

The Spirit of federalism lies in consultation

Crux: Unilateral legislation without taking States into confidence will see more protests on the streets.

The doctrine of "pith and substance":

1. Recently, various State governments raised concerns about Central unilateralism in the enactment of critical laws on subjects in the Concurrent List of the Seventh Schedule of the Constitution. Union Chief Minister Pt. Deven Fadnis noted that it is not in the interest of federalism for the Union government to legislate unilaterally, avoiding discussions with the States on the subjects in the Concurrent List. Tamil Nadu Chief Minister M. K. Stalin raised the issue by calling on other Chief Ministers against the Union government introducing powers under the State and Concurrent Lists. The Kerala Legislative Assembly unanimously passed a resolution against the Electricity (Amendment) Bill, 2020, while the Tamil Nadu Legislative Assembly passed a resolution against the controversial farm laws. The States and the Legislative Assemblies standing up for their rights assume significance in the wake of the Union government introducing a number of laws without taking the States into confidence, thereby undermining the federal principles.
2. It is not in the essence of federalism for the Union government to legislate unilaterally, avoiding discussions with the States on the subjects in the Concurrent List.
3. The States and the Legislative Assemblies standing up for their rights assume significance in the wake of the Union government introducing a number of laws without taking the States into confidence, thereby undermining the federal principles.
4. Around a year back, Parliament passed the farm laws without consulting the States. The laws, essentially related to Entry 14 (agriculture clause) belonging to the State List, were purportedly passed by Parliament citing Entry 33 (trade and commerce clause) in the Concurrent List.
5. According to various decisions of the Supreme Court, beginning from the State of Bombay vs F.N. Balsara case, if an enactment falls within one of the matters assigned to the State List and reconciliation is not possible with any entry in the Concurrent or Union List after employing the doctrine of "pith and substance", the legislative domain of the State Legislature must prevail.

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People gathered for a meeting against the farm laws in Madhavaram, Chennai. The President, Mr. Pranab Mukherjee, said that, incidentally, still continues to stress across India. (Anandababu) 04.11.2020. The bill is intended to electricity is transferable in Entry 33 of the Concurrent List. The power to regulate the sector was vested with the State Electricity Regulatory Commissions (SERCs), which it was unilaterally assumed by the State governments.

Unilateralism in the enactment of critical laws on subjects in the Concurrent List of the Seventh Schedule of the Constitution. Union Chief Minister Pt. Deven Fadnis noted that it is not in the interest of federalism for the Union government to legislate unilaterally, avoiding discussions with the States on the subjects in the Concurrent List. Tamil Nadu Chief Minister M. K. Stalin raised the issue by calling on other Chief Ministers against the Union government introducing powers under the State and Concurrent Lists. The Kerala Legislative Assembly unanimously passed a resolution against the Electricity (Amendment) Bill, 2020, while the Tamil Nadu Legislative Assembly passed a resolution against the controversial farm laws. The States and the Legislative Assemblies standing up for their rights assume significance in the wake of the Union government introducing a number of laws without taking the States into confidence, thereby undermining the federal principles.



6. The farm laws were passed by Parliament even as it does not have legislative competence to deal with agriculture. The lack of consultation in a matter that intrinsically deals with millions of farmers also led to massive protests that, incidentally, still continue in streets across India.

Encroaching the state list: Minor Ports

1. When it comes to non-major ports, the field for legislation is located in Entry 31 of the Concurrent List. According to the Indian Ports Act, 1908, which presently governs the field related to non-major ports, the power to regulate and control the minor ports remained with the State governments.
2. However, the new draft Indian Ports Bill, 2021, proposes to change the status quo by transferring the powers related to planning, developing and regulating the non-major ports to the Maritime State Development Council (MSDC), which is overwhelmingly controlled by the Union government. The
3. The Coastal States like Odisha, Andhra Pradesh, Tamil Nadu and Kerala have objected to the Bill that proposes to seize the power of the State government with respect to non-major ports.

