

## **Powers in Concurrent List- A persisting Demand!**



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It is a demand often raised in Tamil Nadu that education in the concurrent list be transferred back to the state list. 'Aram Seiya Virumbu,' a voluntary organisation run by DMK MLA N.Ezhilan, has filed a case over this demand in the Madras High Court. This case has been shifted to a three-judge bench.

How to make out this demand to shift a power common to both union and state governments to the state list?

### **List of powers**

India is a Federal Union having two systems of government, Union and State. The powers of these two entities have clearly been defined in the Seventh Schedule to the Indian Constitution. The powers allocated between state and union governments have been classified into three types: 1. Union list 2. State list and 3. Concurrent list. The union list contains powers of the Union Government; the state list powers of the states and the concurrent list powers common to both. At present, the union list contains 97 subjects, the state list 66, and the concurrent list 47. Apart from

these three types of power, there are also residuary powers listed in neither the union list nor the state list; but they have been allocated to the union government.

Both union and states can enact laws exercising the powers vested with them by the concurrent list. The phrase 'concurrent list' connotes that both entities must act together in harmony. But in practice it is only the state laws that have to adapt themselves to the union government laws. The union government is not bound by the decisions taken by states exercising their powers vested in the concurrent list. Though the concurrent list is within common definitions, it is the union government which is domineering in the list.

### **Impact of Emergency**

The union government has powers to shift any subject from the state list to the concurrent list. It was former Prime Minister Indira Gandhi, who during Emergency in 1976 brought in the 42nd amendment to the Constitution and shifted five subjects – education, forestry, wildlife & bird protection, administration of justice and weights & measures - from the state list to the concurrent list. She took this measure following a report submitted by the Sardar Swaran Singh Committee.

Even after the Emergency was lifted, the powers in question were not restored to the states. The BJP, which keeps criticizing the Congress for Emergency excesses, has not undone what Indira Gandhi had done on this count; that is, the BJP-led union government has not restored the lost powers to the states.

### **The persisting demand**

When there are differences of opinion between the union and state governments over a subject in the concurrent list, all that the states can do now is just to raise a voice of dissent. Several states toe the line of the union government as the latter introduces new laws over one or the other subjects in the

concurrent list and consequently, the dissenting states have no other go but to fall in line with the union government. When the party helming the union government is in power in several states, its laws enacted in exercise of powers vested by the concurrent list easily pass muster.

For instance, the National Eligibility Entrance Test (NEET) is in vogue in Tamil Nadu too as in other states despite Tamil Nadu's opposition. The catch is that no dissenting state gets relief on this count.

The demand to shift education back to the state is not new to Tamil Nadu. It is the demand that former Chief Ministers M. Karunanidhi and J. Jayalalithaa had raised on multiple occasions. It figured in the election manifestos of the DMK and AIADMK in the run-up to the Assembly elections 2021. DMK Member of Parliament Wilson demanded in the session last year devolution of powers over education in the concurrent list to States.

At a time when NEET and the New Education Policy have become the talk of the town in Tamil Nadu, the demand for shifting education to the state list has hogged much limelight after the doors of the judiciary were knocked at in this regard.

It is a stark reality that howsoever the powers are devolved, they are nobody's permanent possession. Every subject in the power-oriented list is prone to the chances of being turned upside down. Back in the 1970s, Emergency facilitated the transfer of powers over five subjects to the concurrent list with states having no say at all in the matter. There is always the likelihood of powers vested in the state list being shifted to the concurrent list or the union list - of course, with the consent of the states.

If the powers thus taken away are to be restored to the states, only the union government can effect the transfer on its own. But the question is why it has not happened as it must have.

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