

CHAPTER I *PERSPECTIVE*

1. INTRODUCTION

1.1.01. The terms of reference enjoin us to examine and review the working of the existing arrangements between the Union and the States, keeping in view the socio- economic developments that have taken place and having due regard to the scheme and framework of the Constitution designed to protect the independence and ensure the unity and integrity of the country. This task requires not only an analysis of the Constitutional arrangements, but also their *raison d'etre* and the manner in which these have been put to use so far.

1.1.02 A Constitution is not a static frame but “an organic living institution”. This is particularly true of a flexible, yet resilient, Constitution like that of India, designed to meet the needs and problems of a changing society for generations to come. Nonetheless, due to the dynamic interplay of socio-economic, political and other forces, the intent and actual working of the Constitution some time tend to diverge.

1.1.03 For a proper appreciation of the problems and issues that have arisen in the working of Union-State arrangements in the past 37 years, it is necessary to examine briefly the historical processes which influenced the framing of the Constitution, the Union envisaged by it, the subsequent socio-economic and political developments including the divergence between its principle and practice and its causes.

1.1.04 This Chapter which seeks to provide a perspective for our report contains four sections, apart from the very brief introduction given above. The next Section gives a short historical background. Section 3 deals with the nature of the Indian union. Section 4 contains a survey of the socio-economic and political compulsions, and Section 5 gives an outline of the major issues in Union-State relations.

2. HISTORICAL BACKGROUND

1.2.01 India has geo-political and historical characteristics which have few parallels. Its size and population, geographical, linguistic, religious, racial and other diversities give it the character of a sub-continent. But its natural boundaries marked by mountains and seas, serve, to identify it as a separate geographical entity. This insularity, over the years, led to the evolution of a composite cultural unity, a feeling of common heritage and a pervasive under-current of one-ness. These gave the country the character of a general Indian personality.

1.2.02 India's history is replete with brief periods of political unity and stability followed by spells of dissension, chaos and fragmentation. The strongest kingdoms, from time to time, became empires, extending their sway, more or less, to the natural boundaries of the sub-continent, bringing under their suzerainty the local principalities and kingdoms. But, undue centralisation often proved counter-productive and triggered a chain reaction of divisive forces. Whenever, due to this or other causes, the central authority became decadent and weak, the fissiparous forces became strong and led to its disintegration, sometimes tempting foreign invaders to conquer the country.

1.2.03 Another significant fact that stands out in India's history is that the provinces and the local Governments in the various empires, from the Mauryas to the Mughals, enjoyed considerable degree of autonomy. As noted by the historian, Sir Jadunath Sarkar, in ancient empires “each province led its own life, continued its old familiar system of Government (though under the agents of the central power) and used its local language”. Whenever an over-ambitious emperor attempted centralisation by steam-rolling the local autonomy, it evoked strong resentment and reaction. Such extreme centralisation proved not only detrimental to administrative efficiency, but, in counter-effect, weakened the capacity of the Central power to maintain its hold over sub-national forces on a stable and enduring basis. The last of the great Mughals made a strong bid for complete centralisation and abolition of traditional diversities and autonomy of the regions. Soon after his death, the regional forces discarded the mantle of the Central authority. Governors of the Provinces and local chieftains asserted their independence and the entire structure crumbled.

1.2.04 The British also, at the commencement of their regime, tried to centralise all power. But they soon realised, especially after the traumatic consequences of Dalhousie's policies, that it was not possible to

administer so vast and diverse a country like India without progressive devolution or decentralisation of powers to the Provinces and local bodies.

1.2.05 The administration of the country was taken over directly by the British Crown in 1858. A notable fall-out of the conflict in 1857 was the discovery by the British that the Princely States in India could be a source of strength for the maintenance of the British power. As a result, they discontinued their policy of expanding further their 'direct rule' in the sub-continent and preferred 'indirect rule' for these States. But the bulk of the 500 and odd Princely States were 'autonomous' only to a limited extent. In all important matters, they were no less submissive in practice to the suzerain power than the British Indian Provinces. In the remote and inaccessible areas, strong local tribal customs and beliefs had to be given due regard and these areas, with long history of isolation, retained varying degrees of autonomy.

1.2.06 Too centralised an administration was found to be incompatible with the size and diversity of the country. It bred administrative inefficiency and local discontent. Some decentralisation became inevitable. The first small but significant step in this direction was taken by the Indian Councils Act, 1861. It reversed the centralising trend that had been set by the Charter Act of 1833. It provided for participation by non-officials in the Legislative Council of the Governor-General. Similarly provisions were made for the Legislative Councils of the Provinces. The principle of indirect election to these Legislative Councils was established in 1892 and the functions were enlarged to include the right of discussion of the budget and interpellation in matters of public interest.

1.2.07 An important factor which helped and sustained the evolution of a 'dispersed' political system in India, was the decentralisation of finances. This process started with the Mayo Scheme in 1871 and continued till it was formalised by the Government of India Act, 1919.

1.2.08 Association of Indians with local self-government through elected municipalities and district boards was initiated in 1882 by Lord Ripon, along with the gradual transformation taking place in the legislative sphere. The authority allowed to these institutions was, however, very limited and was to be exercised under the watchful eyes of the officials.

1.2.09 The long-drawn-out struggle for self government by the Indian National Congress, joined by the other political parties formed later, led to the growth of Indian nationalism. Modulating their strategy step by step with the mounting demands and persistent pressures of the nationalist movement, the British started devolving more and more powers to the Provinces, involving increasing association of Indians on the one hand and promoting divisive forces on the other.

1.2.10 By the Indian Council Act, 1909 (Morley-Minto Reforms) the British further extended the association of Indians with the governance of the country but on the basis of separate electorates, narrow franchise and indirect election.

1.2.11 The Government of India Act, 1919¹ ushered in the first phase of responsible Government in India. It was a significant step in the development of a two-tier polity. While conceding representative government in a small measure in the Provinces under a 'dyarchical' system, it demarcated the sphere of Provincial Governments from that of the Centre. By the Devolution Rules framed under the Act, powers were delegated to the Provinces not only in the administrative but also in the legislative and financial spheres. For this purpose, separate Central and Provincial Lists of subjects were drawn up. The last item in the Provincial List allotted to the Provinces "any matter though falling within the Central subjects is declared by the Governor-General-in-Council to be of a merely local or private nature within the Province". The subjects in the Provincial List were further subdivided into 'reserved' and 'transferred' subjects. The Departments dealing with the 'transferred' subjects were placed in the charge of elected Ministers responsible to the Provincial Legislature, while Departments in respect of 'reserved' subjects were administered by the Governor with the assistance of an Executive Council nominated by him. Although with respect to 'transferred' subjects, the Provinces derived substantial authority by devolution from the Central Government, yet the Governor-General-in-Council remained in control at the apex of this centralised system, ultimately responsible to the Secretary of State for India in the U.K. There was also a third List regarding taxation powers of local bodies.

