

Time for Overriding Powers of the Centre to Go?- State Autonomy and Concurrent List By Kratika Indurkhya

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Yet again, the existence of concurrent list is questioned to attain more state autonomy. Concurrent list which is enumerated as List III of the seventh schedule, was added with a certain “reasoning” and the question today is, whether the current political scenario has changed completely making the “reasoning” inapplicable and can developing country like India afford to abolish List III of the Constitution.

In the wake of the recent radical demand of denouncing the concurrent list by The TRS chief and CM of Telangana, K Chandrashekhar Rao, a great challenge is imposed on the seventh schedule of the Indian Constitution.

This dispute between Centre and State arises as Article 254^[1] of the Indian Constitution states that central law would prevail over state law in matters of repugnancy, making the Centre strong. This problem is aggravated as today, due to politicization there exists a multi-party system in the country, i.e. different political party at the Centre and State.

But his call for state autonomy and abolishment of concurrent list is not new to our ears. Various

commissions like the Rajmanner, Sarkaria, Anandpur Sahib Resolution, West Bengal Memorandum and MM Punchhi have been set up to look into the Centre-State relations as many regional governments including the government of Tamil Nadu led by DMK party, CPI (M), Left Front Government headed by Jyotibha Basu and Akali Dal have voiced this concern before.

But the need of the hour is to assimilate the meaning, history and importance of concurrent list to determine its relation with state autonomy and also realize its importance in the cooperative federalism of our country.

Concurrent List – Model and History

As India is a Federal Country, the legislative powers are divided between the Centre and the State. The Supreme Court in the cases of *Kesavananda*^[2] and *S.R. Bommai*^[3] have included federalism in the basic structure and also stated that India is not an absolute federalism^[4].

K.C.Wheare, a great authority of federalism states India to be a quasi-federal country and classifies India as “a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles.” Moreover, the Constitution does not mention the word “Federation”, rather Article 1 of the Constitution states India to be a “Union of States”^[5].

Based on federalism, Article 246 of the Constitution demarcated the powers of the Union and the State by classifying their powers into 3 lists, i.e. (i) Union List- on which the Centre has the exclusive jurisdiction to make laws (ii) State list, on which states have exclusive jurisdiction to make laws and (iii) Concurrent List – on which both centre and state can make laws and as stated above, the central law prevails over state in cases of repugnancy.

The bone of contention here is that regional parties believe this repugnancy clause takes away their autonomy, which compounds as different parties prevail in Union and State.

Now the important question is- Why did the framers of our Constitution provide for a centralizing tendency while implementing the federal structure? Firstly, India had actually experienced the phrase “United we stand, divided we fall”, as whenever in the history, India had a weak centre, it was exposed to danger and invasions and that there was a united India only when the centre was strong. Moreover, as against the “divide and rule” policy of the British, the Congress advocated for “Akhand Bharat”.

Secondly, present system is a blue print of the Government of India Act, 1935 which was enacted after 1934 Report of The Joint Select Committee on Indian Constitutional Reform. It stated – “Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a central or to a Provincial legislature...”

Thirdly, after the partition, the concept of strong centre was indispensable. Thereby the Second

Report of the Union Powers Committee stated “Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international space.”^[6]

