

[ADRN Issue Briefing]

## Democratic Backsliding in India

Neelanjan Sircar (Ashoka University, India)

### An Overview of Democratic Decline

India has long been considered the world's most populous democracy, but recent developments in the country have called into question the integrity of its democracy. In May 2019, the incumbent Hindu nationalist Bharatiya Janata Party (BJP) led by Prime Minister Narendra Modi secured a second term in a landslide victory — winning 303 out of 543 seats (with its governing alliance winning a total of 353 seats). This marked the first time since 1984 that a single party won the majority of seats in back-to-back national elections. But along with electoral dominance have come charges of weakening state institutions and intimidation of political opponents and government critics, leading to what many scholars call “democratic backsliding.” These concerns gained worldwide attention with the publication of two recent reports from agencies that assess the quality of democracy around the world.

In its 2021 report, Freedom House, a non-governmental organization, downgraded India's status from “free” to “partly free” because the Indian government “presided over rising violence and discriminatory policies affecting the Muslim population and pursued a crackdown on expressions of dissent by the media, academics, civil society groups, and protesters.”<sup>1</sup> Freedom House relies on country experts and internal procedures to assess a country's quality of democracy.

Soon after this report was released, the Sweden-based V-Dem Institute downgraded India from an “electoral democracy” to an “electoral autocracy.”<sup>2</sup> Unlike the rating system used by the Freedom House, V-Dem uses a nearly exhaustive list of indicators and statistical modeling to derive its indices. These methods portrayed a similar diminution in the quality of India's democracy, with V-Dem observing “a gradual deterioration where freedom of the media, academia, and civil society were curtailed first and to the greatest extent.”

To put things into perspective, the liberal democracy index (LDI) developed by V-Dem shows India's democratic status at levels last seen between the years of 1975 and 1977 — when then-Prime Minister Indira Gandhi declared martial law or “Emergency” across India — a period

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<sup>1</sup> *Freedom in the World 2021— India Country Report*. <https://freedomhouse.org/country/india/freedom-world/2021>

<sup>2</sup> *Autocratization Turns Viral: Democracy Report 2021*. [https://www.v-dem.net/media/filer\\_public/c9/3f/c93f8e74-a3fd-4bac-adfd-ee2cfbc0a375/dr\\_2021.pdf](https://www.v-dem.net/media/filer_public/c9/3f/c93f8e74-a3fd-4bac-adfd-ee2cfbc0a375/dr_2021.pdf)

widely considered to have constituted the formal suspension of India's democracy. Furthermore, these are not methods that judge only non-Western countries harshly. For instance, the United States also displays a precipitous drop in its LDI score after 2016, when Donald Trump was elected president.

From a theoretical standpoint, it has long been believed that democracies are most effective, that is, they are a form of government most accountable and sensitive to the concerns of citizens when political opposition and civil society can freely bring forth their points of view and criticisms of the ruling government. The ruling government is able to entrench itself in power without responding to citizens' concerns when opponents of the ruling government (whether formal political actors or ordinary citizens) are harassed or intimidated and mass media refuses to give space to dissenting voices,

### **Stifling Dissent from Civil Society**

As in many cases of democratic backsliding, police action and disingenuous interpretation of the law have been used to target critics in civil society.

India's sedition law, section 124A of the Indian Penal Code, is over 150 years old and harkens back to British colonial rule, during which the law was actively used to suppress anti-colonial activities. In fact, Mahatma Gandhi was charged with sedition in the 1920s, a law he referred to as the "prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen."<sup>3</sup>

In recent times, the sedition law has been used to explicitly generate a chilling effect among critics of the government. This sedition law has been used to jail student activists Anirban Bhattacharya, Kanhaiya Kumar, and Umar Khalid for raising "anti-national" slogans at a Jawaharlal Nehru University (JNU) campus event. In the aftermath, television media made unsubstantiated claims and accusations about the activists, partially based upon a doctored video, to sway public opinion against them.<sup>4</sup> More recently, student environmental activist Disha Ravi was jailed under the sedition law due to her role in furnishing a "toolkit" as a guide for digital campaigns critical of the government.<sup>5</sup>

