

CHAPTER – V

CHANGING ROLE OF PRIME MINISTER IN INDIAN

COALITION POLITICS

This chapter dwells upon the Union executive and its role in parliamentary and federal governance in India. A modern executive consists of its political and bureaucratic arms. Since the Indian Constitution seeks to combine parliamentary as well as federal principles of Government, the executive here has roles both in parliamentary and federal components of the Government.

Under the Indian Constitution, the political executive is legally and democratically constituted and is subject to legislative control and judicial review. It would be largely untenable to sustain any argument of executive prerogative or privilege in the monarchical tradition in independent India. For the legal transfer of power in India notwithstanding, the sovereign Constituent Assembly to which the British Parliament bequeathed ultimate authority resolved to begin the Preamble with the ringing declaration of Independence with the words “We the people of India.” As the source of political sovereignty. According to Article 53 of the Constitution, executive power is “vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution”. Dr. Rajendra Prasad, the first two-term President, and Zail Singh, the seventh President, tried to suggest a broader discretionary interpretation of President’s power, but as discussed later in some detail, neither their contentions nor a broader construction of conventions of the Constitution with regard to Cabinet advice to

the President were validated by practice. The Attorney Generals and incumbent Prime Ministers through differently.¹

President Radhakrishnan, Fakhruddin Ali Ahmad (even in declaration of the national emergency with no questions asked in 1975 by Indira Gandhi) and R. Venkataraman, who succeeded Sing, also acted out a strictly nominal or constitutional role, although the latter left an ambiguous opinion in his autobiography saying both sides are not entirely immune to assailing or dissenting interpretations. Radhakrishnan was never in doubt about the nature of President's executive authority. He always showed his formal addresses to his Prime Ministers, except on one occasion when Lal Bahadur Shastri was not easily at hand. Shastri subsequently murmured about it.² Radhakrishnan was quite forthright in his informal public comments on the policies or performance of the Nehru Government, particularly after India's debacle in the China war. "Radhakrishnan's reading of the Constitution was that there should never be a vacancy in the office of Prime Minister, with the corollary that the President should never directly exercise executive authority".³

The President of India is, thus, the head of the federal State in the parliamentary mode, i.e., he acts as a parliamentary federal functionary on the Union Cabinet's advice. However, in certain situations he/she may initially act in personal discretion, i.e., when the party system fails to yield a majority party Government after an election or subsequent to it due to unforeseen contingencies. The written text of the Constitution itself is silent on the appointment of the Prime Minister though it binds the President to the Prime Minister's advice in the appointment of other Ministers who must be members of Parliament or must become one in six months thence. However, the

Constitution and convention and practical commonsense dictate that the Cabinet thus appointed must be able to muster majority in the Lok Sabha.

In the event of death of three Prime Ministers in harness - Nehru's in 1964, Shastri's in 1966, and Indira Gandhi's in 1984 Presidents Radhakrishnan and Zail Singh conducted the Prime Ministerial succession in different manners. On the two former occasions, Radhakrishnan immediately sworn in the senior most Cabinet colleagues of the deceased Prime Ministers pending the election of the regular leader of the Congress parliamentary party. The interim Prime Minister on both these occasions was Gulzarilal Nanda, while the party's final choices were Lal Bahadur Shastri and Indira Gandhi, respectively. In these instances, the President had no Prime Minister to advise him and had to decide on his own about caretaker Prime Minister creating constitutional precedents.⁴

However, these precedents could not develop into a convention. For, in the event of Indira Gandhi's assassination President Zail Singh ignored the senior most Cabinet Minister Pranab Mukherji and sworn in Rajiv Gandhi. Critics saw it as the anointing of dynasty's heir apparent. Zail Singh remarks in his autobiography: "My first thought about Mrs. Gandhi's successor was riveted on Rajiv Gandhi. Apart from that I had great respect for Pandit Jawaharlal Nehru and affectionate feelings for Mrs. Gandhi, I wanted to appoint some one, who would be acceptable to the majority party in the Lok Sabha. One who could properly lead to the country at that particular juncture".⁵ Arun Nehru's remembrance of the fateful day from close quarters is: "There was no controversy on the 'succession' or 'swearing-in' issue. Few leaders were available in the initial hours when crucial decisions were to be taken . I did not

discuss the issue of leadership with anyone in particular. Remember we had no cell phones in 1984 and nor was there any time to consult the CWC [Congress Working Committee] members. Rajiv Gandhi was the natural and correct choice and everyone endorsed this as time went by and to my knowledge there was no dissension. There was discussion on the 'modalities' to be adopted and these were later used to settle scores and the person to suffer in particular was Pranab Mukherjee".⁶

The fact remains that the precedents set by Radhakrishnan were more consistent with constitutional prosperity than the one set by Zail Singh. Radhakrishnan's foregoing precedents were not followed by Zail Singh, but the idea of a caretaker Government caught on and has become a constitutional convention and a standard practice after the announcement of the election schedule by the Election Commission of India. During this period pending the formation of the post-poll Government, the transitional Government is expected to carry on only day-to-day decisions and desist from making policy decisions or announcing any new schemes of expenditure. However, the Bharatiya Janata Party-led coalition Government headed by Atal Behari Vajpayee was faced with the contingency of the Kargil war in 1999 during its caretaking period in the run-up to the Lok Sabha election later that year. It had to take vital policy decisions going beyond routine day-to-day administration.

