

Indian Institutions in the Early 1980s: The pre-history of the great transformation

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Abstract

In 1989 India's political system underwent a process of profound change which affected the entire institutional setup of the country. Power was radically redistributed—it began to flow from the central government to the states, and from the Prime Minister's Office to the other institutions of the state. By analysing the severe institutional crisis which occurred during Mrs Gandhi's final term in office, this paper seeks to show how state institutions worked on the eve of such a redrawing of India's institutional setup. In addition, an effort is made to link the working of India's institutions to the configuration of the party system, thus stressing the importance of political dynamics in the functioning of parliamentary democracies.

Introduction

Most people will remember the year 1989 for the immense changes that the fall of the Berlin Wall brought about. For scholars working on contemporary India, that year will recall equally drastic changes. The one-party-dominant system, which had shaped Indian politics since independence, 'suddenly' came to an end. The consequences were immense.

More than 40 years of Congress dominance had resulted in a major concentration of power in the hands of the ruling family—the Nehru-Gandhi dynasty—and in the Prime Minister's Office. With the general election of 1989—when no single party secured an absolute parliamentary majority—power began to flow in the opposite direction: from the central government to the states, and from the Prime Minister's Office to the other institutions of state at the national level. In short, a radical redistribution of power—perhaps more radical

than anywhere else in the world¹—took place, thus contributing to the ‘great transformation’² of India’s political system.

How did such a reshaping of the Indian polity take place? How did state institutions work on the eve of the restructuring of the Indian political setup? This paper will seek to answer these questions by analysing the severe institutional crisis that affected India’s political system in the early 1980s. Shedding light on ‘how things worked’ before 1989 will not only help us to compare today’s India to its old self, thus allowing us to appreciate the degree of institutional regeneration that has occurred in the last two decades, but it will also contribute to our understanding of how and why such a regeneration took place, and which factors contributed to its successes and which to its limitations.

W. H. Morris-Jones, writing shortly after Indira Gandhi’s assassination on 31 October 1984, argued that ‘each institutional element of the political system has lost something of its earlier integrity and therefore of its capacity to make its independent and distinctive contribution to the interaction of the parts’.³ Indeed, in 1984 the question ‘Will the state wither away?’⁴ was certainly posed more frequently than ever before. The state seemed not only unable to cope with the dramatic crises that had exploded in some states of the Indian Union—above all, Punjab, Assam, and Jammu and Kashmir—but also to direct development and to secure the safety of its citizens. In short, a severe ‘crisis of governability’⁵ engulfed the Indian state.

This crisis had a lot to do with the state of the ruling party, Indira Gandhi’s Congress (I).⁶ In fact, much scholarly attention has been dedicated to the decay of the Congress organization and to its growing

¹ James Manor, ‘What Do They Know of India Who Only India Knows?’, *Commonwealth and Comparative Politics*, Vol. 48, No. 4, 2010.

² Sanjay Ruparelia, Sanjay Reddy, John Harris and Stuart Corbridge (eds), *Understanding India’s New Political Economy—A Great Transformation?*, Routledge, London and New York, 2011.

³ Wyndraeth Humphreys Morris-Jones, ‘India after Indira: A Tale of Two Legacies’, *Third World Quarterly*, Vol. 7, No. 2, 1984, p. 246.

⁴ Rajni Kothari in the *Illustrated Weekly of India*, 8 June 1984.

⁵ Atul Kohli, *Democracy and Discontent: India’s Growing Crisis of Governability*, Cambridge University Press, Cambridge, 1991.

⁶ This is indeed one of the main factors identified by Atul Kohli as the root of the crisis of governability. See Kohli, *Democracy and Discontent*. Note: in 1978 the Congress Party split. The faction that followed Mrs Gandhi was named Congress (I)—‘I’ for ‘Indira’.

inability to respond to the demands of an increasingly assertive electorate.⁷ Less attention has been given to the formal institutions of the state, and to how the transformation occurring in the Congress Party and, more generally, in the party system impacted on India's institutional setup.

This paper explores the severe institutional crisis that occurred during Mrs Gandhi's final term in office in the early 1980s. Its aim is twofold. On the one hand, the paper seeks to show how state institutions functioned on the eve of the collapse of the one-party-dominant system; on the other, it is an attempt to link the functioning of the institutions to the configuration of the party system and the balance of power between the political parties.⁸ In fact, Mrs Gandhi's attempts to force the maintenance of an 'artificial' 'one-party-dominant' system can arguably be seen as the root of the breakdown of the institutional setup of the early 1980s.

The paper consists of three sections, which, taken together, analyse the process of deinstitutionalization of India's political system. I will differentiate among three sub-processes which affected Indian institutions and which eventually resulted in the severe institutional crisis of the early 1980s. First, I will describe a process of the politicization of institutions. My attention will focus on the bureaucracy, the judiciary, the presidency, and the parliament. Second, I will look at the erosion of the quality of Indian democracy and of the observance of the letter of the constitution. Third, I will analyse the process of 'informalization' of federal institutions and Mrs Gandhi's attempts in the early 1980s to maintain such a framework, despite the profound changes that had occurred in the political system.

⁷ For example, James Manor, 'Anomie in Indian Politics', *Economic and Political Weekly*, Vol. 18, No. 19/21, 1983; Paul Brass, *The Politics of India Since Independence*, Cambridge University Press, Cambridge, 1994, Chapter 3; Lloyd I. Rudolph and Susanne Hoeber Rudolph, *In Pursuit of Lakshmi—The Political Economy of the Indian State*, University of Chicago Press, Chicago, 1987, Chapter 4; Sudha Pai, 'The Congress Party and Six National Elections: 1964–1984' in Pranab Mukherjee and Aditya Mukherjee (eds), *A Centenary History of the Indian National Congress, Vol. V*, Academic Foundation, New Delhi, 2011.

⁸ W. H. Morris-Jones *The Parliament in India*, Longmans Green, London, 1957. Morris-Jones argued that 'the way in which parliamentary democracy works depends, more than we may like to admit, on the balance of powers between political parties' (p. 113).

Politicization of institutions

The bureaucracy

The importance of political loyalty as an internal organizing principle of India's bureaucratic apparatus—the Indian Administrative Service⁹—emerged in the early 1970s. Eradicating poverty, Mrs Gandhi used to say, required a 'committed bureaucracy'. Loyalty to the ruling party gradually became a—if not *the*—central element in determining the career prospects of civil servants, especially as far as the most senior positions were concerned.

The years from 1975 to 1980 marked a fundamental break in the Indian Administrative Service's history for several reasons. First, hardly any civil servant resigned during the emergency regime (1975–77),¹⁰ while abject decisions were regularly implemented. More importantly, the more a civil servant showed himself ready to implement whatever the High Command (i.e. Indira and Sanjay Gandhi) ordered, the more they were rewarded. A notable example was the then vice-chairman of the Delhi Development Authority, Jagmohan, who, thanks to his 'services' to the 'beautification' of Delhi and 'family planning' campaigns—two of the programmes initiated by Sanjay Gandhi—became, after Mrs Gandhi's return to power in 1980, lieutenant governor of Delhi (1980–81), then lieutenant governor of Goa, Daman, and Diu (1981–82), and finally governor of Jammu and Kashmir (1984–89).¹¹ Numerous other examples could easily be provided.

Second, the high number of 'political' transfers and the concentration of power in the hands of those bureaucrats who were close to the Gandhi family—along with the concerns resulting from the suppression of the democratic rule in 1975–77—spread a climate of fear throughout the public administration. Thus, those bureaucrats who were not eager to pander to the political establishment, in most cases, obeyed out of fear.¹²

⁹ The Indian Administrative Service (IAS) represents the highest echelon of India's bureaucratic structure. Our analysis will be mostly concerned with this section of the bureaucracy.

¹⁰ Ramachandra Guha, *India after Gandhi*, MacMillan, London, 2007, p. 535.

¹¹ Jagmohan would go on to hold several cabinet positions in the 1990s.

¹² *The Hindu*, 20 September 1981.

Third, the climate of fear that had prevailed during the emergency gave way to a 'witch-hunting climate'¹³ during the Janata phase (1977–79). Bureaucrats who had been close to the Gandhi family were in most cases transferred or put on leave or even had their salaries suspended. The same happened to those who were perceived to be close to the Congress Party. In still other cases, officers were transferred just because they were not close enough to the new ruling party and room had to be made for those who were. The Jana Sangh was particularly successful at recruiting its followers into the Indian Administrative Service's ranks,¹⁴ but Charan Singh also spared no effort to change its composition as much as he could.¹⁵ Apparently Mrs Gandhi's concept of a 'committed bureaucracy' had made an impact on her opponents too.

Fourth, the witch-hunting did not end with the collapse of the Janata government. In fact, it started again with renewed vigour after Mrs Gandhi's return to power in 1980. The first victims were those whose positions had been strengthened during the Janata phase, thanks to their political connections. Then came those who had conformed with the basic principle of any bureaucratic apparatus—political neutrality—and had agreed to comply with the Janata government. Then, those who were close to senior politicians who had chosen not to follow Mrs Gandhi in the new Congress (I) had to be sidelined, especially to make room for Sanjay's friends and collaborators.¹⁶ After the latter's death in June 1980, the top layer of the administration was reshuffled once again—a 'de-Sanjayisation' took place¹⁷—in order to bring it more in line with the changed political circumstances. In short, what emerged was a 'spoils system'.

The overall result of these developments was that the subjugation of the bureaucracy to political leaders became the accepted norm regulating the administrative apparatus. This had several important consequences. First, the bureaucracy stopped being a reliable source of information for the central government. When the director general of Civil Aviation wrote to the secretary of Civil Aviation informing him that Sanjay Gandhi was violating air safety regulations, the former

¹³ S. K. Mishra, interview, Delhi, 21 December 2010.

¹⁴ Naresh Chandra, interview, Delhi, 14 December 2010.

¹⁵ *Indian Express*, 7 September 1979 and 21 November 1979.

¹⁶ *Indian Express*, 4 June 1980; Nihal Singh, *My India*, Vikas Publishing House, New Delhi, 1982, p. 83.

¹⁷ *Indian Express*, 10 August 1981.

was asked to proceed on leave.¹⁸ Episodes like this reinforced the well-founded belief that the only information that the political leadership would welcome was good news. Since the Congress Party had stopped functioning as a reliable source of information, the subjugation of the bureaucracy to the political powers further isolated the central government and the political apparatus.

Second, not only did less information reach political leaders, but the reliability of this information became more and more questionable. This was due to the development of vertical chains linking bureaucrats in the states to politicians in New Delhi,¹⁹ which was not entirely new. What was new was that this paralleled an analogous trend within the Congress (I),²⁰ namely the development of factionalism between different levels of the polity. Bureaucrats became an instrument that politicians used to weaken factional enemies. Probably the clearest example of this took place in Punjab. Before being elected as president of India, Zail Singh used and abused his power as India's home minister to weaken his arch-rival, Badal Singh, who was then Punjab Congress (I)'s chief minister. During the period of President's Rule²¹ in 1980, 'mass transfers' of officers were ordered by the Centre, which allowed Zail Singh to run the Punjab administration 'by proxy'.²² As a consequence, bureaucrats began to base their communication with the Centre on political and factional calculations. Given that political and personal considerations became the key element in determining one's career prospects, ambitious bureaucrats did not hesitate to convey false information in order to strengthen their position and/or weaken their rivals (and eventually those of their political masters). For example, shortly before the Asiad Games were held in Delhi in late 1982, Mrs Gandhi was told by the then sports secretary that there were no sport facilities close to the Delhi border, even though such facilities did exist. They had been built in previous years under the supervision of S. K. Mishra. Mrs Gandhi eventually had to fly there

¹⁸ *Indian Express*, 1 July 1980.

¹⁹ Known as 'the Centre'.

²⁰ See James Manor, 'The Electoral Process Amid Awakening and Decay: Reflections on the Indian General Election of 1980', in P. Lyon and J. Manor (eds), *Transfer and Transformation: Political Institutions in the New Commonwealth*, Leicester University Press, Leicester and New York, 1983.

²¹ President's Rule refers to direct rule from New Delhi.