The importance of concurrent list

Among the many, following are the few points on importance of concurrent list-

- Besides ensuring uniformity of law in the country, Union Government also directs and steers the efforts the state legislatures and also provide guidance in areas where the State Government fails to enact law, making sure that no area is neglected.
- As stated by States Re-organisation Committee, one of the various commissions and committees set up for the Centre-state relation, stated- “It is the Union of India which is the basis of our nationality... States are but limbs of the Union, and while we recognize that they should be healthy and strong... it is the strength and stability of the Union and its capacity to develop and evolve that should be governing consideration of all changes in the country.”^[7] Even Dr. Shyama Prasad Mookharjee and Dr. B.R. Ambedkar argued that a strong Centre was in India’s paramount interest.^[8] It is also significant to quote Justice P.N. Sanyal, “our founding fathers wisely did not establish for this country a completely unitary sovereignty among various units composing it. Any such attempt would have completely broken down, as India is too vast a country to be governed as a completely unitary state.”^[9] These two concepts of centralization and de-centralization are ensured by concurrent list as while preserving the national interest, it also protects the interest of the states by providing flexibility as the laws made in the interest of the nations can be modified as suited to the needs of the state.
- Moreover as seen in Uttarakhand floods and many more instances, the states lack the expertise, here the Centre can be very useful in filling the vacuum as Central agencies have proved to be more disciplined and professional.
- We also need to realize that India is still a developing nation and we need foreign investments in our country. India cannot afford to lose the national cohesion by completely abolishing the matters on which both centre and state can legislate, and let states go in their own way. The multifold laws and regulations would discourage the foreign investors in investing in our country. Furthermore, business expansions in different states would be hampered as well.

By completely abandoning the Concurrent list, the cooperation and peacefulness among states would be replaced by complete estrangement. This would be detrimental not only to the national interests but also the development of the country which would ruffle as India is still a flourishing and burgeoning country.

Is abolishing the solution for attaining state autonomy?

To resolve this discord between the State and the Union, we need to identify the nail in the coffin. Is it the concurrent list per se that is creating a problem, or is it that regional parties believe that there is no consultation and arbitrary actions are taken by national governments, hampering the autonomy of the states? Can the state autonomy and concurrent list both be retained by providing a test of repugnancy i.e., by making the overriding powers of the Centre conditional if they satisfy the test of national interest, national standards or the interest of another state?

Another important fact is that countries like U.S.A. were formed by states that were already sovereign entities, in contrast to India, where states were merely limbs of the nation and needed strong centre for growth. Which raises another crucial question -whether states in India strong enough to function professionally without the expertise and help of the Centre? Another important question is that is Centre efficient and keen into keeping in mind the diversity in each state and then formulating laws? It is these questions that need to be answered to reach a conscious and mindful conclusion.

Bearing in mind the importance of the concurrent list, we should seek an alternative to the ideology of the state governments, which fearing the powerful and overreaching powers of the Centre seek to cut them completely.

More negotiations and consultations can be effective and handy, that being stated, the objective of NITI Ayog, realizing that strong states make strong nation is commendable. NITI Ayog, an initiative of the NDA government, works to evolve a shared vision of national development priorities, sectors and strategies with the active involvement of the states in the light of national objectives By accepting the 14th Finance Commission's recommendations, it increased states share in tax revenue from 32% to 42% now.[\[10\]](#)

Even Inter-State Councils, constitutional bodies are established for furthering coordination and cooperation between Centre and State. One solution could be, making sure that these bodies are working in the right direction to fulfill their objectives.

Lastly, the balance provided by Concurrent List is very delicate which regards both the national interests and also the mélange of cultures and traditions of different states. While working towards solving disputes of Centre and State and strengthening the States one must realize that it should not come at the expense of a weak centre which is the need of the this blossoming nation.

[\[1\]](#) Constitution of India, Art. 254.

[\[2\]](#) Kesvananda Bharti v. State of Kerela, (1973) 4 SCC 225

[\[3\]](#) S.R. Bommai v. Union of India, 1994 AIR 1918, 1994 SCC (3).

[\[4\]](#) State of West Bengal v. Union of India, 1963 AIR 1241.

[5] Constitution of India, Art. 1.

[6] <http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C21081947.pdf>

[7] <http://legallaffairs.gov.in/sites/default/files/chapter%208.pdf>.

[8] K.L. Bhatia, *Federalism and Friction in Centre State relations*, ISBN 81-7629-289-3,2001.

[9] Justice P.N. Saprú as quoted in William O. Douglas, *We the Judges*, p. 38.

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