Developments in Indian Federalism: 2005–2007

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The subject matter of this paper, in general, is federalism in India. Three recent instances of the impact of Article 356—the ‘Emergency Provisions’—are analyzed to study two questions. How is federalism affected when different political parties are in power in the States and at the federal level, and does the current coalition government’s experience help or hinder federalism? As to the first question, the two States of Jharkhand and Bihar, with particular emphasis on the latter, in the aftermath of the 2005 elections are examined. In both cases, it was blatant federal intervention that led to the dismissal of the duly elected governments in these States solely on political considerations and the advice of the Governors who were appointed by the federal government. The third is the case of the State of Uttar Pradesh where in 2006–2007 an attempted use of this Article was thwarted by the Election Commission. As to the second question, the use or the very threat of using Article 356 to dismiss duly elected State governments under the pressure of coalition partners at the Centre does not augur well for constitutional government or coalitions, and certainly not for federalism. In any case, Indian federalism lives up to the moniker as pointed out by C. H. Alexandroviczt that it is sue generis.

Keywords: Federalism; India; State Election; Federal Intervention; Coalition politics

Introduction

Federalism in India is the subject matter of this paper. It examines two important issues. First, how are the ‘Emergency Provisions’ used by the Centre (i.e. the federal or central government) to affect federalism when different, or often opposing, governments are in power at the Centre and the federating units (i.e. the States)? Second, does the prevailing structure of coalition governments help or hinder federalism? In response, the first section of this paper briefly discusses the unique features of Indian federalism. The second section explains the Emergency Powers in...
general while the third deals with the role of Governor. The fourth section examines the politics of Emergency in 2005 in the States of Jharkhand, and more prominently Bihar, while highlighting the 2006 decision of the Supreme Court of India pertaining to the latter. The fifth section dwells on the experience in the State of Uttar Pradesh (UP) in 2006–2007. Some observations and recommendations are made in the sixth and final section.

The Indian Union

As the prominent English constitutional law scholar A. V. Dicey observed (1973: 141), the hallmark of federalism is that a people ‘must desire union, and must not desire unity’. Should they unite altogether, the form of government might as well be designated as a unitary one, as the very *raison d’etre* of a federation becomes obsolete. Thus, two forces operate in a federal form: the federating units desire some form of union while largely retaining their independence. How to balance these two seemingly dichotomous objectives is often a contentious issue.

Article I of the Indian Constitution declares: ‘India ... shall be a Union of States’. The choice of wording was deliberate, given the threat of fissiparous tendencies in the country, and the need to keep it together. India’s population of over one billion today live in 29 States and six Union Territories, speaking as many as 18 languages (in addition to English) and innumerous dialects (some of which do not even have a script). As a multi-religious country with an overwhelming majority of its population being Hindus (over 82%), India has the second largest Muslim congregation in the world (nearly 13%). With such a diversity, India all along suffered from the threat of being pulled apart. Two other developments further exacerbate this. One is the loss of hegemony exercised by the Congress (I) Party (henceforth the Congress) due to the emergence of several regional parties since the 1960s. The second, under the leadership of the Bharatiya Janata Party (BJP), the push to turn India into a Hindu *Raj*, led to the inflation of already existing religious divisions, often times leading to conflagrations (Tummala, 2004a; Sen, 2005). These forces, abetted by self-serving leaders, have tended on one hand to pull the country apart, and on the other, accentuate the issue of keeping the Union together.

Unlike other federal systems, such as the United States, where separate entities (colonies) came together to form a federation for the sake of administrative convenience and economic advantage among other things, in the case of India, a federal entity was carved out of a unitary administrative system that evolved under British rule. Whether India is a federation at all has long been debated by scholars. For example, Paul H. Appleby (1957: 54) thought that India is ‘most federal’ insofar as the Centre is weak and depends upon the States for the execution of the several developmental programs and plan projects. Others called it ‘cooperative federalism’—an ‘amicable union’ (Austin, 1966: 186–187). K. C. Wheare (1953: 28) characterized it as ‘quasi-federal’. C. H. Alexandrovictz (1957: 159) dubbed it to be *sui generis* unique, a type by itself.
The founders of the Indian Constitution were aware of this ambivalence or
uniqueness, as may be seen from the following statement made by one of the major
architects of the Constitution, B. R. Ambedkar:

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 … Constitution (of India) 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 … it is so designed as to make it work as though it was a unitary system.
Once the President issues a Proclamation which he is authorized to do …, the
whole scene can become transformed and the State becomes a unitary State …
Such a power of converting itself into a unitary State no Federation possesses. This
is one point of difference between the Federation proposed in the … Constitution and
all other Federations we know of. (quoted in Shiva Rao, 1968b: 810–811, emphasis
added)

There are several unique features of the Indian Union. Parliament at the Centre can
change the boundaries of any State, or even dismember it altogether, by merging all
or part of it into another State or with parts of other States (Article 3). The executive
power of the States shall be so exercised as to ensure compliance with the laws passed
by Parliament (Article 256), and not to impede or conflict with the executive power
of the Centre (Article 257). Moreover, in pursuit of national interest, Parliament is
empowered to legislate for one or more States for a year at a time, if the Rajya Sabha
(the upper House of Parliament) so passes a motion by a two-thirds majority (Article
249). While all the legislative powers are separated into three different lists—federal,
State and concurrent (with the last category exercisable by both the federal and State
governments)—all residuary powers are left for the Centre (Article 248).

But it is the section of the Constitution dealing with ‘Emergency Provisions’ which
is of particular interest here (as discussed below). The most unparalleled effort to
alter the federal form by using these powers occurred in 1975, when Prime Minister
Indira Gandhi of the Congress set out to amend the Constitution after declaring an
‘internal emergency’ claiming that she wanted to ensure the nation’s internal security
from a ‘conspiracy’ (Tummala, 1994: 50–56). There had indeed been a contest going
on then for some time between the executive and the Supreme Court as the former
felt that the latter derailed some of the efforts of the government in its pursuit of
militant socialism, as well as the right of Parliament to amend the Constitution,
leading to what came to be characterized as ‘judicial blockade’. Indira Gandhi’s efforts
to overcome these hurdles were facilitated by the fact she commanded more than a
two-thirds majority in Parliament. Armed with such a brute majority, and driven by
ideological and personal motivations (her election to the Parliament in 1971 was
challenged, and she was convicted of two trivial counts of electoral fraud), she set out
to rewrite the Constitution through the use of the Amendment process.