²² *Indian Express*, 9 March 1980.

by helicopter in order to establish whether such facilities existed or not.²³

Third, the climate of fear pervading the administration resulted in a near-halt of administrative activity. Not only were actions not taken that could be interpreted as hostile to the ruling family or to its close associates, but officers, not knowing when and where they might be treading on the toes of someone who was politically connected, were afraid to take responsibility even in marginal cases.²⁴ For example, in Madhya Pradesh in late 1982, a district collector was ordered to give up his charge for not withdrawing a case against a Congress (I) worker, who turned out to be part of the district's 20-Point Programme Implementation Committee and therefore somehow associated to Mrs Gandhi.²⁵ Many more examples could be found in all the major national newspapers. Moreover, given that orders from politicians, especially if they were politically inconvenient, were issued orally, and given that such orders were often in conflict with each other, meant that officers faced the invidious situation of not knowing which orders to follow and which to disregard.²⁶

Fourth, the growing influence of the politicians over bureaucrats caused a defensive reaction. Officers at all levels began to look for protection. The easiest way to find it was to align with the ruling party. However, this was a short-term strategy which was likely to jeopardize future career prospects, since there were growing signs that the Congress (I) would not rule forever. Furthermore, the anarchic condition of the ruling Congress (I) made political alignment more risky than ever before, since the equilibrium of power within the party changed rapidly and without following a discernible path. A wiser way to seek protection was to adopt an approach of total submission to whatever party was ruling—a strategy that was adopted on a very large scale—or to 'unionize' on the basis of larger categories such as language, caste, religion, and so on. In this way punitive transfers could be seen as being targeted against a particular community, which would act as a sort of internal lobby and limit somewhat the arbitrariness in the management of the administrative personnel.

Fifth, the submission of the bureaucracy to the will of politicians gradually transformed it into a fund-raising apparatus. Following Mrs

²³ S. K. Mishra, interview, Delhi, 21 December 2010.

²⁴ *Indian Express*, 16 January 1981. This is particularly true for the Hindi belt.

²⁵ *Hindustan Times*, 2 February 1982.

²⁶ *Indian Express*, 2 January 1981.

Gandhi's ban on political donation by private corporations in the early 1970s, politicians belonging to any party were virtually obliged to resort to illicit funds (black money) to provide their parties with the financial resources they needed.²⁷ One of the preferential channels through which this could be done was by filling the bureaucracy with civil servants who either willingly closed their eyes to corrupt practices or were keen to supplement their sources of income. The chief minister in Karnataka, Gundu Rao, is one of the best examples of this transformation of the bureaucratic apparatus into a fund-gathering machine.²⁸ The compression of the salaries of those in the higher echelons of the bureaucracy since 1950, as part of the 'socialist' agenda, and the increasing availability of expensive middle class status symbols (e.g. colour televisions and video-recorders) along with the declining appeal of an 'idealistic' commitment to the nation-building effort, contributed to the endemic spread of corruption in the administration.

To sum up, one of the effects of the emergence of a competitive party system at the national level, although for a very brief period of time, was the transformation of the bureaucratic apparatus into a personal instrument in the hands of powerful—and, in some cases, even not-so-powerful—politicians. Needless to say, this was particularly true for the prime minister, who was able to direct the state apparatuses to pursue her personal and political goals. In fact, the politicization of the Indian Administrative Service was just the tip of the iceberg. Virtually all public institutions were subject to heavy pressures to act according to the political leadership's wishes. For example, the Election Commission indefinitely postponed the Garwal constituency (Uttar Pradesh) by-election²⁹ because the central government wanted to impede H. N. Bahuguna, a powerful Brahmin leader with a strong following among Muslims, from re-entering parliament after he had resigned in protest at Sanjay Gandhi's 'autocratic' management of the allocation of the Congress (I)'s tickets. The reason given by the Election Commission was that law and order could not be ensured. Curiously enough, the same objections were not raised one year later, when elections in Assam were duly held despite the complete

²⁷ Prem Shankar Jha, *In the Eye of the Cyclone: The Crisis in Indian Democracy*, Viking, New Delhi, 1994, p. 38.

²⁸ See E. Raghavan and J. Manor, *Broadening and Deepening Democracy: Political Innovation in Karnataka*, Routledge, New Delhi, 2009, Part II.

²⁹ *The Hindu*, 15 November 1981.

breakdown of law and order in that state, and despite numerous police reports that literally begged for a postponement of the elections.³⁰ (Bahuguna eventually managed to get elected to the Lok Sabha the following year anyway.)

In August 1984, the governor of Andhra Pradesh, Ram Lal, dismissed the recently elected chief minister, N. T. Rama Rao,³¹ despite the fact that he enjoyed a comfortable majority in the State Assembly, and nominated the former finance minister, Bhaskara Rao, in his place.³² The Congress (I) Party supported the new government from 'outside'. A huge amount of money—between 20 and 30 million rupees³³—was allegedly sent by the Congress (I) High Command to Andhra in order to 'convince' some of Rama Rao's followers to support the new chief minister. In order to 'insulate' his legislators from temptations, Rama Rao decided to bring all of them to Delhi to appeal to the president, Zail Singh. However, he was denied the authorization to arrange a charter flight and train reservations were mysteriously cancelled (by the state-owned Indian Railways) so that legislators had to be squeezed into the regular, unreserved coaches. The train journey, which normally took about 24 hours, lasted two-and-a-half days.

In short, what emerged in the wake of the emergency was a 'combination of an American-style 'spoils system' with the security of tenure of the mandarin system'—a disastrous mix indeed.³⁴ The bureaucracy split into three groups: 'the "wives" (those officers who were attached to one party), the "nuns" (officers who remained unattached to any party), and the "prostitutes" (who attached themselves to whichever party was in power and switched whenever there is a change of government)', with the number of 'prostitutes' being 'quite high'.³⁵ The bureaucratic apparatus was subjugated to the political system to a significant extent. As a consequence, it began to work according to distorted logic and rules, which seriously

³⁰ *India Today*, 1 May 1983.

³¹ Rama Rao was popularly known as NTR.

³² Further details about this sordid operation can be found in Raghavan and Manor, *Broadening and Deepening Democracy*, Chapter 7.

³³ Krishna K. Tummala, 'Democracy Triumphant in India: The Case of Andhra Pradesh', *Asian Survey*, Vol. 26, No. 3, 1986, p. 391.

³⁴ K. P. Krishnan and T. V. Somanathan, 'Civil Service: An Institutional Perspective', in Devesh Kapur and Pratab Bhanu Metha (eds), *Public Institutions in India—Performance and Design*, Oxford University Press, New Delhi, 2005, p. 299.

³⁵ Krishnan and Somanathan, 'Civil Service', p. 306.

compromised its ability to function as one of the key institutions of a democratic polity, not to mention the resultant decline in efficiency and accountability.

The judiciary

Mrs Gandhi's relationship with the judiciary had been turbulent throughout her political career. In the wake of her left turn in 1969, the prime minister included the judiciary in the list of those who had 'vested interests' in maintaining the status quo and were thus hindering her projects of social transformation.³⁶ Indeed, the strained relationship between the executive³⁷ and the judiciary had begun in Nehru's years, when a vicious circle was established in which 'the parliament [could] pass a legislation, the courts [could] determine its constitutionality, the parliament [could] try to circumvent the courts by amending the constitution, the courts [could] pronounce that parliament [had] limited powers of amendment, parliament [could] . . . and so on and on'.³⁸

During Mrs Gandhi's years as prime minister the conflict intensified. In policy terms, it meant that the implementation of land reforms and other progressive measures were hindered by the Supreme Court's interpretation of the constitution, which gave the Fundamental Rights priority over the Directive Principle of State Policies, which were supposedly the source of inspiration for Mrs Gandhi's developmental strategy.³⁹ In institutional terms, the supremacy of the Directive Principles was translated into unlimited amending power for parliament; by contrast, the defence of Fundamental Rights moved the Supreme Court to formulate the 'basic structure' doctrine, elucidated for the first time in the Kesavananda case on 24 April 1973, according to which certain fundamental features of the constitution could not be

³⁶ One of the best accounts of the relationship between Mrs Gandhi and the judiciary is that of Granville Austin, *Working a Democratic Constitution—A History of the Indian Experience*, Oxford University Press, New Delhi, 1999.

³⁷ Formally, the clash was between the legislative and the judiciary. However, as we shall see below, parliament never had a high degree of autonomy from the executive.

³⁸ Lloyd I. Rudolph and Susanne Hoeber Rudolph, 'Redoing the Constitutional Design: From an Interventionist to a Regulatory State', in Atul Kohli, *The Success of India's Democracy*, Cambridge University Press, New York, 2001, p. 187.

³⁹ Of course, this was only part of the problem. Indeed, the fact that the landowning castes comprised the most significant part of the Congress Party's social base in most states explains to a great extent why land reform was implemented in the way it was.

changed. The very next day, the government appointed Justice A. N. Ray—who had been part of the dissenting minority—as chief justice of India, over three more senior colleagues,⁴⁰ all of whom had been part of the majority which delivered the ruling.

The appointment of Justice Ray inaugurated a new phase in the relationship between the government and the judiciary. Supersessions and transfers of the judges of the Supreme Court and the state-level High Courts became a more or less accepted tool used by the central government to put pressure on the judiciary.⁴¹ While the conflict between the executive and the judiciary was of long standing, this represented a vastly greater intrusion of political considerations into the workings of the Supreme Court and High Courts. The new appointment policy was even candidly defended in the parliament, as a way to get a ‘committed judiciary’ which, along with a ‘committed bureaucracy’, was said to be a pre-condition for the proper implementation of anti-poverty initiatives.⁴² Needless to say, it was during the emergency—the proclamation of which was part of the ongoing battle between the judiciary and the executive—that most of the abuses occurred.⁴³ Furthermore, a great many of the provisions included in the amendments of the constitution passed during the emergency were aimed at curbing the judiciary’s independence and the power of judicial review.

The Janata phase (1977–79), which entailed restoring the equilibrium between the institutions through the repeal of the most authoritarian pieces of emergency legislation—first and foremost the 42nd Amendment—created the conditions for a temporary truce in the constitutional dispute between the judiciary and the executive. What turned out to be crucial from this point of view was the majority obtained by the non-Congress parties in the Rajya Sabha (the upper house). In fact, it took almost five years for Mrs Gandhi to regain a nearly two-thirds majority there, which was necessary for amending the constitution. Moreover, in the summer of 1980, after her return to power, the Supreme Court in the *Minerva Mills* case reaffirmed the

⁴⁰ Namely, Justice A. N. Grover, Justice K. S. Hegde, and Justice J. M. Shelat.

⁴¹ Pratap Bhanu Mehta, ‘India’s Judiciary: The Promise of Uncertainty’, in Kapur and Pratab Mehta (eds), *Public Institutions*.

⁴² A. G. Noorani, ‘The Prime Minister and the Judiciary’, in J. Manor (ed.), *Nehru to the Nineties*, Hurst & Co, London, 1994.

⁴³ Law minister, H. R. Gokhale, even threatened the Supreme Court in parliament; see *ibid*, p. 106.

'basic structure' doctrine.⁴⁴ Even though the government repeatedly said that it did not accept the doctrine,⁴⁵ and despite the fact that it actively sought to get the Supreme Court to review its ruling,⁴⁶ in the post-emergency political conditions, it would have been quite difficult for Mrs Gandhi to pass through constitutional amendments which restored the unlimited amending power of parliament.

That did not mean that government–judiciary relations were easy. The main bone of contention remained the transfer of High Court judges and, more generally, the intrusion of politics into the functioning of the judiciary. Just a week after Mrs Gandhi's return to power, the law minister, P. Shiv Shankar, told the Lok Sabha that the government was going to have 'fresh look' at the policy of appointing state-level High Court judges.⁴⁷ The Cabinet issued a press note⁴⁸ in early 1983 in which the government set out the guidelines for their appointment. According to these guidelines, the chief justice and one-third of the judges of each High Court were to be from outside the state. While in principle this would have fostered uniformity in the judicial process and limited the biases derived from local pressures on judges who had spent most of their lives in the same state, in actual terms the guidelines paved the way for the systematic humiliation and denigration of those judges the government did not find 'completely pliant and congenial'.⁴⁹ This was particularly so after 1981, when the Supreme Court ruled in the High Court Judges case that the consent of the judge to be transferred was not necessary. During the following five years, the government transferred 30 High Court chief justices.⁵⁰

Transfers were not the only weapon in the government's arsenal. Two other 'popular' measures to put pressure on the judiciary were the unduly long delays in the confirmation of additional judges and in the appointment of judges to the Supreme Court and the High Courts, and the granting of rewards to 'committed' (to the ruling family) judges. For example, the judge who freed Mrs Gandhi from jail in 1977, R. Dayal, was made commissioner to Sick Mills in December 1980,

⁴⁴ *Indian Express*, 2 August 1980.

