Spirit of Federalism

What is the issue?

Recently, various State governments raised concerns about Central unilateralism in the enactment of laws on subjects in the Concurrent List.

What are the recent contentions?

- Parliament passed the farm laws without consulting the States.
- They were passed by Parliament even as it does not have legislative competence to deal with agriculture.
- The laws are related to Entry 14 (agriculture clause) belonging to the State List.
- But were passed by Parliament citing Entry 33 (trade and commerce clause) in the Concurrent List.

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**.

- Field for legislation of non-major ports is in Entry 31 of the Concurrent List.
- According to the Indian Ports Act, 1908, which presently governs the non-major ports, the power to regulate and control the minor ports remained with the State governments.
- However, the new draft Indian Ports Bill, 2021, proposes to transfer the powers to the Maritime State Development Council, which is controlled by the Union.

- Electricity is traceable to Entry 38 of the Concurrent List.
- The power to regulate the sector was vested with the State Electricity Regulatory Commissions.
- However, the proposed amendment seeks to establish a National Selection Committee, taking away the states' power to regulate the electricity sector.

What has been the reaction?

- The lack of consultation in a matter that deals with millions of farmers also led to massive protests.

- Kerala Assembly unanimously passed a resolution against the Electricity (Amendment) Bill, 2020.
- TN Assembly passed a resolution against the farm laws.
- Major Ports Authorities Act, 2021 passed by Parliament was opposed by Goa (ruled by the

same party), stating that it would lead to the redundancy of the local laws.
- The Union government's increasing take-over of the Concurrent affects the balance of the Constitution.

What should be done?

- **Sarkaria Commission Report -** 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".
- 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.
- **Venkatachaliah Commission -** Individual and collective consultation with the States should be undertaken through the Inter-State Council established under Article 263 of the Constitution.
- **S.R. Bommai vs Union of India -** States are not mere appendages of the Union.
- The essence of cooperative federalism lies in consultation and dialogue.

Source: The Hindu

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