1.2.12 The reforms of 1919 failed to meet the aspirations of the people for full responsible government. In reality, the structure remained unitary with the Governor-General-in-Council in effective ultimate control. Finance was a 'reserved subject' in charge of a member of the Executive Council and no

progressive measures could be put through without his consent. The main instruments of administration, namely, the Indian Civil Service and Indian Police were under the control of the Secretary of State and were responsible to him and not to the Ministers. The Governor could act in his discretion otherwise than on the advice of the Ministers. No Bill could be moved in a Provincial Legislature without the permission of the Governor-General. No Bill could become law without his assent.

1.2.13 The intense India-wide agitation carried on by the political parties for full responsible government, evoked a partial response from the British Government. In November 1927, they appointed a Statutory Commission under Sir John Simon for considering the grant of a further instalment of responsible Government. All the seven members of the Commission were British. The Indian National Congress and all other leading political parties boycotted the Commission. The Congress pressed the British Government to accede to the national demand for convening a Round Table Conference or Constituent Assembly to determine the future Constitution of India.

1.2.14 The British Government published a White Paper in 1933, embodying the principles of constitutional reforms in India. This, *inter alia*, sought to extend 'separate' electorates further to Scheduled Castes and Tribes, which had to be withdrawn after a protest "fast unto death" by Mahatma Gandhi. These proposals were considered by the Joint Select Committee of the British Parliament. On the basis of the Select Committee's Reports, a Bill was drafted and enacted in 1935 as the Government of India Act. The Federal subjects were classified into 'reserved subjects' and 'transferred subjects'. The Governor-General administered the 'reserved subjects' with the assistance of Councillors, and the 'transferred subjects' with the aid of the Council of Ministers responsible to the Central legislature. Wide discretionary powers were given to the Governor-General. Instrument of Instruction issued under the Act enabled the Governor-General to include, in his discretion, in his Council of Ministers representatives of the minorities and Indian States.

1.2.15 The Act envisaged an all-India Federation which was to consist of 11 Governor's Provinces, 6 Chief Commissioner's Provinces and such Indian States as would agree to join the federation. So far as the British Provinces were concerned it was obligatory for them to join the federation. The Governmental subjects were divided into three Lists—Federal, Provincial and concurrent. The Legislatures of the Provinces were given exclusive power to legislate with respect to matters in the Provincial List. Similarly, the Central Legislature had the exclusive power to legislate with respect to matters in the Federal List. The Centre and the Provinces had concurrent jurisdiction with respect to matters in the Concurrent List. The Act thus introduced Provincial autonomy with responsible Government. However, certain safeguards by way of special powers and responsibilities were provided, which detracted from the concept of responsible government. Subject to the limitations provided therein, the Act allocated to the Federal and Provincial Legislatures plenary powers, making them supreme within their respective spheres.

1.2.16 The part of the Act which contemplated the inclusion of the Princely States never came into operation as the States did not opt to join the federation. However, its provisions relating to the Provinces came into effect in 1937 when elected governments responsible to legislatures, assumed office in the Provinces. But there was a deadlock when the Government of India declared a "state of war" without consulting the Legislatures. Governments in Provinces led by the Congress Party resigned in protest in 1939. Further, during the Second World War, a number of measures were introduced which considerably curtailed the powers of the provincial governments and virtually nullified provincial autonomy.

1.2.17 The Government of India Act, 1935, is nevertheless an important milestone in the history of constitutional devolution of power particularly from two stand-points. Firstly, it constitutionally distributed powers between the Centre and the Provinces. Secondly, subject to certain safeguards, it introduced representative government at the Provincial level responsible to the Provincial Legislature.

1.2.18 In March, 1942, Sir Stafford Cripps came with proposals of the British Government to resolve the political deadlock in India. These proposals envisaged that a Constituent Assembly, elected through proportional representation by the Provincial Legislatures, would frame a new Constitution for India after the cessation of hostilities. The British Government would accept the new Constitution subject, *inter alia*, to the condition that any Province would opt out of it and retain its constitutional position as in the 1935 Act. The Cripps proposals were rejected by all sections of public opinion in the country.

1.2.19 The next important event in the Constitutional history was the announcement of the British Cabinet Mission Plan by Mr. Attlee, the British Prime Minister, on May 16, 1946. It envisaged a Central

Government with very limited powers and relatively strong Provinces having considerable degree of autonomy with all the residuary powers. The Indian National Congress had, on the other hand, throughout its long struggle for independence, emphasised the need to safeguard the unity and integrity of India. In the hope, however, of securing the co-operation of the Muslim League and thereby preventing the threatened partition of the Country, they accepted the Cabinet Mission Plan. The Objectives Resolution moved by Pandit Nehru on December 13, 1946 in the constituent Assembly, was based on this Plan, although he was all along very apprehensive about it. But, all such concessional resolutions, conciliatory gestures and persuasive efforts failed to keep the country united. And, the partition of the Country was announced on June 3, 1947.

1.2.20 The Constituent Assembly thereupon sharply reversed its approach and resolved in favour of a Strong Centre. This reaction found unequivocal expression in the Second Report of the Union Powers Committee, dated July 5, 1947 : “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 co-ordinating vital matters of common concern and that the soundest framework of our Constitution is a federation with a “strong Centre”.

1.2.21 The primary lesson of India's history is that, in this vast country, only that polity or system can endure and protect its unity, integrity and sovereignty against external aggression and internal disruption, which ensures a strong Centre with paramount powers, accommodating, at the same paramount time, its traditional diversities. This lesson of history did not go un-noticed by the framers of the Constitution. Being aware that, notwithstanding the common cultural heritage, without political cohesion, the Country would disintegrate under the pressure of fissiparous forces, they accorded the highest priority to the ensurance of the unity and integrity of the country. As aptly observed by an eminent jurist, “the founding fathers were painfully conscious that the feeling of Indian/nationhood was still in the making and required to be carefully nurtured. They therefore built a constitutional structure with a powerful Central Government envisaging the emergence of an indivisible and integrated India”.²

1.2.22 It was realised that, in India, democracy was yet in its infancy and to prevent or remedy possible breakdowns of Constitutional machinery in the constituent units, it was essential to invest the Union with over-riding powers.

1.2.23 The contemporary events also had an inevitable impact on the formulation of the Constitution. The large-scale communal violence and the influx of millions of uprooted persons from Pakistan brought in their train colossal problems which could be tackled only with the pooled strength and resources of the nation.

1.2.24 Even as the Government was struggling to deal with the problems arising out of the partition, Jammu and Kashmir was invaded by outside forces. The consequences of this invasion are too well-known to require any recounting. The Princely States also posed a delicate problem which was solved in a statesman-like manner averting further fragmentation of the country. Eruption of violence in the neighbouring country, Burma, and the wanton killing of its Cabinet, spelt out clearly the possible dangers from extremist violent groups. The new Government and its leaders had more than what any one could be expected to cope with. The external aggression in Kashmir and the out-break of extremist violence in some parts of India under-scored the imperative of building a strong Centre capable of protecting the independence and integrity of the country against dangers from both within and without.

