laws, enacted by the Union Parliament in 2020 and officially repealed on December 1, 2021[30], serves as a powerful case study on the tensions within India's federal structure. This episode highlights the constitutional principles at stake when Union and State legislative powers collide. Constitutionally, agriculture is a quintessential state subject under Entry 14 of the State List, granting

[29] Kaiser-I-Hind Pvt. Ltd. v. Nat'l Textile Corp., (2002) 8 S.C.C. 182.
[30] The Farm Laws Repeal Act, 2021 (Act No. 39 of 2021).

state legislatures exclusive power over it.[31] However, this power is intertwined with subjects on the Concurrent List, most notably Entry 33, which covers "trade and commerce in, and the production, supply and distribution of... foodstuffs."[32] Citing its authority under Entry 33, the Union government enacted the laws[33] to create a national market for agricultural produce, effectively bypassing the state-regulated Agricultural Produce Market Committees (APMCs). The Union's legal justification was that it was legislating on the "trade and commerce" of foodstuffs, not on the act of "agriculture" itself.

State Opposition and the Core Conflict: This move was met with fierce opposition from several state governments and widespread farmer protests. The states argued that the laws were a colourable exercise of legislative power-using a Concurrent List entry as a pretext to dismantle the state-managed agricultural marketing system, which falls under the State List's ambit of 'agriculture' (Entry 14) and 'markets and fairs' (Entry 28). They contended that by creating unregulated trade areas, the laws would undermine their ability to protect farmers and levy market fees, a significant source of state revenue. The dispute became a classic test of the "pith and substance" doctrine, which courts use to determine the true nature of legislation.

Legacy of the Controversy: Although the Supreme Court had stayed their implementation[34] and the Union government ultimately repealed the laws due to immense political pressure, the episode left a deep scar on federal relations. It remains a critical example of the Union's willingness to interpret Concurrent List entries broadly to legislate on matters that are substantively within the states' exclusive sphere. The controversy established a precedent for constitutional conflict, demonstrating how such actions can be perceived as treating state governments not as partners in governance but as subordinate administrative units.

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[31] The Constitution of India, Seventh Schedule, List II (State List), Entry 14: "Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases."
[32] The Constitution of India, Seventh Schedule, List III (Concurrent List), Entry 33.
[33] The three laws were: The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020; and The Essential Commodities (Amendment) Act, 2020.
[34] Rakesh Vaishnav & Ors. v. Union of India & Ors., Writ Petition (Civil) No. 1118 of 2020.

State Response and Constitutional Challenge: The opposition from states was swift and multi-pronged, moving beyond mere political protest to direct legislative and legal action.

1. **Legislative Countermeasures:** States like Punjab, Chhattisgarh, and Rajasthan enacted their own amendment bills in their respective assemblies. These state bills aimed to negate the effects of the central laws within their jurisdictions by, for instance, making Minimum Support Price (MSP) a legal requirement for any crop sale and punishing traders who bought below it.[35] This was a direct legislative challenge, creating a parallel legal framework in defiance of the Union's laws.
2. **Constitutional Court Challenges:** Several states took the matter to the Supreme Court. The Government of Kerala, for instance, filed an original suit arguing that the laws were unconstitutional.[36] The core legal argument, also echoed in petitions by Punjab, was that the Union's legislation was a "colourable exercise of legislative power." They contended that the laws, while claiming to be about "trade and commerce" (Concurrent List), were in their "pith and substance" (a legal doctrine to determine the true nature of a law) an encroachment on the state's exclusive powers over 'agriculture' (State List, Entry 14) and 'markets and fairs' (State List, Entry 28).[37]

Though the Supreme Court stayed the implementation of the laws and the Union ultimately repealed them, the legal questions were never fully adjudicated.[38] The episode, however, clearly demonstrated the states' use of both legislative and judicial avenues to defend their constitutional turf.

[35] The Hindu Bureau, "Punjab Assembly passes Bills against Centre's farm laws," The Hindu, October 20, 2020.
[36] A. Vaidyanathan, "Kerala Government Challenges Farm Laws In Supreme Court," NDTV, December 31, 2020.
[37] Krishnadas Rajagopal, "SC to examine if Centre has power to bring farm laws," The Hindu, January 6, 2021.
[38] Utkarsh Anand, "Supreme Court stays implementation of 3 farm laws," Hindustan Times, January 12, 2021.