The first of such Amendments was the Thirty-Ninth, passed in August 1975,
modifying Articles 71 and 329, which in effect empowered Parliament to entrust to a
forum other than a court, all matters relating to the election of President, Vice-President, Prime Minister and Speaker of Lok Sabha (the lower House of Parliament). In December, she suspended several Fundamental Rights (to speech, assembly, free movement, ownership of property, etc.) guaranteed under Article 19. Among several other Amendments (Twenty-Fourth, Twenty-Fifth and Twenty-Sixth—all in 1971—to neutralize some of the decisions of the Court), the Forty-Second of 1976 was the most sweeping and damaging to normal democratic norms. With over 59 clauses, this Amendment in effect rewrote the Constitution. India was declared a ‘socialist secular’ state (and continues to be so even after the 1990 New Economic Policy of liberalization). National integration was emphasized. Primacy was given to Part IV of the Constitution (the ‘Directive Principles of State Policy’ which thus far were simply guidelines to governments as the very title indicates, and could not be enforced by a court of law) over Part III guaranteeing Fundamental Rights (equality before, and protection under, law, per Article 14; freedom of speech, etc. under Article 19; and the Right to Property under Article 31). Thus, those Fundamental Rights that were thought to be obstacles in pursuit of Part IV were neutralized. A new clause asserting Fundamental Duties of citizens (such as upholding the Constitution, national integrity, etc.) was added.

A more serious provision of this Amendment was meant to curtail the jurisdiction of the Supreme Court and State High Courts. From now on, there would be no limit to the power of Parliament to amend the Constitution, and the Courts were denied the power of judicial review of the same. Even judicial review of ordinary laws was removed from the purview of the lower courts; only the Supreme Court, that too with only a two-thirds majority, could rule on their constitutionality. All this proved what a determined leader in total control of a party which also had a substantial majority in Parliament could do, leading a parliamentary form of democracy through a party dictatorship, and thus towards a dictatorship of that party leader.

As most of these changes were met without much protest from the nation, Indira Gandhi surprised everyone by calling a general election in March 1977. That proved to be her Waterloo; she lost the election and was out of office. The succeeding Janata government set out to correct several of these aberrations. With the passage of the 1977 Forty-Third Amendment, the Supreme Court was restored to its previous position. The 1978 Forty-Fourth Amendment made property an ordinary right (no more a Fundamental Right) which cannot be deprived, save by authority of law. It also deleted the protections accorded to legislation in pursuit of Part IV of the Constitution. Later, in the Minerva Mills decision of 1980, the Supreme Court, reiterating its previous position of 1973, curtailed the unbridled power of Parliament to change the ‘basic character’ of the Constitution through amendments. It also restored the primacy of Part III of the Constitution (Fundamental Rights) over Part IV (Directive Principles). Thus a balance was restored in tune with not only the desires of the founding fathers, but also in consonance with basic democratic norms. But the powers exercised under the Emergency Provisions were left untouched.
The ‘Emergency Provisions’

Federal Constitutions in general, with the notable exception of the United States of America, contain some provision to contend with forces that might pull the nation apart under pressures from the federating units. Asides the trauma of partition of the country, independent India had to contend with myriad fissiparous tendencies (as already seen). To that end, Part XVIII of the Constitution provided the ‘Emergency Provisions’ (Articles 352–360). Strangely, these powers were borrowed from the 1935 Act which was prompted by two considerations during the British rule: first was how to control the Provinces (as they were conferred some autonomy from the Centre), and second, how to carry out administration if the machinery of ministerial government failed in the Provinces.

Under the new Constitution, three types of Emergency are foreseen: due to war, external aggression or armed rebellion (Article 352); because of failure of constitutional machinery in the States (Article 356); and a financial emergency (Article 360). While there was no financial emergency so far, there were four national emergencies (under Article 352): 1962, 1964, 1972 and 1975. The first was due to a war with China, and the second and third because of wars with Pakistan. The fourth was the internal emergency proclaimed by Indira Gandhi, as seen above.

It is, however, Article 356 which is significant in terms of its misuse by several governments leading to an assault on the federal form. Under this Article, if the President of India is ‘satisfied’ on receipt of a ‘report’ from the Governor of a State, ‘or otherwise’, that a State government cannot be run in accordance with the Constitution, he may issue a Proclamation of Emergency. Such a Proclamation shall be laid before each House of Parliament, and will cease to operate at the end of two months unless approved by both Houses before that time. If approved, it will be in operation for six months and may be renewed at six month intervals, but not to exceed a total of three years. Parliament shall confer on the President the powers of the legislature of the State who in turn may delegate the same to any authority of choice (which of course is the Central government). The elected legislative Assembly of the State in question can be dissolved, and the President may suspend the application of any, or all, parts of the Constitution (except those pertaining to the High Court) in the State. In other words, a federal form of government can be transformed into a near unitary one, albeit temporarily, under Article 356.

Given such a critical power of the Centre, one would expect that Article 356 would be used very sparingly and with great caution after considerable deliberation. Indeed, this provision initially was so appropriately invoked to dismiss either unstable or corrupt or incompetent State governments that it led M. V. Pylee (1967: 347) to conclude that ‘in practice, the emergency provisions ... have proved to be ... a protective device for responsible government’. But this has not been the actual experience since. More so of late.

In their judgment in Rameshwar Prasad (2006: 183), the Supreme Court of India quoted the 2002 National Constitutional Review Commission’s study to the effect
that there were a total of 111 cases (of the use of Article 356) since the new Constitution came into force on 26 January 1950. Of those, 13 pertained to Union Territories. Of the remaining 98 cases, 10 fell in to the category of technical applications such as reorganization of States, delay in elections and so on. Among the other 88 occasions, 54 were considered to be appropriate to invoke Article 356, and about 13 were of possible, and 18 clear misuse. The Court went on to say: ‘This analysis shows that number of cases of imposition of President’s rule . . . which could be considered as a misuse for dealing with political problems or considerations irrelevant for the purposes in that article such as maladministration in the State are a little over 20’. While their statistic does not compute (as five cases are not accounted for), it is noteworthy that the Court came to the profound conclusion that ‘in view of the fact that Article 356 represents a giant instrument of constitutional control of one tier of the constitutional structure over the other raises strong misapprehensions’.

It is evident that this process has been politicized and perverted, upsetting the federal principle. Several State governments controlled by a party (or parties) opposed to the party/parties in power at the Centre were unjustly dismissed and Presidential rule imposed, thus arbitrarily taking over the duly elected State governments under virtual Central control (Tummala, 1996). The following assessment of three recent cases further sustains this assessment.