1.2.25 The Constitution-framers were aware that several Provinces, regions or areas of India were economically and industrially far behind relatively to others. There were great economic disparities. The problem of economic integration had many facets. “Two questions, however, stood out: one question was how to achieve a federal, economic and fiscal integration, so that the economic policies affecting the interests of India as a whole could be carried out without putting an ever-increasing strain on the unity of India, particularly in the context of a developing economy. The second question was how to foster the development of areas which were underdeveloped without creating too many preferential or discriminative barriers”.³ Not much had been done for economic development of the country in the pre-Independence era. To catch up with the industrially developed nations, the progress that took them centuries, had to be compressed into decades. The nation was committed to a socio-economic revolution designed not only to secure the basic needs of the common man and economic unity of the country, but further to bring about a fundamental change in the structure of the Indian society in accordance with egalitarian principles. It was

felt by the Constitution-framers that such a transformation could be brought about only by a strong Central Government.

1.2.26 All the above considerations weighed with the Constitution-framers in opting for a Constitution which blends the imperatives of a strong national control with the need for adequate local initiative. In a country too large and diverse for a unitary form of government, they envisaged a system which would be worked in co-operation by the two levels of government—national and regional—as a common endeavour to serve the people. Such a system, it was conceived, would be most suited to Indian conditions as it would at once have the advantages of a strong unified central power, and the essential values of federalism.

1.2.27 In the next Section we consider how these concepts of a strong Union have been woven into the warp and woof of the constitution.

3. NATURE OF THE INDIAN UNION

1.3.01 The Constituent Assembly addressed itself to the immensely complex task of devising a Union with a Strong Centre. This task was set with many difficulties. They had to bring into the Union not only the British Indian Provinces, but also the Princely States and the remote inaccessible Tribal Areas. They were conscious that several areas and regions of this sub-continent had, for a very long time past, been following their own sub-cultures, administrative systems, traditions, customs and ways of life. It was, therefore, readily accepted that “there are many matters in which authority must lie solely with the units”. Further, that “it would be a retrograde step both politically and administratively” to frame a Constitution with a Unitary State as the basis.

1.3.02 They settled for a Parliamentary or Cabinet form of Government at the Union as well as in the constituent units. The President and the Governors were envisaged as *de jure* heads of the respective Governments acting on the advice of the Council of Ministers, which comprised the *de facto* executive.

1.3.03 In fashioning the form of Parliamentary government, the Assembly drew largely on the British model. In devising the pattern of Union-State Relations they were influenced, in varying degrees by the principles underlying the constitutions of Canada and Australia, which had Parliamentary system, and the United States, which had Presidential system. They made use of the Government of India Act, 1935, after making significant changes in it. Nevertheless, the Constitution as finally passed, was *suigeneries*. They were substantial differences in both legal provisions and conventions between India and these other countries. The reason was that the geographical, historical, political, economic and sociological conditions and compulsions in India were basically different.

1.3.04 The Constitution as it emerged from the Constituent Assembly in 1949, has important federal features but it cannot be called 'federal' in the classical sense. It cannot be called 'unitary' either. It envisages a diversified political system of a special type. According to Dr. B.R. Ambedkar, Chairman of the Drafting Committee of the Constituent Assembly, it is unitary in extraordinary situations, such as, war (or emergency) and federal in normal times. Some authorities have classified it as a “quasifederal” Constitution. However, these labels hardly matter as both levels of government derive their respective powers from a written Constitution, which is supreme and there is a Supreme Court to interpret the Constitution.

Indian Union Indestructible

1.3.05 Article 1 describes India as a 'Union of States'. These States are specified in the First Schedule to the Constitution. Articles 2, 3 and 4 enable Parliament by law to admit a new State, increase, diminish the area of any State or alter the boundaries or name of any State. A special aspect of the Indian Union is that the Union is indestructible but not so the States; their identity can be altered or even obliterated. This is a departure from a federal feature which obtains in a classical federation like the U.S.A. The Constituent Assembly rejected a motion in the concluding stages to designate India as a 'Federation of States'. Dr. Ambedkar, Chairman of the Drafting Committee, while introducing the Draft Constitution, explained the position thus.

“..... that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation, and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the country and

the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to disputes.”⁴

1.3.06 Another distinctive aspect of the Indian Constitution is that it provides for a single citizenship for the whole of India. There is no dual citizenship, one of the Union and the other of the States. In this respect, the Indian Union basically differs from the American federation which recognizes a dual citizenship and consequent diversity in the rights of the citizens of different States. This important difference between the two countries is due to their different historical backgrounds. Whereas the American Federation was the result of an agreement between pre-existing independent States, in India the position was significantly different. Before the formation of the Indian Union, its units did not have the status of sovereign independent States.

1.3.07 In firm consistency with their resolve to constitute a Federation with a Strong Centre, the framers of the Constitution made an elaborate distribution of governmental powers—legislative, administrative and financial—between the Union and the States. To make it strong, they gave weightage to the Union, allocating to it dominant and relatively larger powers.

1.3.08 The Union legislature or Parliament has two Houses, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Unlike in most federations, representation in both is on the basis of population, through indirect election in the former and direct election in the latter. The Council of States has been given some special functions regarding matters affecting States, while the House of the People has been given some special role regarding financial matters. States have been given some flexibility about having bicameral or unicameral legislatures.

1.3.09 The subjects of Legislative Power have been classified into three Lists—Union List (List I), State List (List II) and the Concurrent List (List III) in the Seventh Schedule of the Constitution. Parliament has the exclusive power to legislate in respect of matters in the Union List. Similarly, exclusive power has been conferred on the State Legislatures with respect to matters in the State List. Parliament, and the State Legislatures, also, have power to make laws on any matters in the Concurrent List (Articles 245 and 246 read with the Seventh Schedule). Residuary powers of legislation have been vested in Parliament (Article 248 read with Entry 97, List I).

1.3.10 Normally, the executive powers of the Union and the States are co-extensive with their legislative powers. However, with respect to matters in the Concurrent List, the executive power remains with the States unless the Constitution, or Parliament by law expressly provides otherwise (Article 73 and 162). It is pertinent to note that the powers, both of the Union and the States are derived from the Constitution and, as such, are subject to the limitations provided therein.

1.3.11 The Constitution makes a distribution of taxing powers between the Union and the States. The fields of taxation have been enumerated either in the Union List or in the State List. There is no subject of taxation in the Concurrent List. The Constitution recognises that the financial resources of the States may not be adequate for discharging their onerous responsibilities. It, therefore, envisages certain tax revenues raised by the Union to be shared with the States. It provides not only for their distribution between the Union and the States but also *inter se* among the States on the recommendations of the Finance Commission (Articles 268 to 281).

1.3.12 It is noteworthy that, though the Constitution creates a dual polity based on divided governmental powers, this division is not watertight. It is flexible. The large concurrent sphere left alone, several entries in the State List have an inter-face with the Union List. Such Entries are either subject to certain Entries in the Union List or Concurrent List, or a law made by Parliament.