⁴⁵ For example, *Indian Express*, 2 October 1980.

⁴⁶ *Hindustan Times*, 7 January 1981.

⁴⁷ *Times of India*, 15 January 1980.

⁴⁸ The note is reproduced in Noorani, 'The Prime Minister and the Judiciary', p. 108.

⁴⁹ From the Bar Council of India's reply to the government press note, reproduced in *ibid.*, p. 109.

⁵⁰ Austin, *Working a Democratic Constitution*, p. 532, note 55.

with the status of joint secretary, a post carrying twice the salary of a temporary additional district judge (which he was in 1977).⁵¹ Another example was the appointment of Baharul Islam, a former Congress member of the Rajya Sabha, to the Supreme Court in December 1980, despite the fact that he had already retired.⁵² Islam later contested a Lok Sabha seat on a Congress (I) ticket from Assam.

To sum up, Mrs Gandhi's relationship with the judiciary in the early 1980s was in complete continuity with her earlier terms as prime minister. The judiciary's independence was seen as a potential restraint on her power. Therefore, she systematically sought to make the judiciary work on the basis of political considerations, so that, in the last resort, it would be subjected to the executive. Indeed, it was Mrs Gandhi herself who explained to the chief justice of India, Yeshwant Vishnu Chandrachud, the logic underpinning the appointment of Supreme Court judges: 'I am a political leader. I have to carry my people with me. I cannot displease my own people. My difficulties are political difficulties.'⁵³

Mrs Gandhi was successful only to a certain extent. Indeed, at the time of her death, 'an uneasy truce over transfers'⁵⁴ and over constitutional supremacy had been reached. The conflict would resurface after the collapse of the one-party-dominant system in 1989, this time with the Supreme Court acting from a much stronger position.⁵⁵

The parliament and the presidency

The proclamation of the emergency regime made apparent the fragility of India's institutions—it had been imposed in accordance with constitutional provisions; it had been authorized by the president of the Republic; the cabinet had approved it; parliament had ratified it; most of the press submitted to censorship; and the bureaucracy obediently implemented the most extreme decisions of the authorities. This was particularly true for the president and the parliament which, in theory, were supposed to work as a constitutional restraint

⁵¹ *Indian Express*, 5 December 1980.

⁵² *Ibid.*

⁵³ Mrs Gandhi quoted in Noorani, 'The Prime Minister and the Judiciary', p. 111.

⁵⁴ Austin, *Working a Democratic Constitution*, p. 532.

⁵⁵ Rudolph and Rudolph, 'Redoing the Constitutional Design'.

on the executive's attempts to abuse its power, but in practice legitimated the suspension of democratic rule. Relations between the presidency, parliament, and the government have generally been heavily unbalanced in favour of the latter. This was true during Nehru's years and even more so during Mrs Gandhi's premiership. The imbalance stemmed from the high degree of politicization to which these institutions had been subjected since the early 1950s, especially after Mrs Gandhi's appointment as prime minister. As the emergency clearly demonstrated, both institutions functioned by following political rather than constitutional considerations and were not capable of exercising any degree of autonomy. This led these institutions to become politically irrelevant.

While the presidency is somehow bound to be a relatively⁵⁶ marginal institution in parliamentary democracies, parliament is supposed to be the centre of a country's political life. However, parliament—more than other institutions—is influenced by the configuration of the party system. Therefore, paradoxically, the firm control over the Lok Sabha enjoyed by all prime ministers until 1989—with the exception of Charan Singh and, to a lesser extent, Morarji Desai—created the conditions for the parliament to become marginal in India's democratic life and paved the way for the concentration of power in the executive's hands. Parliament came to play a merely procedural role.

Mrs Gandhi came to see the parliament as 'something to be tolerated',⁵⁷ and several examples show the scant respect she had for it. Throughout her last term in office, she resorted to legislation by ordinance—therefore excluding parliament from the policy-making process—on a regular basis.⁵⁸ She explicitly refused to discuss certain public issues in parliament.⁵⁹ The government began to modify tariffs and state-controlled prices not only without informing parliament, but also immediately before the beginning of the Budget Sessions.⁶⁰ The partisanship of the Lok Sabha speaker, Balram Jakhar, led to some

⁵⁶ The word 'relatively' needs to be stressed here. Especially in times of political crisis, the president of a republic can—and indeed must—play a decisive role, as happened in India during the period of political instability post-1989, or as happened in this author's country (Italy) during the severe political and economic crisis of late 2011.

⁵⁷ *Indian Express*, 26 November 1980.

⁵⁸ *Indian Express*, 13 November 1980.

⁵⁹ *Times of India*, 15 October 1982.

⁶⁰ *Indian Express*, 16 January 1981; *Hindustan Times*, 22 February 1982.

rather bizarre interpretations of the procedural regulations of the lower chamber, for example, the episode when Zail Singh explicitly praised Adolf Hitler, which was later expunged from the records.⁶¹ Indeed, Mrs Gandhi stopped appearing in the Lok Sabha to report on her official visits abroad, as when she returned from the United States in the summer of 1982 and instead sent in the external affairs minister, Narasimha Rao, who had remained in India taking care of domestic affairs, to report to parliament.⁶² Quite naturally, MPs began to consider themselves more as administrative clerks than as legislators. Many of them did not bother to turn up, even when they had put up questions for oral replies,⁶³ and as a result parliamentary sessions became shorter and shorter.⁶⁴ Many more examples could be provided.

Before 1989, the president of India played a significant role on only two occasions.⁶⁵ The first occurred in 1951 when President Rajendra Prasad asserted himself in an attempt to block legislation on Hindu personal law,⁶⁶ and the second in July 1979, when President Neelam Sanjiva Reddy discretionally refused to give Jagjivan Ram the opportunity to demonstrate a parliamentary majority and called instead for fresh elections. Apart from these instances, the role of the presidents had been largely ceremonial, with the partial exception of President Zail Singh who came very close to dismissing Rajiv Gandhi's government for 'irresponsibility and corruption'.⁶⁷ Presidents usually kept a low profile and avoided public controversies. In many cases, especially during Indira Gandhi's premierships, this was translated into complete subservience to the prime minister. The most striking example occurred in 1975, when President Fakhruddin Ahmed agreed—albeit probably reluctantly—to sign the proclamation of the emergency, even though the cabinet had not been informed beforehand.⁶⁸ Similarly, during the emergency he did not object to any of the draconian legislative measures adopted by the government.

⁶¹ *Indian Express*, 27 March 1982.

⁶² *Times of India*, 14 August 1982.

⁶³ *India Today*, 16 March 1983.

⁶⁴ *Hindustan Times*, 1 May 1982.

⁶⁵ J. Manor, 'The Presidency', in Kapur and Pratab Metha (eds), *Public Institutions*.

⁶⁶ G. Austin, *The Indian Constitution: Cornerstone of a Nation*, Clarendon Press, Oxford, 1996, p. 140.

⁶⁷ J. Manor, 'The Prime Minister and the President', in Manor (ed.), *Nehru to the Nineties*.

⁶⁸ This made the proclamation of the emergency illegal.

The same can be said about parliament, which not only ratified the proclamation of the emergency and the subsequent extension of that parliament's life,⁶⁹ but agreed to subvert the democratic character of the constitution by passing a whole set of authoritarian constitutional amendments.

In the early 1980s the situation did not change much. Relations between President Sanjiva Reddy and Mrs Gandhi were usually cordial, despite past animosity.⁷⁰ The president consented to sign whatever piece of legislation or ordinance was brought before him, including the much-discussed dissolution of nine state assemblies and the National Security Ordinance.

The election of Zail Singh to the presidency in 1982 made relations with the prime minister even smoother. The latter was universally reputed to be one of the most loyal politicians to the Gandhi family, as well as one of the most inept. His election heralded the president coming to play a mere administrative role in government. In fact, when in late March 1984 Mrs Gandhi carried out a major reshuffle of governors, Zail Singh came to know about the changes only when his secretariat brought him the files for signature.⁷¹

Erosion of institutions: the rule of law and the constitution

The institutions that were seriously undermined during Mrs Gandhi's rule were crucial elements of India's democratic framework and, more specifically, of the constitution. We have already seen how Mrs Gandhi's attempts during the 1970s to subjugate the institutions of the state to the executive culminated in the proclamation of the emergency and in draconian amendments to the constitution, which were then enacted. We will now see in greater detail how these tendencies continued in the early 1980s.

⁶⁹ MPs' fear of arrest surely played a role.

⁷⁰ Reddy had been chosen by the Congress to be the Party's candidate for the presidency in 1969, but in the course of the dramatic struggle for power between Mrs Gandhi and the 'Syndicate', which eventually led to the split of the Party, she decided instead to back V. V. Giri. Zareer Masani, *Indira Gandhi: A Biography*, Oxford University Press, New Delhi, 1975; and Inder Malhotra, *Indira Gandhi: A Personal and Political Biography*, Northeastern University Press, Boston, 1991, provide two richly detailed accounts of this episode.

⁷¹ *India Today*, 1 April 1984.

From this point of view, the early 1980s are in complete continuity with Mrs Gandhi's earlier terms in office. Along with a series of disturbing trends—above all, the spreading of corruption, the virtual annihilation of the Congress Party's organization, and the appointment to important positions of people whose democratic credentials were far from solid—the declining quality of India's democracy was the result of the enactment of a set of quasi-authoritarian laws. These concerned three main areas: preventive detention, labour, and freedom of expression.

One of the Janata government's few achievements had been the restoration of the democratic character of the constitution and the repeal of the Maintenance of Internal Security Act, which had given the government sweeping powers to 'manage' political disorder. However, a similar measure, the Preventive Detention Ordinance, was issued by Charan Singh's caretaker government in late 1979. A well-known lawyer and intellectual, A. G. Noorani, compared the two laws and found them to be similar.⁷² Shortly after Mrs Gandhi's return to power, the Lok Sabha converted the Ordinance into law. Apparently, the desire for dealing with growing social unrest by imposing severe limitations on citizens' rights was something that cut across party lines.

A few months later, the president promulgated yet another ordinance, which was converted into law in December 1980. The National Security Act⁷³ gave the government the right to arrest and detain without trial those suspected of undermining national security and essential economic services. The National Security Act was subsequently amended in the summer of 1984 by an ordinance which established that a detention order made under the Act would not be deemed invalid because one or more of the grounds were held to be unsustainable.⁷⁴ The fact that these provisions could be used to curb political dissent was clearly demonstrated the very day the ordinance was promulgated: the government released two of the Akali Dal leaders⁷⁵—Operation Bluestar had just taken place—and immediately rearrested them under the amended National Security Act.

⁷² *Indian Express*, 15 October 1979.

⁷³ *Indian Express*, 17 December 1980.

⁷⁴ *Indian Express*, 22 June 1984.

⁷⁵ As we will see below, the second half of Mrs Gandhi's final term in office was marked by a major insurgency in Punjab. The Akali Dal was the political soul of this insurgency.

In July 1984, supposedly in response to the civil war-like situation in Punjab, the government had the president promulgate the Terrorist Affected Areas (Special Courts) Ordinance which was converted into law in August of the same year. The Act, which extended to the whole of India, except for Jammu and Kashmir, gave the central government the power to declare *any area* of the country to be a 'terrorist affected area'. In such cases, it was possible to establish special courts to try some of those accused of specified offences. These included, among others, 'waging war against the state, abetting mutiny, promoting enmity between classes, assertions or imputations prejudicial to national integrity and certain serious offences relating to human body and property like murder and dacoity'.⁷⁶ Moreover, the definition of the word 'terrorist' was so broad that even striking workers fell within its purview. The Act ensured that a 'terrorist' remained in detention for at least six months, before an Advisory Board was summoned to evaluate the grounds on which that person had been arrested. In any case, even if the Advisory Board held the detention order to be invalid, the government was allowed to rearrest the same person on the very same grounds. Furthermore, the Act, by modifying Section 111A of the Evidence Act, put the burden of proof on the accused, thus discarding one of the basic principles of any democratic penal code in the world—namely, that one is to be presumed innocent until guilt is proven. Rajiv Nayar compared the Terrorist Affected Areas Act to the colonial Rowlatt Act.⁷⁷

Mrs Gandhi's government also actively intervened in labour relations. She sought a corporatist solution to labour unrest.⁷⁸ However, along with setting up tripartite talks between the business community, the central government, and the unions, her government enacted a set of laws whose scope was to suppress labour unrest. The most notorious provision—along with the already mentioned Terrorist Affected Areas Act—was the Essential Services Maintenance Act 1981, which sought to curb workers' rights. The Act enabled the government to ban strikes in certain 'essential' services and gave the police the power to arrest without warrant any person 'reasonably' suspected of having committed an offence under the ordinance. Not

⁷⁶ *Indian Express*, 15 July 1984.