The Electricity (Amendment) Bill, 2020

1. The various States like West Bengal, Tamil Nadu and Kerala have also come forward against the Electricity (Amendment) Bill, 2020. The field related to electricity is traceable to Entry 38 of the Concurrent List.
2. The power to regulate the sector was vested with the State Electricity Regulatory Commissions (SERCs), which were ostensibly manned by individuals appointed by the State government.
3. However, the proposed amendment seeks to change the regulatory regime from head-to-toe with the establishment of a National Selection Committee, dominated by members nominated by the Union government that will make appointments to the SERCs.
4. Further, the amendment proposes the establishment of a Centrally-appointed Electricity Contract Enforcement Authority (ECEA) as the sole authority having jurisdiction over matters regarding the performance of obligations under a contract related to the sale, purchase or transmission of electricity.
5. In effect, the power to regulate the electricity sector would be taken away from the State government. This is apart from other proposed changes, including changing the licensing regime to facilitate private sector entry without State government approval.



Constitutional design

1. The Union government increasingly extending its hands-on subjects in the Concurrent List is a cause of grave concern as the balance of the Constitution is now turned on its head.
2. The model envisioned in the Government of India Act, 1935, was adopted by the framers of the Constitution and certain subjects were put in the Concurrent List by giving the Union and the State Legislatures concurrent powers regarding them.
3. The fields in the Concurrent List were to be of common interest to the Union and the States, and the power to legislate on these subjects was to be shared with the Union so that there would be uniformity in law across the country.
4. However, one of the worst fears of Constituent Assembly members has now come true, with subjects in the Concurrent List being transferred to the Union List over a period of time due to the Union government's high-handedness.

Consultation and dialogue are key

1. The Sarkaria Commission Report had specifically recommended that there should be a "coordination of policy and action in all areas of concurrent or overlapping jurisdiction through a process of mutual consultation and cooperation is, therefore, a prerequisite of smooth and harmonious working of the dual system".
2. It was further recommended that the Union government while exercising powers under the Concurrent List, limit itself to the purpose of ensuring uniformity in basic issues of national policy and not more.
3. The National Commission to Review the Working of the Constitution (NCRWC), or the Venkatachaliah Commission, had recommended that individual and collective consultation with the States should be undertaken through the Inter-State Council established under Article 263 of the Constitution.
4. As the Supreme Court itself had held in the S.R. Bommai vs Union of India case, the States are not mere appendages of the Union. The Union government should ensure that the power of the States is not trampled with.

The intention of the framers of the Constitution is to ensure that public welfare is subserved and the key to that lies in listening to stakeholders. The essence of cooperative federalism lies in consultation and dialogue, and unilateral



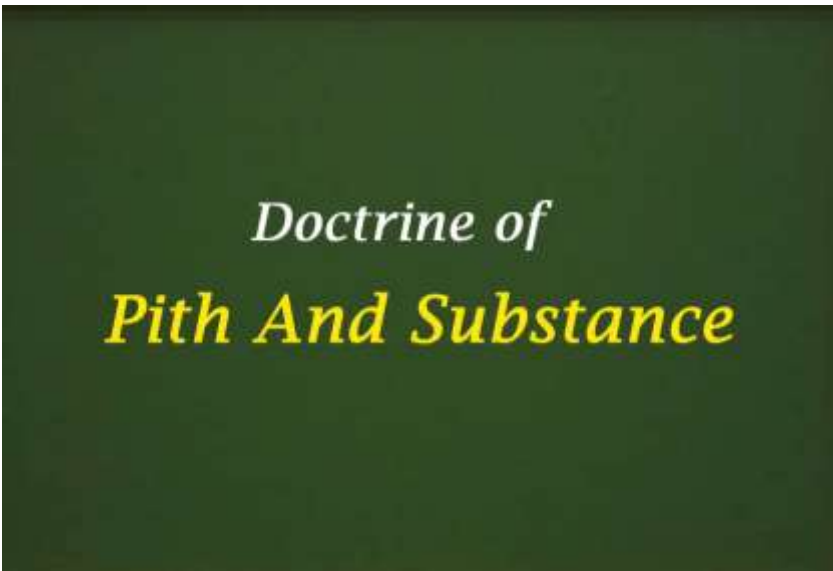
legislation without taking the States into confidence will lead to more protests on the streets.

Mains practice

Recent legislative efforts by the centre are being seen as encroachment over the state's constitutional right to legislate. Many states are protesting against the alleged trend. Discuss the issue giving examples and suggest remedies.