1.3.13 Introducing the draft Constitution, Dr. Ambedkar pointed out that when diversity created by division of authority in a dual Polity goes beyond a certain point it is capable of producing chaos. In this context, he emphasised:

“The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three:—

- (1) a single judiciary;
- (2) uniformity in fundamental laws, civil and criminal; and
- (3) a common All-India Civil Service to man important posts⁵⁷”.

There are other special features also which highlight the predominance of the Union.

Supremacy of Union Legislative Power

1.3.14 Where, with respect to a matter, there is irreconcilable conflict or overlapping as between the three Lists of the Seventh Schedule, the legislative power of the States must yield to that of the Union [Non-obstante clauses in article 246(2) and (3)]. A law made by a State legislature, repugnant to a law made by Parliament or an existing law applicable in that State, in regard to any matter enumerated in the Concurrent List, shall be void to the extent of repugnancy. [Article 254(1)]. However, if such a State law having been reserved for the consideration of President receives his assent, if it shall remain operative [clause (2) of Article 254]. Nevertheless, Parliament may amend or repeal such State law notwithstanding the President's assent.

1.3.15 Every citizen in a State is subject to the operation of the laws of the Union and the States. Implementation of the Union laws could be entrusted to either a separate Union agency, if any, or to a State agency. The latter course has been followed in our Constitution in regard to a large number of Union Laws. Articles 256 and 257 cast obligations on the States to comply with Union laws and the existing laws, and not to impede the exercise of the executive power of the Union. The Union is authorised to give such directions as may be necessary for this purpose.

1.3.16 If a State fails to comply with any valid executive direction of the Union Government, it shall be lawful (under Article 365) for the President to hold that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of the Constitution and, therefore, warrants action under Article 356.

Entrustment of Union Functions to the States and *vice versa*

1.3.17 Article 258(1) enables the President to entrust with the consent of the Government of a State to that Government or its officers notwithstanding anything in the Constitution, functions in relation to any matter to which the executive power of the Union extends. Under clause (2) of Article 258, Parliament may by law confer powers and impose duties on a State Government or its officers and authorities, notwithstanding that it relates to a matter with respect to which the legislature of the State has no power to make laws. The consent of the State Government is not a condition precedent for exercise of the power under this clause. Article 258A provides for entrustment, by a State, of functions in relation to any matter in respect of which the executive power of the State extends with the consent of the Government of India to the latter or its officers.

Control of the Union Executive over State Legislation

1.3.18 The control of the Union Executive over State legislation reserved for the consideration of the President is another special feature of the Constitution. Article 200 provides that a Bill passed by a State Legislature shall be presented to the Governor who may assent, withhold his assent or return the same for reconsideration by the Legislature. However, if it is again passed by the State Legislature with or without amendment, he shall not withhold his assent. The Governor may also reserve the Bill for consideration of the President (in effect the Union Council of Ministers) who may in turn signify his assent withhold the same or return it for re-consideration. However, in contrast to the position of the Governor, the President need not give his assent when such a Bill is returned with or without amendment after reconsideration by the Legislature of the State (Article 201). There are special provisions also, some of which were inserted by subsequent Amendments, which require certain type of State Bills for certain purposes to be reserved for the consideration of the President.⁶

1.3.19 Another unique feature of constitution is that it enables Parliament to legislate with respect to a matter in the State List if the Council of States by a two-thirds majority of the members present and voting, declares that it is necessary or expedient to do so in the national interest (Article 249). Such a resolution remains in force for a period not exceeding one year.

1.3.20 The Constitution also enables Parliament to legislate in respect of any matter in the State List, if resolutions to that effect are passed by the legislatures of two or more States. Any Act so passed may be adopted in like manner by the Legislatures of other States (Article 252).

Emergency Provisions

1.3.21 During the two World Wars, even the 'classical' federations functioned as 'unitary' governments. This was made possible by the widest interpretation put by the courts on the "Defence Power" vested in them by their Constitutions. The Indian Constitution makes express provisions in this regard in Articles, 352, 353, 354, 358 and 359. This special feature was described by Dr. Ambedkar as follows:

"All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system..... Such a power of converting itself into a unitary State no federation possess....."

1.3.22 The Constitution provides for proclamation by the President of a grave emergency whereby the security of India is threatened by war or external aggression or armed rebellion (Article 352). When such a Proclamation is in operation, the Union may assume for its organs all the legislative and executive powers of the State. Consent of the State Government is not a condition precedent to such assumption (Article 353). A Proclamation of Emergency has the effect of converting the State List into Concurrent List; and therefore, if Parliament legislates on any subject in the State List, the State laws, to the extent of repugnancy, shall be null and void and the law made by Parliament shall prevail. The executive powers of the State also become subject to the Directions of the Union as to the manner in which these powers are to be exercised.

1.3.23 Another important feature of the Constitution (Article 355) is the express provision casting a duty on the Union to:

- (a) protect every State against external aggression, and internal disturbance; and
- (b) ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

1.3.24 'Public Order' is the responsibility of the States. However, a State Government may require the assistance of the Union's armed forces for this purpose. In case of a serious disorder amounting to 'internal disturbance', the Union may deploy its forces, to put it down.

1.3.25. If the President on receipt of a report from the Governor of a State, or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution, he may by Proclamation assume to himself all or any of the functions of the State Government or all or any of the powers vested in or exercisable by the Governor or any authority in the State. He may also declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament (Article 356). The purpose of Union intervention under this Article is to remedy a break-down of the Constitutional machinery in a State and to restore its functioning in accordance with the Constitution.

1.3.26 Yet another type of emergency, namely, Financial Emergency is envisaged by Article 360 of the Constitution. If the President is satisfied that a situation has arisen whereby the Financial stability or credit of India or of any part of its territory is threatened, he may proclamation a financial emergency. When such an emergency is in operation, the executive authority of the Union extends to the giving of directions to any State for the purpose of securing observance of canons of financial propriety.

1.3.27 In all the above-noted cases, the 'President' actually means the Union Council of Ministers in as much as under Article 74 he is required to act on the aid and advice of the Council.

Inter-Dependence and Mutual Co-operation

1.3.28 Federation is not a static paradigm. It is a changing notion. The classical concept of federation which envisaged two parallel governments of co-ordinate jurisdiction, operating in isolation from each other in water-tight compartments, is no where a functional reality now. With the emergence of the Social Welfare State, the traditional theory of federalism completely lost its ground. After the First World War, it became very much a myth even in the older federations. By the middle of the Twentieth Century, federalism had come to be understood as a dynamic process of co-operation and shared action between two or more levels of government, with increasing inter-dependence and Centrist trends. The framers of the Constitution took due note of these changing concepts and functional realities. Avoiding a dogmatic approach, they fashioned a *sui generis* system of two-tier polity in which the predominant strength of the Union is blended with the essence of co-operative federalism. Several features and provisions of the Constitution appear to have been deliberately designed to institutionalise the concept of co-operation.

1.3.29 In the legislative sphere the most important of these is the provision of a fairly wide field of Concurrent jurisdiction. The framers recognised that there was a category of subjects of common interest which could not be allocated exclusively either to the States or the Union. Nonetheless, uniformity in the main principles of the law on those subjects was considered essential in the national interest. They, therefore, included them in the Concurrent List.