⁷⁷ *Seminar*, No. 302, October 1984.

⁷⁸ Diego Maiorano, 'Mrs Gandhi's Final Term and the Remaking of the Congress (I)'s Social Base', *India Review*, Vol. 11, No. 1, 2012.

only was the list of 'essential' services very long and vaguely defined, but,

... any other service connected with matters with respect to which Parliament ha[d] power to make laws and which the Central Government being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship of the community, may, by notification in the Official Gazette, declare to be an essential service for the purposes of [the] act.⁷⁹

Furthermore, the definition of 'strike' included the refusal to work 'overtime'. In short, the government conferred on itself the right to suppress strikes altogether. However, for the government, the results were disappointing: even if the Bombay Textile Strike is excluded from the count, the man-days lost to strikes steadily increased during the early 1980s.⁸⁰

Another area in which the Congress (I)'s government curbed citizens' rights was freedom of expression. Four provisions are worth noting. First, in the 1981 Budget, a 15 per cent levy was introduced on imported newsprint.⁸¹ The move was unprecedented as it had been exempted from customs duties since 1947. Small and medium-sized newspapers would have found themselves in serious difficulties had this been implemented; however, the levy was ultimately cancelled for small newspapers and reduced to 5 per cent for medium-sized ones.⁸²

Second, the central government backed a piece of legislation introduced in the Bihar Legislative Assembly—controlled by the Congress (I)—which threatened to jeopardize the freedom of expression in the state. The legislation, known as the Bihar Press Bill, introduced a new kind of offence, namely scurrilous writing. According to the Bill, judicial and executive magistrates—the latter being petty functionaries of the state government—had the power to issue a warrant for scurrilous writing against a journalist. Further, the offence was not regarded as an ordinary criminal offence, but was non-bailable.⁸³ Mrs Gandhi defended the Bill on the grounds that the press in India was in the hands of the opposition and it indulged in

⁷⁹ Essential Service Maintenance Act 1981, article 2.17.

⁸⁰ Maiorano, 'Mrs Gandhi's Final Term'.

⁸¹ Minister of Finance, *Budget Speech Before the Lok Sabha*, 1981.

⁸² *Indian Express*, 23 April 1983.

⁸³ *Times of India*, 18 September 1982.

'character assassination'.⁸⁴ The Bill was eventually withdrawn after it aroused nationwide protests.⁸⁵ It is worth pointing out that, amid the public furore against the Bihar Bill, the central government's request to the Press Council of India to formulate a 'Code of Conduct' for journalists was accepted, almost unnoticed.⁸⁶ Many feared that the government wanted to dictate guidelines for journalists, but in the event the freedom of the press was not significantly eroded.

Third, in August 1982, the government attempted to amend the Post Office Act 1898. The provision aimed at conferring on the government the right to intercept private mail on the 'occurrence of any public emergency or in the interest of public safety or tranquillity'.⁸⁷ Once again, the very general and broad scope of the bill left ample space for abuses. However, the legislation was eventually withdrawn.

Fourth, the government-controlled media became—in keeping with the previous decade—an instrument for the ruling family's propaganda. The very rapid spread of radio and television into even the remotest corners of the country—a result of carefully designed government policies,⁸⁸ including an ambitious plan for the expansion of broadcasting infrastructures worth Rs. 68 crore⁸⁹—made the effects of this kind of limitation of the public media's independence qualitatively and quantitatively different from the past. Not only was the number of people who could be reached through these means considerably higher than in previous decades, but these 'new' media were acquiring a growing influence on the urban middle class, which had been chosen as one of the key components of Mrs Gandhi's national constituency.⁹⁰

The general decline of the quality of democracy in India was occurring parallel to a somewhat latent threat to the constitution. Throughout Mrs Gandhi's final term, some of her closest associates repeatedly referred to the possibility of transforming the

⁸⁴ *Times of India*, 8 September 1982.

⁸⁵ The central government backed another piece of legislation introduced in the Orissa Legislative Assembly—controlled by the Congress (I)—which threatened to subject newspapers to the will of the state government; see Chittaranjan Alva, 'What the Bihar Press Bill Means', *Social Scientist*, Vol. 10, No. 12, 1982.

⁸⁶ *Times of India*, 12 November 1982.

⁸⁷ *Indian Express*, 14 August 1982.

⁸⁸ *India Today*, 16 June 1983.

⁸⁹ *India Today*, 16 August 1983.

⁹⁰ Maiorano, 'Mrs Gandhi's Final Term'.

parliamentary system into a presidential form of government. The debate was not new. Indeed, the constituent assembly itself had taken into consideration a presidential system before opting for the more familiar Westminster model. Since then, the debate has resurfaced regularly.⁹¹

Thus, on the eve of the 1980s, the debate on the presidential system was far from unfamiliar one to the Indian public. It was seen by some—among others, J. R. D. Tata and several other important businessmen⁹²—as a remedy for political instability; for others, especially after the emergency, it evoked the spectre of authoritarian rule.

The debate resurfaced shortly after Mrs Gandhi came back to power. What was new were the forms that the debate took. In previous decades, the issue had been raised mainly by intellectuals and bureaucrats, rather than politicians. The rare occasions when politicians took part in the debate happened at party forums, as when R. Venkataraman proposed to reform the constitution during the All India Congress Committee session in Chandigarh in the mid-1960s. Then in the 1970s, an anonymous paper⁹³ describing a new constitutional order was circulated among Party members and eventually leaked to the press. In the early 1980s, by contrast, the issue was raised mostly by politicians who were widely regarded as the most fervently loyal to the prime minister and debated in public.

By the late 1970s, most countries neighbouring India (except China) had adopted a strong presidential system. In Bangladesh, the forth amendment (in 1975) to the constitution introduced a presidential form of government. In Sri Lanka, with the enactment of the third constitution since independence, a French-style presidential system came into being. In Pakistan, Bhutto's constitution, although it formally established a parliamentary system, envisaged a strong role for the prime minister, giving Pakistan a de facto presidential form of government. In Burma, the promulgation of the 1974 constitution had made General Ne Win the president of the Republic. Presidentialism was 'in the air'.

⁹¹ The following brief summary of the debate is largely drawn from A. G. Noorani, *The Presidential System—The Indian Debate*, Sage Publications, New Delhi, 1989, and Austin, *Working a Democratic Constitution*.

⁹² *Indian Express*, 19 October 1979.

⁹³ It later turned out that the author of the paper was A. R. Antulay, Congress (I) chief minister of Maharashtra in the early 1980s.

The first proposal to switch over to a presidential system came from Chenna Reddy, then chief minister of Andhra Pradesh. In summer 1980, he called for a constituent assembly to frame a new constitution establishing a presidential form of government.⁹⁴ The opposition and virtually the entire national English-language press reacted vehemently, predicting the end of democratic rule in India. The law minister, P. Shiv Shankar, felt obliged to state before the Rajya Sabha that Chenna Reddy's statement had been made 'in his individual capacity'.⁹⁵ However, few were reassured by the law minister's declarations. This became a familiar pattern: one of Mrs Gandhi's men—including the former president of the Republic, V. V. Giri;⁹⁶ Maharashtra chief minister, A. R. Antulay;⁹⁷ Congress (I) MPs Vithal Gadgil⁹⁸ and Kamalapati Tripathi;⁹⁹ and union minister, Vasant Sathe¹⁰⁰—would call for the establishment of a presidential form of government; the opposition would express its concerns in the strongest possible terms; a member of the government or the prime minister herself would deny (in rather ambiguous language) the existence of any plan to change the constitution 'in the near future',¹⁰¹ which provoked those opposing the change even more.

The debate on presidentialism resurfaced with particular vigour shortly before the general election that was due by January 1985. In April 1984, Vasant Sathe relaunched the debate, first by writing a letter to Rajiv Gandhi (then a Congress (I) general secretary),¹⁰² and later through a series of press statements.¹⁰³ In the meanwhile, the convenor of the legal cell of the Congress (I), Lalit Bhasin, issued a statement demanding a constitutional amendment that would make the opposition 'more responsible'.¹⁰⁴ In a press interview Mrs Gandhi made an ambiguous declaration that both the parliamentary and presidential systems had advantages and disadvantages.¹⁰⁵ In the

⁹⁴ *Indian Express*, 4 June 1980 and 8 June 1980.

⁹⁵ *Indian Express*, 10 June 1980.

⁹⁶ *Indian Express*, 22 June 1980.

⁹⁷ *Indian Express*, 8 December 1980 and 29 January 1981.

⁹⁸ *The Hindu*, 2 March 1981.

⁹⁹ *Indian Express*, 15 December 1980.

¹⁰⁰ *Indian Express*, 29 April 1984; *Times of India* 27 August 1984; *India Today*, 16 June

1984.

¹⁰¹ Mrs Gandhi in *Indian Express*, 28 January 1981.

¹⁰² Reproduced in Noorani, *The Presidential System*, Appendix III.

¹⁰³ *Times of India*, 29 April 1984.

¹⁰⁴ *Indian Express*, 4 May 1984.

¹⁰⁵ *Blitz*, 2 June 1984.

same weeks, according to *India Today*,¹⁰⁶ the government appointed a group comprising former Supreme Court judges A. N. Mulla and Baharul Islam¹⁰⁷ to review all the articles of the constitution and suggest appropriate changes.

Vasant Sathe continued his campaign for constitutional reform for several months. In August 1984, a Congress (I) MP, Sat Paul Mittal, hosted a dinner for 50 Congress (I) MPs, including well-known loyalists like Sathe, Darbara Singh, and A. P. Sharma. A press note was released in which the minister argued that, given the serious threats to national unity and integrity 'arising out of regional, parochial, linguistic and communal urges', strong action was needed to ensure stability.¹⁰⁸ The problem, Sathe argued, was that it was extremely unlikely that any party would secure an absolute majority in the forthcoming elections. The same prediction had been made by district-level chiefs of the Congress (I) and members of the Party's front organizations, who had gathered in Delhi in June 1984.¹⁰⁹ A presidential system, the minister's note continued, would provide both the necessary stability and a democratically elected national figure who would protect national integrity. The following day, speaking before the Lok Sabha, Pranab Mukherjee tried to reassure the opposition that they should not worry before actual measures were taken.¹¹⁰ At the same time, Mrs Gandhi, speaking in front of Assam's MPs and state legislators, stressed the need for the people to be educated about suitable changes to the constitution, while Kamal Nath—one of the few among Sanjay Gandhi's loyalists who had remained in a position of power after Sanjay's death in June 1980—drafted a resolution to be adopted by the Madhya Pradesh Congress (I) asking for a switch to a presidential system.¹¹¹ Finally, in September 1984, Vasant Sathe—after Mrs Gandhi had invited people 'to study the different systems of government prevailing in other parts of the world'¹¹²—spelled out his proposition in greater detail. He suggested amending only articles 54 and 55 so that the election of the president would be by direct

¹⁰⁶ *India Today*, 16 May 1984.

¹⁰⁷ We have seen above how Baharul Islam was appointed to the Supreme Court.

¹⁰⁸ *Indian Express*, 27 August 1984.

¹⁰⁹ *India Today*, 16 June 1984.

¹¹⁰ *Indian Express*, 28 August 1984.

¹¹¹ *Indian Express*, 31 August 1984.