B. Case Study 2: Education and the Centralisation of Policy

Education is a powerful illustration of how a subject's migration to the Concurrent List can lead to systemic centralisation. Originally, 'Education, including universities' was Entry 11 in the State List. However, during the Emergency, the 42nd Constitutional Amendment Act, 1976, shifted 'Education' to its current position as Entry 25 in the Concurrent List.[39]

The rationale offered was the need to improve national standards and foster uniformity. While this goal is laudable, the consequence has been a steady erosion of the states' role in shaping educational policy. The Union government, through bodies like the University Grants Commission (UGC) and the National Council of Educational Research and Training (NCERT), and its significant financial leverage through centrally sponsored schemes, effectively dictates the direction of education nationwide.

The National Education Policy (NEP) 2020 is the latest and most comprehensive example of this trend.[40] While styled as a "policy," its recommendations for structural changes-such as the 5+3+3+4 school system, the establishment of a single higher education regulator (HECI), and the introduction of a common university entrance test-are intended to be implemented nationwide. While states are theoretically free to adapt or reject these, the Union's control over funding and regulatory bodies creates immense pressure for compliance. Several states, particularly in southern India, have voiced concerns that the NEP promotes a one-size-fits-all approach that ignores regional languages and cultural contexts, and undermines the autonomy of state universities.[41] The shift of education to the Concurrent List has thus transformed it from a state-driven enterprise into a centrally-directed one, where states are often reduced to implementing agencies for a national agenda.

[39] The Constitution (Forty-second Amendment) Act, 1976, § 57 (substituting entry 25 in List III).
[40] Ministry of Human Resource Development, Government of India, National Education Policy 2020 (2020).
[41] See T. Ramakrishnan, Tamil Nadu panel finds NEP 2020 flawed, THE HINDU, Nov. 25, 2022.

State Response and Constitutional Challenge: Opposition to the NEP was particularly strong in southern states, which feared it would impose a uniform model that ignored regional diversity.

1. Policy-Level Resistance: States like Tamil Nadu and Kerala vocally rejected the NEP. Tamil Nadu's government announced it would formulate its own State Education Policy (SEP), tailored to its cultural context and educational history, explicitly rejecting the NEP's three-language formula and common entrance tests.[42] This represents a direct administrative and political refusal to align with the central policy framework.
2. Targeted Legal Challenges: While a broad policy like the NEP cannot be easily challenged in court, its specific mandates can be. The introduction of the Common University Entrance Test (CUET) as a mandatory requirement for admission to central universities became a flashpoint. The Tamil Nadu government filed a suit in the Supreme Court challenging this mandate, arguing it infringes upon state autonomy and disadvantages students from its state board education system.[43] The constitutional argument is that while 'education' is on the Concurrent List, a single, centrally-mandated entrance exam undermines the state's role in higher education and violates the federal principle.

This demonstrates how states are pushing back not just politically but also by initiating legal challenges against specific components of a central policy that they deem to be an overreach.

C. Case Study 3: Electricity and Regulatory Control

'Electricity' is Entry 38 on the Concurrent List.[44] For decades, the electricity sector was primarily managed by State Electricity Boards (SEBs), which handled generation, transmission, and distribution. The Union's role was largely limited to policy

[42] "Will formulate a state education policy, says Tamil Nadu CM MK Stalin," The Times of India, August 27, 2022.
[43] "Tamil Nadu moves SC challenging constitutional validity of CUET for college admissions," The Indian Express, March 14, 2024.
[44] The Constitution of India, Seventh Schedule, List III, Entry 38.

guidance and managing inter-state transmission. This changed dramatically with the enactment of the Electricity Act, 2003.[45] This comprehensive legislation "occupied the field," unbundling the SEBs and creating a new regulatory structure with Central and State Electricity Regulatory Commissions. While it introduced much-needed reforms, it also significantly increased the Union's influence.

