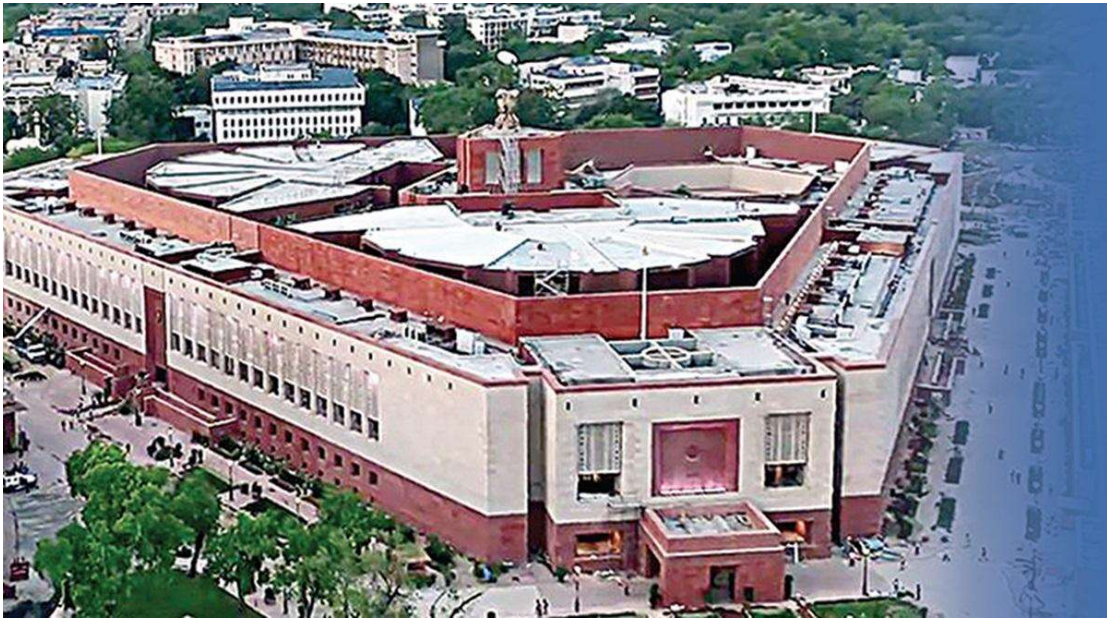


Concurrent List controversy: Understanding and solution



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A controversy has again broken out over the Concurrent List in the 7th Schedule of the Constitution. In fact, the controversy dates back to 1950s. Divergent opinions prevailed about this issue even among members of the Constituent Assembly. There were certain members then, who argued that the Concurrent List would be tantamount to opening of the states' backyard gates to the union government. Yet the framers of the Constitution, unfazed by this argument, allowed the Concurrent List, paving the way for curtailment of states' powers.

State rights confiscated

There are three lists mentioned in the Constitution: Union List, State list and Concurrent List. The Union List has certain subjects over which the union government can enact laws, the State List has certain subjects over which the states can bring in laws and the Concurrent List has certain subjects over which both union and states have powers to enact their own laws. But the catch is that when there is a discord between the laws of the union and state governments over the concurrent subjects, it is only the union government's laws which will be valid and the states have no other option but to toe the line of the union government. Thus the state powers are subordinated to those of the union government. Besides, according to the Article 249, the union government can enact laws on its own over the subjects in the State List. So, the state powers are further curtailed.

Are the subjects in the State List permanent? No. For instance, way back in 1976, most subjects were shifted from the State List to the Concurrent list through the 42nd amendment to the Constitution during the regime of Indira Gandhi. Education was one of the subjects thus changed during Emergency. Of course, reversing this action, Morarji Desai, who succeeded Indira Gandhi as Prime Minister, shifted some of the subjects back to the State List. Yet he allowed education to continue remaining in the Concurrent List. This is a typical instance of the Central rulers, whoever they are, ensuring concentration of powers in the central dispensation. This tendency flies in the face of the federal rule principle, triggering certain current developments – formation of new education policy, efforts to impose it on states without subjecting it to parliamentary debates and arrangements to shift higher education to the union list. In this respect, both national

parties – Congress and BJP – are the proverbial birds of a feather flocking together.

It is the stance of the union government that taking a national eligibility test is a sine qua non to pursue higher education. But it is our argument that such a nationwide eligibility test will affect Tamil Nadu and it is not necessary for our state which has a higher enrolment rate in higher education, compared to other states. Hence it is necessary to frame separate laws on education in states according to their demands and needs.

As far as the Concurrent List is concerned, when it comes to enacting laws, both union and states have statutorily equal powers. But in practice, when a union government's law on a subject is in a sharp contrast with a state's law on the same subject, it is only the former's law that prevails. This degrades the states' power of enacting laws. Overall what comes across is the appearance of the states yielding to the union government. This is absolutely a negation of the federal rule principle.

Lokpal and Lokayukta

Lokpal law is pertaining to the union government and the Lokayukta to state governments. While framing the Lokpal law, the union government had also included the Lokayukta law. When the law was referred to the Parliamentary standing committee for scrutiny, as a member of the panel I went on record as saying, "Lokayukta law should not be brought in by the union government. It should be left to the states which can exercise their powers to frame their own laws." My viewpoint was accepted by the Rajya Sabha and thereby the union government

was prevented from enacting the Lokayukta law. The right to enact the law was left to the states.

In another instance, a ban was clamped on jallikattu after bull was added to the animals whose public display was prohibited by the concurrent list law. Yet the Tamil Nadu government brought in a separate law amid difficulties and struggles and got the Presidential assent to the law. As a result, Tamil Nadu was exempted from the union government's law.

India is a multi-faced country and the union government is just a central point where all states converge. The 'union of states' as mentioned in the Constitution means that because the union government is a convergence of all states, the stances, sentiments and rights of all states should be respected.

Our ancestors, who had framed the Constitution, had included the Concurrent List for some reasons. However, the controversy over the Concurrent List should not continue so that the union and state governments will maintain a harmonious and cordial relationship. Parliament has powers to review laws and schemes for the sake of the states' welfare. Similarly, the union Cabinet has a scope for changing any policy decision.

Time to put an end

There was not much of a problem in the initial years as it was the same political party which was in power at Centre and in states as well. But the trend has changed a lot now with several regional parties in power in several states refusing to budge an inch when it comes to state powers and autonomy. Hence there is a general

criticism that there is a confrontation between the union government and states.

So, it is imperative to put an end to this long controversy. By way of resolving the row, the following arrangements should be part of the scheme of things. The states should accept the laws introduced by the union government on a subject if the laws are found appropriate to them. In case the states find the laws not acceptable and bring in their own laws on the same subject, the union government should give a nod to the state laws, facilitating the Presidential assent and allowing the states to implement their laws according to their circumstances and needs.

This is the only solution to the concurrent list problem, which will help strengthen the country's federal structure.

Translated by V. Mariappan.