

CHAPTER XXI
GENERAL OBSERVATIONS

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CHAPTER XXI GENERAL OBSERVATIONS

INTRODUCTION

21.1.01 In the preceding chapters we have examined in some detail the legislative, administrative and financial provisions of the Constitution, having a bearing on Union-State relations. We have also considered how they have performed in practice over the last thirty-seven years.

21.1.02 Adhering strictly to our Terms of Reference, we have confined the earlier Chapters of our Report essentially to those issues which have a *direct* impact on the working of the Union-State relations. But in the political system which is organically a whole, there are many peripheral matters which cast their shadow on Union-State relations. We will be failing in our duty if we do not take note even of the most important of them.

DECENTRALISATION

Importance of Decentralisation of Power

21.2.01 In India, because of the diversities in relation, language, caste, race, etc. there are a large number of groups, seeking to establish their identity and promote their sectional interests.

21.2.02 The issue of devolution of powers and responsibilities between the top two tiers of Government, Union and States, needs, therefore, to be considered in the context of the broader issue of decentralisation between these and other tiers of government on the one hand, and the functional agencies within each of these tiers, on the other. The interests and aspirations of most people are concentrated in the localities in which they live and carry on their avocations of life. Normally, they would be content to compete at the level of the local self-governing bodies, making way for persons interested in larger issues of regional or national significance, to opt for higher elective forums. Decentralisation of real power to these local institutions would thus help defuse the threat of centrifugal forces, increase popular involvement all along the line, broaden the base of our democratic polity, promote administrative efficiency and improve the health and stability of inter-governmental relations.

21.2.03 Unfortunately, there was not only inadequate territorial and functional decentralisation in India when the country became independent, but there has also been a pervasive trend towards greater centralisation of powers over the years, *inter alia*, due to the pressure of powerful socio-economic forces.

21.2.04 The Indian Constitution creates two tiers of Government, one at the level of the Union and the other at the level of the States. At the sub-State level, also, there are tiers which are the creatures of the States. These are : Zilla Parishad (or District) Panchayat Samiti (or Sub-Division in some States); and Panchayat (or Thana, Mandal or Block in some States). It is noteworthy that the Constitution casts a duty on the State to take steps to organise Village Panchayats and endow them with powers and authority to enable them to function as units of self-Government (Article 40). In this system, the District, in particular, holds a central position.

21.2.05 The importance of developing adequate sub-State level political institutions cannot be over-emphasised. It is only by providing opportunity to the people that they can be trained to shoulder responsibilities in a system of self-government. In 1959, a major experiment in decentralisation of power was launched based upon the findings of the Balwant Rai Mehta Committee on Panchayati Raj. "The people are not merely to be consulted but effective power is to be entrusted to them", observed Jawaharlal Nehru while inaugurating Panchayati Raj in Rajasthan. For a variety of reasons, this bold experiment has not proved a success. These institutions have been allowed to stagnate. Elections to these bodies have not been regularly held and often they remain superseded for long periods.

21.2.06 While there is considerable reluctance to decentralise powers to the Districts, there has been even greater reluctance in most States to decentralise powers to the lower levels like Municipalities, Panchayat Samities and Panchayats, in spite of the explicit directive in Article 40 of the Constitution.

Inefficiency of undue centralisation

21.2.07 Since, for reasons explained elsewhere in this report, there is a general tendency towards greater centralisation of powers, there is special need in a country like India for a conscious and purposive effort to counter it all the time. There is considerable truth in the saying that undue centralisation leads to blood pressure at the Centre and anaemia at the periphery. The inevitable result is morbidity and inefficiency. Indeed, centralisation does not solve but aggravates the problems of the people.

21.2.08 We have drawn attention in the Chapter on Economic and Social Planning to the need for decentralisation of the Planning Process. The objectives of decentralised Planning cannot be achieved unless the Panchayati Raj and other local bodies are allowed full scope to play their role. We are of the view that for this purpose, it is necessary that elections are held regularly and adequate finances are devolved on these institutions.