¹¹² *India Today*, 16 August 1984.

universal franchise.¹¹³ All other constitutional provisions would not be changed. This would have given the president both a democratic legitimation and virtually absolute power—for example, to declare President's Rule in any state.¹¹⁴

It is quite possible that the whole debate was just political chitchat.¹¹⁵ It is also plausible that a debate on the form of government was begun intentionally in order to leave 'less time for a debate about sugar'.¹¹⁶ However, in August to September 1984, for the first time since the emergency, the constitutional requirements that were needed to amend those articles of the constitution were met. First, Mrs Gandhi enjoyed a two-thirds majority in the Lok Sabha. In the Rajiya Sabha, after Zail Singh had nominated two more members because of their 'special knowledge' of 'literature, science, art and social service',¹¹⁷ the Congress (I) was just nine MPs short of a two-thirds majority. However, it was likely that the AIADMK (which had 11 members in the Rajya Sabha) would vote with the Congress (I), as it had done in several other occasions, including for the election of Zail Singh to the presidency. Moreover, its leader, M. G. Ramachandran, had earlier suggested turning the Lok Sabha into a constituent assembly that could take 'a fresh look' at the constitution.¹¹⁸ A Tamil Nadu chief minister, he was also probably thankful for Mrs Gandhi's covert support to Tamil insurgents in Sri Lanka. Second, according to article 368 of the constitution, in order to modify articles 54 and 55 at least half of the legislative assemblies as well as a two-thirds majority in both Houses of Parliament had to ratify the amendments. In September 1984, the Congress (I) enjoyed an

¹¹³ He made the same proposition at the Press Club of Calcutta a few days before Mrs Gandhi's assassination. The full text of his address is reproduced in Noorani, *The Presidential System*, Appendix IV.

¹¹⁴ *Economic and Political Weekly*, 20 October 1984.

¹¹⁵ Indeed, this is the view of most of the observers with whom this author spoke in Delhi in late 2010 to early 2011. Interviewees included Sir Mark Tully, Prem Shankar Jha, Inder Malhotra, George Verghese, and Subhash Agrawal. Politicians who were close to Mrs Gandhi also denied that there was any plan to change the constitution on the eve of the elections. Interviews with Vasant Sathe, Bishma Narain Singh, and Natwar Singh.

¹¹⁶ Arun Shourie, *Mrs Gandhi's Second Reign*, Vikas Publishing House, New Delhi, 1983, p. 224.

¹¹⁷ Constitution, article 80. These were K. Ramamurthi, a Congress (I) member from Tamil Nadu, and Gulam Rasool Kar, a Congress (I) member from Jammu and Kashmir.

¹¹⁸ *Indian Express*, 14 June 1980.

absolute majority in eight (out of 22) states,¹¹⁹ including Assam, where the Congress (I) had won 91 out of 126 seats the previous year, when most opposition parties had boycotted the elections that the central government had decided to impose. In three more states—Jammu and Kashmir, Sikkim, and Andhra Pradesh—the respective non-Congress (I) chief ministers had been dismissed (in what were constitutionally rather dubious and politically unwise moves) and new coalitions—which included Mrs Gandhi's party—had been formed.¹²⁰ In other states, the Congress (I) was either part of a coalition government or enjoyed a wafer-thin majority.

In the event, nothing came of the debate. Since then the issue has resurfaced regularly, through the efforts of a wide array of political actors, but technical and/or political difficulties have thwarted all attempts to abandon the Westminster model.¹²¹

Informalization of institutions: the federal system

Arguably the most severe and potentially dangerous institutional breakdown in the early 1980s occurred in centre-state relations, within the federal system. It is my contention that the main cause of this failure to keep interactions among the constituent parts of that system under control stemmed from the 'informalization' of federal relations, which had occurred in the previous decades. By 'informalization of federal institutions' I mean that since 1947 the management of centre-state relations had not occurred within a formal institutional framework. In its years as a dominant party, Congress 'swallowed up' centre-state relations. In the early 1980s, the de facto collapse of the one-party-dominant system and Mrs Gandhi's inability or unwillingness to redesign federal relations on the basis of the new configuration of the party system ultimately led to the severe crisis of governability which caused many to wonder if India was falling apart.

¹¹⁹ Namely, Assam, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, and Uttar Pradesh.

¹²⁰ In Sikkim, President's Rule was imposed shortly thereafter.

¹²¹ See Jessica Wallack, 'India's Parliament as a Representative Institution', *India Review*, Vol. 7, No. 2, 2008; Rudolph and Rudolph, 'Redoing the Constitutional Design'; D. Douglas Verney, 'From Quasi-Federation to Quasi-Confederacy? The Transformation of India's Party System', *Publius*, Vol. 33, No. 4, 2003.

Paradoxically, the informalization of federal institutions had an institutional root. The constitution provided the centre with large and very flexible powers—some scholars define India as a ‘centralized federation’¹²² or a ‘quasi-federal’ polity, while some others even deny its federal character.¹²³ At the same time, however, the constitution did not allow for strong institutional mechanisms for the management of centre-state relations. If a certain degree of flexibility was intentionally envisaged in order to let federal institutions adapt to changing circumstances,¹²⁴ the lack of institutional constraints on the exercise of such flexibility paved the way for the informal management of centre-state relations and, at the same time, for all sort of abuses. In other words, the federal system came to rely heavily on the party system and on the personalities of political leaders, the relative weight of each factor varying according to the actual political context.¹²⁵

Nehru’s government did little to build up a strong institutional framework for the management of centre-state relations. It sought to strengthen the centre vis-à-vis the states, while Nehru developed the informal management of federal relations as the norm.

A fundamental push towards a more centralized political system came from the establishment of a planned economy and the Planning Commission. Not only were the states called on to formulate plans that were consistent with the national plan, but they were highly dependent on the Planning Commission for the resources necessary to implement them.¹²⁶ In other words, the Planning Commission, especially during Nehru’s years in power, in practice became the

¹²² For example, Mahendra P. Singh and Douglas V. Verney, ‘Challenges to India’s Centralized Parliamentary Federalism’, *Publius*, Vol. 33, No. 4, 2003.

¹²³ For some references, see Amaresh Bagchi, ‘Rethinking Federalism: Changing Power Relations between the Center and the States’, *Publius*, Vol. 33, No. 4, 2003, or Douglas V. Verney, ‘Federalism, Federative Systems, and Federations: The United States, Canada, and India’, *Publius*, Vol. 25, No. 2, 1995.

¹²⁴ Balveer Arora, ‘Adapting Federalism to India: Multilevel and Asymmetrical Innovations’, in Balveer Arora and Douglas V. Verney (eds), *Multiple Identities in a Single State—Indian Federalism in Comparative Perspective*, Konark Publishers, New Delhi, 1995.

¹²⁵ For a detailed account of Indian federal institutions, see Austin, *Working a Democratic Constitution*. See also Ved Marwah, ‘Use and Abuse of Emergency Powers: The Indian Experience’, in Arora and Verney (eds), *Multiple Identities*, and the Sarkaria Commission Report (hereafter SCR). The report is available on the Interstate Council’s website: < <http://interstatecouncil.nic.in> >, [accessed 4 October 2013]. The Sarkaria Commission was appointed in mid-1983 to investigate the state of centre-state relations.

¹²⁶ P.K. Bhargava, ‘Transfers from the center to the states in India’, *Asian Survey*, Vol. 24, No. 6, 1984.

‘economic Cabinet, not merely for the Union but also for the States’.¹²⁷ Moreover, until 1969¹²⁸ the Commission allocated plan transfers to the states on a completely discretionary basis. In addition, the establishment of a centrally planned economy was accompanied by the emergence of the centrally controlled licence-Raj¹²⁹ and by bringing all basic industries under central control.¹³⁰ Even before the government came to supervise the ‘commanding heights’ of the economy, fiscal federalism and the planned economy were firmly in the hands of the Union.

The high degree of flexibility left to the central government by the framers of the constitution allowed the ruling party at the centre to manage centre-state relations in an informal way (i.e. through its own internal organization). This was the most natural, logical choice, given the configuration of the national party system as a ‘Congress system’.¹³¹ But it was also somewhat inescapable, since the constitution had not designed strong institutional mechanisms for the management of centre-state relations, with the partial exception of the Finance Commission (which, besides being a centrally appointed organ, was to be overshadowed by the over-centralized Planning Commission).¹³²

Other institutions, theoretically designed to manage centre-state relations, were ‘swallowed up’ by the Congress system and lost much of their institutional significance. The National Development Council, for example, rather than working as an ‘apex institution for arriving at a consensus among the Union and the States on various matters relating to planning and socio-economic development’, in fact became a ‘forum for the ventilation of individual grievances’.¹³³ In other words, given the dominance of the Congress Party at the centre and in the great majority of the states, the Council became a sort of internal Party forum. Indeed, it met only at the initiative of the Planning Commission (which is chaired by the prime minister); also, according to the Sarkaria Commission, its contribution to the

¹²⁷ Asok Chanda, quoted in Austin, *Working a Democratic Constitution*, p. 620.

¹²⁸ In 1969, following the states’ protests, the Planning Commission adopted the Gadgil formula as the basis for the distribution of plan resources to the states.

¹²⁹ The so-called licence-Raj refers to the series of authorisations that were needed to operate a private business in India.

¹³⁰ Bagchi, ‘Rethinking Federalism’.

¹³¹ Rajni Kothari, ‘The Congress “System” in India’, *Asian Survey*, Vol. 4, No. 12.

¹³² SCR, Chapter 10.

¹³³ *Ibid*, Chapter 11.

formulation of plans was limited to approving the approach papers and the draft plans—and even this was not always the case, for example, chief ministers claimed that the Third Plan was presented to them only after parliament had approved it.¹³⁴ In addition, although the National Development Council was supposed to meet at least twice a year, meetings were actually more sporadic (just 39 took place between 1952 and 1987). Thus the states scarcely participated in any significant manner in the planning process, and when they did, it was through informal consultations within the Party high command, rather than through the institutional channels officially envisaged. Neither did other institutions such as the multi-state councils or various sub-state institutions play any significant role in most parts of India.¹³⁵

It is also worth noting that one of most utilized institutional mechanisms designed to manage centre-state relations—article 356 of the constitution¹³⁶—was seldom used as the constitution intended—as a useful device to avoid the breakdown of a state government in a genuine emergency.¹³⁷ Most of the abuses occurred after Nehru's death;¹³⁸ however, misuse of the President's Rule occurred even earlier. It was first imposed (in Punjab in 1951) not to tackle an emergency in the state, but to solve an internal squabble within the state Congress Party.¹³⁹ A few years later, at the explicit initiative of the Congress president, Indira Gandhi, the government of Kerala was dismissed for no apparent reason other than that it was led by a non-Congress party.¹⁴⁰ Once again, this reveals not only how centre-state relations were managed informally—the president of the ruling party should not have a voice in such cases—but that when federal issues arose outside the 'Congress system', the likelihood of abuse on the part of the central government increased.

¹³⁴ Austin, *Working a Democratic Constitution*, p. 619, note 20.

¹³⁵ Arora, 'Adapting Federalism to India'.

¹³⁶ Article 356 confers on the president the right to declare 'President's Rule' (i.e. direct rule from the centre) in one of the states of the Indian Union, if the governor of that state—a centrally appointed position—is satisfied that the 'government of the State cannot be carried on in accordance with the provisions of [the] Constitution'.

¹³⁷ J. Manor, 'Centre-State Relations', in Atul Kohli (ed.), *The Success of India's Democracy*, Cambridge University Press, Cambridge, 2001.

¹³⁸ Bhagwan D. Dua, 'Presidential Rule in India: A Study in Crisis Politics', *Asian Survey*, Vol. 19, No. 6, 1979.

¹³⁹ Ved Marwah, 'Use and Abuse of Emergency Powers: The Indian Experience', in Arora and Verney (eds), *Multiple Identities*, p. 142.

¹⁴⁰ Malhotra, *Indira Gandhi*, p. 70.

To sum up, during the Nehru period, centre-state relations worked because federal ‘bargaining’¹⁴¹ took place *predominantly* within the Congress system—one of the best examples being the states’ reorganization in 1956, when most actors shared the same political goal, namely reorganizing state boundaries so that Congress would reap the political dividends from the change. In other words, it was the configuration of the party system that allowed the informal management of federalism. It was a short-sighted game on the part of the Congress: instead of building up institutional—and therefore long-lasting—mechanisms that would survive the demise of the Congress system and subsequent changes in the party system, it preferred to postpone the problem under the illusion that Congress rule would last forever.

It is in this context that Indira Gandhi’s premiership must be understood. My contention is twofold. On the one hand, Mrs Gandhi’s centralizing policies constituted not a radical reversal of the trend, but a continuation and then a very steep acceleration and degeneration of previous tendencies. On the other, Mrs Gandhi, rather than weakening (barely) existing federal institutions, refused to build them up when the need arose, in the wake of the changes that occurred in the party system. The electoral dominance of Mrs Gandhi’s Party till 1977—and the increasing personification of power within the Party—reduced centre-state relations ‘to a state of near non-existence as a problematic of federal politics in India’,¹⁴² thus compensating for the lack of institutional mechanisms for their management. Indeed, the persistence of a (somewhat artificial) Congress system rendered over-centralization feasible and the degeneration of centre-state relations tolerable.