1.3.30 Several entries in the Union List are expressly intertwined with certain items in the State List. These entries have been so designed that Parliament may, by making a declaration by law of public interest or national importance, assume to the extent so declared, jurisdiction to legislate on the connected matters in the State List. Examples of matters in this category are provided by entries 7, 23, 24, 27, 32, 52, 53, 54, 56, 62, 63, 64 and 67 of the Union List. Such entries having an interface with the State List, in a way, disclose another field of 'over-lapping' responsibility. Overlap as between the Lists may also occur when aspects of the same subject are put in more than one List. For example, different aspects of 'trade and commerce' find mention in all the three Lists; namely, Entries 41 and 42 in List I, Entry 26 in List II and Entry 33 in List III. From certain matters in List II a portion has been carved out and specially put in List I. Entries 13 and 32 of List II and Entries 22, 43, 44 and 91 of List I are instances of inter-linked matters cutting across inter-List boundaries. These criss-cross patterns of the Entries in the Lists indicate not only flexibility in the division of powers but also postulate co-operation between the Union and the States in their working. There are inbuilt techniques, *inter alia*, in Articles 246 and 254 for resolving conflict and ensuring harmony and co-operation between the Union and the States in the exercise of their legislative powers in areas of over-lapping jurisdiction.

Forums for Co-ordination

1.3.31 The Constitution envisages forums for resolving issues and ensuring co-ordination of policy and action in the exercise of governmental functions by the Union and the States. Article 263 enables the President to establish an Inter-State Council for enquiring into and advising upon disputes between States and for investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have common interest and to make recommendations upon any such subject, particularly for better co-ordination of policy and action with respect to such subjects.

1.3.32 In the area of inter-State trade and commerce the Constitution contemplates the appointment of an authority for carrying out the purposes of Articles 301 to 304 (Article 307). Parliament has also been enabled by law to provide for the adjudication of disputes relating to waters of inter-State rivers or river valleys (Article 262). Inter-State River Water Disputes Act, 1956 provides for the constitution of Tribunals for adjudication of such disputes.

Role of the Judiciary

1.3.33 The role and structure of the judiciary also institutionalise the idea of co-operative federalism. Although the Constitution empowers Parliament to establish separate courts for enforcement of Union laws, it has, in the interest of unity and integrity of the nation and economy, continued the system of a single integrated judiciary for the Union and the States. The Supreme Court is at the apex of the combined judicial system. Article 131 confers exclusive original jurisdiction on the Supreme Court to decide suits between the Union and the States and the States *inter se*. Judges of the Supreme Court are appointed by the President (in effect, the Union Government) after consultation with the Chief Justice of India and such

judges of the Supreme Court and the High Courts as the President may deem necessary. For every State or a group of States and a Union Territory, there is a High Court. Judges of a High Court are appointed by the President after consultation with the Chief Justice of the High Court, the Governor (in effect, the State Government) and the Chief Justice of India.

1.3.34 With a view to maintaining the constitutional division of powers, the Constitution authorises the Courts to review and pronounce upon the Constitutional *vires* of the legislative and executive actions of the Union and the States. The role of the judiciary in India, as in most federations, is one of guardian of the Constitution. As Constitutional interpreter, the Courts in the older federations have played a significant role in balancing the claims of the federal power and the rights of the constituent units, but generally with weightage in favour of the former. The Supreme Court of the United States and the High Court of Australia have, through expansive interpretation of their respective Constitutions, immensely increased the powers of their national governments with relative decline of those of the States. In India, the comprehensive nature of the Constitution, the detailed enumeration of the powers of the Union and the States and the comparative ease with which the Constitution can be amended, limit the scope for bringing about, through judicial interpretation, any substantial alteration in the balance of Union-State relations. There are only a few judgements of the Supreme Court in this area, dealing directly with Constitutional issues between the Union and the States. A review of these judgements would show that most of them have, in effect, upheld the primacy of the Union *vis-a-vis* the States. The need for a strong united India which was the prime objective before the Constitution-framers, appears to have been the silent premise dominating the process of adjudication of Union-State disputes in these cases.⁸

4. POLITICAL AND SOCIO-ECONOMIC DEVELOPMENTS

General

1.4.01 Since 1950, when the Constitution came into effect, there has been a revolutionary advance in science and technology. The world has entered the nuclear as well as space age. Planes travel now several times the speed of sound. Through satellite communications and television, anything happening in one place can be visually and instantly perceived in all parts of the world. The rapidly increasing population with its concomitant problems has added another dimension to the world scenario. International and intra-national mobility of people has also tremendously increased. Social and cultural intercourse between peoples within and across international boundaries is growing. Old concepts are yielding place to new. As a result of the changing attitudes, thinking the expectations of the people from a welfare State, there is hardly any walk of life that remains untouched by the activities of government. The functional methodology of federal systems, world over, has also been undergoing change with this changing environment. The centralising trends which were just discernible when the Indian Constitution was on the anvil, are now manifest realities of gigantic proportion in most federations.

1.4.02 However, this phenomenal spurt in scientific and technological advance is not an unmixed blessing. It has thrust into the hands of ambitious nations weapons of mass destruction. This has an inevitable impact on the concept of 'defence'. The defence requirements of nations have considerably increased. Even in peace-time, defence capability now requires a healthy people, advanced scientific and technical education, sophisticated industrial self-sufficiency civil defence, continuous improvement and modernisation of weaponry to match that of a possible enemy. These requirements now extend even to areas of domestic policy-making.

1.4.03 While under the inexorable pressures of various conceptual, technological, demographic and other factors indicated above, the role of the national government in all countries having a two-tier polity, has immensely expanded, the functioning of their system has progressively become a co-operative process of shared responsibilities.

The United States of America

1.4.04 In the New Deal era of late 1930s, the governmental system even of the United States, the classical federation, entered a new phase. Through a series of decisions, their Supreme Court, by a liberal construction of the Police, Commerce, Taxation and Spending Powers under their Constitution, practically left it to the Congress to determine by legislation what was a 'national purpose', 'national interest' or

'national objective' for evaluation of the proposals for federal aid programmes. The resulting proliferation of the federal power continued through the 1950s. This centralising process gained momentum after 1960. The extension of the Police power was specially notable.⁹ By 1980, the federal role had become 'bigger, broader and deeper', covering a wide range of governmental functions in new fields which had hitherto been the exclusive or predominant preserve of the States or their local sub-divisions. The regulatory role of the federal government directly covered big business, labour agriculture communications, transportation, banking securities, environment, health and safety, consumer protection and social equality areas. It also got indirectly expanded through the use of grant conditions as means of furthering national, social, environmental, egalitarian and other goals. While the dominant ethic of the federal grant system was still largely the co-operative one, in practice, it had become co-optive and dysfunctional.¹⁰