The trend towards centralisation has been further accelerated by the proposed Electricity (Amendment) Bill. Key proposals in various versions of the bill include delicensing distribution to allow multiple private players in the same area, strengthening the powers of the central load dispatch centres, and fixing tariffs through a central authority. State governments have strongly opposed these measures, arguing that they strip states of their regulatory control over the crucial distribution sector, which directly impacts consumers and farmers (through subsidies).[46] They contend that giving the Union and central agencies the power to dictate terms in distribution-the financial backbone of the sector-undermines state finances and their ability to implement welfare-oriented tariff policies.

This opposition has moved beyond political debate and into the realm of constitutional challenge. Several state governments have argued that the proposed amendments are unconstitutional, contending that they violate the basic structure of the Constitution, of which federalism is an integral part. The core of their legal argument is that while Parliament can legislate on the concurrent subject of 'Electricity', it cannot do so in a manner that effectively nullifies the states' constitutionally mandated role. States like Tamil Nadu and Kerala have passed formal resolutions in their assemblies opposing the bill, framing it as a legislative overreach that encroaches upon the powers of the State Legislature. They maintain that the amendments, particularly those related to delicensing distribution and centralizing tariff powers, are not merely regulatory changes but an attempt to recentralize the entire sector, thereby rendering the states' role meaningless and violating the spirit of the Concurrent List.

[45] The Electricity Act, 2003, No. 36 of 2003, Acts of Parliament.
[46] As reported by numerous media outlets and in statements from various state governments during consultations on the draft bills.

State Response and Constitutional Challenge: The opposition to the Electricity (Amendment) Bill has been widespread, with states framing it as a fundamental assault on federalism.

1. Unified Political Opposition: Numerous states, including Tamil Nadu, Kerala, West Bengal, Telangana, and Punjab, have passed formal resolutions in their legislative assemblies opposing the bill.[47] They have argued that allowing private companies to use state-owned distribution networks ("delicensing") would lead to "cherry-picking" of profitable urban areas, leaving state-run DISCOMs to serve rural and poor consumers at a loss, ultimately making farm subsidies unviable.
2. Constitutional Arguments: The legal challenge, though currently prospective, is framed as a violation of the basic structure of the Constitution, of which federalism is a key part. The states' core contention is that while Parliament can legislate on 'Electricity', it cannot do so in a way that effectively nullifies the state's constitutionally mandated role. State leaders have argued that giving the Union power over retail distribution and tariff-setting is not concurrent legislation, but a complete takeover of a domain intrinsically tied to state governance and finance, violating the spirit of federalism.[48]

D. Case Study 4: Criminal Law and Procedural Uniformity

'Criminal law' and 'Criminal procedure' are placed at Entries 1 and 2 of the Concurrent List, respectively, while 'Police' and 'Public order' are state subjects (Entries 1 and 2 of the State List).[49] This division means that while the substantive penal code and procedural laws are uniform, their implementation and enforcement are the responsibility of the states.

In 2023, the Union government introduced and passed three bills to comprehensively replace the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the

[47] P. S. Gopikrishnan Unnithan, "Kerala Assembly passes resolution against Centre's Electricity Amendment Bill," India Today, June 23, 2022. See also reports on similar resolutions by other states.
[48] M. K. Stalin, Letter to Prime Minister Narendra Modi, as reported by PTI, "Stalin writes to Modi, says Electricity Bill will lead to 'hardship' for people," Business Standard, August 8, 2022.
[49] INDIA CONST. sched. VII, list III, entries 1, 2; INDIA CONST. sched. VII, list II, entries 1, 2.

Indian Evidence Act, 1872.[50] While modernizing these colonial-era laws is a necessary project, the manner in which it was undertaken has raised serious federal concerns. The new codes-the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam-were drafted and passed by the Union Parliament with what many states felt was inadequate consultation.

Given that state police forces, prosecution departments, and judiciary are the primary agencies that will have to implement these wholesale changes, a lack of deep and meaningful engagement with them is problematic. Changes in definitions of offenses, admissibility of electronic evidence, and procedural timelines for investigation will have massive administrative, financial, and training implications for the states. Critics argue that such a fundamental overhaul of the justice system, though constitutionally permissible under the Concurrent List, should have been a deeply collaborative exercise between the Union and the States. Instead, it was presented as a fait accompli, reinforcing the perception of a top-down approach that disregards the federal partnership in the administration of justice.