All this changed in the early 1980s. The Janata phase had irremediably changed the party system.¹⁴³ The regional units of the parties ruling at the centre started to affect political dynamics in Delhi more than ever before,¹⁴⁴ exercising an influence arguably greater

¹⁴¹ W. H. Morris-Jones, *The Government and Politics of India*, Hutchinson & Co, London, 1964, p. 152.

¹⁴² T. V. Sathyamurthy, ‘Impact of Centre-State Relations on Indian Politics: An Interpretative Reckoning 1947–1987’, in Partha Chatterjee (ed.), *State and Politics in India*, Oxford University Press, New Delhi, 1997, p. 245.

¹⁴³ J. Manor, ‘Parties and the Party System’, in Chatterjee (ed.), *State and Politics in India*.

¹⁴⁴ Christophe Jaffrelot, *India’s Silent Revolution—The Rise of the Lower Castes*, Hurst & Co., London, 2003, Part 2.

than that exercised by the centre on the states. However, when Indira Gandhi came back to power, she chose to continue managing centre-state relations in the way she had done in the previous decade. She continued to treat her Party as her personal fiefdom—the ‘I’ (for ‘Indira’) added to the Party’s name in 1978 was there to remind anyone in doubt of this fact—substituting chief ministers at will, imposing drastic changes to the list of candidates for state elections, and maintaining firm control over states’ administrative apparatuses. When it became clear, after the state elections in 1982¹⁴⁵ and, even more so, those in 1983, that the one-party-dominant system was gradually but steadily coming to an end, Mrs Gandhi tried to reverse the processes of change through a series of subterfuges, which eventually resulted in the outbreak of four major crises in as many states.

A few weeks after Mrs Gandhi’s return to power, nine legislative assemblies—all opposition-led—were dissolved and President’s Rule was imposed. The law minister, P. Shiv Shankar, adduced three reasons for the move. First, he said that these assemblies were responsible for the delays in the ratification of the constitutional amendment that extended reservations for the scheduled classes and tribes. For some mysterious reason, the same was apparently not true for those Congress-controlled states that had not yet ratified the provision. Second, the law minister feared that states controlled by opposition parties would block the implementation of ‘other progressive measures’. Finally, the result of the 1980 general election showed that the people had lost faith in the Janata Party which therefore, in Shiv Shankar’s eyes, meant that it lacked the legitimacy to govern anywhere in India.¹⁴⁶

The apparent restoration of a one-party-dominant system and the extreme degree of centralization imposed by the Congress (I) made centre-state relations in most parts of the country as smooth—through

¹⁴⁵ In 1982 the Congress (I) failed to secure an absolute majority in all the states that went to the polls (Haryana, Himachal Pradesh, Kerala, and West Bengal). In 1983, it won in the municipality of Delhi and in Assam (in the latter case, most opposition parties boycotted the polls) but lost in Jammu and Kashmir, Andhra Pradesh, and Karnataka.

¹⁴⁶ *Indian Express*, 19 February 1980. The precedent had been set by the Janata Party in 1977 when it dismissed nine Congress-led state assemblies, on the grounds that as Mrs Gandhi at the centre had been badly rejected by the people, her Party could not legitimately govern in the states. The Supreme Court had endorsed this view. In the Janata Party’s defence, one could argue that the post-emergency context was completely different from that of early 1980.

being virtually non-existent—as they mostly were in the 1970s. There were at least two important exceptions. The first was Assam; the second, Punjab. The two crises in these states had several elements in common. Both began before Mrs Gandhi returned to power; both originated from local issues, which had little to do with federal relations; both degenerated into major crises thanks to the excessive intrusion of the central government in the states' affairs and to the sordid manipulation of ethnic identities on the part of the Congress (I); and a solution to both crises could not be found because of Mrs Gandhi's inability to negotiate with actors who did not share her own political goals.

Assam

This is not the place to discuss the Assam crisis in detail. There are several accounts of the events which deal with this very complex issue.¹⁴⁷ Our scope here is to see how the lack of an institutional framework for the management of the crisis gave the central government complete flexibility in dealing with the Assam agitation. It is my contention that the complete breakdown of governance which followed the centre's decision to impose state elections in early 1983 and the subsequent deaths of several thousands of people were completely avoidable, and that the crisis degenerated because there were no institutional mechanisms to guide both parties towards an acceptable solution. This is not to say that relations between the northeast region and the rest of the country were not a very sensitive issue. Indeed, the extreme socio-economic complexity of the area and the very delicate equilibrium within the region, combined with its particular geopolitical location, has constituted a continuous challenge for New Delhi. It is certainly not a coincidence that most of the special provisions included in article 371 of the constitution—which allows the central government to grant special concessions to certain states or regions—were created with this region in mind; and it is certainly no coincidence either that the northeast was the area from which the highest number of states was carved out after the states'

¹⁴⁷ For example, Myron Weiner, *Sons of the Soils—Migration and Ethnic Conflict in India*, Princeton University Press, Princeton, 1978; and Sanjib Baruah, *India Against Itself: Assam and the Politics of Nationality*, University of Pennsylvania Press, Philadelphia, 1999.

reorganization in the 1950s. Therefore, I am not suggesting that the underlying issues were easily resolved; indeed, I am not even sure if they were solvable at all.¹⁴⁸ Instead, I am pointing out that the actual crisis which broke out in the early 1980s could have been avoided had a mechanism for an institutional bargaining process existed or had Mrs Gandhi been willing to bargain with someone who did not have among their goals the future electoral prospects of the Congress (I).

The bone of contention in Assam was the revision of the state electoral rolls, which contained many non-Indian citizens (most of whom had migrated from East Pakistan/Bangladesh in the previous decades) and who thus had no right to vote. By all accounts, most of these non-Indian voters were Congress supporters. The Assamese, through a series of organizations led by the All Assam Student Union, wanted the electoral rolls to be revised and illegal immigrants to be deported out of Assam, in order to ward off the political subjugation of the Assamese. Indeed, Mrs Gandhi herself, shortly before the 1980 general elections, said that free elections were not possible in Assam, unless the electoral rolls were revised.¹⁴⁹ However, after she came back to power, she apparently changed her mind.

The talks were conducted in an extremely informal fashion. Sometimes it was the home minister who bargained with the leader of the All Assam Student Union.¹⁵⁰ At other times it was the external affairs minister.¹⁵¹ At still other times, it was the finance minister¹⁵² or the prime minister herself or the chief minister of Manipur or the Gandhi Peace Foundation that led the negotiations.¹⁵³ A great deal of confusion resulted from the several rounds of talks and no solution could be found. In the meanwhile, several Congress (I) governments—which had a majority thanks to major defections from the Janata Party—were appointed, only to be rapidly followed by long periods of President's Rule.¹⁵⁴ Furthermore, the leaders of the agitation were repeatedly arrested, which resulted in even more confusion around the negotiating table. In any case, the framework of informal federalism could not work because the parties involved in the negotiation had

¹⁴⁸ Manor, 'Centre-State Relations'.

¹⁴⁹ *Indian Express*, 4 December 1979.

¹⁵⁰ *Indian Express*, 26 February 1980.

¹⁵¹ *Indian Express*, 22 October 1980.

¹⁵² *Times of India*, 9 March 1982.

¹⁵³ *Indian Express*, 28 January 1980.

¹⁵⁴ President's Rule was imposed from December 1979 to December 1980; from June 1981 to January 1982; and from March 1982 to February 1983.

diverging political goals. To put it in very simple terms, the All Assam Student Union was asking the government for two things: first, to delete several thousands Congress (I) voters from the electoral rolls; and, second, to guarantee them an 'honourable' way out of the agitation that they had promoted and led. Neither of these two things was acceptable to Mrs Gandhi.

The prime minister sought a different way out of the impasse. A democratically elected Congress (I) government, in her eyes, would have been a more suitable interlocutor in the framework of informal federalism, hence her decision to call for fresh elections on the basis of the unrevised electoral rolls. The government justified this decision—which ultimately led to the most violent elections since independence¹⁵⁵—on two grounds. First, there was a constitutional obligation to hold elections before March 1983, since five years had passed since the previous legislative assembly had been elected. In order for the postponement of the elections to be constitutionally permissible, an amendment allowing the government to prolong President's Rule beyond one year was needed. Indeed, a bill was introduced in the parliament¹⁵⁶ and the opposition parties agreed to give their consent in the Rajya Sabha, where the Congress (I) did not yet have a two-thirds majority.¹⁵⁷ However, the Congress (I) decided instead to withdraw the bill and go ahead with the elections, despite the fact that the Army had estimated that no fewer than 120 battalions would be needed to ensure acceptable law and order during the elections—to put things into perspective, the whole Central Reserve Police Force amounted to just 76 battalions.¹⁵⁸ Moreover, according to intelligence reports, the Rashtriya Swayamsevak Sangh on the one side, and Mrs Gandhi on the other, utilized an explicitly communalist idiom, which contributed to inflaming feelings and radicalizing the situation.¹⁵⁹

Second, the government justified the decision to hold elections on the basis of the unrevised electoral rolls by saying that there was no time to do alter them, since the decision to have an election had only been taken on 7 January 1983, about five weeks before they were due to be held. Revising the electoral rolls could take from six weeks to six

¹⁵⁵ *India Today*, 1 May 1983.

¹⁵⁶ *Times of India*, 3 November 1982.

¹⁵⁷ *Economic and Political Weekly*, 29 November 1983.

¹⁵⁸ *India Today*, 1 May 1983.

¹⁵⁹ *India Today*, 1 March 1983.

months, depending on the method used.¹⁶⁰ However, it is absolutely not credible that the Election Commission was taken by surprise by the government communication of 7 January. The requirement to hold an election by March 1983 had been known since the election of the legislative assembly five years before. The imposition of President's Rule—which could last no more than a year—and the dissolution of the legislative assembly in March 1982 should have served as a reminder to the Election Commission, but apparently it did not. In addition, in the preceding year, several statements by a series of institutional actors left no doubt about the constitutional obligation to hold elections. Bishma Narain Singh, a cabinet minister at the time, recalled that 'everyone' knew that elections would be held in March 1983.¹⁶¹

Preparations for the elections had begun in May 1982 and detailed reports had been sent to the prime minister regarding the number of officials and polling boots needed, and similar technical matters.¹⁶² Despite all this, the chief of the Election Commission, R. K. Trivedi, apparently did not realize that elections were about to be held. It seems more credible that the electoral rolls were intentionally left unrevised.¹⁶³

To make things worse, after the imposition of President's Rule in March 1982, the central government resorted to increasing repression. Shortly before the elections, Rajesh Pilot, at that time a Congress (I) official in charge of the Party's electoral campaign in neighbouring Tripura, spelled out the Congress (I)'s strategy towards Assam to the journalist, Shekhar Gupta. Pilot said that people wanted elections and a 'political government'. Therefore, the central government was planning to arrest some 5,000 agitators in the run-up to the election period. In this way, the agitators would be 'finished politically' and normalcy could be restored in Assam.¹⁶⁴ The plan was actually implemented and the entire leadership of the All Assam Student Union was arrested on the very day the elections were

¹⁶⁰ *India Today*, 16 May 1983.

¹⁶¹ Interview, New Delhi, 16 January 2011.

¹⁶² *India Today*, 16 May 1983.

¹⁶³ I am not suggesting that revising the electoral rolls would have solved all the problems in Assam or that detecting foreigners would have been easy or even feasible. Rather, I am arguing that revising the electoral rolls, or at least trying to do so, would have eased the tension and perhaps the 1983 bloodbath could have been avoided.

¹⁶⁴ Reported in Baruah, *India Against Itself*, p. 131.

announced.¹⁶⁵ A consequence of the crackdown, which was probably unintended, was to hand the leadership of the Assam movement to its most extremist elements. Further, the entire operation was accompanied by an 'invasion' of central personnel into Assam. Given the reluctance of state officials—out of fear and/or their political beliefs—to organize the elections, several thousand officials had to be 'imported' from outside the state. The same happened with the security apparatus. The local police were definitely unhappy about repressing the Assam movement (another similarity with the Punjab agitation). In some cases, clashes erupted between the police and the Central Reserve Police Force which led to some casualties.¹⁶⁶ On top of this, the central government imposed censorship in the state, thus creating the rather paradoxical situation that in order to promote the democratic process, the government suppressed the most fundamental civil liberties.