In terms of Indian constitutional law, executive power is the residue of governmental functions that are neither legislative nor judicial.⁷ In certain exigencies, it can be used prior to legislative sanction subject to the Constitution.⁸ The Constitution, in broad terms, includes at least three limitations on the Union executive power : separation of powers between the

three classic organs of Government, albeit within the parliamentary crucible which in practice fuses legislative and executive powers; federal division of powers between the Union and States; and fundamental rights of citizens. All these limitations flow from the Constitution, case laws, and conventions of the Constitution.

The Federal Executive in India is partly elected and partly appointed. It comprises the President, the Prime Minister and his Cabinet, and the bureaucracy. The relation between the President and the Prime Minister was, until the 44th Amendment in 1978, largely governed by convention (rather than the codified constitutional text), according to which the former is nominal head of the State, while the latter is the real head of the Government. The 44th Amendment changed this convention into an explicit provision in the written text of the Constitution, whereby the President must ultimately go by Cabinet advice, subject to only one request for reconsideration. This development largely rendered infructuous the argument of Rajendra Prasad, the first two term President, that the Indian head of the State was not analogous to the British Crown. For, he/she was elected, impeachable, and a federal functionary, neither of which was true of the British monarch.⁹ The advice rendered by M.C. Setalvad, the first Attorney General of India, to Rajendra Prasad regarding the scope of his powers remains as valid today as when it was offered in the 1950's.

“In this interview which I had with him I pointed out to him what I thought was the constitutional position of the President. He could, like the British monarch, try and persuade his Ministers, and persuasion coming from so high a quarter would undoubtedly carry great influence as it had done many a time

in British Constitutional history. But if such persuasion failed, I told him that he was bound to act according to the advice of his Ministers".¹⁰

By writing this conventional law into the text of the Constitution by the 44th Amendment, India joined the company of the Irish Republic, whose Constitution has a similar provision, though the Irish Constitution is other wise patterned after the Westminster model.

This precaution did not, however, settle all matters of relations between the President and the Prime Minister. Fresh questions cropped up during the presidencies of Zail Singh and his successor R. Venkataraman. Zail Singh complained of denial of power and opportunities to be briefed by Prime Minister Rajiv Gandhi in person as well as to be provided with the Thakkar Commission Report on Indira Gandhi's assassination that he requisitioned. Singh contended that he was entitled to these courtesies/ rights under Article 78 which enjoins upon the Prime Minister to keep the President informed about the affairs of the State.¹¹

Later, when the Bofors arms deal scandal involving the Rajiv Gandhi Government surfaced, Singh and his successor Venkataraman were consecutively approached to dismiss or sanction prosecution against the Prime Minister on corruption charges.¹² Neither actually took this drastic step which, to our mind, was correct. For, going by strictly legal and constitutional norms, the President should in such cases neither short circuit judicial procedure nor circumvent a parliamentary majority. However, writing about is dealing with this question, Venkataraman in his memoirs records that the attorney General veered to the position that the Supreme Court's ruling in Karunanidhi's case

would suggest that the Chief Minister (and therefore a Prime Minister) might be deemed to be a public servant under the Anti-Corruption Act, 1986, and the Governor (and therefore the President) could remove a Chief Minister (and therefore a Prime Minister) for proven charges of corruption.¹³ Besides, he also argued that in terms of the R.S. Naik case, the President or the Governor should decide independently of the Council of Ministers in sanctioning such prosecution. However, both the president and the Attorney General thought that both “these positions could be assailed in appropriate proceedings”.¹⁴

The post-Independence Constitution of India (1950), embodying the discursive decision in the Constituent Assembly in favour of parliamentary Cabinet system, provided for “a Council of Ministers with the Prime Minister at its head to aid and advise the President” whom the 44th Amendment obliged to go by his Council’s advice subject to a presidential request for reconsideration (Article 74, Clause 1). In view of the constitutionally sensitive relationship between the President and the Council of Minister, the Constitution also stipulates: “The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court” (Article 74, Clause 2). As in another context where the Constitution makers preferred to use the term “Union” to federation, in this context too the term “Council of Ministers” was preferred to Cabinet. This presumably reflected a desire to make a new beginning in India without being unduly encumbered by the deadwoods of histories of other nations, even though the debates and committee papers of the Constituent Assembly leave no one in doubt that the constitutional systems of Westminster and the early Commonwealth parliamentary systems were in reference. The term Cabinet occurs in the Rules

of Business of the council framed under Article 77(3) of the Constitution. The Council as a body never meets. The Cabinet caucus and its committees frequently meet and decide in the name of the Council.