The 2005 Experiences

**Jharkhand**

For a House of 81 members in that State, the post-election party strength was thus: BJP 30; Jharkhand Mukti Morcha (JMM)17; the Congress 9; Rashtriya Janata Dal 7; and independents 18. While indeed no party had an absolute majority, the single largest party was BJP which thus had a right to be called to form the government. Instead, the Governor, Syed Sibte Razi (belonging to the Congress), invited Shibu Soren of JMM. It should be noted that the JMM is a constituent of the Congress-led UPA government at the Centre where Soren was a Cabinet Minister. Also is the fact that Soren is one of those ‘tainted’ Ministers in the Central Cabinet, acquitted in a previous bribery scandal alleging that he was bought to support a previous P. V. Narasimha Rao’s Congress government at the Centre. He was out of the current UPA Cabinet for a short while, only to be taken back. Soren, with such baggage and with only a strength of 17, was not only invited to form the government in the State but also was given 20 days to prove whether he could survive by showing his strength in the Assembly. This was done while the BJP-led NDA coalition (sitting in opposition to the UPA at the Centre) was claiming that they had a majority of 41 seats. In fairness to the Congress it must be stated that its leaders at the Centre were caught red faced, and they tried to distance themselves from the Governor’s invitation to Soren. Not unexpectedly, the BJP leader in Jharkhand, Arjun Munda, went to the Supreme Court challenging Soren’s appointment. The Court advanced the date Soren
should prove his strength to 11 March, instead of 15 March which the Governor set. Seeing the writing on the wall, the Central Cabinet met and advised Soren to step down, which he did on 11 March. The following day, Arjun Munda was sworn in as Chief Minister and showed his strength of 40 (with two abstaining). The Supreme Court quite aptly called the appointment of Soren ‘a total fraud on the Constitution’ (*India Today*, 2005: 12). And Soren remained as Minister for Coal at the Centre until he was convicted in a murder case in 2006, and is serving time in jail.

**Bihar**

This case was more unsettling. But before getting into its details it is worthwhile to set the stage to help the reader. Bihar has the dubious distinction of one of the most lawless States, and also very backward. During 1991–1999 there were as many as 58,565 murders (of which 495 were classified as political), a total of 18,485 kidnappings, 8,377 rapes and 390 massacres (*The Hindu*, 1999). Per capita income in the State amounts to $94.00 a year (while the national average is around $255.00), with a total of 43% of its population living below the poverty line, and a literacy rate of 48% (against the national average of 65%). Between 1992 and 2004, there were 32,600 kidnappings. ‘(A) murder took place every two hours, a rape was committed every six hours and a bank looted every day’ (Biswas, 2005).

For over 15 years, Lalu Prasad Yadav ruled the State first as its Chief Minister, and then by proxy. A backward caste man, Yadav claimed that the State was long ruled by forward caste leaders, and it was time for him and his ilk to hold office. When he was forced to step down after being indicted on bribery charges, which came to be commonly known as the ‘fodder scam’ where over 100 million dollars were alleged to have been siphoned off, he anointed his own wife, Rabri Devi, a political amateur and more or less illiterate, as Chief Minister. When confronted about the corruption charges, he was reported to have observed that he did not do anything untoward that his predecessors (the upper caste lot) did not do, after all. The state of affairs there is best illustrated by the fact that the State Election Commissioner, a former Indian Administrative Service officer, D. P. Maheshwari, first absconded, and then surrendered to police when a non-bailable warrant was issued against him in another multimillion dollar scam pertaining to a road-building project. A former State Cabinet Minister, Illiyas Hussain, a confidant of Yadav, was in fact jailed in this scam, but Yadav (as he became the Central Railway Minister) appointed him as Chairman of Railway Passenger Safety Commission (Tewari, 2005). It was in this State that the second President’s rule fiasco occurred.

Besides Governor Buta Singh (an appointee of the Congress-led UPA government), who played a crucial role, the cast of characters in Bihar has three politicians. As already noted, the first is Yadav, who is currently the Minister for Railways in the Central Cabinet of the UPA coalition led by the Congress. His party, the Rashtriya Janata Dal (RJD), won the single largest number of seats in Bihar with 75 members. The Congress got 10 seats. Even with their support ($75 + 10 = 85$) Yadav’s party was
short of the minimum 122 required to have a majority (out of the total 243) to form a government.

The second is Nitish Kumar, a former Central Cabinet Minister (in the NDA government headed by the BJP). With his Lok Janasakti Party gaining 29 seats, he was part of JD(U) which had a total of 55 seats. With BJP’s 37 seats, making a total of 92 seats, he would have needed at least 30 other supporters to have a majority. There of course could be no alliance between him and Yadav as they have been mortal enemies.

The third is Ram Vilas Paswan of LJP, then holding the Chemicals, Fertilizers and Steel Ministry in the UPA Central Cabinet. He had 29 seats. There were 37 independents as well, whose loyalty is up in the air by the very nature of lack of party affiliation. JD(U) and BJP wanted to back Paswan as Chief Minister, but he demurred. Instead, he declared that he was willing to support a Muslim as Chief Minister, failing which he would support the President’s rule.

Given that no party had the majority, the constitutionally proper thing should have been to either invite the single largest majority party (RJD in this case) and ask it to prove that it could muster enough strength to run the government, or allow some time to enable cobbled together of a coalition government, which has become a norm of late even at the Centre. Noteworthy, however, was the fact no one approached the Governor staking any claim to form a government. While how much time should be provided to enable formation of a government under either of the above scenarios is a matter of debate, the Governor waited no more than a week, and sent letters to the President of India on 6 March 2005, saying the following (Rameshwar Prasad, 2006: 64–65, 67, 69):

I explored all the possibilities and from the facts . . ., I am fully satisfied that no political party or coalition of parties of groups is able to substantiate a claim of majority in the Legislative Assembly, and having explored the alternatives with all the political parties and groups and Independent M.L.As, a situation has emerged in which no political party or groups appear to be able to form a Government commanding a majority in the House . . . This is a case of failure of constitutional machinery . . ., I, therefore, recommend that the present newly constituted Assembly be kept in suspended animation for the present and the President of India is requested to take such appropriate action/decision, as required.

The Central Cabinet decided to invoke the emergency provision and impose President’s rule in the State on 8 March, and Parliament approved the same on the 21st. It is of interest to note that this meeting of the Central Cabinet was not attended by either Yadav or Paswan, both members of the Cabinet. The Governor followed up with another letter on 27 April stating that he was aware of several horse-trading efforts that were being made in an effort to cobble up a coalition, and said:

(The) present situation is fast approaching a scenario wherein if the trend is not arrested immediately, the consequent political instability will further give rise to horse trading being practised by various political parties/groups trying to allure elected MLAs. Consequently it may not be possible to contain the situation without giving the people another opportunity to give their mandate through fresh poll.
And finally, on 21 May, the Governor wrote again to the President thus:

'I am of considered view that ... a situation has arisen in the State wherein it would be desirable in the interests of the State that the Assembly presently kept in suspended animation is dissolved ...'

Accordingly, the UPA government on 23 May decided to dissolve the newly elected Assembly. This decision was made in the middle of the night by the Central Cabinet when in fact there were rumors flying that by next morning Kumar was ready to announce that he would form a government. Allegations soon emerged that Yadav was behind this decision so that he could go to the people in a fresh election that might turn the tide in his party's favor—allegations he promptly denied, not unexpectedly. (This midnight decision was rushed to President Abdul Kalam for his signature while he was in Moscow, Russia. He signed it, but it was reported that he later came to relent the haste.)