Most parties boycotted the elections—the only exceptions, beside the Congress (I), were the parties of the Left. The Congress (I) eventually won 91 out of 126 seats. In several constituencies the turnout was lower than 1 per cent. About 3,000 people died in the days preceding the elections.¹⁶⁷ The new chief minister, Hiteswar Saikia, an ethnic Assamese who belonged to the Ahom (upper) caste (like most of the leadership of the agitation) promoted a set of policies aimed at accommodating different tribal groups and, according to press reports, actively tried to split the All Assam Student Union on communal lines,¹⁶⁸ a strategy that was partially successful. Eventually, a weaker All Assam Student Union and, more importantly, another government at the centre—not so keen on maintaining its political hold on the state and able to conceive of centre-state relations outside the informal federalist framework—led to the signing of the Assam Accord in 1985. The subsequent state elections were won decisively by the Gana Assam Parishad. However, Assam's problems were not resolved, as the rise of the United Liberation Front of Assam and the following decades of guerrilla warfare clearly demonstrate.

¹⁶⁵ *Indian Express*, 8 January 1983.

¹⁶⁶ *India Today*, 16 May 1983.

¹⁶⁷ Baruah, *India Against Itself*, p. 133.

¹⁶⁸ *India Today*, 1 May 1983.

Punjab

Let us now turn our attention to the second crisis which haunted Mrs Gandhi's government from the very beginning to the very end of her final term in office.¹⁶⁹ It is my contention that the Punjab problem was both completely avoidable and easily manageable, had Mrs Gandhi been prepared to negotiate with actors who did not share her political objectives. To put it differently, although deeper socio-economic factors did play a role—especially in terms of providing Sikh militants with a growing following among the educated unemployed¹⁷⁰—the crisis emerged, degenerated, and could not be solved for entirely political reasons.

The anti-Indira wave which swept North India in the wake of the end of the emergency regime hit Punjab too. The party of the Sikhs, the Akali Dal,¹⁷¹ formed a government in alliance with the Janata Party. In the changed national party system that the anti-emergency wave had brought about, regional parties and state governments occupied significant political space. In this context, the Akali Dal renewed their demands on the central government by slightly modifying the so-called Anandpur Saheb Resolution.¹⁷² The Sikhs demanded that the letter of the constitution be respected as far as federal relations were concerned, thus asking for less intervention by the centre in the states' affairs. The Akalis also listed a series of administrative demands. The most significant were: handing over the city of Chandigarh to Punjab,¹⁷³ along with some areas dominated by Punjabi-speakers in neighbouring states; a greater share of some of its river waters; and for the right of the Shiromani Gurdwara Parbandakh Committee to administer Sikh temples—and their finances—outside Punjab. Some

¹⁶⁹ Two very detailed accounts of the Punjab crisis are: Mark Tully and Satish Jacob, *Amritsar—Mrs Gandhi's Last Battle*, Jonathan Cape, London, 1985; Kuldip Nayar and Khushwant Singh, *Tragedy of Punjab—Operation Bluestar and After*, Vision Books, New Delhi, 1984.

¹⁷⁰ Paul Wallace, 'Religious and Ethnic Politics: Political Mobilization in Punjab', in Francine Frankel and M.S.A. Rao (eds), *Dominance and State Power in Modern India—Vol. 2*, Oxford University Press, New Delhi, 1990.

¹⁷¹ Or, to be more precise, the party of the Sikhs belonging to the Jat caste cluster.

¹⁷² The first version of the resolution was drafted in 1973. The 1982 version of the resolution, which was 'officially' endorsed by Sant Longowal, is reproduced in Nayar and Singh, *Tragedy of Punjab*, Annexure A.

¹⁷³ This had been promised by Mrs Gandhi as early as 1969, when Sant Fateh Singh, an Akali Dal faction leader, threatened to burn himself to death if Chandigarh was not handed over to Punjab. See Tully and Jacob, *Amritsar*, p. 51.

religious and symbolic demands, such as the granting of the status of 'holy city' to Amritsar, provided the 'ideological' framework of the resolution. The prime minister, Morarji Desai, was not sympathetic towards these demands, to put it mildly.¹⁷⁴ However, the Akalis, although their demands were not accommodated, were given the autonomy that they had so eagerly sought in the previous decade.

The routing of the Congress Party in North India in the 1977 election was not without consequences in Punjab. It is now widely accepted that, shortly after the establishment of an Akali Dal-Janata government, Sanjay Gandhi and Zail Singh began to look for a 'Sikh leader who was more Sikh than the Akalis'.¹⁷⁵ Their choice was a hitherto unknown Sikh preacher, Sant Jarnail Singh Bhindranwale. Apparently Sanjay and Zail Singh thought they could manipulate the Sant into breaking the tenuous unity of the Akali Dal. With this in mind, they financed and promoted him. During the 1980 general elections, Bhindranwale even campaigned for the Congress (I) Party in at least three constituencies.¹⁷⁶

Punjab was among the states that were brought under President's Rule in February 1980, after Mrs Gandhi's return to power. In the following elections, the Akali Dal, badly divided into a number of warring factions, suffered a resounding defeat. The Congress (I) came back to power and Mrs Gandhi installed Darbara Singh as chief minister. Zail Singh, who had by then been appointed as Union minister of home affairs, was definitely not pleased to see his arch rival at the head of his state's government. However, he still had an ace in the hole with which he could make his rival's life tough. Bhindranwale was therefore not left to pursue his own destiny. On the contrary, the central government's backing guaranteed him almost complete impunity. In the next few months Bhindranwale and his followers began systematically to kill those who were on the Sant's blacklist—policemen, journalists, civil servants who had been identified as enemy of the Sikhs—and, a few months later, to kill Hindus at random. Punjab was brought to the edge of a civil war. The imposition of President's Rule in late October 1983 did nothing to bring the situation under control.

¹⁷⁴ Robin Jeffrey, *What's Happening to India?—Punjab, Ethnic Conflict, Mrs Gandhi's Death and the Test for Federalism*, MacMillan, London, 1986, Chapter 8.

¹⁷⁵ Mark Tully, interview, New Delhi, 10 December 2010.

¹⁷⁶ Francine Frankel, *India's Political Economy 1947–2004*, Oxford University Press, Oxford, 2005, p. 671.

In the meantime, the Akali Dal leaders had launched an agitation, parallel and partially overlapping with the Sant's campaign, for the implementation of the Anandpur Saheb resolution. The negotiating process with the government was extremely complicated and was influenced by a great many factors. The actual issues at stake—in particular, the share of the river waters, the fate of Chandigarh, and control over places of worship—were less important than the events that unfolded at the time. The negotiations were influenced by a series of state elections. Talks in April 1982 failed because Mrs Gandhi was not willing to concede anything to the Akalis on the eve of elections in neighbouring Haryana and Himachal Pradesh. The breakdown of talks was usually followed by various initiatives on the part of the Akalis, which in turn forced Mrs Gandhi to reopen the negotiations, but then the Delhi and the Jammu and Kashmir elections came along, and Mrs Gandhi's political priorities changed—and so it continued.

The talks were also influenced by a set of initiatives undertaken by both the Akalis and the government, which had the net effect of raising tensions to barely manageable levels. For example, the Akalis publicly threatened to disrupt the Asiad Games in Delhi, which were a top political priority for the central government (and, perhaps more importantly, Rajiv Gandhi's first important task after his entry into politics). The central government reacted by ordering the Haryana government not to let any Sikh cross the Delhi border. All sorts of abuses—including forced shavings¹⁷⁷—ensued.

The anarchic situation within the Congress (I) and petty intraparty political games also prevented any progress being made. On several occasions the Punjab state unit of the Party actively undermined the talks by spreading false information about the nature of the agreements reached or by misleading both Mrs Gandhi and the Akalis about the other's intentions.¹⁷⁸ In one instance, Zail Singh secretly called the leader of the Akali agitation, Sant Longowal, to tell him to reject Mrs Gandhi's proposal to include Swaran Singh, which obviously did not contribute to building a positive climate for the upcoming round of talks.¹⁷⁹ At another time, Mrs Gandhi decided that the details of the accord reached with the Akalis regarding river waters had to be approved by parliament, but the account she presented in the Lok Sabha differed significantly from the accord that she had reached

¹⁷⁷ *India Today*, 1 December 1982 and 16 December 1982.

¹⁷⁸ Prem Shankar Jha, interview, New Delhi, 2 December 2010.

¹⁷⁹ Nayar and Singh, *Tragedy of Punjab*, p. 45.

with the Akalis, who then decided to abandon negotiations.¹⁸⁰ The systematic humiliation of the moderate Akalis enabled Mrs Gandhi to reduce their influence in Punjab politics but it also handed the leadership of the Sikhs to Bhindranwale on a plate.

The institutional set up in Punjab broke down completely. Not only had the administration been virtually paralysed by the Darbara Singh–Zail Singh dispute, but the imposition of President’s Rule had created even more confusion, alternative centres of power, and mutual vetoes. More dramatically, the police in the state were becoming more and more reluctant to use their powers as increasing numbers of policemen had either become admirers of Bhindranwale or were afraid to take the necessary action, thus rendering the enactment of draconian provisions like the Terrorist Affected Areas Act quite useless. As in Assam, the Central Reserve Police Force clashed with the Punjabi police on several occasions.

The talks failed because Mrs Gandhi acted as if the Akali Dal shared her political goals—or, to use the terminology that I have adopted, she was proceeding on the basis of informal federalism. In political terms, the Akalis were seeking ‘a victory’¹⁸¹ which would enable them to restore their credibility as the party of the Sikhs and eventually isolate Bhindranwale. But crucially, Mrs Gandhi was not willing to concede a political victory to a non-Congress (I) party at any cost. As in Assam, her adversaries in Punjab had to be ‘finished politically’. The defeat of the Congress (I) in a series of by-elections in May 1984—only a few months from the coming general elections—convinced Mrs Gandhi that a growing section of Indian society—especially the middle class—expected her to undertake strong action. Operation Bluestar, the army’s assault on the Golden Temple, the Sikhs’ holiest shrine, followed.

The constitutional revolt

Meanwhile, the fragmentation of India’s party system along regional lines accelerated. In the course of 1983 it received a decisive boost from the victory of N. T. Rama Rao’s Telugu Desam Party in Andhra Pradesh, Ramakrishna Hegde’s Janata Party in Karnataka, and Farooq Abdullah’s National Conference in Jammu and Kashmir. Five of the

¹⁸⁰ Jeffrey, *What’s Happening to India?*, p. 154.

¹⁸¹ M. J. Akbar, *India: The Siege Within*, Penguin, Harmondsworth 1985, p. 196.

major states were now ruled by non-Congress parties (the other two were West Bengal and Tamil Nadu). Feeling stronger than ever before, they joined hands to confront the centre in a concerted way. They sought to build a confederal national alternative to the Congress (I) Party, and non-Congress chief ministers mounted a 'constitutional revolt',¹⁸² the main objective of which was to demand the institutionalization of federal relations, in lieu of the informal federalism of the previous decades.

In one of N. T. Rama Rao's very first public declarations, he demanded the creation of a commission to study centre-state relations.¹⁸³ Indeed, the demand for a substantial decentralization of power—along the lines suggested by the Anandpur Saheb resolution—had been included in the Telugu Desam Party's election manifesto. Bolder initiatives were undertaken in the following months. In late March 1983, Hegde hosted a meeting of the chief ministers from the South in Bangalore—the Congress (I)'s chief minister of Kerala, K. Karunakaran, declined the invitation, labelling the initiative 'seditious'.¹⁸⁴ Alongside many rhetorical declarations, the meeting issued a set of recommendations to the central government. The chief ministers asked for the establishment of a commission on federal relations, suggested the amendment of articles 256 and 257 of the constitution in order to give more powers to the states, and demanded the repeal of the provision which obliged the states to seek the president's (in practice, the prime minister's) assent to enact laws on certain state-reserved subjects. They also asked for a fairer and less discretionary distribution of central resources. For example, they claimed that Andhra Pradesh's first steel project had been starved of funds since the January 1983 elections, and that that Kerala—controlled by the Congress (I)—was receiving bigger allocations of rice than Tamil Nadu, despite the latter's larger population.¹⁸⁵ Shortly after the meeting, Rama Rao explained that he saw the initiative as a 'nucleus for a bigger body'.¹⁸⁶ What he had in mind was the creation of a council of all chief ministers that would function as a forum for discussing centre-state relations in an institutional setting.