An idea about the dimly defined ways of the role of the Prime Minister and his ministerial colleagues can be found in the exchange of classic notes between Nehru and Patel through Mahatma Gandhi at a time of grave misunderstanding in the relations between the first Prime Minister and Deputy Prime Minister. Nehru's note in part read:

As I conceive it, the Prime Minister's role is, and should be, an important role. He is not only figurehead but a person who should be more responsible than anyone else for the general trend of policy and for the co-ordination of the work of various Government departments. The final authority necessarily is the Cabinet itself. But in the type of democratic set-up we have adopted, the Prime Minister is supposed to play an outstanding role. Otherwise there will be no cohesion in the cabinet and the Government and disruptive tendencies will be at work. If this view is correct, then the PM should have full freedom to act when and how he choose, though of course such an action must not be an undue interference with local authorities who are immediately responsible.¹⁵

IN REPLY, PATEL'S NOT IN PART READ:

The Prime Minister position, according to my conception, is certainly preeminent : he is first among equals. But he has no overriding powers over his colleagues; if he had any, a Cabinet and Cabinet responsibility would be superfluous. In my view the Prime Minister, as the leader of the party and the head of the whole administration is inevitably concerned that Cabinet decisions

are effective and that there is no conflict between one Ministry and another. But the entire responsibility for implementing the policy of Government rests upon the Ministers and Ministers under them which are concerned with the subject matter of the cabinet decisions. He had accordingly the right to ask for information from Ministers concerned as well as the right to consult and advise on the lines of policy to be adopted and even the manner in which the policy is to be implemented. But the responsibility for the implementation of the policy must be that of the Ministry concerned and the Minister in charge, and the Prime Minister should influence action by way of consultation with and advice to the Minister.¹⁶

Both Nehru and Patel were to see Gandhi on this matter, but before the meeting could take place, Gandhi was assassinated. But the two stalwarts did sink their differences in the trail of the tragic event and worked jointly to guide the destiny of the stunned nation. In any event, what this exchange of notes makes suggestively clear is that the relations between the Prime Minister and powerful Cabinet colleagues cannot be precisely laid down in simple formulas for all times and personalities. This is so for the simple reason that the nature of these equations is contingent on such objective conditions as the factional balance of forces in the ruling party or coalition and such subjective factors as personalities of the principal actors involved.

Except for the bare outlines of the institutions of the Prime Minister and his Cabinet provided in the written text of the Constitution, the major aspects of the political executive in India are still left to the conventions or rules of business to be framed for its smooth functioning. The category of ministers, the practice of caretaker Government, the office of Deputy Prime Minister, if any,

are also matters of precedents or conventions. Arguably, these conventions can be reconstructed on the basis of the Constituent Assembly debates, precedents and conventions of India and those of the old Common wealth applicable to Indian. In case of doubt, the matter is finally determinable by the judiciary. Conventions, amendments, and judicial interpretations are the principal ways through which the Constitution has grown.

The Connecting link between the constitutional text and convention can be found in Article 75(2) and (3) that provides, with apparent contradiction, that “Ministers shall hold office during the pleasure of the President” and “The Council of Ministers shall be collectively responsible to the House of the People.” The apparent contradiction can be removed by the obvious inference that the President can only appoint a person as the Prime Minister who can command a majority support in the popular Chamber of the Parliament. The Ministers appointed on the recommendations of the Prime Minister by the President must be members of either House of the Parliament or must become one within six months of their appointment (Article 75, Clauses 1 and 5). So far, all Prime Ministers have been members of either the Lok Sabha or the Rajya Sabha, mostly of the former.

An unwritten rule of the Cabinet system in India that has become more or less well – established is the principle of regional and ethnic representation in the formation of the Council of Ministers. It has come to be expected and politically advisable for any Prime Minister to include in the Government representatives of India’s major States and regions and castes and communities, sometimes even at the cost of talent and efficiency outside the vital ministries of finance, home external affairs, and defence. Regional or

community representatives in the ministries are even expected to an extent to draw the attention of the Cabinet to the legitimate expectations of their clientele. In Canada the regional representation in the Cabinet has developed into a veritable convention of the Constitution such that the Prime Ministers go to the extent of appointing Senators from important provinces and regions and elevate them to ministerial status if the party in power does not electorally win any representatives from those areas in the House of Commons.

Because the Rajya Sabha is a relatively weak federal Second Chamber, and the Canadian Senate is even weaker, the federal Cabinets in both the countries have emerged as a far more effective instrument of regional representation than the upper Chamber despite its declared federal character. This is inevitable in a parliamentary federal system where the Cabinet is collectively responsible to the popular parliamentary House. This tendency of regionalization of the Council of ministers has become even more marked with onset of federal coalition Government in India since 1989. Incidentally, Canadians are committed practitioners of party Governments. If a hung Commons emerges from the hustings, Canadians prefer to form minority Governments instead of coalition Governments. Perhaps an instance of being more royalists than the Britons themselves.

One can, it seems to us, delineate at least three patterns of executive leadership in India's constitutional history.¹⁷ These are

- a) Predominantly *parliamentary/quasi-federal* premiership during the Nehru-Patel duumvirate that eventuated into the *prime ministerial*

Cabinet system under Nehru following Patel's death in December 1950 (1946-1971).

- b) *Quasi-parliamentary / quasi-federal / patrimonial prime ministerial* system under Indira Gandhi through the bulk of the 1970s, when due to over centralization of powers in the Congress Party and the Government in New Delhi even Chief Ministers were named by the Prime Ministers and subsequently endorsed by Congress legislature parties in States.
- c) Precursive phase of *federal* premiership of Morarji Desai, Indira Gandhi, and Rajiv Gandhi (1977-1989), and *federal* premiership of the era of coalition / minority Governments (since 1989 to date) when the federal features of the Indian political system demanded a reconfiguration of supremacy of prime ministerial authority and of the principle of collective responsibility of the Cabinet in practice, if not in theory.