Canada

1.4.05 The British North America Act, 1867 (renamed in 1982 as the Constitution Act, 1867) placed only two subject, *viz.* Agriculture and Immigration, in the concurrent legislative field of the Dominion and the Provinces. Classes of the Subjects allocated to the Dominion and the Provinces were also indicated in Sections 91 and 92 of the Act. The residuary powers with respect to unspecified Classes of Subjects were left in broad terms to the Dominion. The centralising tendency in the Canadian Constitution was tempered by judicial pronouncements of the Privy Council. However, the experience of the working of the system soon led to the realisation that most problems required joint action by the Federal and provincial governments. In recent years, a fairly large field of *de facto* concurrency has emerged. After the mid 1950s, a "consociational" type of federation was gaining favour gradually overcoming formal demarcation of powers in the Constitution Act. In this type of federation, according to one expert¹¹, the dominant principle of co-operation is given practical shape through joint endeavours and a continuing dialogue between the Federal Government and the federating units. This type of co-operative federalism has been ushered in Canada by various devices. Principal among these were conferences of the Federal Prime Minister and the Provincial premiers. It has come to be one of the most crucial institutions of Canadian federalism. Allocation or sharing of revenues and tax fields, equalisation grants, unified control of borrowings have been other extra-constitutional methods to resolve financial problems of the federation. Thus, in Canada also, the system has assumed, on the basis of practical arrangements, a *de facto* form of co-operative federalism transcending the boundaries formally designated in its Constitution.¹²

Australia

1.4.06 In Australia, liberal interpretation of its Constitution by their High Court has helped to increase the powers of the Federal Government. Its financial resources enabled it to expand its role through the instrument of financial grants to the States. Many other factors—social, political and economic—have also contributed the growth of the Federal power in Australia. In West Germany and Switzerland also, the trend has been broadly similar.

Function Trends in Union-State Relations in India

1.4.07 In India, the last 37 years of the working of the Union-State relations witnessed continuous expansion of the responsibilities of the national government. The role of the Union now extends into areas in the State field. This extension has come about as a result of the legislative and executive action of the Union.

1.4.08 The Union has through the exercise of its dominant legislative power taken over functions which normally were to be left to the States. Acts passed by Parliament by virtue of Entries 52 and 54 of the Union List are typical examples. Under Entry 52, Parliament has passed the Industries (Development and Regulation) Act, 1951. As a result, the Union now controls a very large number of industries mentioned in Schedule I to the Act. The Constitutional effect is that to the extent of the control taken over by the Union by virtue of this Act, the power of the State Legislatures with respect to the subject of 'Industries' under Entry 24 of the State List, has been curtailed. This Act also brings under Central regulation agricultural products such as tea, coffee, etc. Similarly, Parliament has, by making the requisite declaration of public interest under Entry 54 of the Union List, enacted the Mines and Minerals (Development and Regulation) Act, 1957. The legal effect is that to the extent covered by this Act, the legislative powers of the State Legislatures under Entry 23 of the State List have been ousted. Parliament enacted under Entry 33 of the Concurrent List the Essential Commodities Act, 1955 to regulate trade and commerce in many essential

commodities including certain agricultural products. A large number of Union laws, including existing laws, relating to matters in the concurrent field, are in operation. These include the Civil Procedure Code and the Criminal Procedure Code, 1973. To the extent, the Concurrent field is occupied by a Union law, the power of the State Legislatures to enact a law in variance with it, becomes inoperative. Power under Articles 200 and 201 and other special provisions (Some of which were inserted later) have also enabled the Union Executive to centralise control over State Legislation. The reservation by the Governor of State Bills for Presidential consideration with respect to matters in the Concurrent List, also contributed to the expansion of the power of the Union government.

1.4.09 Centralised planning through the Planning Commission is a conspicuous example of how, through an executive process, the role of the Union has extended into areas, such as agriculture, fisheries, soil and water conservation, minor irrigation, area development, rural reconstruction and housing etc. which lie within the exclusive State field. The Planning Commission was set up by a resolution of the Union Cabinet in 1950. Primarily, the Commission was charged with the duty to prepare plans for the most effective and better utilisation of the country's resources. The Constitution envisages that fiscal resources would be transferred to the States on the recommendation of the Finance Commission. But, in practice, the role of the Finance Commission has come to be limited to channelising of revenue transfers (including a very small capital component) only. The capital resources (including a revenue component) for planned development, are now transferred on the recommendation of the Planning Commission.

1.4.10 The National Development Council, which was set up in 1952 by a resolution of the Union Government, is supposed to be the highest deliberative body in the field of Planning. It includes the Prime Minister (as its Chairman), the Members of the Planning Commission and the Chief Ministers of all the States. Its function is to oversee the working of the Plans from time to time, to consider important questions of social-economic policy affecting national development and to recommend measures for implementing the aims and targets set out for the National Plans.

1.4.11 These institutions were expected to play an effective role as adequate forums of consultation and co-operation between the States and the Union, but within a centralised framework.

Current Scenario

1.4.12 We now consider the consequences of the dynamic interplay of various forces both at the national and sub-national levels in India giving rise to a set of situations, or, what may be called the present imperatives affecting the working relationship of the Union and the States.

Socio-Economic Changes

1.4.13 The last 37 years have seen many changes in the socio-economic and political fields. When the Constitution came into force in 1950, India was just emerging from her colonial past with its social stratification, allowing very little mobility. The old feudal system was still very much in evidence. In the rural areas, the Zamindari system and the rich absentee land-lords held sway over precarious tenants and share-croppers. In the urban areas, the Government servants, professionals and the trading classes had a clear edge over the technicians and the artisans. No doubt, during this period, the Zamindari system has been abolished, tenancy reform has been largely implemented and land ceiling laws have been applied with varying degrees of success. Yet, much more remains to be done.

1.4.14 Economic development has led to the growth of an affluent community of gentlemen farmers who now form the rural elite and the landless labourer continues to struggle to maintain his place at the periphery. There has been a sea change in agriculture—a subsistence economy has yielded place to surpluses and a market economy, with almost all crops having a market relevance in the country. Migration of agricultural labour seeking employment in the more agriculturally advanced areas has been yet another significant development. In the urban areas, a new class of entrepreneurs, many of them immigrants, has emerged, who have by hard work and perserverence established many a successful enterprise. Large business houses have also put highly sophisticated industries all over the country. One of the most significant gains of the last three and half decades of development is the emergence of a vast common integrated market with mobility of capital and skilled labour. Investment opportunities are perceived with reference to factors of production seen on a national basis.

1.4.15 Another important feature has been the pace of urbanisation and the sharp increase in population in the entire hierarchical structure of urban conglomerates starting with metropolitan cities to small municipalities. The urge to get away from the drudgery of village life or its caste identities, or the quest for better job opportunities, are some of the factors which have contributed to exodus from villages to cities, and across inter-State boundaries. Apart from this, the poor immigrants are inevitably drawn into the slums which abound in the metropolitan cities and large towns. Deprived of even the basic amenities, these dwellers of shanty towns living in the shadow of the affluent, nurture an intense hatred of society itself. The sadism building up within them, requires but a spark to explode into full-scale savage rioting. The problems related to them are no longer considered to be the exclusive concern of the States and their local bodies.

