

should be removed or modified even if it requires amendment of the Constitutional provisions. This is felt more important now when centralization tendencies are getting stronger and fragmentation of the polity is becoming intense.

Whenever Central policies are formulated in relation to one or more States, it is only proper that Committees of Rajya Sabha involving representatives of concerned States are allowed to discuss and come up with alternate courses of action acceptable to the States and the Union. Thus, compensating the mineral rich States or the Hill States can well be negotiated in the Rajya Sabha Committee. Similarly, States adversely affected by the Centre entering into treaties or agreements with other countries can get appropriate remedies if the forum of the Rajya Sabha is utilized for the purpose. In fact, Rajya Sabha offers immense potential to negotiate acceptable solutions to the frictional points which emerge between Centre and States in fiscal, legislative and administrative relations.

On Equal representation of States in Rajya Sabha

The principle of equality and equal representation in institutions of governance is as much relevant to States as to individuals in a multi-party diverse polity. Equally applicable is the idea of preferential discrimination in favour of backward States in the matter of fiscal devolution from Union to States. There are other federations (like USA) which give equal number of seats to the federating units in the Council of States irrespective of the size of their territory and population. The number of seats in the House of People (Lok Sabha) anyway is directly linked to the population and there is no need to duplicate the principle. A balance of power between States inter se is desirable and this is possible by equality of representation in the Rajya Sabha. If the Council of States has failed to function as representative of States as originally envisaged, it is because of the asymmetry of coalition politics and the way the party system developed. The functioning of Rajya Sabha can be reformed to achieve the original purpose of federal equilibrium. There should be amendment of the relevant provisions to give equality of seats to States in the Rajya Sabha, irrespective of their population size.

The reasoning of the Supreme Court in *Kuldip Nayyar vs. Union of India*, (2006) rejecting the status of Rajya Sabha as a Chamber representing the States in the federal Union is faulty and deserves review. Meanwhile, Parliament should act restoring section 3 of the Representation of People Act as it originally stood to redeem the federal balance in shared governance. The territorial link with that state from which a person is contesting for Rajya Sabha membership, which was prescribed by the Representation of People Act (until it was dispensed in 2003) is necessary and desirable to let the States realize that they are equal partners in national policy making and governance.

On Relationship of Article 246(3) and 162 with Articles 243G and 243W

Articles 243G(power, authority and responsibility of panchayats) and 243W (power, authority and responsibility of municipalities, etc.) are sometimes read to mean that they leave it to the discretion of States whether or not to devolve any powers and functions to the local bodies. Such a reading makes the Constitutional Amendments superfluous defeating the whole purpose of the exercise. Although States have the discretion to decide and vary the subject matters in respect of which it wants to devolve powers and responsibilities, States are not free to decide not to devolve anything at all. After all, local bodies have been given the status of "self-government" which term unfortunately has not been defined in the Constitution. The scope of devolution of powers to local bodies to act as institutions of self-government should be constitutionally defined through appropriate amendments, lest decentralised governance should elude realization indefinitely. The approach should be on the principle of "subsidiarity" which is implicit in the scheme of Constitutional Amendment and letting the State Government confine itself only to matters of policy that cut across the entire domain of local