21.2.09 To rectify this dysfunctioning of the local self-governing bodies it is necessary to ensure, by legal provisions analogous to those in Articles 172 and 174 of the Constitution, that elections to and sessions of Zilla Parishads and Municipal Corporations are held regularly and these institutions do not remain superseded for long periods. The power of enacting such a law vests under Entry 5, List II exclusively in the State Legislatures. Nevertheless, uniformity in these aspects of the law throughout the territory of India, is essential. This uniformity can be secured by adopting, in the following order of preference, any of the alternatives given below:—

- (i) By laws with respect to this matter made by *all* the State Legislatures in accordance with a model Bill prepared on the basis of consensus at the forum of the Inter-State Council (Inter-Governmental Council, recommended by us to be established under Article 263).
- (ii) By a law on this subject made by Parliament under Article 252(1) with the consent of the Legislatures of all the States.
- (iii) By a Parliamentary law uniformly applicable throughout India containing provisions analogous to Articles 172 and 174 of the Constitution.

Adoption of alternative (i) or (ii) will not require any amendment of the Constitution. However, as a condition precedent for adopting alternative (iii), those aspects of the matter which are analogous to Articles 172 and 174, will have to be carved out of the ambit of Entry 5, List II and transposed as a separate item to List III.

We recommend that in order to ensure that elections to sessions of Zilla Parishads and Municipal Corporations are held regularly and these institutions do not remain superseded for long periods, any one of the alternatives, (i), (ii) and (iii) be pursued in the order set out above. Resource to alternative (iii) may be had only as a last resort when attempts to follow alternatives (i) and (ii) fail, or are otherwise found infeasible.

CITIZEN PARTICIPATION

21.3.01 Effective participation by citizens is an integral part of democracy. Large parts of the programmes, projects and services initiated by the Union are executed in the States. Many of the programmes undertaken by the States also have wider implications for the Union as well as local Governments. There is at present no forum where a citizen can present his views on all these matters. No doubt, various issues of national importance would be discussed by the Inter-Governmental Council recommended by us. But it will necessarily be *in camera*.

21.3.02 We feel that the I.G.C. should set up an Advisory Committee of experts which may look into specific inter-governmental problems requiring special knowledge of the subject, such as law, economics, sociology etc. The proceedings of this Committee should be unfettered by the formal positions taken by the various Governments, and may permit public hearings. This will enhance the acceptability of the programmes and solutions suggested by the I.G.C. and ensure efficiency in their implementation.

21.3.03 In view of the relatively communal nature of some "majorities" and "minorities" of different hues (of religion, caste, language, race, etc.) at different governmental levels of our country, it is most important that democracy is seen as Government by "compromise" between the majority and the minority, and not an authoritarian use by the former of its voting power riding roughshod over the latter. In this context, the sense of "realism", spirit of "moderation" and reluctance to push issues to the "extreme" that is usually shown by "majorities", say, in a country like the U.K., in contrast with supposedly more "logical"

and less "moderate" use of voting power by "majorities" in some other democracies, have much greater relevance for us. If the power of vote that democracy gives us is used thoughtlessly, or fanatically along communal lines, it may eventually sound the death-knell of secular democracy itself, in our heterogeneous society. And this is where sound codes of conduct and conventions play a crucial role.

21.3.04 It will be useful if the I.G.C. arranges, through its Advisory Committee or otherwise, for a periodical review of the deviations from desirable codes of conduct and conventions and considers appropriate corrective action well before the situation takes an unhealthy turn.

WORKING OF THE CONSTITUTION

Constitution Basically Sound

21.4.01 The working of the Constitution in the last 37 years, has demonstrated that its fundamental scheme and provisions have withstood reasonably well the inevitable stresses and strains of the movement of a heterogeneous society towards its development goals. The Constitution has been amended a number of times to adjust its working to the changes in the environment. In our view, it is neither advisable nor necessary to make any drastic changes in the basic character of the Constitution.

21.4.02 But there is certainly scope for improvement and reform in a number of aspects, as indicated by us. The actual working of the Constitution leaves much to be desired.

21.4.03 A Constitution by its very nature, cannot be too exhaustive, providing for all possible contingencies. If it tried to do so, its labyrinthine complexity and Procrustean rigidity would soon render it unworkable in a changing world.

21.4.04 As a matter of fact, there is a view that the Indian Constitution is already one of the most detailed in the world. The Constitutions of many major countries are much shorter, less detailed and leave larger scope for judicial interpretation, codes of conduct and conventions to balance the claims of stability and adaptability in tune with the current needs of a dynamic society.