These are not isolated incidents either. A database of sedition cases in India from 2010 to 2020 found that 65% of all cases had been filed since the election of Prime Minister Modi in 2014. More strikingly, 96% of the sedition cases filed against Indian citizens for being critical of the government or politicians between 2010 and 2020 were filed after Narendra Modi became the prime minister.<sup>6</sup>

Perhaps the most effective legal tool in stifling criticism has been India's anti-terrorism law, known as the Unlawful Activities (Prevention) Act (UAPA). Soon after having been re-elected, the government introduced an amendment to the UAPA to allow the designation of not only

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<sup>3</sup> Republic of dissent: Gandhi's sedition trial. *Live Mint*. January 25, 2019. <https://www.livemint.com/politics/news/republic-of-dissent-gandhi-s-sedition-trial-1548352744498.html>

<sup>4</sup> 'We faced a trial by media': The Umar Khalid and Anirban Bhattacharya interview. *Scroll*. March 19, 2016. <https://scroll.in/article/805353/we-faced-a-trial-by-media-the-umar-khalid-and-anirban-bhattacharya-interview>

<sup>5</sup> Climate Activist Jailed in India as Government Clamps Down on Dissent. *New York Times*. February 15, 2021. <https://www.nytimes.com/2021/02/15/world/asia/climate-activist-jailed-india.html>

<sup>6</sup> Our New Database Reveals Rise In Sedition Cases In The Modi Era. *Article 14*. February 2, 2021. <https://www.article-14.com/post/our-new-database-reveals-rise-in-sedition-cases-in-the-modi-era>

organizations (and members therein), but also individuals as terrorists. Under the UAPA, those arrested need not immediately be informed about why they have been arrested (charges can be framed up to 180 days later) and are rarely given bail. Government data shows that the number of cases filed under the UAPA increased by more than 72% from 2015 to 2019 and between 2016 and 2019 only 2.2% of cases ended in conviction.<sup>7</sup> This has led many observers to conclude that the UAPA has been increasingly used to harass individuals critical of the government even when there is no defensible legal case — as cases can take many years to resolve due to India’s case backlog — while a person under trial must continue to be in jail.

One of the most high-profile uses of the UAPA has been in relation to the “Bhima Koregaon violence.” On January 1, 2018, groups representing the Dalit communities (those belonging to the “lowest” caste groups) held an event commemorating the Battle of Koregaon — a historically important event for Dalit communities — in the Bhima Koregaon village in the state of Maharashtra. After right-wing incitement, a group pelted stones upon those in the commemoration leading to the death of a 28-year-old in the subsequent confrontation, triggering massive statewide protests.<sup>8</sup> In the aftermath, several civil rights activists and scholars, most of whom had not taken part in the event — such as Hany Babu, Sudha Bharadwaj, Gautam Navlakha, Varavara Rao, Father Stan Swamy, Anand Teltumbde, Rona Wilson — were charged under the UAPA and are still in jail.<sup>9</sup> There are strong indications, however, that the basis of some of the charges stems from data planted on the computers of the activists,<sup>10</sup> and a number of those jailed are in poor health drawing attention from the UN Human Rights office.<sup>11</sup>

By May 2021, India had experienced a devastating second wave of the coronavirus pandemic, formally peaking at over 400,000 cases and 4,500 deaths per day. Nonetheless, it has been widely understood that this is a severe undercount due to limited testing availability and poor accounting of deaths.<sup>12</sup> Images of overcrowded hospitals, people dying due to the lack of oxygen availability, and makeshift burials and funerary pyres flashed across the globe. The government has sought to counter negative publicity through punitive action. In Uttar Pradesh, India’s largest state, chief minister Yogi Adityanath (who is aligned with the ruling BJP) instructed officials to take action against those “creating fear” by criticizing his government’s handling of the coronavirus pandemic, including hospitals that reported a shortage of oxygen.<sup>13</sup> In another example, the police in the capital city of Delhi, which is controlled by the central government, arrested 24 individuals