Nehru's "fine art of Government" is characterized in the following words by his biographer Sarvepalli Gopal:

"To Nehru democratic Government was a fine art, the achievement of a cooperation within a series of widening circles which gave a sense of participation to everyone involved. He exploited his personal dominance to secure, as he hoped, its own destruction. It was a magnificent effort which did not quite come off".¹⁸

This metaphorical invocation of Gandhi's imagery of "oceanic circles" is more poetic than valid of Nehru's prime minister ship. It was in fact neither an exercise in dualistic federal power – sharing nor in Gandhian notion of radical

decentralization. Nehru's towering personality and Congress dominance at Union as well as State levels of power could not have made any such things possible. The power structure in the Nehru era was more pluralistic than during the Indira Gandhi Government in the 1970s, but neither of the two periods was truly federal. Some Chief Ministers were given greater consideration than others, but their respectful relations were mutual. Nehru wrote regular long letters to the Chief Ministers, but these were communications rather than interactions concerning Union-State demarcated jurisdictions. As the editorial note to one of the volumes compiling these letters remarks:

In these letters Nehru touches on every problem, large and small, and all the efforts being made to deal with these problems. The progress of planning. Community development projects, land reforms, administrative issues and the development of the north – east frontier areas are but some of the matters he considers; but he always sets them in the wider context of the right objectives and proper directions towards those objectives. So too, in foreign policy, he explains repeatedly the true nature and significance of non-alignment and puts in their proper setting the immediate issues such as the negotiations on Korea, relations with Pakistan.¹⁹

The first Union Cabinet was virtually a diarchy between Prime Minister Nehru and Deputy Prime Minister and Home Minister, Vallabhbhai Patel. The two stalwarts exchanged notes on their divergent views about the role of the Prime Minister and the Cabinet system through Gandhi, as mentioned before. Gandhi's assassination "reunited Nehru and Patel. Their reconciliation not only saved Congress and India's Central Government from collapse, but it kept Nehru in power. Without the Sardar's strength and support Nehru might have

broken down or been forced out of high office. Vallabhbhai ran India's administration for the next two years while Nehru indulged mostly in foreign affairs and high Himalayan adventures."²⁰ After Patel's death in December 1950, Nehru exercised unchallenged power in the Cabinet virtually until his death in May 1964. Even though Nehru is often likened with a Grand Moghal sitting over a highly centralized political pyramid,²¹ Michael Brecher observed that the "magnitude of his responsibilities compels him to rely on other". Brecher goes on to remark. "The Congress elite has changed little since the death of Patel in 1950. The key group in the Congress Working Committee is of about twenty members. But of these only a half – dozen were and are involved in making important decisions. Other than Nehru and Azad, the dominant figures have been Pant, Morarji Desai and Dr. B.C. Roy. Approaching the inner group is Lal Bahadur Shastri of the UP. In central Cabinet it is much the same group. Following the Prime Minister, the unofficial ranking is Pant, Morarji Desai and Shastri, with Krishna Menon occupying a special status in foreign affairs."²²

During this phase, it was essentially a prime ministerial Cabinet under Nehru's tutelage. The Shastri and the early Indira Gandhi Cabinets as well as the Desai Cabinet were more collegial. However, Indira Gandhi's Cabinets in the 1970s and the 1980s were predominantly prime ministerial. The Government under Rajiv Gandhi was in our view also more or less similar though somewhat more collegial and collective in its working.

With the transformation of the party system and the advent of coalition Governments, the presidential power has acquired a new dimension. As James Manor hypothetically explores:

The President has become more important since 1989 because he is the referee in the game of Government formation, and he decides whether to grant a Prime Minister's request for dissolution of Parliament. In this era of hung Parliaments, the former task has become more complex and difficult, and the latter is a potential problem. This makes it much more likely that the presidency will be engulfed in heated disputes which may occur even if presidents seek to avoid controversy as they usually do.²³ Manors apprehension has not happened, at least to any crisis proportions.

FEDERAL PREMIERSHIP STYLE:

During the era of coalition/ minority Governments, the prime ministerial Cabinets that had operated under Nehru after Patel's death in December 1950, under Indira Gandhi in the 1970s (excepting the Janata Party rule), and Indira Gandhi and Rajiv Gandhi during the 1980s became a thing of the part. Instead, a more collective Cabinet system came into existence. The difference between the 1970s and the 80s only was the that Congress Prime Ministers had to contend with more autonomous non-Congress state Governments especially in the non-Hindi speaking rim-lands. During the latter half of the 1980s a more differentiated party systems at the state level dotted by non-Congress Governments also differentiated configuration of party representation in the Lok Sabha and the Rajya Sabha. The Congress Governments could manage to muster a parliamentary majority but with considerably reduced margins. By the 1990s Congress and non-Congress coalition Governments managed to somehow muster majority in the Lok Sabha, but the Rajya Sabha was invariably controlled by the parties or coalitions in opposition.