These case studies collectively illustrate a clear and consistent trend. The Union is increasingly leveraging its constitutionally sanctioned supremacy on the Concurrent List not merely to ensure uniformity in basic principles, but to enact comprehensive, detailed legislative schemes that effectively centralize policy and administration, pushing the Indian federal system into a state of flux and confrontation.

State Response and Constitutional Challenge: The primary response from states revolved around the unilateral process and the immense implementation burden it would create.

1. Process-Based Opposition: Opposition-ruled states and legal experts criticized the Union for pushing through such a monumental legal overhaul without meaningful consultation with the states.[51] The key argument was a violation of

[50] The Bharatiya Nyaya Sanhita, 2023 (came into effect July 1, 2024); The Bharatiya Nagarik Suraksha Sanhita, 2023 (came into effect July 1, 2024); and The Bharatiya Sakshya Adhiniyam, 2023 (came into effect July 1, 2024).
[51] Dipu Rai, "Opposition questions 'lack of consultation' as govt introduces Bills to replace IPC, CrPC," The Indian Express, August 11, 2023.

the principle of cooperative federalism. States are the primary implementers- their police forces have to investigate, their prosecutors have to argue, and their courts have to adjudicate based on these new laws. The lack of prior engagement was seen as treating states as mere subordinate agencies rather than partners.

2. Potential Constitutional Hurdles: While the Union is constitutionally empowered to legislate on criminal law, specific provisions of the new codes could face legal challenges. For example, if a provision is deemed to interfere excessively with the day-to-day administration and operational command of the state 'Police' (State List, Entry 2), it could be challenged on the grounds that its "pith and substance" is policing, not criminal procedure.[52] The financial and administrative implications are also a point of friction, with states arguing that such a centrally-imposed transition should come with corresponding financial support from the Union.

VII. REIMAGINING CONCURRENCY AND FEDERALISM

The growing legislative assertiveness of the Union on the Concurrent List is not without its justifications. However, its corrosive effect on state autonomy and the spirit of cooperative federalism necessitates a critical re-evaluation of the current equilibrium. A healthier federal balance requires not just constitutional tinkering but also a fundamental shift in political culture.

A. The Rationale for Centralisation: A Counter-Perspective

It would be simplistic to dismiss the Union's legislative actions as a mere power grab. There are compelling arguments in favour of a strong, guiding hand from the Centre in a developing and diverse country like India.

1. National Unity and Integrity: A primary concern of the framers, which remains relevant today, is the need to counter secessionist or divisive tendencies.

[52] Alok Prasanna Kumar, "The New Criminal Law Bills Are a Missed Opportunity," Vidhi Centre for Legal Policy, August 24, 2023.

Uniform laws in critical areas are seen as a bulwark against regional fragmentation.

2. Economic Integration: For India to function as a single common market, uniformity in laws governing trade, commerce, contracts, and industry is essential. Central legislation can prevent a "race to the bottom" where states compete by lowering regulatory standards, and it can facilitate seamless inter-state business. The Goods and Services Tax (GST) regime, despite its own federal challenges, is an example of this logic.
3. Fulfilling International Obligations: Under Article 253, Parliament has the power to legislate on any matter (even on the State List) to implement international treaties and agreements.[53] In an increasingly globalized world, issues like climate change, intellectual property, and trade require a unified national response, which often necessitates central legislation.
4. Equity and Minimum Standards: The Union can play a vital role in ensuring that all citizens, regardless of their state of residence, are entitled to certain minimum standards in areas like education, health, and social security. Central schemes and laws can help redistribute resources and mitigate regional inequalities.

While these arguments have merit, they do not provide a blanket justification for unilateral central action. The challenge lies in achieving these national goals through collaboration and consensus, rather than through legislative imposition.

B. From Coercive to Cooperative Federalism: The Path Forward

The current trajectory points towards what has been termed "coercive federalism," where the Union uses its financial and legislative powers to compel states to fall in line with its agenda. To reverse this trend and reinvigorate the "cooperative federalism" envisioned by Austin, a multi-pronged approach involving institutional, judicial, and political reforms is necessary.