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<sup>7</sup> Parliament proceedings | Over 72% rise in number of UAPA cases registered in 2019. *The Hindu*. March 10, 2021. <https://www.thehindu.com/news/national/parliament-proceedings-over-72-rise-in-number-of-uapa-cases-registered-in-2019/article34029252.ece>

<sup>8</sup> Violence in Maharashtra as Dalits protest death of 28-year-old in Bhima Koregaon clashes, bandh called in state. *Hindustan Times*. January 2, 2018. <https://www.hindustantimes.com/india-news/violence-in-maharashtra-as-dalits-protest-death-of-28-year-old-in-bhima-koregaon-clashes/story-zerVWqrSjLjF2x53oHmVXL.html>

<sup>9</sup> Manufacturing Evidence: How the Police is framing and arresting constitutional rights defenders in India. *The Polis Project*. August 13, 2020. <https://thepolisproject.com/manufacturing-evidence-how-the-police-framed-and-arrested-constitutional-right-defenders-in-india/>

<sup>10</sup> Further evidence in case against Indian activists accused of terrorism was planted, new report says. *Washington Post*. April 21, 2021. <https://www.washingtonpost.com/world/2021/04/20/india-bhima-koregaon-activists-report/>

<sup>11</sup> UN Human Rights Office Urges Release of Bhima Koregaon Activists ‘at the Very Least on Bail’. *The Wire*. January 24, 2021. <https://thewire.in/rights/un-human-rights-office-bhima-koregaon>

<sup>12</sup> As Covid-19 Devastates India, Deaths Go Undercounted. *New York Times*. April 24, 2021. <https://www.nytimes.com/2021/04/24/world/asia/india-coronavirus-deaths.html>

<sup>13</sup> Oxygen shortage | Some hospitals creating fear: Yogi Adityanath. *The Hindu*. April 26, 2021. <https://www.thehindu.com/news/national/other-states/oxygen-shortage-some-hospitals-creating-fear-adityanath/article34409725.ece>

for posting flyers that questioned Prime Minister Modi's vaccine policy.<sup>14</sup>

## Media and Stymying Political Opposition

Since the BJP came to power in 2014, there has been a noticeable shift in Indian mass media. The Indian media is regularly accused of openly displaying bias for the ruling government, bowing to political pressure on a number of matters, and engaging in self-censorship.<sup>15</sup> Most worryingly, there is significant concern that the media engages in “dog whistle” tactics to vilify India's Muslim community and generate greater Hindu-Muslim polarization (which is considered beneficial for the ruling Hindu nationalist BJP).<sup>16</sup>

With mass media viewed largely biased towards the ruling government, social media may plausibly create spaces for alternate or critical content. In practice, however, online spaces have been flooded with aggressive content and fake news produced by those associated with the Hindu nationalist ideology and anti-Muslim rhetoric.<sup>17</sup> A more troubling development is that the Indian government has resorted to internet (and phone data) shutdowns when it senses threat, essentially cutting off two-way communication between citizens and voices critical of the government. According to available data, of the 155 internet shutdowns recorded in 2020, 109 were in India.<sup>18</sup> (The next closest country was Yemen with six.) The disproportionate use of internet bans in India has been an effective tool in restricting the most critical voices from the political opposition.

But the restriction of opposing political voices does not only pertain to the domain of communication — key opposition leaders have also been jailed or harassed by the central government. On August 5, 2019, the ruling BJP changed the land protections for Jammu and Kashmir, India's only Muslim majority state, which was a long-time demand from Hindu nationalists. At the same time, it unilaterally demoted the state to a “union territory” and divided the state into two. This demotion gave the central government significant power over the region, as regional political actors were often adversarial to the central government.<sup>19</sup> In order to prevent political resistance, the government jailed all key leaders (some of whom still continue to be in custody).<sup>20</sup> Even 82-year-old former chief minister Farooq Abdullah was kept in custody for 7 months.<sup>21</sup> On top of the jailing of key leaders, the government imposed a bruising internet ban that

<sup>14</sup> Arrests over PM Modi's posters ‘illegal’, says plea in Supreme Court. *Hindustan Times*. May 18, 2021. <https://www.hindustantimes.com/india-news/arrests-over-pm-modi-s-posters-illegal-says-plea-in-supreme-court-101621293711703.html>

<sup>15</sup> Edward Anderson and Christophe Jaffrelot. 2018. Hindu nationalism and the ‘saffronisation of the public sphere’: an interview with Christophe Jaffrelot. *Contemporary South Asia*. Vol 26, No. 2: 468-482.