The formation of the first minority – cum – coalition Government formed by the Janata Dal-led Nation Front (NF) under the leadership of V.P. Singh brought about a sea change in the role of the Prime Minister and the working of the Cabinet system. This was for the reason that although it was a coalition Government presaged by the *de facto* coalition Government, like that formed by the Janata Party in the later 1970s, but unlike the latter it was not a majority coalition Government. A minority Government was also presaged by the Rao Congress Government during 1991-96, but it was not a coalition Government. It faced an oppositional majority in the Lok Sabha. The United Front was a minority as well as coalition Government. The task for the V.P. Singh Government was thus more complicated. To outsiders, V.P. Singh appeared inexperienced and temperamentally unsuitable for this doubly difficult situation. For example, he failed to reconcile his difference with his deputy Prime Minister, Devi Lal. A factional feud between the two turned out to be irreconcilable. The Prime Minister took an apparently impulsive and precipitate action in dismissing his powerful deputy. Soon thereafter, he proceeded to hurriedly implement the Mandal Commission Report in 1978 that was shelved for nearly more than a decade by the Indira Gandhi and Rajiv Gandhi Congress Governments during the 1980s. By available indicators, he consulted neither the full Cabinet nor the National Front (NF) coordination committee and took the plea that the item was included in the National Front election manifesto.

However, an insider's account provided by the leading journalist, Prem Shankar Jha who served as Information Advisor to the Prime Minister, differs from this public perception. Jha²⁴ opines that V.P. Singh was acutely aware of "the smallness of his party and its dependence on two disparate allies" and

“evolved a style of political management that minimized these disadvantages.”²⁵ Jha proceeds to write:

At the centre, V.P. Singh sought to build the consensus through an elaborate, multi-tier process of consultation; with all political parties; then with its own ‘friendly’ parties, the Bhartiya Janata Party (BJP) and the Left, and lastly with in the National Front (NF). In all these ways he attempted to build a consensus, as far as that was possible, on key issue facing the country, as a prelude to taking the necessary legislative or executive action.²⁶

Jha does, however, give some instances where these exercises at consensus were not “equally successful”.²⁷ The intractable examples related to Punjab where initial hopes for a consensual solution could not bear fruits. However, an all-party meeting “achieved a consensus of sorts on a few peripheral issues”, e.g. the repeal of the Fifty – Ninth Amendment which had temporarily suspended enforcement of Fundamental Rights by Courts during an Emergency in Punjab.²⁸ All party delegation to Kashmir as well as on electoral reform also by and large failed to produce consensus that could facilitate decisive action on the part of the Government.²⁹

A few other episodes may be cited here to illustrate what we have called the federal premiership style. Two of these relate to the K.R. Narayanan-I.K. Gujral period, and two to the presidency of A.P.J. Abdul Kalam in his relationship with Atal Behari Vajpayee and subsequently Manmohan Singh. The Gujral Government recommended the dismissal of the RJD Government in Bihar for its inability to maintain law and order but President Narayanan requested the Government to reconsider its proposal. As it happened, the

proposal was not presented to the President again. On another occasion, the UP Governor Romesh Bhandari dismissed a BJP Government and replaced it by an all-defector Government headed by a Congressman, Jagdambika Pal. The Janata Dal-led United Front Government in New Delhi headed by Gujral adopted an ostrich policy and left President Narayanan without any advice in the midst of repeated representation to the union for intervention in the matter. Narayanan on his own faxed an advice of disapproval not any specific directive to the Governor. Finally, the matter reached the Supreme Court which ordered the restoration of the dismissed Government.

During the presidency of Kalam, the Vajpayee Government sent a bill to him annulling the Election Commission (EC) directive requiring candidates to file an affidavit along with nomination paper regarding their financial assets, educational qualifications and involvement, if any, in criminal activities. The EC directive was in pursuit of a Supreme Court judgment. Kalam returned the bill for reconsideration. The Cabinet reiterated its proposal whereupon the President granted his assent to the bill. The 2005 elections in Bihar returned a hung assembly, resulting in an impasse in formation of a Government for months together. Governor Buta Singh recommended to the Centre that the Assembly be dismissed just when a NDA – led coalition Government appeared to be on the cards, alleging horse trading in legislators. The Congress – led United Progressive Alliance (UPA) Government at the Centre headed by Manmohan Singh sent a proposal to the President endorsing the Governor's report. President Kalam signed on the dotted lines but later the Supreme Court declared the dismissal of the assembly unconstitutional.

During the federal premiership phase, the supreme political power of the Prime Minister in practice has become subject to multi-party coalitional power sharing. Besides, collective responsibility of the Cabinet to the Parliament (Lok Sabha, to be more specific), must take into account powerful regional and national parties in the coalition. The top leaders of these regional parties often prefer to stay back as Chief Ministers and nominate their junior partners to the Union Cabinet and remote – control them. This result in the fragmentation of the collegial nature of the Cabinet system and debilitation of Prime Ministerial control and co-ordination as well as initiation of significant policies of reform.

To be sure, the Indian Cabinet system cannot be a duplication of the British model. This is for the obvious reasons that

- a) India is not only a parliamentary system but also a federal system.
- b) We also have had for long to deal with the imperatives of coalition / minority Governments in New Delhi (and in some states), and
- c) Our Constitution not only incorporates rights of federating States but also fundamental rights of citizens that make the judiciary the ultimate arbiter in the political system.