This proclamation was challenged, and the Supreme Court was faced with the issues of whether a Legislative Assembly could be dismissed even before it was convened, and was the dissolution of Bihar Assembly constitutional? The petitioners contended that as the new Assembly was not even given its oath of office, it could not be dissolved under the argument that '(W)hat does not exist, cannot be dissolved'. Hence the need to restore status quo ante (i.e. restore the Assembly). The Court argued that '(T)here is no restriction ... stipulating that the power to dissolve the Legislative Assembly can be exercised only after its first meeting' under the governing Article 174 (2) (b). However, on 7 October 2005, the Court issued an interim order saying that the dissolution of the Assembly was indeed unconstitutional. But keeping in view of the fast paced political developments and the Election Commission's order of 3 September 2005 calling for fresh elections for October–November 2005, the Court declined to restore the Assembly. It posted the case for further decision later.

Challenging the petition against the dismissal of the Bihar legislature, the Centre presented to the Court two major arguments: (a) Under Article 361, the President and Governors are immune for their actions while performing their duties, and (b) the Presidential Proclamation imposing an Emergency is a political matter which should not be subjected to judicial review, as even if the Court were to step in, it could not provide 'judicially manageable standards' to govern the President's action. The Court rejected similar arguments in two cases in the past, first in 1977 (in State of Rajasthan) and later in 1994 (in Bommai, which in fact widened the scope of Court intervention in these cases.) In its majority decision, the current Court noted on 24 January 2006 that the Bihar case was the first of its kind raising the question whether it is legal to dissolve an Assembly claiming that some illegal means were being used, thus preventing even any attempt of putting together a coalition of parties to form a government. Its observations in this regard (in Rameshwar Prasad, 2006: paras 140 and 155) deserve to be quoted in detail. In asserting its rights, the Court emphatically said: 'It is open to the Court, in exercise of judicial review, to examine the question whether the Governor's report is based upon relevant material or not;
whether it is made bona fide or not; and whether the facts have been duly verified or not. Having checked the facts, the Court concluded that the Governor did not even give a chance to any political party to come up with a government. Instead, they said, that ‘the action of the Governor was a mere pretence (sic), the real object being to keep away a political party from staking a claim to form the Government’.

The Court also took note of the fact that there were no facts, other than those provided by the Governor, to decide whether there was indeed a possibility or not to form a government. They thus did not mince any words in expressing their disgust. They said:

In the absence of the relevant material much less due verification, the report of the Governor has to be treated as the personal ipse dixit of the Governor. The drastic and extreme action under Article 356 cannot be justified on mere ipse dixit, suspicion, whims and fancies of the Governor. This Court cannot remain a silent spectator watching the subversion of the Constitution. It is to be remembered that this Court is the sentinel on the qui vive. In the facts and circumstances of this case, the Governor may be the main player, but the Council of Ministers should have verified the facts stated in the report of the Governor before hurriedly accepting it as a gospel truth as to what the Governor stated. Clearly, the Governor has misled the Council of Ministers which led to aid and advice being given by the Council of Ministers to the President, leading to the issue of the impugned proclamation.6

Thus the Court ruled that the Proclamation of Emergency in Bihar was unconstitutional, but they did not restore the dismissed Assembly, and new elections ensued, as already noted. The results of the election in the meantime were not only stunning, but were a slap in the face of Governor Buta Singh and the UPA government at the Centre. The JDU leader Nitish Kumar, who was denied the opportunity to form the government previously, came up with a comfortable majority of 142 seats (the JD-U and BJP combine) in the 243 member Assembly. Yadav’s RJD obtained only 65 seats while the LJP got 14 and independents 22. Governor Buta Singh had no alternative but to swallow his pride and invite Kumar on 24 November to form the government, which he did. Kumar soon claimed that he was finding it rather very difficult to undo the damage in the State with many an important administrative positions remaining unfilled, and with no regular Cabinet meetings held during the previous regime headed by Rabri Devi (Ahmed, 2006: 18–19).

To understand the politics of Bihar and to get a grip on this sordid affair, two questions need to be addressed: (i) why did the Governor act as he did? and (ii) why did the government of India decide as it did?

Buta Singh is no novice to politics. He served as Home Minister in Rajiv Gandhi’s Congress government in late 1980s (but later contested the Lok Sabha elections as an independent). Two instances could be cited as to his bona fides, or the lack thereof. The first was when he later became the Communications Minister in the BJP-led NDA coalition government of Atal Behari Vajpayee. In 1998, Singh was targeted by other coalition partners because of his previous involvement in the JMM scandal (cited above pertaining to Soren). They demanded that all ‘tainted’ Ministers be
sacked. Singh was asked to resign accordingly, but having demurred, was sacked from the Cabinet by Prime Minister Vajpayee.

The other was while serving in his current capacity as Governor of Bihar, occupying a palatial official home in Patna, Buta Singh did not choose to vacate the Delhi bungalow which was allotted to him while he was a Cabinet Minister at the Centre. He did not oblige the written request of the Centre sent to him on 8 August 2005 giving a deadline to vacate. (He was not alone in this unprofessional conduct, though; there were as many as 32 others.) The Supreme Court was moved by the government, and the Court in essence was told on 24 October that he be thrown out (along with others). Finally he did vacate the residence on 14 November 2005.

Consequent to the debacle of President’s rule, and the chastising new election results, everyone thought that Governor Buta Singh either would resign on his own, or the government would sack him from his Governor’s position. But adding insult to injury, Singh not only refused to step down but instead declared in Delhi soon after the decision of the Supreme Court that he would go to Patna and take the salute as Governor during the Republic Day parade set for 26 January. And he did take the salute, and resigned as Governor only thereafter. The government of India congratulated itself by saying that the principles of good governance were upheld by his resignation, while Lalu Prasad Yadav commended Singh saying that he set an example for the rest! But the fact remains that the government of India simply could not force him to resign, or for that matter did not know what else to do. Their fear was that he knew too much to be of comfort to the government. Once fired, there is no way of knowing what Singh could do, or how he could be controlled.

Two other factors are also to be noted. For one, the Congress had its plate full with other scandals such as the Volcker report (which led to the forced resignation of the Minister for Foreign Affairs in the oil scandals of Iraq under Saddam Hussein), claims by other opposition Chief Ministers that their phones were being tapped, the continually pestering Bofors scandal and the role of the Italian Quattrochi in that, and so on. Second was the awkward position of Prime Minister Manmohan Singh vis-à-vis Sonia Gandhi, who was elected as the leader of the Congress Parliamentary Party (CPP)—a position which till then legitimately belonged to the Prime Minister. Sonia Gandhi, belonging to the Nehru–Gandhi ‘dynasty’, while declining the position of Prime Minister, continues to be the focus of attention in the Congress. Thus, Prime Minister Manmohan Singh, leading the UPA coalition government, is considered as playing only the second fiddle exercising not much power, but keeping in office subject to the several pulls of coalition politics (Tummala, 2004b: 31–58).