<sup>16</sup> Shakuntala Banaji and Ram Bhat. September 24, 2020. Disinformation against Indian Muslims during the COVID-19 pandemic. *Media@LSE Blog*. <https://blogs.lse.ac.uk/medialse/2020/09/24/disinformation-against-indian-muslims-during-the-covid-19-pandemic/>

<sup>17</sup> By design and delusion, the project to radicalise Hindu India gains momentum. *Scroll*. March 9, 2019. <https://scroll.in/article/915757/by-design-and-delusion-the-project-to-radicalise-hindu-india-gains-momentum>

<sup>18</sup> Internet shutdowns report: Shattered dreams and lost opportunities. *Access Now*. March 3, 2021. <https://www.accessnow.org/keepiton-report-a-year-in-the-fight/>

<sup>19</sup> The interplay between Kashmir and India's democratic project. *Hindustan Times*. September 14, 2019. <https://www.hindustantimes.com/analysis/the-interplay-between-kashmir-and-india-s-democratic-project/story-styS64AQc8SRxLZxl0IZXO.html>

<sup>20</sup> Jailed Kashmiri leaders' families seek their release in the wake of pandemic. *The Hindu*. May 6, 2021. <https://www.thehindu.com/news/national/other-states/jailed-kashmiri-leaders-families-seek-their-release-in-the-wake-of-pandemic/article34500450.ece>

<sup>21</sup> Farooq Abdullah meets son Omar in Srinagar sub-jail day after release from 7-month detention. *Hindustan Times*. March 14, 2020. <https://www.hindustantimes.com/india-news/farooq-abdullah-meets-son-omar-in-srinagar-sub-jail-day-after-release->

lasted for 18 months.<sup>22</sup>

This activity is not restricted to the contested region of Kashmir. Somewhat surprisingly, despite its dominance in national politics, the BJP has performed poorly in recent state elections.<sup>23</sup> In early 2021, the state of West Bengal went to the polls. The ruling chief minister of West Bengal, Mamata Banerjee (from a party called the Trinamool Congress), has been a strong critic of the BJP. In order to shift the narrative, the BJP aggressively used its state resources in the election campaign, using central agencies like the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI) to investigate cases and question politicians during the electoral campaign.<sup>24</sup> In the aftermath of the election, in which the BJP was defeated soundly, the CBI has arrested 4 key political leaders, including 2 ministers of the government, affiliated with Mamata Banerjee's Trinamool Congress in a seven-year-old case that had been lying dormant.<sup>25</sup>

In principle, India's institutions are supposed to act as a check against the erosion of democratic norms, or, at minimum, not function in a biased manner. But often these same institutions have been complicit in stymying critical voices. The Supreme Court, for instance, has been viewed as one of the strongest and most independent in the entire world — and one that can effectively counter moves by politicians to curtail liberty. However, like many other contexts undergoing similar cases of democratic backsliding like Hungary and Turkey, the Court has stood down,<sup>26</sup> refusing to act during the aforementioned mass arrests in Jammu and Kashmir.<sup>27</sup> This is not only limited to the courts. In addition to the central police, the income tax department has been regularly used to intimidate politicians,<sup>28</sup> critics of the government, and even celebrities.<sup>29</sup> Perhaps most prominently, the ceremonial post of the governor in the Indian system (a political appointee from the central government) has been used to harass state governments in opposition to the ruling BJP.<sup>30</sup> In short, the democratic breakdown is built upon the complicity and manipulation of India's existing institutions.

from-7-month-detention/story-6ErpcQYCMD8DcCGmYjBhUP.html

<sup>22</sup> 4G Is Back in J&K After 18 Months, But it Can't Compensate for What We Lost. *The Wire*. February 7, 2021.