Background:

The Doctrine of Pith and Substance: The power granted to legislatures to formulate a statute under three lists of the seventh schedule in the Constitution of India is bound to overlap at certain points but this can't be used as a reason to make the whole statute null and void. Therefore, incidental effects or



encroachments are permissible under Constitutional Law while determining the competence of particular legislatures to the extent of subject matters in the three lists is in question. This rule is known as the Doctrine of Pith and Substance.

The salient features of the Doctrine of Pith and Substance are as given below:

- It becomes applicable in circumstances when the subject matter of one list is in conflict with the subject matter of another list.
- The reason behind its adoption is to avoid any limitation on the powers of legislatures by declaring every other enactment invalid basis that it encroaches upon another law.
- It is meant to determine the true nature and character of the subject and decide under which head of the list it falls.
- The Doctrine provides a degree of flexibility on the powers of the state to make a law that involves the subject of Union List.



From fighters to rulers

India must use its voice on the international stage to make the Taliban respect freedoms, rights.

New government

1. After postponing the announcement twice, Taliban spokesmen have said that they expect to have a new government in Afghanistan this week.
2. The jockeying is reportedly over cabinet portfolios, the appointment of governors in the 34 provinces, control of the cities and the possibility of including non-Taliban Afghan leaders.
3. Reports of the differences have escalated and the appearance in Kabul of the Pakistan ISI chief, Lt. Gen. Faiz Hameed, is believed to have been an attempt to smooth over the cracks in government formation.
4. At the base of the differences in the tussle between the Taliban's push to consolidate their takeover of Afghanistan and implement an Islamist agenda, and the desire to receive recognition from the international community and its continued financial support.

India's Interests:

1. The outcome holds the key not only to the future of Afghanistan but also to New Delhi's engagement with the new regime. Any government that gives the Haqqani group key positions will make it difficult for India to have a role in either diplomacy or development projects in Afghanistan, given previous terror attacks.

THE HINDU

From fighters to rulers

India must use its voice on the international stage to make Taliban respect freedoms, rights

After postponing the announcement twice, Taliban spokesmen have said that they expect to have a new government in Afghanistan this week. There has been some speculation over the delay, more than three weeks after Taliban gunmen walked into Kabul and President Ashraf Ghani fled. While some have said the Taliban were waiting to take control of the last hold-out province of Panjshir, and others even suggested there was some symbolism attached to timing it with the 20th anniversary of 9/11, the real reason appears to be differences within various Taliban factions over the government's structure and composition. In particular, the differences between the Taliban leadership in Helmand, Kandahar, and the political office in Doha, seen as the more "moderate" face, as well as between the "original" Afghan Taliban leadership and the Pakistan-based Haqqani network, a designated terror entity. The jockeying is reportedly over cabinet portfolios, the appointment of governors in the 34 provinces, control of the cities and the possibility of including non-Taliban Afghan leaders. Reports of the differences have escalated and the appearance in Kabul of the Pakistan ISI chief, Lt. Gen. Faiz Hameed, is believed to have been an attempt to smooth over the cracks in government formation. At the base of the differences is the tussle between the Taliban's push to consolidate their takeover of Afghanistan and implement an Islamist agenda, and the desire to receive recognition from the international community and its continued financial support.

The outcome holds the key not only to the future of Afghanistan but also to New Delhi's engagement with the new regime. Any government that gives the Haqqani group key positions will make it difficult for India to have a role in either diplomacy or development projects in Afghanistan, given previous terror attacks. Any overt role for Pakistan, as well as China, will also raise red flags for New Delhi. The Modi government has announced that it is now engaging the Taliban, with the first publicly acknowledged meeting in Doha last week; the MEA says it conveyed concerns on the safety of Indians in Afghanistan and ensuring Afghan soil is not used for attacks in India. Any engagement with the Taliban beyond this is contingent on the composition of the new power structure and how much the new government in Afghanistan is amenable to international expectations of it, in terms of representation, rights, and in allowing UN agencies to monitor development. To this end, India must use its voice on the international stage forcefully. This includes blocking any move at the UNGA and UNSC to recognise the new regime, and stopping the delisting or exemptions to Taliban leaders at the 1988 sanctions committee, which India chairs, until the Taliban regime shows a willingness to comply.

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