Perhaps the more formidable fact is the presence of Lalu Prasad Yadav in the Central coalition government. For one, he has a strength of 24 RJD members in the current Parliament, and has to be appeased by the UPA government in return for his support. Knowing that, Yadav in fact demanded that he be given the Home Ministry, and having been refused (given the corruption charges the investigation of which could be compromised by a Home Minister), he sulked and went away to Patna, only to be brought in as Minister for Railways. Thus, the need to keep him in
good humor is important for the UPA government; its survival in fact might even be dependent upon him.

Also to be noted is his continued strength in the State of Bihar. For example, the advisor to the Governor, once President’s rule was declared in Bihar, was handpicked by Yadav. It was Arun Pathak, an IAS officer, who served as Chief Secretary of the State of Bihar while Yadav was the Chief Minister, and was considered to be the Chief Minister’s right-hand man. Needless to say, Pathak’s new position clashed with that of the sitting Chief Secretary, G. S. Kang. Governor Buta Singh tried to make peace by dividing the several portfolios between the two. Yet, the important assignments such as home, finance, power and personnel were left to Pathak. Kang could not take this, and simply left his office on leave instead. Consequently, the powers given to Pathak were taken away by the Governor, and Kang returned to his office which substantiates claims of collusion between Yadav and Governor Buta Singh. And the Central Cabinet of Prime Minister Manmohan Singh tended to be a mute spectator, so to speak. In fact, Yadav boasted that Governor Buta Singh was his nominee for that position—a statement which roiled the Parliament (The Hindu, 2005).

Even prior to the 2005 elections, there were suggestions that Yadav was pressing the Congress to persuade Ram Vilas Paswan of LJP to join him and his RJD in an electoral alliance so that Yadav could capture Bihar once again. The Congress of course was not willing to oblige for fear that it might lead to cracks in the UPA coalition, particularly because of the opposition of the Communists who themselves were organizing an anti-RJD and anti-BJP alliance in Bihar. In return for the support of the Congress (in whose Cabinet he was a member), Paswan promised that his party would not field any candidates against the Congress candidates in the ensuing elections in Bihar. His previous condition that he would have no truck with Yadav’s RJD in Bihar unless Yadav supported a Muslim candidate as Chief Minister of State was reiterated, which virtually ruled out any possible rapprochement between Yadav and Paswan. Thus, left for himself, Yadav had to play the Governor to his advantage in Bihar. And that led to the fiasco of imposition of President’s rule, as already seen.

The 2006–2007 Case of Uttar Pradesh (UP)

Thirty-seven members of the UP legislative Assembly belonging to Bahujan Samajwadi Party (BSP) led by Mayawati broke away, and under a new banner of Loktantrik Bahujan Dal (LBD) joined the Samajwadi Party (SP) of Mulayam Singh Yadav on 27 August 2003. That enabled Yadav to form a government, and in return he rewarded 13 (of the 37) with Cabinet Ministries. However, such a cross-over was challenged under the Anti-defection Amendment (Fifty-Second) of 1985. On 14 February 2007 the Supreme Court indeed disqualified the 13 retroactively (from the date of their defection). Feeling triumphant and keeping the forthcoming new elections in view, Mayawati argued that all of the 37 defecting members of her party stood dismissed. She demanded the dismissal of the Yadav government under Article 356 claiming that the constitutional machinery in the State broke down. (Mayawati was in a way able to flex
her political muscle as her BSP has 38 members in the Lok Sabha at the Centre, and they could embarrass the UPA Central government which was to present its budget in Parliament soon.) The BJP joined in the chorus for dismissal.

Governor T. V. Rajeswar recommended that the President take over the UP government. But the Congress found itself on the horns of a major dilemma. For if it supported the dismissal of Yadav, it would be joining hands with the opposition BJP and the BSP. It would also be offending the CPI-M, who are the allies of the UPA government at the Centre but always opposed President’s rule in any case. Paradoxically, the CPI-M itself was in a quandary in that its own partners in UP—the Jan Morcha—were also demanding the dismissal of Yadav.

Adding to the dramatic dilemma, Yadav had already proved his strength in the Assembly (with 223 out of the total 402 members voting with him) on 15 January 2007, thus throwing a gauntlet to the Center and daring them to dismiss him. On top of all this, the Centre had to contend with yet another imponderable. Knowing that the President resented his previous decision to hastily accept the dismissal of the Bihar government (as seen above), they were not sure how the President would react to a recommendation to dismiss Yadav now.

Moreover, it should be noted that the dismissal of either individual Ministers or legislators by the Supreme Court has no constitutional relevance to the dismissal of the government itself by imposing President’s rule. Even if Yadav were to lose majority in the Assembly—which he did not—it is for the Assembly to sort out who should be the next Chief Minister. Thus, who should run the State government, and whether such a government should survive are matters for the State legislature to decide. But the politics of Article 356 often ignores this constitutional imperative. And those who kept demanding the dismissal continued to raise the bogey that Yadav would indulge in a great deal of horse-trading to retain his power and that would be immoral, as if wooing support by hook or crook is anti-politics and somehow a rarity. Given all the threats being administered, Yadav’s SP (which has 42 members in the Lok Sabha and 16 in the Rajya Sabha) decided in a symbolic gesture to withdraw its support to the UPA government at the Centre.⁸

As Yadav was poised to prove his strength in the Assembly once again on 26 February 2007, all the members of BSP resigned from the Assembly in protest. Other parties against Yadav decided to boycott the legislative session with the fond hope of creating yet another political crisis which could lead to the imposition of President’s rule. There is yet another curious feature in that the five year term of the Assembly would come to an end on the 25th, and the Governor was supposed to have alerted the Centre that any Assembly session on the 26th could thus be illegal. But the session was held on the 26th, and Yadav won the confidence of the Assembly by a voice vote. Thus, the Congress at the Centre was left in a quandary. Into this dismal situation, the Election Commission stepped in as a savior when it announced that new elections to the UP legislative Assembly would be held, starting on 7 April. And in a rather surprising development, the BSP got an absolute majority in the new elections, and Mayawati was sworn in as the Chief Minister on 13 May 2007.
Governor Rajeswar opened the new Assembly session with a speech wherein he declared that the previous Yadav government was after all unconstitutional all along as he indulged in splitting parties for his own advantage, and in fact there was anarchy all over the State. No doubt the Governor’s speech is always an artifact of the government in power. But he chose to express the feelings of the current Chief Minister Mayawati, forgetting that for over four years, he after all was keeping office in a government which he now deemed unconstitutional! This leads one to wonder whether he was upholding his constitutional duties if indeed he was convinced of the *mala fide* of the government! Or, is it he was trading in his own integrity by just mouthing the words of the incumbent Chief Minister to just keep himself in office? Either way, this Governor’s position, as has been the case of the others above, comes under the searchlight while acting as the lynchpin between the Centre and the States, raising two important questions: what was the intended role of a Governor, and what did it turn out to be?