Parliamentary supremacy in the united kingdom does not have to contend with any of these limitations. If anything, a comparison between India and Canada in this connection would be more apt. For, the two political systems are congenital twins due to coincidence of common British colonial history. The British Parliament enacted the Government of India Act, 1935,

largely patterned after the British North America Act, 1867, also a product of the Parliament in London, and now the Canada Constitution Act, 1967.

Yet, the fact remains that the weakening of the prime ministerial authority and the cabalization of the Cabinet system that we have witnessed since the 1990s can hardly quality as a wholesome exercise in good governance. We have witnessed the tendency of empire-building among coalition partners in the ministries parceled out to them, endless roll-backs of Cabinet decisions under external pressures from the constituents of the ruling coalition, patronage to the special interests, undemocratic pressures from corrupt and criminal parties and individuals, and massacres of Dalits and upper castes in Bihar, and a Muslims and Christians in Gujarat at the connivance of the State Governments or the Union Government or both. To compound all these problems, or perhaps mercifully, most Governments in New Delhi have also been unstable.

THE EXECUTIVE UNDER COALITION GOVERNMENTS:

The advent of coalition Governments on the Indian political scene has altered the pattern of executive functioning in a significant way. Multiparty coalition Governments have meant a departure from or at least modifications in the Pattern of executive functioning influenced by the Westminster Parliamentary tradition. In fact, it is a second step away from the British parliamentary principle and practice. The first step away was the combination in the Indian Constitution between Parliamentarism and federalism, as in Canada. The second step away has become evident under the imperative of federal coalition Government since 1989.

The working of federal coalition Cabinets has resulted in larger Cabinets and, in turn, greater federalization (in the sense of regionalization) of the Cabinet system in India. Coalition Governments in New Delhi have made possible a greater degree of State or regional autonomy. There has also been a wider power sharing between the national and regional parties which has promoted national unity and integration. However, coalition Cabinets are also characterized by instability of Union Governments though state have become more autonomous and stronger coalition Governments are also bedeviled by policy in coherence and at times even policy paralysis or atrophy.

In retrospect, looking at the executive Government at Union as well as in States, we can delineate at least three phases of coalition Governments in India. First, there were post-1967 catch-all coalition Governments in north Indian States spanning from Punjab to Bengal. These coalition Governments were formed under the spell of “non-Congressism”, the arch priest of which ideology was Dr. Ram Manohar Lohia. Dr. Lohia forged the strategy of non-Congress catch-all coalitions inclusive of all non-Congress parties ranging from the right to the left: Bhartiya Jana Sangh, Swatantra Party, Ganatantra Parishad, a number of Jana-Congress parties that had split from the Congress on the right, and Samyukt Socialist Party, Communist Party of India (Marxist) on the left. On account of their ideological diversity, these coalition Governments turned out to be very unstable, except for a Ganatantra Parishad –led right wing coalition Government in Orissa. This coalitional phase in north-Indian State politics was superseded by the restoration of Congress dominance under the leadership of Indira Gandhi after the 1969 Congress split.

Second, the post-1977 coalition Governments of like minded parties in West Bengal (the CPI(M)-led Front), Kerala (CPI(M)-led Left Democratic Front and Congress-led United Democratic Front), and in Tripura (CPI(M)-led Left Front). These ideologically compatible coalition Governments have been effectively more stable.

Third, there have been the post-1989 coalition Governments at the Union level of three muted heraldic hues:

- a) The Janata Dal-led National / United Fronts.
- b) The BJP-led National Democratic Alliance and
- c) The Congress-led United Progressive Alliance.

From the point of view of executive Government, the moral of the working of these coalition Governments in New Delhi can be summed up in terms of the following 'dos' and 'don'ts'. For stable executive Government, there is need for programmatic coherence among coalescing parties, genuine power sharing and mechanisms for reconciliation of differences, e.g. coordination committee, etc., The things to be avoided in the interest of Governmental stability are hidden agendas, 'outside' support (from the legislative floor without joins the Cabinet), overstraining the collective responsibility of the Cabinet to centers of power of outside the Parliament and thus reducing the prime ministerial power to a vanishing point.

By present reckoning, coalition Governments are likely to continue in the foreseeable future. This is for two reasons:

- a) The trend of continuing fragmentation of the party system to an extent that one seasoned observer goes to the extent of saying that due to this

factor, the Indian political system has transited from “quasi-federation” to ‘quasi-confederacy’³⁰ and

- b) The lack of class polarization in India typical of industrial societies.

As for reforms in the prevailing patterns of coalitional governance, the problem can be addressed at three levels;

- a) Electoral system.
- b) The party system and
- c) Rules of business of Parliament.

The stability of coalition Governments is closely linked with the system of representation and the party system. The expectation that plurality or first-past-the-post electoral system generally leads to a two-party system has not been fulfilled in India largely because of the exceptional social and regional diversities in the country. However, proportional representation is likely to lead to even greater fragmentation of the party system. Hence, the alternative that remains is to introduce the majority electoral system which requires a party or a candidate to win at least 50 per cent plus votes in an election. This system may necessitate more than one balloting if no party secures more than 50 percent vote in the first instance. The second voting with only two candidates with largest number of votes remaining in the field will produce the desired result. If more than one balloting is considered expensive and cumbersome, then the system of preferential voting in terms of first, second and third preference with votes of the least successful candidate being transferred to most successful ones may be tried.