1.4.16 The metropolitan areas, with high degree of industrialisation, have become multilingual islands surrounded by rural-unilingual seas in almost all the States. These have provided scope for some unscrupulous elements to whip up antagonisms based on language with a view to securing narrow political gains.

1.4.17 Free flow of inter-State trade and commerce has perhaps been the most outstanding achievement during this period. Massive investments in socio-economic development under Central guidance have also contributed very largely to the strength of the nation, but with large regional variations.

Political Changes

1.4.18 The political scene has over the last three decades undergone a major transformation along with other aspects of national life. At the time of Independence, the Congress Party occupied a predominant position in national life. Leaders and many in the rank and file of this party were old freedom fighters who had come from the legal, medical and academic professions. They had good education, patterned mainly on the English system and values. The Congress Party formed the Government at the Centre and in the States for nearly two decades after Independence. In these conditions, Union-State relations under the Constitution were essentially an intra-party arrangement of the Congress. Differences between the State Governments and the Union Government were quite easily sorted out at the party level. Stalwarts at the Union and those in the States acted with a sense of mutual respect and accommodation. As the old guard of the pre-Independence days began to vanish from the political scene by sheer efflux of time, the composition of the Congress Party underwent a change particularly in the States. The new political leaders were distinctly different from their predecessors. They were younger and not steeped in the Gandhian traditions of the pre-Independence era. Political life was not seen as in the days of the freedom struggle, as a sacrifice for the nation. Rather, it became a political career and a means of reaching for power and pelf in varying proportions. It was no longer the lawyer or doctor sacrificing a lucrative practice or the teacher throwing up his calling to join politics. It was the local leader commanding money, muscle power and caste or communal loyalties who came to the forefront of State politics. In a sense, this process was inevitable with the growing vacuum at the top and the new mores and ethos of electoral politics which afforded no place—and gave no quarter—to those who did not acknowledge the new rules of the game. Starting with national parties in 1947, a span of mere twenty years witnessed the rise of regional parties and the split of the national parties. The developments of 1967 came to stay.

1.4.19 The Indian Constitution contemplates election of representatives both to Parliament and to the State Legislature on the basis of territorial constituencies. This led to replacement over the years of ideology-oriented intellectuals by vote-bank-based political leaders in the power structure. Their vision and approach to national and local, long term and short term and basic and populist issues, varied widely. Populism became a much more important factor for them and the new generation of politicians found it essential to combine money and manpower with populist slogans, to capture and stay in power. In the absence of the idealism of the freedom struggle, very often the success or failure has come to depend to a large extent on the shifting loyalties of factions owing allegiance to an individual and none to any ideal.

1.4.20 Wherever the majority in a territorial constituency, although with general electorate, could be swayed by communal (or linguistic) slogans, the behaviour pattern tender to be nearly the same as in a territorial constituency, with separate electorate, which had led to the creation of Pakistan and had been firmly discarded by the Constituent Assembly.

1.4.21 Elections have become today very costly with all round allegations of corrupt practices. Control or influence over the State machinery secured at large expense has to be increasingly used by politicians to give as *quid pro quo* special advantage to those moneyed interests who help to meet this expense. It is

inevitable that such a development should result in retreat from politics of those who did not conform to the realities of power play. Those in power at the national level have been obliged to use diverse strategies and tactics, which were not always sound from long-term interests, in order to maintain their hold on the state level forces. It was not uncommon for the national level leaders to lay down high principles for selection of candidates; but the political machinery was in the hands of the local bosses whose only concern was winning the elections. This led to selection of candidates based on communal and caste grounds.

1.4.22 Local bodies have always played an important role in India. They were the cradle for the emerging leadership in the second half of the nineteenth and early twentieth centuries. Unfortunately, over the years, these have, for all practical purposes ceased to be significant for power-sharing. The safety valve which local bodies provide for minority communities to effectively participate in the governance of the country, was often abandoned thoughtlessly for small immediate advantage. The consequences have been serious in a composite society like ours. Frustrations of the deprived communities have often led them to give up the Constitutional path in favour of violent agitations.

Growth in Sub-National Forces

1.4.23 In examining the various issues connected with Union-State relations, it would be useful to recognise that a number of problems between the Union and the States arise in matters not directly connected with the various provisions in the Constitution. These are nevertheless important because they have an impact on the working of constitutional arrangements between the Union and the States. These problems are distinguished by the fact that they arise not so much from the actions of the State Governments or the Union Government but from various groups which operate both at the State and the national levels.

1.4.24 Although they all start with different bases and address themselves to different group affinities and sensitivities, the common characteristic of many of these groups in a plural society like ours is to promote sub-nationalism in a manner that tends to strengthen divisive forces and weaken the unity and integrity of the country. Very often the sub-nationalist sentiment which is initially based on linguistic, religious or ethnic groupings gains strength with a blend of economic issues such as those relating to land, water and regional backwardness. One of the most significant developments has been the rise of linguistic chauvinism, rearrangement of the boundaries of the States on linguistic basis, imposition of the language of the majority in a State on the minorities and disregard of the special provision relating to language spoken by a section of the population of a State (Article 347), resulting in fissiparous tension.

1.4.25 One State Government has observed that “with the reorganisation of the States on a linguistic basis, these are no longer mere administrative sub-divisions of the country with their boundaries for the most part a historical legacy. These are now deliberately reorganised homelands of different linguistic-cultural groups. These groups are, in fact, growing into distinct nationalities”. An opposite view is that forces of modern communication and industry are working against such incipient localised homeland idea by promoting country-wide mobility, inter-State migration and social intercourse of people. The whole of India is in fact now the homeland of every citizen of the country. That this should be the correct approach, was emphasised by the States Reorganisation Commission itself, which observed:

“It is the Union of India that is the basis of our nationality. It is in that Union that our hopes for the future are centred. The States are but the limbs of the Union, and while we recognise that the limbs must be healthy and strong and any element of weakness in them should be eradicated, it is the strength and the stability of the Union and its capacity to develop and evolve that should be the governing consideration of all changes in the country.”¹³

If a particular community, religious or linguistic group claims one region of the country as its homeland, it generates antagonism of other communities or groups both within that region and elsewhere: For, the very idea of “homeland” within a country implies a pernicious discrimination between the so-called original inhabitants or 'sons of the soil' and so-called 'immigrants' or 'outsiders' from other States. Practice and promotion of such un-healthy ideas eventually lead to creation of two or more classes of citizens all over the country. While, at heart, thoughtful persons in all communities realize this danger, even they, with the motive to gain or maintain political power,—euphemistically disguised as 'political compulsions'—

often find it expedient not to be less loud and hoarse than their more desperate rivals in swearing by this hyper-parochial credo.

1.4.26 In analysing the origins of these tendencies, several causes can be identified, both legitimate and pernicious. Among the more legitimate origins of sub-nationalist groupings can be included a search for identity, a need for security and the demands for a fair share in the national cake in terms of education, employment and industrial opportunities.