**The Governor**

While drafting the Constitution, there was little doubt as to whether there was any need to have the position of Governor at the States level. It was agreed that there would be a President at the Union level, modeled after the Crown England, holding what Walter Bagehot in his classic work called the ‘dignified’ part as head of State, carrying out ceremonial functions and not exercise any substantive powers. Thus, each State government came to be headed by a Governor, with a popularly elected Chief Minister as the chief executive.

There, however, was a long discussion on how to fill that position (Shiva Rao, 1968a: 68–78; 1968b: 382–407). The initial choice was whether the Governor should be elected, or alternatively when the President of India were to be given the power to appoint the Governor, should he pick a candidate from a panel (of four, or two, selected by individual State Legislatures). Both were rejected. It was reasoned that the election of Governor could lead to friction between that office and that of the elected Chief Minister of the State. Or worse, they both might collude with each other. Moreover, an elected Governor would also infringe upon the principle of Ministerial responsibility which is the hallmark of parliamentary democracy. Contrarily, selection from a panel might enable the President to pick a candidate of his/her own party from the given panel which might pit the State government against the Centre. Thus, the Special Committee advising on the matter suggested that the President should be given the power to directly appoint the Governor. Hence the choice of the word ‘appointment’ rather than ‘elect’. It, however, certainly was never meant to be an office of patronage.

The logic of ‘appointment’ and the fond hope of the founders were summed up by Alladi Krishnaswamy Ayyar, a member of the Constituent Assembly, thus: ‘If the choice of the Governor was left to the President and his Cabinet, they might choose a person of undoubted ability and position in public life who at the same time had not
been mixed up in provincial (State) party struggles and factions; a person who was likely to act as ‘a friend and a mediator’ of the Cabinet and help in the smooth working of the Cabinet Government’ (Shiva Rao, 1968b: 395).

There was also some discussion on whether to have a Deputy Governor, or a temporary Governor, to act either in the absence or incapacity of a regular Governor. It was suggested that the Speaker of the House or the Chief Justice could be the Deputy Governor. This too was rejected as it was felt that the power of ‘appointment’ would be enough in that the President can act quickly in any contingency.

As to the tenure of the Governor and the powers to be conferred, it was decided that the Governor will hold office at the pleasure of the President, although the normal term would be for a period of five years with a provision for reappointment. What with the past experience of the misuse of special powers conferred on the Governors under the 1935 Act fresh on everyone’s mind, the general mood among members of the Constituent Assembly was not to confer any ‘special responsibilities’ on the Governor. Moreover, it was felt that conferring any special powers would diminish Ministerial responsibility and encroach upon the power of the Legislature itself. Hence the decision that the Governor would have no special responsibilities/powers beyond the understanding that (s)he would always act on the advice of the Council of Ministers (just as the President would at the Centre). Sardar Patel (later, the first Home Minister of independent India) clarified that any special powers left for the Governor ‘would be the power to report to the Union President when a grave emergency arose threatening menace to peace and tranquility, and the power to summon and dissolve the Provincial Legislature’ (Shiva Rao, 1968b: 389).

To elaborate on what has already been explained in Section III above with regard to the Emergency Powers, the Governor’s report would be the normal basis for the actions of the President (which in essence is the action of the government at the Centre, given the President’s nominal powers; there was not a single occasion when a Central government recommended, or the President invoked Article 356 on his own or by obtaining information from sources other than the Governor). The assessment of the *bona fides* of such a report is left to the government at the Centre before it recommends to the President a Proclamation of Emergency.

A Governor serves both the Centre which appointed him/her, and also the State to which the appointment is made, playing three different roles—as constitutional head of State, a link between the Centre and the State, and as an agent of the Centre with special responsibilities in specific areas in normal times (Article 239), and in other areas in abnormal times (Article 356).

Given such importance for the position, it was believed that only eminent persons will be appointed as Governors. There was also the fond hope that the concerned State Chief Minister would be consulted while making the appointment of Governor. Practical experience, however, has been contrary to the high-minded norms of the founding parents and an abrogation of constitutional principles. In fact the Governor’s position in general tended to be a high profile job often used either to rehabilitate some leaders, or just used as a patronage position to appease certain
individuals, or otherwise keep them from causing trouble. And on occasion, some
Chief Ministers were surprised to come to know of the appointment only after an
official announcement by the Center, or even worse through the media. Conse-
quentially, instead of behaving as a non-partisan ceremonial head of the State, some
Governors have been behaving as agents of the Centre and even those of some
powerful political bosses at times, thus turning the Raj Bhavans (their official
residences) into party offices.

As far back as in 1979 (in Hargovind Panth: paras 463–464), the Supreme Court
had disabused this deterioration by saying: ‘It is no doubt true that the Governor is
appointed by the President which means in effect and substance the government of
India, but that is only a mode of appointment and it does not make the Governor an
employee or servant of the government of India’. Further, the Governor ‘is not
amenable to the directions of the government of India, nor is (s)he accountable to
them for the manner in which he carries out his functions and duties. He is an
independent constitutional office which is not subject to the control of the
Government of India’.

It may, however, also be noted that when V. P. Singh became the Prime Minister, in
1989 he sought the resignation of 18 of the incumbent Governors appointed by the
previous Congress government so that he could pick and choose his own candidates.
That in effect reduced the position of the Governor to a patronage appointment; at least
several Governors came to believe that they somehow need to appease, or repay, the
benevolence of the Center, as may be seen from the above experience in the three States.

Conclusion

That the Emergency Powers invested with the President (thus with the Centre) are
necessary to counter any fissiparous tendencies which might lead to unconstitutional
and inefficient administration in the States is undeniable. Equally indisputable is the
fact that though these powers were initially used with good reason, the story has been
altogether different what with the Governors acting in ways far different from what
was originally presumed, or at least hoped, to be their role. The above analysis shows
that the original intent of federalism is being altered to suit the political needs of the
government in power at the Centre. Regional parties who are coalition partners at the
Centre had not shied away from seizing their share of political mileage just as their
leaders tried to exact revenge in their respective States. In this process, Governors
became partisan players.