¹⁸² Austin, *Working a Democratic Constitution*, p. 541.

¹⁸³ *The Hindu*, 24 January 1983.

¹⁸⁴ *Economic and Political Weekly*, 26 March 1983.

¹⁸⁵ *India Today*, 1 April 1983.

¹⁸⁶ *The Hindu*, 6 April 1983.

The Congress (I) reacted vehemently to the meeting of the southern chief ministers, claiming that the initiative was 'extra-constitutional' and 'highly dangerous'.¹⁸⁷ However, it did accept one of the recommendations, namely to establish a commission for the study of centre-state relations (the abovementioned Sarkaria Commission). However, according to Granville Austin, Mrs Gandhi tried to limit the freedom of manoeuvre of its chairman, Justice Sarkaria, by asking him to conduct his study 'within the constitution', by not allowing him to influence the composition of the Commission,¹⁸⁸ and by delaying the beginning of the enquiry by about ten months.

The establishment of the Commission did not satisfy the opposition parties' demand for the institutionalization of centre-state relations. Another meeting was held in late May in Vijayawada in Andhra Pradesh, and still another one in Srinagar shortly after Farooq Abdullah's victory in Jammu and Kashmir. In addition, Hegde hosted a seminar on federal relations in Bangalore in August 1983, which was attended by many prominent academics, civil servants, and commentators. The papers of the conference formed the basis for a discussion held in Srinagar in October 1983. Here the opposition leaders issued quite a detailed statement in which about ten articles of the constitution were highlighted as the means by which the Union government exercised wide discretionary powers and imposed its dominance upon the states.¹⁸⁹ In particular, they questioned the legitimacy of President's Rule—according to the Sarkaria Commission only 26 out of 75 impositions of article 356 had been 'inevitable'¹⁹⁰—and other emergency provisions; they asked for a revision of the constitutional distribution of powers and for the creation of institutional mechanisms that would ensure the states' exclusive right to legislate in areas reserved for them in the constitution; they strongly argued for the formation of an Interstate Council (as envisaged by article 263 of the constitution, which had not yet been implemented); they asked for a provision which would make it mandatory for the central government to obtain a state's assent before deploying the

¹⁸⁷ *Indian Express*, 1 April 1983.

¹⁸⁸ Austin, *Working a Democratic Constitution*, p. 542. The other members of the Commission were former cabinet secretary and IAS member, B. Sivaraman, and former member of the Planning Commission, S. R. Sen.

¹⁸⁹ Collection of statements presented at the Srinagar Meeting, 5–7 October 1983, printed as *Centre-State Relations*, Vikas Publishing House, New Delhi, 1984.

¹⁹⁰ SCR, Chapter 6.

army within its boundaries; and they questioned the overall structure of financial relations.

The Srinagar meeting, as pointed out by the Communist chief minister of West Bengal, Jyoti Basu, claimed to speak for Congress (I)-ruled states too.¹⁹¹ Indeed, that most chief ministers were not content with the framework of informal federalism was confirmed by Justice Sarkaria himself, who stated that some Congress (I) chief ministers, although scared of coming out with this in public, actually backed many of the opposition-sponsored reforms.¹⁹²

The opposition leaders who mounted such an unprecedented challenge to the centre were not forgiven by Mrs Gandhi. Within months, most of the protagonists of the 'constitutional revolt' had been somehow punished. The first victim was Farooq Abdullah.

Apparently Mrs Gandhi had decided to remove him from power 'at any cost'.¹⁹³ Three techniques were used to destabilize his National Conference government. First, the Congress (I) state unit deliberately tried to 'create a law and order situation' to convince the governor to impose the Governor's Rule¹⁹⁴ (as direct rule from New Delhi is called in Jammu and Kashmir).¹⁹⁵

Second, Mrs Gandhi repeatedly accused Farooq of being a secessionist and in a secret alliance with Muslim fundamentalists inside and outside India. The central government linked him with virtually any law and order problem in the country, especially in Punjab, and insistently portrayed him as an agent of the Central Intelligence Agency.

Third, the Congress (I) contacted potential defectors from the National Conference and tried to 'convince' them to join Ghul Shah's (Farooq's brother-in-law) newly formed party, the Awami National Conference. The standard offer was 'Rs. 2 lakhs (200,000) in cash

¹⁹¹ Manor, 'Centre-State Relations'.

¹⁹² Austin, *Working a Democratic Constitution*, p. 627.

¹⁹³ Arun Nehru, quoted in Malhotra, *Indira Gandhi*, p. 297.

¹⁹⁴ 'Notes on the present situation in J&K discussed with the PM on 5th Jan 1984', B. K. Nehru Papers, Subject File 80, Nehru Memorial Museum and Library, New Delhi (hereafter NMML). B. K. Nehru's view that the Congress (I) deliberately created chaos in order to destabilize the government is shared by many observers, such as Tavleen Singh, quoted in Victoria Schofield, *Kashmir in Conflict: India, Pakistan and the Unending War*, I. B. Tauris, London, 2003, p. 146, or Arun Shourie in *India Today*, 16 September 1983 and 1 September 1983.

¹⁹⁵ In practical terms, little changes.

plus a Ministership'.¹⁹⁶ The fact that all 13 defectors did indeed obtain ministerial posts in Ghul Shah's cabinet, once Farooq had been toppled, confirmed the claim. However, until Mrs Gandhi decided to substitute B. K. Nehru with Jagmohan as the governor of Jammu and Kashmir, the only results the Congress (I) obtained were to escalate tensions in the Kashmir Valley and to increase the hitherto limited consensus among Islamist organizations such as the Jamat-e-Islami.¹⁹⁷ The insurrection which exploded in the Valley in the late 1980s reflected both these outcomes.

At the National Development Council in the summer of 1984, the non-Congress (I) chief ministers of Tripura, West Bengal, Karnataka, and Andhra Pradesh presented a joint statement protesting against Farooq Abdullah's dismissal. However, Mrs Gandhi would not allow them to raise the issue. As Rama Rao tried to read his statement, 'there were interruptions by the Buta Singhs and the Bhajan Lals'. The chief ministers finally walked out, instructing their officials to remain seated. However, Mrs Gandhi ordered them to leave along with their chief ministers, 'as if these states had ceased to belong to the Union'.¹⁹⁸ Within two weeks, Rs. 325 crore (3.25 billion), which West Bengal was supposed to receive in line with the Finance Commission's recommendations, was cancelled.¹⁹⁹ Two weeks later, N. T. Rama Rao was dismissed in yet another unconstitutional move.

The Congress (I)'s plot to get rid of him was very similar to that of Farooq's removal. They began with the state-level Congressmen drawing up a list of potential defectors. They then tried to convince them to defect, offering money and ministerships. Newspapers reported that about Rs. 20–30 million were sent from New Delhi to tempt legislators.²⁰⁰ Efforts intensified during Rama Rao's stay in the United States for medical treatment in July 1984. In this period Mrs Gandhi even paid a surprise visit to her constituency (Medak) in Andhra Pradesh.²⁰¹ Apparently, despite the large sums invested, the Congress (I)'s search for defectors was unsuccessful. Nevertheless, the

¹⁹⁶ 'Notes on the present situation in J&K discussed with the PM on 5th Jan 1984', B. K. Nehru Papers, Subject File 80, NMML.

¹⁹⁷ Sten Widmalm, 'The Rise and Fall of Democracy in Jammu and Kashmir', *Asian Survey*, Vol. 37, No. 1, 1997, p. 150.

¹⁹⁸ Ashok Mitra in the *Illustrated Weekly of India*, 5 January 1986.

¹⁹⁹ *Economic and Political Weekly*, 8 September 1984.

²⁰⁰ Krishna K. Tummala, 'Democracy Triumphant in India: The Case of Andhra Pradesh', *Asian Survey*, Vol. 26, No. 3, 1986, p. 391.

²⁰¹ *Indian Express*, 19 July 1984.

Party convinced the governor, Ram Lal, to dismiss Rama Rao anyway and swear in former finance minister, Bhaskara Rao, in his place.²⁰² The Congress (I) thought that this *fait accompli* would inspire many more to defect from the Telugu Desam Party. However, they had not anticipated the strong popular reaction against Rama Rao's dismissal. He was still very popular and the Congress (I)'s move only reinforced the feeling that Telugu pride was being trampled on by New Delhi. Most of the Telugu Desam Party legislators were aware enough not to fall into the Congress (I)'s trap. And thanks to Rama Rao's decision to bring them all to neighbouring Karnataka, they were less exposed to the Congress (I)'s offers. Eventually, Rama Rao was sworn in again in mid-September.

A very similar plot was planned in Karnataka—a Congress (I) member's attempts to bribe a potential defector were even recorded on tape²⁰³—but the attempt to topple Hedge's government failed. A few months earlier, in May 1984, the Sikkim Janata Parishad chief minister, Nar Bahadur Bhandari, had been dismissed, after the state Congress (I) unit had 'encouraged' defections.²⁰⁴ These machinations to reimpose a one-party-dominant system, which would sustain a framework of informal federalism, gave the Congress (I) control of more than half of the legislative assemblies of the states, which was necessary to amend the articles of the constitution concerning the election of the president of the Republic.

An unintended result was the collapse of support for the Congress (I) in those states where Mrs Gandhi had resorted to unconstitutional means. In the December 1984 general elections, just after her assassination and in the midst of wave of a sympathy for her son and successor, Rajiv, Andhra Pradesh elected only six Congress (I) legislators (in 1980 there had been 41) and 30 belonging to the Telugu Desam Party, which became the single largest opposition party in the Lok Sabha after the sympathy votes triggered a landslide victory for Congress (I). In the state elections in the following years, the trend was confirmed. Punjab, Andhra Pradesh, Sikkim, Assam, and Karnataka all chose non-Congress (I) governments. The Congress system was finished.

²⁰² *The Hindu*, 16 August 1984.

²⁰³ Raghavan and Manor, *Broadening and Deepening Democracy*, Chapter 7.

²⁰⁴ The Congress (I) government in Sikkim lasted about two weeks, after which President's Rule was imposed.

In subsequent years, parallel to the process of regionalization and fragmentation of the national party system, the demand for institutionalization of federal institutions was partially responded to. The anti-defection law²⁰⁵ enacted in 1985 made the toppling of state governments a much more difficult endeavour; the establishment of the inter-state council in the early 1990s provided a forum for expressing state grievances; and in 1994 a Supreme Court ruling made the imposition of President's Rule much more difficult.

Conclusion

In this paper, I have sought to analyse the aggressive process of deinstitutionalization which occurred in India during the early 1980s. I have distinguished between three sub-processes—politicization, erosion, and informalization—in order to show how the dominance of the Congress Party over India's political system impacted on the functioning of state institutions and modified their working principles. Also, I have showed how the gradual collapse of the old party system which had sustained the process of deinstitutionalization brought unbearable pressures to bear on India's institutional order, thus contributing to the 'crisis of governability' that engulfed the Indian state for most of the 1980s.

Two concluding—and somewhat conflicting—observations emerge from this analysis. First, as I have tried to show, the functioning of state institutions depends to a significant extent on the configuration of the party system. Therefore, it is through the democratic process that institutional regeneration occurs. This is in fact what happened in India after 1989. The reconfiguration of the national party system in the wake of the collapse of the dominant Congress (I) Party has led not only to a reworking of the reciprocal relations among state institutions, but also to a redrawing of the logic regulating their functioning. In other words, the state and the Congress Party began to diverge. The result is that today's India not only functions in a more democratic way, but its institutions are slowly but steadily adapting to a different—and more democratic—political system, thus contributing to the further democratization of the system itself.

²⁰⁵ That is, the 52nd Amendment to the constitution.

Second, the degree to which state institutions were subjected to the executive until 1989 contributed to the entrenchment of the idea—among politicians and the public alike—that politicians were omnipotent. Hence a somewhat paradoxical process developed. On the one hand, as argued by Rajni Kothari, quite large sections of the electorate lost faith in the state as an agent of social change;²⁰⁶ on the other hand, more and more people believed that access to political power remained the best way to pursue their private interests. In other words, as the legitimacy of the state as a public institution faded, it increasingly became seen as a tool for private benefits. The damage done to the quality of India's democracy will not be repaired any time soon. This must be seen as one of the most important—and most detrimental—of Mrs Gandhi's legacies.

²⁰⁶ *Illustrated Weekly of India*, 8 June 1984.