[53] INDIA CONST. art. 253.

1. Institutional Reforms: Strengthening Consultative Mechanisms: The Constitution already provides for institutions to foster inter-governmental dialogue, but they have been woefully underutilized.
    - Empowering the Inter-State Council: The Inter-State Council, established under Article 263, is mandated to inquire into and advise upon disputes between states, investigate subjects of common interest, and make recommendations for better coordination.[54] It is the perfect institutional forum for negotiating legislation on Concurrent List subjects. It should be transformed from a dormant advisory body into a vibrant, permanent, and powerful secretariat for federal dialogue. A constitutional amendment could make it mandatory for the Union to place any proposed bill on a significant Concurrent List subject before the Council for deliberations *before* it is introduced in Parliament.
    - Transparent and Time-Bound Consultation: The pre-legislative consultation process needs to be institutionalized and made transparent. Draft bills should be shared with state governments with a mandatory and adequate period for feedback. The feedback received and the Union's response to it should be made public to ensure accountability.
2. Judicial Re-evaluation: A Federalism-Protecting Approach: The judiciary must reassume its role as the ultimate guardian of the federal structure, which has been declared a "basic feature" of the Constitution.[55]
    - Narrowing the "Occupied Field" Doctrine: The Supreme Court could refine its interpretation of the "occupied field" doctrine. Instead of asking whether Parliament *could have* intended to occupy the field, the presumption should be in favour of the validity of the State law. The onus should be on the Union to demonstrate a clear and direct conflict or an undeniable necessity for uniformity that makes co-existence of state legislation impossible.

[54] INDIA CONST. art. 263.
[55] S. R. Bommai v. Union of India, A.I.R. 1994 S.C. 1918. The court held that federalism is a basic feature of the Constitution and states are not mere appendages of the Centre.

- Giving Substance to Presidential Assent: The judiciary could reconsider its hands-off approach to Presidential assent under Article 254(2). While avoiding a deep dive into the political thicket, the Court could require that the decision to grant or withhold assent be based on reasoned grounds related to the constitutional scheme, especially when assent is withheld for an inordinate period. This would lend more transparency and accountability to the process.

3. Political Culture: Embracing the Federal Spirit: Ultimately, federalism is as much about political culture as it is about constitutional text. No amount of legal reform can succeed if the political executive at the Centre views states ruled by opposition parties as adversaries. A genuine respect for regional mandates and administrative competence is paramount. The party system, which has become increasingly presidential and centralized, needs to rediscover the value of internal federalism and accommodate regional leadership.

VIII. CONCLUSION

The Concurrent List in the Indian Constitution was a masterful compromise, a testament to the framers' wisdom in balancing the centripetal and centrifugal forces that animate the Indian polity. It was designed to be a dynamic space for legislative partnership, allowing for a harmonious blend of national unity and regional diversity. However, this article has argued that in contemporary practice, this vision is in peril. The Union's increasing use of its legislative supremacy under Article 254, often justified by an expansive interpretation of Concurrent List entries and the "occupied field" doctrine, has led to a significant erosion of state autonomy.

The case studies of agriculture, education, electricity, and criminal law reveal a pattern of centralisation that transforms states from legislative partners into mere implementing agencies of a central agenda. This shift from cooperative to coercive federalism is not a mere academic concern; it has profound implications for governance, accountability, and the very idea of a pluralistic India. When states lose the power to legislate on matters that directly affect the lives of their citizens, it

weakens the democratic chain of accountability and can foster a sense of alienation and resentment.

The federalism of the Indian Constitution is in flux, caught between its centralizing text and its pluralistic context. Restoring the balance requires a concerted effort. Institutional mechanisms like the Inter-State Council must be revitalized to become effective platforms for consensus-building. The judiciary must adopt a more robust, federalism-protecting jurisprudence that gives due weight to state legislative space. Above all, there must be a shift in political culture towards a genuine appreciation of the federal spirit. The Concurrent List must be restored to its original purpose-as a bridge between the Union and the States, not a weapon for legislative dominance. The future health of India's vibrant democracy may well depend on it.

Excellent analysis. Building on this conclusion, here are specific suggestions for future research directions that would enhance the paper's academic value and directly address potential counterarguments.