At the level of the party system, a comprehensive legislation on parties with incentives for formation of federal parties combining the regional ones would reduce the number of parties. This would be conducive for a stable Cabinet Government. Moreover, the system of national convention of federal parties for electing their leaders as in Canada would also set in motion a federal aggregation of political forces in the country into fewer numbers of parties.

At the level of rules of legislative business, the National Commission for Review of the Working of the Constitution (NCRWC) recommendation in favour of electing the Prime Minister or Chief Ministers on the floor of the House and “constructive vote of confidence” (allowance of a non confidence motion only when it is accompanied by a proposal for an alternative Government) is worth considering.

THREE BASIC PROBLEMS OF EXECUTIVE GOVERNANCE:

Since the 1990s, a greater degree of federalization produced by coalition / minority Governments also brought to the fore at least three basic problems that seriously weakened the effectiveness of federal executive governance. First, increased federalization reduced parliamentary supremacy and gave federal features of the Constitution a freer play. The combination of parliamentary and federal principles of Government in the Constitution and the resultant contradictions between the two was supposed to be primarily reconciled by giving the Parliament or the Union executive supremacy at the cost of State autonomy. Parliamentary and federal principles of Government are inherently contradictory as the former is premised on supremacy of the

Parliament and the latter is predicated on decentralization of powers. The Indian Constitution seeks to reconcile this contradiction by giving the Parliament and union executive certain overriding powers over State legislatures and State Governments. Since the 1990s, parliamentary supremacy came to be seriously compromised by federal coalition Cabinets with regional / State parties. Such regional parties were also in power at the State level having a decisive balancing role in them. When parliamentary supremacy came to be undermined by such federal coalition Governments, it produced judiciary-driven governance in place of executive-driven governance of the past. Moreover, with the growing social mobilization and political participation, federalization and the fragmentation of the party system of the national level, the ways and means of reconciliation must also be found at the levels of multi-party system and intergovernmental forums of Inter-State Council and National Development Council.³¹ All these developments require a different style of prime ministerial leadership and Cabinet system that, as mentioned above, we have called a federal prime ministership and a federalized collective Cabinet system.

The second problem that has stared the Indian political system in its face with its growing federalization is even more fundamental and complex. The kind of Union executive intervention for protection of minority rights that could be possible in the past has become difficult now. For example, the situation in Jammu and Kashmir in the 1990's Punjab, Assam, and Bihar in the 1980s, and Gujarat in more recent years have raised a complex question : How can the rights of minorities or weaker sections be adequately protected in a federal system of divided authorities and responsibilities? This problem became

more acute in State demographically dominated by communities that are national majorities but regional minorities. The plight of Kashmiri pandits in Jammu and Kashmir, Hindus in Punjab, Dalits and upper castes in Bihar, and linguistic minorities in any State are cases in point. In the era of one-party Congress dominance, the Union Government was looked upon as a more trusted protector of minority rights everywhere.

During those days, the Union Government could effectively intervene by the use of its executive power under Article 356 which allows President's rule in States under constitutional emergencies. With greater federalization of the system and increase in State autonomy, such interventions have become difficult due to the regionalization of the party system and judicial interpretation of the Constitution ensuring federal autonomy of State Governments since the Bommai judgment (1994)³² of the Supreme Court, which made President's rule open to judicial scrutiny with attendant uncertainties. The majority of the opposition in the Rajya Sabha, which has generally been the case since the 1990s also creates political uncertainties. For example, after the massacre of dalits in the Naarayanpur village in Bihar, the Rashtriya Janata Dal (RJD) Government in the State was dismissed by the National Democratic Alliance (NDA) Government at the Centre. The Presidential order was passed by the Lok Sabha but rejected by the Rajya Sabha, resulting in the restoration of the dismissed State Government. In the Gujarat riots in 2002, the NDA Government at the Centre did not even go through the motions of seeking to invoke the constitutional emergency in the State against the BJP Government led by Narendra Modi despite evident complicity of the Gujarat police and complacency of the State Government in the communal conflict.

The third problem that besets federal executive governance especially since 1989 is governmental instability due to social and political fragmentation and politics of defection and corruption. In 14 years, since the 1989 Lok Sabha elections, we have witnessed as many as nine Governments with varying terms and uncertainties at the Centre. Six elections had to be held where a maximum of three would have normally sufficed.

ALL INDIA SERVICES:

An analysis of the Indian federal executive will be incomplete without a discussion of the civil services and the party system. Of these two factors, bureaucracies are internal to the Union and State Governments, while parties are a vital link that connects the civil society and the State. Both these structures have had significant functional roles in the emergence and working of the Indian federal political system. A synoptic view of the evolution of Indian federalism suggests that the colonial design was conceived as a bureaucratically driven system. In fact, the Central Government under the Government of India Act, 1935, continued to be a bureaucratic regime, as the federative union of British Indian provinces and princely States could not come into existence due to the reluctance of the latter to join it. Ministerial regimes with limited powers in areas of “transferred” as distinguished from reserved) subjects briefly emerged in the provinces. However, Congress provincial ministries in 1937 resigned in 1939 when the British Government involved India in the Second World War without consulting the Indian National Congress.