1.4.27 Among the more pernicious of these motivations can be recognised the role of vested interests in converting legitimate aspirations into strident discord and dissent by clever manipulation and encouragement of psychological alienation. The use of the sub-nationalist plank for building of group leadership which commands attention at the national level, is another strong motivation which is sometimes responsible for throwing up the more vociferous leaders. It is from these origins that the more extreme forms of dissent and revolt against the existing order emerge in the form of extremist and terrorist actions.

1.4.28 While poorer States have been pressing the Union Government earlier to ensure for them a greater share of the national cake, richer States have started asking for more powers for themselves recently so as to be able to protect their share. The conflict between centripetal and centrifugal forces, that this tends to accentuate, deserves greater attention than it has been given so far. It is thought-provoking that the Government of one borderland State, which has higher per capita income and growth rate than heart-land States has complained about the latter's Hindu-Hindi-Hind based domination and that of another borderland State over a thousand miles away with nearly the same income and growth record, has also expressed similar sentiments. Only purposive promotion of a general political will to understand one another's compulsions and give priority to mutual accommodation as against hard bargaining, can help resolve this conflict.

Political Parties

1.4.29 India had the immense advantage of out-standing leaders who had been in the forefront of the struggle for independence stepping into political office and the Constituent Assembly to guide the destinies of the nation. They were imbued with a spirit of sacrifice and service. The Congress Party had evolved, over the years a policy of rapid economic development which these leaders put into action soon after coming into the Government. It has held for a long time the reins of power both at the Union and in the States. This lent a great measure of stability to the nation. At the same time the fact that a strong single monolithic party continued to hold power both in the Union as well as the States for a long time had unexpected adverse effect on the healthy growth of Union-State relations. There was very strong leadership at the apex in the Congress Party and Union-State issues, as already noted came to be resolved through party channels. Need for institutions which would have enabled effective Union-State dialogue and meaningful discussion in a spirit of compromise and cooperative partnership to arrive at solutions based on consensus, was not felt. Lack of internal democracy within the parties also contributed, in no small measure, to this development.

1.4.30 Another development has been the fragmentation of the Congress Party, itself, and the emergence of new political parties earlier at the national, and later at the regional levels. In the last fifteen years or so, regional parties and coalitions have formed governments in a number of States. With the substratum of political activists being thrown up by the same society with its changing values, these new parties and splinter groups did not show much differences in their basic characteristics. When some of these parties came to power in the States, their attitudes, also, to power and to the problems of the people, were not significantly different from those who had held sway earlier. A large number of splinter groups with shifting loyalties and narrow interests have been thrown up rather than large-size political parties with healthy traditions and broad outlook which could shoulder heavy responsibility if occasion arose. This has tended to encourage irresponsible political behaviour.

1.4.31 Effective functioning of a democracy requires an adherence to basic political morality. A sad commentary is the spectacle of members of the legislatures changing their allegiance from one party to another for personal or factional gains. The result has been an undermining of confidence in all institutions barring the few having constitutional sanction. How far the recently enacted anti-defection law can effectively check this evil, only time will tell.

1.4.32 The above survey of the developments of the past thirtyseven years brings out clearly two diametrically opposed trends. On the one hand, a number of factors, primarily centripetal economic forces, have strengthened the impulses of centralisation, modernisation, growth and development. On the other, very strong centrifugal forces have been unleashed in the country on account of break-up of the old political order, split of national parties, ever-increasing exploitation of populist slogans and caste, language, money and muscle power in elections. Corruption in many walks of life, emergence of linguistic chauvinism and fissiparous tendencies—all these point to increasingly rough weather ahead for our ship of State.

5. MAJOR ISSUES IN UNION AND STATE RELATIONS

1.5.01 A study of the memoranda submitted by the various State Governments, political parties and the evidence given by many eminent persons and the replies received in response to the questionnaire circulated by us, shows a wide divergence of views. Many are of the opinion that the basic structure of the Constitution is sound and should not be tampered with. On the other side, there are some who are of the view that it requires drastic alteration so as to bring it in accord with their own perception of an ideal federal system.

1.5.02 The Constitution is what we make of it, so runs the argument of those who lay emphasis on the divergence between theory and practice. They point out that the actions of the Union have led to a very large degree of over-centralisation in all aspects, reducing the States to mere administrative agencies of the Union. Such over-centralisation in legislative, administrative and financial spheres, it is contended, has been effected by the Union to the detriment of the States.

1.5.03 They allege that the Union has occupied most of the concurrent field leaving little for the States, and by indiscriminately making declarations of public interest or national importance, taken over excessive area of the linked entries in the State field at the expense of the State legislative power. They point out that legislation in these fields is "more often than not, undertaken with no or inadequate prior consultation with the States. The net effect of many recent amendments of the Constitution and judgements of the Supreme Court has been to give more power to the Union than was contemplated by the Constituent Assembly". They question the wisdom of a legislation that seeks to secure dull uniformity in all matters, instead of laying down the main parameters and leaving the States free to legislate in regard to other matters in the light of local conditions.

1.5.04 The institution of Governor was conceived of as an effective link between the two levels of Government. It was expected to encourage nation-building forces, made for unity and integrity and ensure the conduct of the affairs of government in the State in accordance with the Constitution. It is alleged that this instrument has been made use of to destabilise the State Governments run by parties different from that in power in the Union, to facilitate imposition of the President's rule and reserve for President's consideration many State Bills to thwart the States' legislative process.

1.5.05 It is complained that the resources of the States have not grown at a rate commensurate with the growth in their responsibilities. The gulf between available resources and responsibilities is steadily widening. On this ground it is demanded that more resources be included in the shareable pool, if necessary, by amending the Constitution.

1.5.06 Another issue raised is that the emergence of planned development has concentrated all power in the hands of the Union, with the Planning Commission acting as a limb of the Union Government. It is emphasised that even in matters which lie within the exclusive competence of the States, through a variety of means, particularly the mechanism of Centrally Sponsored Schemes, deep in-roads have been made by the Union. On these premises it is demanded that the Planning Commission be restructured to limit the scope of the Union's interference in the area reserved for the States.

1.5.07 The system of controls, licences and permits, which had its origin during the Second World War, has proliferated greatly to subserve the requirements of a planned regime. This, it is argued, has led to vast expansion in the powers of the Union Government at the expense of the State Governments and local bodies. The consequent unhealthy centralisation, giving undue power to a small coterie, it is urged, needs to be reversed.

1.5.08 It is also pointed out that institutions or forums specially envisaged in the Constituion for sorting out problems arising in the working of inter-governmental relations (*e.g.* a permanent Inter-State Council with a comprehensive charter as contemplated in Article 263) have not been created at all. It is urged that in matters of dispute between the Union Government and a State Government, the former should not be both the disputant and the Judge but should get the case examined by an independent assessor before taking a decision.

1.5.09 The basic thrust of these and other criticisms is that while the Union-State relations were intended to be worked on the basis of co-operative federalism and consensus in all areas of common interest, they have not been so worked and the forums envisaged by the Constitution for that purpose, have not been established.