A. Research Questions

1. How has the Union's use of the Concurrent List in the Seventh Schedule led to legislative dominance over the states in contemporary India?
    - The Union's use of the Concurrent List in the Seventh Schedule has increasingly led to legislative dominance by enabling Parliament to enact comprehensive, detailed laws on shared subjects, often overriding or pre-empting state initiatives and reducing states to administrative extensions of central policy.
2. What constitutional mechanisms (such as Article 254) and judicial interpretations have further entrenched Union supremacy on concurrent subjects?
    - Article 254 establishes Union law's primacy over state law on concurrent subjects, and judicial interpretations-especially the "occupied field" doctrine-have broadly favored the Union by reading central laws as exhaustive, further entrenching Union supremacy and limiting the legislative space available to states.

3. In what ways have recent legislative interventions in sectors like agriculture, education, electricity, and criminal law affected federal spirit and state autonomy?
    - Recent legislative interventions-such as the farm laws, National Education Policy 2020, Electricity Act reforms, and the complete overhaul of criminal laws-have eroded state autonomy. These measures often bypass meaningful state consultation, disrupt traditional state domains, and centralize policy decisions, thereby weakening the spirit of cooperative federalism.
4. What institutional, legal, or political reforms can reinvigorate cooperative federalism and restore balance in Centre-State legislative relations?
    - To reinvigorate cooperative federalism, reforms should include empowering and making mandatory the Inter-State Council for concurrent legislation, mandating transparent and time-bound Union-State consultations, and promoting a more federalism-protecting judicial approach-especially narrowing the "occupied field" doctrine and strengthening procedural requirements for Presidential assent-restoring legislative partnership and accountability in Centre-State relations.

B. Future Research Directions

1. **Quantitative Analysis of Legislative Centralisation:** The paper powerfully uses four case studies. A strong counterargument, however, is that these cases might be "cherry-picked" examples of high-profile political friction rather than evidence of a systemic trend.
    - **Research Suggestion:** Conduct a quantitative and longitudinal study of all Union legislation passed under the Concurrent List since a specific period (e.g., 1991, post-liberalisation). This research would involve:
        i. Categorising Legislation: Classifying each law based on its nature. Is it a broad framework law that leaves significant room for state-level rules (cooperative), or is it a highly prescriptive law that micromanages implementation (coercive)?

ii. Tracking Financial Levers: Analysing the extent to which these laws are tied to Centrally Sponsored Schemes (CSS) or other financial incentives that compel state compliance.

iii. Outcome: This would produce empirical data to prove or disprove whether there has been a statistically significant shift towards more prescriptive central legislation over time, directly addressing the counterargument of selective evidence.

2. **Comparative Federalism:** The "Concurrent List" in Practice: The argument for centralisation often rests on the need for national standards and economic unity. A counterargument is that other successful federations achieve this without sacrificing state autonomy.
   - **Research Suggestion:** A comparative study of how concurrent legislative powers are managed in other major federal systems, such as Germany (with its strong second chamber, the Bundesrat) and Australia. Key questions would include:
     i. What are the institutional mechanisms for negotiation and dispute resolution between the federal and state/provincial governments *before* legislation is passed?
     ii. How do their constitutional courts interpret doctrines like "occupied field"? Do they provide more protection to sub-national legislative space?
     iii. Outcome: This research would provide a benchmark. If other federations successfully maintain national standards through genuine consensus-building, it weakens the "necessity" argument for unilateral central action in India and offers concrete models for institutional reform.
3. **State Capacity and Asymmetrical Resistance:** The paper highlights state opposition but treats "the states" as a somewhat monolithic bloc. In reality, state responses vary significantly. A counterargument could be that the issue is not just Union overreach but also a lack of state capacity to legislate effectively.

- **Research Suggestion:** An investigation into "asymmetrical federalism in practice." This would involve selecting a few central laws (e.g., an education or environment-related act) and comparing the responses of different states.
    i. Why are some states (like Tamil Nadu or Kerala) more effective at creating alternative policy frameworks or mounting legal challenges?
    ii. What role does the capacity of state-level legislative bodies, bureaucracies, and legal departments play?
    iii. Does the presence of strong, well-organised regional political parties correlate with more robust defence of state autonomy?
    iv. Outcome: This research would add significant nuance, moving beyond a simple Union vs. States narrative. It could reveal that strengthening federalism requires not just checking central power but also building legislative and administrative capacity at the state level.