As mentioned earlier, besides the elected political part, the Union executive also has an appointed bureaucratic part. This comprises the central

services that are exclusively used by the Union Government. Then, there are the unique All India Services (AISs), originally two – Indian Administrative Service (IAS) and Indian Police Service (IPS) and presently three, since 1966, with a third added on to the list – Indian Forest Service. Their immediate antecedents go back to the British Indian Civil Service (ICS) and Indian Police (IP). The Constituent Assembly decided to reinstitute them on the basis of a consensus decision at a provincial Premiers conference in July 1946, convened and chaired by the Home Minister of India Sardar Ballabhbhai Patel. Patel persuaded Prime Minister Jawaharlal Nehru not to leave these highest cadre services (to be commonly used by federal as well as provincial Governments) to the legislatures of the two orders of Governments. As it turned out, they are regulated by the Constitution itself and supplementary legislations. They are recruited by an independent constitutional commission, the Union Public Service Commission (UPSC) are trained in central academies and in field administration in States to whose cadres they belong. They mostly serve under State Governments and are occasionally loaned to the federal Government on deputation. The two levels of Governments have, of course, their own Central and State Civil Services recruited by Union Public Service Commission (UPSC) and similar constitutionally entrenched Public Service Commissions of respective States.

The AISs lend a certain degree of centralization and coordination in the working of the federal system without, however, unduly standing in the way of decentralization if the party system and the civil society so desire. This is amply borne out by the experience of the Janata Party Government in New Delhi in 1977-1979 and after the transformation of the party system from Congress

dominance to multiparty system since 1989. The AISs have weathered the test of working under different political regimes in New Delhi as well as in States. Also, under one political party or coalitional regime in New Delhi and Governments of other political persuasions in States. The demand for abolishing these services is no longer made today. They have also worked under one-party majority Governments as well as coalition Governments. The initial suspicion about their loyalty in the minds of non-Congress Governments after a long spell of Congress dominance has by now disappeared. By the “merciless use of the power of transfer” by the newly emergent non-Congress Governments was enough to get over their initial suspicion.³³

PARTY SYSTEM:

The impact of the party system on the Indian federal executive has been tremendous. The three systems of prime ministerial leadership outlined above are, as a matter of fact, more related to the variations of the nature of the party system than the personalities of the incumbents. To be sure, personalities of the incumbents have varied considerably from Nehru to Manmohan Singh. However, personalities were partly helped or hindered by the varying political atmospheres shaped by the prevailing party system. A strong personality (e.g. Nehru) would emerge as a stronger prime ministerial leader in a one-party Government sans factional feuds than a modest personality (e.g. Shastri). However, even a strong personality would be hamstrung in a factionalized and fragmented party Government (e.g. Desai in the Janata Party Government during 1977-79). Minority and / or coalition Governments in a multiparty system are, of course, an entirely different proposition; they require moderate personalities with reconciliatory skills, i.e, leaders who creatively lead by

following. What we have earlier called the federal prime ministerial leadership style is typically the product of the post-1989 multiparty system. This phase has witnessed coalition Governments with the number of parties ranging from eight to 24, some of them “national” or all-India parties and some other, “State” or regional parties.

Three different coalitional assortments of these parties have rallied round three “pivot” national parties at various points in time since 1989; Janata Dal, Bharatiya Janata Party, and Indian National Congress. A fourth national party, Communist Party of India (Marxist), was once offered the leadership of one of the Janata Dal-led United Front Governments with Jyoti Basu, the West Bengal Left Front Chief Minister, as the Prime Minister. While Basu was inclined to accept the offer, his party rejected it on the consideration that it would not join, let alone, lead, a coalition Government in which it was not in a dominant position. Basu later described this decision of his party as a “historical blunder”.

These four real or potential pivot national parties are of special importance to the working of federal executive governance in India today. They are more likely than regional parties to head a federal coalition Government, although the later have often played a crucial balancing role in deciding which of the three major national parties was to form the Government.

In a country of multicultural and federal proportions like India, coalition politics in the legislative arena may find expression at two planes: intra-party and inter-party. The Indian National Congress in its dominant phase was the locus classicus for intra-party coalitions on a grand scale. The Janata Party of

the late 1970s was at least formally such an intra-party coalitional formation, although one can also argue that it would be more appropriate to regard this party as a de facto inter-party coalition of Congress (Organization), Bharatiya Lok Dal, Socialists, Bharatiya Jan Sangh, and Congress for Democracy. For, these pre-merger constituent parties of the Janata Party never fully merged their separate organizational elements into a truly single party and kept working as veritable parties (rather than factions) under the makeshift canopy of the hurriedly formed Janata Party.

The inter-party coalitions since 1989 have provided a fecund breeding ground for mushrooming and growth of regional parties – new and old – and fragmentation and dwarfing of national parties. One can delineate at least two types of national parties that have led the various inter – party coalitions since 1990s. federal and confederal. A federal party may be defined as one with a more regularized pattern of articulation between the central and State units of the party organization with reasonable degrees of central direction and branch autonomy for State units. A confederal party is an amalgamation of fairly strong State branches with nominal central control. The Indian National Congress, BJP, and CPI(M) illustrate the category of federal parties, while the Janata Party / Dal exemplified a confederal party.

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