<https://thewire.in/rights/jammu-and-kashmir-4g-internet-costs>

<sup>23</sup> Neelanjan Sircar. March 6, 2021. The Welfarist Prime Minister: Explaining the National-State Election Gap. *Economic and Political Weekly*. Vol. 56, No. 10. <https://www.epw.in/engage/article/welfarist-prime-minister-explaining-national-state>

<sup>24</sup> CBI, ED, IT probes against opposition politicians — on at election time, off after that. *Print*. April 16, 2021.

<https://theprint.in/india/cbi-ed-it-probes-against-opposition-politicians-on-at-election-time-off-after-that/640596/>

<sup>25</sup> Bail On Hold, Mamata Banerjee's 2 Ministers, 2 Others Spend Night In Jail. *NDTV*. May 18, 2021.

<https://www.ndtv.com/india-news/four-including-mamata-banerjees-ministers-arrested-in-narada-bribery-case-get-bail-2443606>

<sup>26</sup> With Freedom at Stake, Courts Are Collapsing. *New York Times*. September 9, 2020.

<https://www.nytimes.com/2020/09/09/opinion/hungary-turkey-india-courts.html>

<sup>27</sup> Is the SC abdicating its responsibility? *Mumbai Mirror*. August 24, 2019.

<https://mumbaimirror.indiatimes.com/opinion/columnists/by-invitation/is-the-sc-abdicating-its-responsibility/articleshow/70812765.cms>

<sup>28</sup> Income tax department raids DMK leader Kanimozhi's house in Tamil Nadu's Thoothukudi. *Hindustan Times*. April 16, 2019. <https://www.hindustantimes.com/india-news/income-tax-department-raids-dmk-leader-kanimozhi-s-house-in-tamil-nadu-s-thoothukudi/story-JYQXZfvcSCH3tcunGDTC6K.html>

<sup>29</sup> 'Not so sasti anymore': Actor Tapsee Pannu takes dig after I-T raids on her, Anurag Kashyap. *The Print*. March 6, 2021. <https://theprint.in/india/not-so-sasti-anymore-actor-tapsee-pannu-takes-dig-after-i-t-raids-on-her-anurag-kashyap/616836/>

<sup>30</sup> Governors Vs states – Delhi 'sultanate' back amid growing sense of bias. *The Federal*. October 21, 2020.

<https://thefederal.com/analysis/governors-vs-states-delhi-sultanate-back-amid-growing-sense-of-bias/>

## Conclusion

While the demotion of India's status in various democratic indices was domestically controversial, a closer look provides a genuine empirical basis for such demotion. While it is true that there have been anti-democratic laws and practices throughout India's history, some of which harken back to British colonial rule, the conduct of Prime Minister Modi's BJP government shows a significant increase in the use of these tools. Upon assuming power in 2014, and especially after the re-election in 2019, the ruling BJP has used legal machinery and centrally controlled institutions to harass opposition political leaders and critics of the government in civil society. Indeed, a close reading of the reports that accompany the Freedom House and V-Dem reports highlights these exact factors for the demotion of India's status in their respective indices. Without a course correction, India will continue down the path of democratic erosion. ■

■ **Neelanjan Sircar** is a Senior Visiting Fellow at Centre for Policy Research (CPR) and Assistant Professor at Ashoka University. His research interests include Indian political economy and comparative political behavior with an eye to Bayesian statistics, causal inference, social network analysis, and game theory. Dr. Sircar is also a Non-Resident Fellow at the Center for the Advanced Study of India at the University of Pennsylvania. He received a bachelor's degree in applied mathematics and economics from UC Berkeley in 2003 and a PhD in political science from Columbia University in 2014.

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For inquiries:  
Jinkyung Baek, Director of the Research Department

Tel. 82 2 2277 1683 (ext. 209)      j.baek@eai.or.kr

The East Asia Institute  
#909 Sampoong B/D, Eulji-ro 158, Jung-gu,  
Seoul 04548, South Korea  
Phone 82 2 2277 1683      Fax 82 2 2277 1697  
Email eai@eai.or.kr      Website www.eai.or.kr