When a Governor presents the ‘report’ advising President’s rule, it is for the Prime
Minister and his government to verify the presented facts. While in the case of
Jharkhand the Central government was caught unawares, in the case of Bihar, the
government did not even pretend to check the facts. Instead, they accepted the
Governor’s recommendation at its face value, even leaving the impression that at least
some in the government are party to play of politics. In fact, it was the Supreme
Court which pointed out that the Governor misled the government at the Centre. Yet,
it did not indict the Central government which after all had advised the President to invoke the Emergency Provisions. Similarly, on hearing the first Supreme Court decision in July 2005, the Prime Minister declared that he could not disown his responsibility, but he did not dismiss the Governor. Nor did he himself resign. Also noteworthy is the fact that President Kalam, who tended to be an activist President, did not question the decision of the government of India, but endorsed it. In the case of UP, the baffling situation was saved by the Election Commission’s decision to conduct new polls, as scheduled.

Some of the arguments put forward before the Court by the Central government with regards the Bihar case yield some interesting perspectives. Attorney General Milon K. Banerji argued before the Court that any judicial review, if it cannot be eliminated, must be extremely limited. He also contended that Parliament in itself is enough of a control because without its approval no Presidential proclamation could become effective. But he had missed the point that parliamentary majorities themselves are subject to manipulation in a coalition setting, and in case of a dominant party, as was the case of the Congress at one time, as seen above, there could be little effective parliamentary control.

Banerji further argued that the Governor was apprehensive about horse-trading. The two dissenting Justices (it was a 3–2 majority decision) indeed thought that the Governor has the duty to uphold the democratic principles and prevent immoral or unethical horse-trading. Idealistic as this position is, this would not have been the first occasion of horse-trading. All parties used such practices, often very effectively, in forming governments and seeing them fall as well. Moreover, neither is there any requirement, constitutionally or legally, that the Governor should prevent, or pre-empt, such practice! Soli Sorabjee, arguing for the petitioners, put it succinctly:

There is no power in the Constitution which empowers the Governor to uphold ‘public morality’ and ‘ethical values’ according to his subjective assessment. Morality and ethical values have no fixed content. The conferral of such power . . . is not countenanced by the Constitution and in reality would change the office of the Governor into that of a moral ombudsman. (Rameshwar Prasad, 2006: para 17: 4)

Gopal Subramanium, also appearing for the Centre, argued: ‘By virtue of Article 164 of the Constitution (which allows the Governor to appoint the Chief Minister and other members of the Cabinet), the Governor is enjoined to discover whether the formation commands a majority and whether it can provide a stable government’ (Rameshwar Prasad, 2006: 57). Such logic leads one to the untenable finding that it must then be the duty of the Governor to dismiss an Assembly which has not produced a clear majority, and also tell the electorate that they may elect a majority government by going to polls anew!

Returning to the debates of the Constitutional founding parents, there indeed was a long discussion about the possibility of incursions into the autonomy of States by using these emergency powers. H. V. Kamath in particular opposed the provision
allowing the President to declare an emergency having been satisfied ‘otherwise’ beyond the report of the Governor, as it might lead to some mischief. Others thought that provincial autonomy would be reduced to a farce with the use of these provisions (Shiva Rao, 1968: 813–814).

Contrary to the observation made by Kamath, the Supreme Court in its Bommai decision (cited above), while laying down several criteria for a proper Proclamation of Emergency, argued that the President ought not to solely depend upon the Governor’s ‘report’ as it might be tainted (as has been the fact as seen above), but satisfy himself ‘otherwise’ as well, implying that the President ought to take into consideration facts other than what the Governor provides although they did not (as the Constitution itself did not) explain what those other sources could be. They also laid down that when there is a majority government in place, imposition of President’s rule on account of maladministration would be out of the purview of Article 356. Contrarily, when a State government in fact tries to subvert the Constitution while professing that they are acting in consonance within the Constitution, the President can declare an Emergency. Obviously neither of the suggestions made much difference in practice. In fact, it is apparent that the Governors’ reports, though *mala fide* to further partisan interests, were largely taken by the President on their face value. Given that, it is time to return to the two basic issues pertaining to the Emergency Powers: what role should the Governor play in the State, and do coalition governments help or hinder federalism?

In answer to the first, it should be noted that sound conventions in making the appointments of Governors and controlling their behavior once in office have not been developed. As a remedy, numerous Committees made recommendations *ad infinitum*, all of which have been honored thus far in the breach. Yet, the following are some important pointers to ponder.

1. The Sarkaria Commission in its report of 1988 dealt with Articles 352–360, and made 12 recommendations of which 11 were regarding Article 356. (The other was concerned with Article 355.) There was a specific recommendation towards amending the Constitution according protection to States from political interference in their self-governance. In case of political breakdown, the State was to be given an occasion for an explanation and redress of the situation, unless the situation is such that it threatens national security, or is not in the interest of the State, or for some other reason necessitating urgent action. Whether a State government lost its credibility can be decided only on the floor of that State Assembly. The Governor’s report should be a ‘speaking document’, containing a precise and clear statement of all material facts and grounds, on the basis of which the President may satisfy himself whether Article 356 be invoked. The Governor must be an eminent person in some walk of life; someone from outside the state; detached from local politics of the state; and had not taken too great a part in politics generally, particularly in the recent past. And the National Commission to Review the Working of the Constitution reiterated that the Chief Minister be consulted while appointing and removing the Governor.
2. During the founding parents’ debates, Hriday Nath Kunzru suggested that ‘(I)f responsible government (in the State) is to be maintained, then the electors must be made to feel that the power to apply the proper remedy when misgovernment occurs rests with them. They should know that it depends upon them to choose new representatives who will be more capable of acting in accordance with their best interests’ (Shiva Rao, 1968b: 814). In other words, an immediate poll could be conducted which could actually be a referendum on the incumbent government. The decision thus would be on the shoulders of the people which is what democracy is.

3. In the extreme, two suggestions have been made. One is to delete Article 356 altogether, and the other to abolish the office of the Governor. While no one denies the misuse of Article 356, it is difficult to argue for its deletion so long as fissiparous tendencies in the country continue, which are only being exacerbated with the rise of regional parties. The Sarkaria Commission in 1988 recommended its retention, but wanted that the Article be used only as a matter of last resort—a position that was reiterated by others.

The other is whether there is a need for the office of Governor at all. Not necessarily. Unless one is stuck with the original idea of a head of State, nothing is last if the Constitution is amended to abolish the position altogether. It would save not only many of the troubles but also a great deal of tax-payers’ money. Most of the ceremonial functions could be given either to the Chief Minister or the Chief Justice of the High Court. The only naughty question that needs to be addressed then is what could be done when indeed there is a breakdown of Constitutional machinery, or for that matter when no party is able to form a government and all remain squabbling? In this case, the power to mediate and/or ‘report’ to the President could be conferred on the Chief Justice of the State, or a panel of three Judges of the High Court, with the fond hope they might behave beyond reproach. If they were to turn out to be as corrupt as the political crowd, or even excel them, then the country itself is in serious trouble.