Importance of Conventions

21.4.05 Notwithstanding the fact that ours is a detailed Constitution, the Constitution-framers left certain matters to be governed by conventions, thereby giving to the holders of constitutional offices some degree of discretion in respect of such matters. Conventions lubricate the room left at the joints in the constitutional structure and protect them against ossification. "Conventions", as John Stuart Mill put it, "are unwritten maxims of the Constitution by which the conduct of political authorities is in fact regulated..... without which the Constitution would soon lose its stability". The main purpose of the Constitutional conventions is to ensure that the legal framework of the Constitution retains its flexibility to operate in tune with the prevailing constitutional values of the period. Although conventions are not legally enforceable and the sanction behind them is moral and political, yet some conventions of the constitution which set norms of behaviour of those in power or which regulate the working of the various parts of the Constitution and their relations to one another, may be as important, if not of greater significance, as the written word of the Constitution itself. This is particularly true of the role of 'conventions' in a system of Parliamentary democracy having a Constitutional distribution of powers between two or more levels of Government. The archetypical convention which requires the Governor to appoint only that person as the Chief Minister who can head a Council of Ministers commanding an absolute majority in the Legislative Assembly, is the essence of the Cabinet system of Parliamentary democracy, although a breach of this convention is immune from challenge in a court of law.

21.4.06 One unfortunate fact of the Indian situation is that enough attention has not been paid to the evolution and observance of the right codes of conduct and conventions. Even the codes and conventions evolved in the earlier years have been broken too lightly in the later years. Expediency has sometimes been given precedence over wisdom and short-term advantages over long-term benefits. Narrow personal or parochial interests have been given priority over larger national interests. One unwise action has provoked an equally unwise reaction and triggered off a whole chain of adversary relationships. There is an increasing tendency to resort to violence and extra-Constitutional methods to force settlement of political or economic issues—imagined or real.

21.4.07 This would be a cause for concern even in a small homogeneous country. In India, a heterogeneous country of huge dimensions, this cannot be a matter of grave anxiety.

21.4.08 A natural reaction of some people has been that all the loopholes in the Constitution which have permitted aberrant developments, should be plugged. It is urged that, if conventions do not work, appropriate constitutional safeguards should be provided. If appropriate conventions are not followed and the discretion provided under certain circumstances is misused, the entire system may collapse. In order that appropriate conventions and codes of conduct get evolved, it is essential that incumbents of constitutional offices and other sentinels of the polity are selected from among persons of admitted competence and integrity and provided with reasonable security of tenure.

21.4.09 The Constitutional amendments having a bearing on Union-state relations, suggested by us, though significant, are not many. These pertain to Article 155 (appointment of Governor); Article 217 (empowering the President to Frame Rules); Article 248 read with Entry 97, List I (residuary powers regarding non-tax matters); Article 252(2) [regarding amendment of an Act passed under Clause (1)]; Article 269(1)(f) and Entry 92, List I (enlargement of their scope); insertion of a provision regarding sharing of Corporation tax, analogous to Article 272; Article 276(2) (for raising the tax-ceiling on professions, trades, etc.); Article 356 (to ensure its proper and efficacious use) and shifting a part of Entry 5 of List II to List III (for ensuring regular elections to and working of local bodies by an all-India statute).

21.4.10 But the changes we have proposed in the functional aspects of Union-State arrangements, are far more substantial. The more important of these relate to the role of Governor; reservation of State Bills for consideration of the President; use of the extraordinary powers under Articles 256, 257 and 356; establishment of a standing Inter-Governmental Council with a comprehensive charter; National Economic and Development Council having a nexus with the Planning Commission formalised under Article 263; limitation on Centrally Sponsored Schemes regarding subjects in the exclusive State field; State Finance and Planning Boards; role of Zilla Parishads and Municipal Corporations regarding socio-economic planning and development; restraint on excessive occupation by the Union of the Concurrent field; periodic review of the Industries (Development and Regulation) Act, 1951; decentralisation of powers assumed by law under Entry 52, List I; Loans of States and Municipalities etc.

21.4.11 Given mutual trust, confidence and understanding between the two tiers of the polity, our recommendations—it is hoped—, if implemented, will go a long way to ensure smooth and harmonious working of the Union-State arrangements on principles of cooperative federalism. But, it is not claimed that they foreclose the need for a countrywide debate in political, academic and other forums as to their merits, utility and viability.