4. **The Judiciary's Evolving Doctrine on Federalism:** The conclusion calls for a more "federalism-protecting jurisprudence." A counterargument is that the judiciary has always interpreted the Constitution as having a strong centralising tilt, and current judgments are consistent with past precedent.
    - **Research Suggestion:** A doctrinal analysis of the Supreme Court's interpretation of the Concurrent List over different historical periods.
        i. Has the application of the "pith and substance" doctrine changed over time to favour the Union?
        ii. How has the Court's view on what constitutes an "occupied field" evolved since the landmark *S.R. Bommai v. Union of India* case, which strengthened federal principles?
        iii. Is there a discernible difference in judgments on federalism between different judicial eras?
        iv. Outcome: This would provide an evidence-based answer to whether the judiciary's stance has shifted, and it could identify

specific precedents and legal principles that could be revived to restore the federal balance, as the paper advocates.

C. Potential Counterarguments

1. **The Imperative of National Interest and Unity*:*** This is perhaps the most fundamental counterargument. It posits that a strong, decisive central government is essential for a country as diverse and complex as India.
   - **Argument:** On critical issues that have nationwide implications-such as food security, energy security (electricity), national education standards, and tackling organized crime-a fragmented, state-by-state approach is inadequate. Proponents of this view argue that central legislation on Concurrent List subjects is not an overreach but a necessary action to safeguard the national interest, ensure unity, and prevent regional disparities from deepening. For example, a unified criminal code is seen as essential for fighting inter-state crime and terrorism.
2. **Economic Efficiency and the Single Market:** This argument frames centralisation not as a power grab, but as a prerequisite for economic growth and ease of doing business.
   - **Argument:** A patchwork of different state laws and regulations creates internal trade barriers, increases compliance costs, and hinders the creation of a seamless single national market. The (repealed) farm laws, for example, were justified on the grounds that they would liberate farmers from localized monopolies and create a national market for their produce. Similarly, uniform electricity regulations are argued to be necessary to attract investment and rationalize power distribution across the country. From this perspective, central action is a pro-market reform, not an anti-federal move.
3. **Deficiencies in State Capacity and Governance:** This is a pragmatic, governance-based counterargument that focuses on the varying capabilities of state governments.

- **Argument:** The Union often steps in because many states lack the technical expertise, financial resources, or even the political will to legislate effectively on complex modern issues. For instance, proponents of the National Education Policy (NEP) argue that central guidance is necessary to ensure a minimum quality of education across the country, especially in states with poor learning outcomes. In this view, central intervention is a corrective measure to ensure that all citizens, regardless of which state they live in, have access to a certain standard of welfare and governance. It's seen as upholding the rights of citizens where states may be failing.

4. **Constitutional Design and Original Intent:** This legalistic counterargument holds that the current trend is not a violation of the federal spirit but an expression of the Constitution's original design.
    - **Argument:** The Indian Constitution was intentionally designed with a strong central bias. The very existence of Article 254, which explicitly states that Union law will prevail over state law in case of a conflict on a Concurrent List subject, is proof of this. Proponents argue that the Union is not "overreaching" but simply exercising the legislative supremacy granted to it by the constitutional text. The framers foresaw the need for uniformity and gave the Union the tools to achieve it. Therefore, such actions are constitutionally legitimate and align with the original intent.
5. **Cherry-Picking of Evidence:** This final counterargument challenges the methodology of the original thesis, suggesting it focuses on conflict while ignoring cooperation.
    - **Argument:** The case studies of agriculture and education represent high-profile political disputes, but they are not representative of the entire landscape of Union-State relations. This view would highlight successful instances of cooperative federalism, such as the functioning of the GST Council, where the Union and states collectively decide on tax policy. Collaboration under the Disaster Management Act is another example. This argument suggests that the thesis is based on a biased sample of contentious

issues, while ignoring the many areas where the federal partnership works as intended.

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