4. If indeed the Governor’s position is to continue, then something drastic needs to be done to correct (a) poor appointments and (b) the partisan behavior of those appointed. Any number of admonishments have been made urging the governments in power at the Centre to abide by the original intent of appointing only exceptional personalities who could act neutrally, and certainly devoid of partisanship. The responsibility for the misbehavior of Governors thus should rest entirely on the shoulders of the incumbent Central government. Indeed, this poses the question whether the governments were responsible and whether they were the very cause of all dysfunctions. So, ways shall be devised beyond the no-confidence vote provision, whereby such a government be held responsible for bad appointments and shoddy behavior of such an appointed Governor.

Similarly, all Governors should be educated at the time of their appointment on the constitutional prescriptions and mores of good governance with concomitant punishment for failure to follow them such as summary dismissal, and with a bar on holding any public position for some time to come.
5. To ensure transparency in the process, the ‘report’ of the Governor should be made public no sooner than it was presented, and the President’s decision be made only after a given interval (during which time the care-taker government could operate in the State, which is nothing unusual anyway) to provide an occasion to deliberate the issue.

6. The hands of the President may also be strengthened. As it is, the President can refer the recommendation back to the government once, but when presented the second time, the President has no choice but to accept it (under Article 111). This could be altered to the effect the President could obtain a judicial opinion, as he could do in other cases (Article 143).

As to the second question of the contribution of coalition governments towards federalism in India, three factors need to be considered. (i) No student of a parliamentary form of democracy could object to the growth in political parties. The only pertinent questions then are how many parties, and on what basis are they to be formed? The hope always is that political parties are formed on the basis of some ideology and a particular political platform. But in the case of India, once the big-tent parties such as the Congress have declined, parties have proliferated, some to champion regional interests, and the others just by, and around, disgruntled leaders, who have no more than their own personal agendas. While regional parties may have indeed served respective regions, the national interest itself has been relegated to the back-burner as national leaders are replaced by ‘pulp leaders’.

Consequently, (ii) the phenomenon of coalition governments seem to be here to stay. The above analysis shows how leaders of regional parties, who are also members of coalition governments, have not shied away from using their own position at the Centre to advance their personal, and incidentally the regional interests, through the use of Emergency Powers. The magnitude of the problem can be seen from the myriad calls made on the basis of all sundry reasons, on a daily basis, for the use of Article 356 to dismiss an incumbent State government. This not only cheapens the very important Constitutional provisions but also subverts them.

No doubt, coalition governments by their very nature are a deterrent to a heavy-handed party dictatorship which might actually degenerate into a Prime Minister’s dictatorship when there is a dominant majority, as had happened during Prime Minister Indira Gandhi’s 1975 Emergency. On the other hand, the coalition partners on several occasions did take the government at the Centre more or less hostage, by bringing them down when the coalition partners’ demands are not met.

(iii) A new more recent phenomenon in this context is important to note. The Communists support the current UPA coalition government of Prime Minister Manmohan Singh from outside without joining the government as such. Prime Minister Singh knows full well how important their support is, and the Communists know it as well. While fighting against the Congress in State elections in West Bengal and Kerala, the same Communists not only support the Congress coalition at the Centre but also extract their pound of flesh in return in terms of either pushing its own policy preferences, or in particular prevent the government’s policy initiatives as
may be seen from the obstruction of some economic reforms. The same may be said of some other parties. Thus some of these parties are having it both ways, influencing policymaking and governance without taking responsibility.

Given the above, it is time to assess the party system in India. While it is not clear as to how many parties actually serve well for the functioning of a parliamentary democracy, it appears that the current party status in India and its concomitant coalition governments need a fresh and deeper look to preserve federalism. Not surprisingly, President Abdul Kalam himself came out talking of a two-party system, rather than the personalized multi-party system as it is now.

Unique as it has been, how Indian federalism further evolves under these circumstances is something that is yet to be seen. All this might appear to be a trivial semantic discussion for those who are content with the utilitarian thought that India is getting to be an economic powerhouse, and may even be a nuclear super-power eventually. But, for the constitutionalists, the issues raised here are of paramount concern begging for correction.

Notes

[1] Although Delhi is recognized as a Union Territory in the Eighth Schedule of the Constitution, it nonetheless enjoys the special status of a State, without being designated as such.

[2] An argument could possibly be made that federalism in India started with the introduction of ‘dyarachy’ (dual government) in 1919 which gave some independent powers to the Provincial governments (as States were known then). But those powers were only nominal, with all the important powers retained by the Centre whose control over the Provinces did not diminish.

[3] Minerva Mills Ltd. v. Union of India AIR 1980 SC 1789. The controversy over the power of Parliament to amend the Constitution is not new. In I. C. Golaknath v. Punjab (AIR 1967, SC 1643), the Supreme Court denied Parliament the power of amendment so as to subordinate Part III to Part IV of the Constitution. In 1973, in Keshavananda Bharati v. Kerala (AIR 1973 SC 1461), the Twenty-Fourth Amendment which gave Parliament the power to amend the Constitution was challenged. The Court here ruled that the Golaknath decision prohibiting Parliament from amending the Constitution was wrong. However, the Court also stipulated that Parliament cannot destroy the ‘basic structure’ of the Constitution (without defining what constitutes ‘basic structure’). In Waman Rao v. Union of India (AIR 1981 SC 271, para 15, p. 278), the Court clarified by saying that whether the ‘basic structure’ of the Constitution is destroyed in a particular case depended upon ‘which Article of Part III is in issue and whether what is withdrawn is quintessential to the basic structure of the Constitution’.

[4] Secession is not allowed under the American Constitution. In its judgment in Texas v. White, 7 Wallace 700 19 L. Ed. 227 (1869), the Supreme Court of the United States laid down that ‘the Constitution was ordained “to form a more perfect Union” and the Constitution looks to an indestructible Union, composed of indestructible states’.

[5] The implied statement that if the upper caste leaders could loot the State in the past, it is now the turn of the lower caste leaders (Weiner, 2001: 195).

This measure was meant to control the defections of individual legislators from a party under whose banner they were elected into another party when the latter lured them away with offers of positions such as Cabinet Ministries, etc. It is, however, acceptable when a third of the members of the party were to change their party affiliation.

Neither Yadav’s withdrawal of support, nor the threat by Myawai to do the same, would have led to the fall of the UPA government at the Centre as they have the support of nearly 300 others member (out of a total of 545) in the Lok Sabha.

As opposed to the ceremonial ‘dignified’ position, the Prime Minister of England (in his/her Cabinet) holds the ‘efficient’ part, exercising all substantive executive powers in the country (see Bagehot, 2001: 10–11).

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