

Is constitutional democracy in India in crisis?

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Abstract

Purpose – This paper examines the decline of the largest working parliamentary democracy in India overtime, but accelerating since 2014 as the Bharatiya Janata Party (BJP), under the leadership of Prime Minister Narendra Modi at the Center (as the federal government is commonly known).

Design/methodology/approach – It is eclectic. Original constitution, along with commentaries, are studied. News outlets, government pronouncements, journal articles, and other media outlets — electronic and print — are also sourced.

Findings – The findings show how three important features in democracy — elections and their outcomes, control of information, and suppression of dissent are widely used to undermine constitutional democracy.

Originality/value – Democracy can be undermined without altering the Constitution itself. It also explains the irony of Modi's popularity, given the undemocratic practices. As he may continue in office for some time to come, commanding a log-rolling majority, the need of the hour is a united, constructive and effective opposition to ensure a healthy working democracy.

Keywords Bharatiya Janata Party, Narendra Modi, Indian Parliament, Control of information, Suppression of dissent

Paper type Research paper

Introduction

India is not only known as the world's largest working democracy, but also proud of its admittedly long history of constitutional working. But the decline of the former due to the surreptitious subversion of the Constitution is not well appreciated. This paper examines these two phenomena in four parts. The first deals with parliamentary democracy and some other ancillary issues. The second examines the implication of controlling information flow. The third enquires into suppression of dissent. The fourth draws the conclusions and provides some explanations.

Parliamentary democracy

Consequent to independence on August 15, 1947, India adopted its new Constitution on November 26, 1949 which established a bi-cameral Parliament at the Centre (i.e., the federal government) with the lower House called as *Lok Sabha* (House of the People), and the upper House, *Rajya Sabha*. Discussion here is confined to the former, directly elected by the people. The *Rajya Sabha* (representing States) is not covered as it is indirectly elected by the sub-national units — 28 States and 9 Union Territories (UTs).

The Indian Constitution and The Representation of the People Act, 1951 (as amended mainly in 1966) prescribe the qualifications to be a legislator for *Lok Sabha* (and *Rajya Sabha* and State Assemblies too), based on universal adult franchise. Elections are centrally



controlled and are held once in five years, but with some exceptions. The Prime Minister can dissolve the Parliament earlier and call for new elections for whatever reasons. A Prime Minister might resign, or voted out of office on a no-confidence motion, both leading to midterm elections. Similar exceptions apply to State Legislative Assemblies headed by Chief Ministers. Additionally, when an “emergency” is declared in a State under Article 356 due to failure of “constitutional machinery”, real or purported, fresh elections may be conducted, or the Assembly is left in a limbo till such time the crisis passes.

(a) **Table 1** shows that the election exercise is massive, and in general fair, albeit with some minor violence in some places, and even corrupt political and electoral processes. One cannot fail to notice that there is a surfeit of political parties, some of not much consequence. In fact, the Election Commission delisted 86 of them since May 2022 (*thehindu.com*, 2022).

Two important institutions are involved in the conduct of elections. The first is the Delimitation Commission — a statutory body created by Parliament with the power to carve out the nation into legislative electoral districts (“constituencies”) after every decennial census. So far, its work has been exemplary. However, the last experience in the State of Jammu and Kashmir (J&K), which was bifurcated on October 31, 2019 into two UTs — J&K and Ladakh, is of interest. With elections long overdue, instead of the erstwhile Commission, an ad hoc three-judge panel was constituted for the new delimitation. No one complained, much less the Commission itself. The Supreme Court itself in February 2023 dismissed challenges to this exercise by a few residents of Srinagar (summer capital of J&K).

The timing too turned out to be debatable. While Prime Minister Narendra Modi’s government decided on conducting this exercise in 2021, leaders of J&K wanted to wait till after the elections (whenever they are conducted). But the process was allowed to play out. In its final report of March 2022, the panel recommended 6 new seats for Jammu and 1 for Kashmir contending to correct the extant imbalance (when Kashmir had 7). Leaders of the J&K opposition parties, however, criticized that it would lead to a “political shift” towards Jammu, advantageous to BJP during the next elections. Moreover, while the nationwide delimitation exercise is due in 2026, why in 2022 in J&K, alone? It is also noteworthy that enumeration of national census due in 2021, was postponed in 2022 by the Modi government until further notice without assigning any reason. This was the first such postponement in independent India.

Population of India	1.3 billion
Total registered voters	911,950,734*
Total voted	Over 600 million (67.4% of the populace)
Total polling stations	1 million
Total election officials	10 million
Total # parties	2,293 (largely unrecognized by EC)
Registered with EC	149
Recognized	8 national, and 59 State level**
Total number of seats in Parliament	545
Elected	543
President Nominates	2***

*The Election Commission announced that as of January 1, 2023, the number stood at 945 million.

**The eight recognized national political parties are: Indian National Congress, Bharatiya Janata Party, Trinamool National Congress, Bahujan Samaj Party, Communist Party of India, Communist Party of India (Marxist), National Peoples Party, and National Congress Party.

***The practice of nominating two Anglo-Indians (given their miniscule number) was in operation till 2020 when the 126th Amendment of 2019 discontinued the practice as their numbers further dwindled.

Source: Compiled by the author from various reports of the Election Commission.

Table 1. A panoramic picture of the Election Exercise, 2019

Actual elections are conducted by the second institution — the Election Commission (EC), consisting of the Chief Election Commissioner (CEC) and such number of other Commissioners as the President of India determines. Under Article 324(2) of the Constitution the President appoints and determines their tenure and service conditions “subject to the provisions of any law” passed by Parliament. However, the Election Commission Act of 1991 set their term of office for six years, or their retirement, whichever comes earlier. The EC has proved to be an impartial and efficient body. But some recent events cloud its reputation. Given the President a near figurehead, who acts on the aid and advice of the government, the latter was blamed for the pitfalls.

The very first CEC served for eight years. But of late those who have not even a year left before retirement are being appointed inviting the criticism that the government was picking those who could be pliant. The previous UPA government of Prime Minister Manmohan Singh had six CECs in eight years. Current Modi government continued the trend. An egregious case occurred in November 2022 when an IAS officer, Arun Goel, serving the government as Secretary, Heavy Industries, resigned six weeks prior to his retirement on Friday, November 18, 2022, was appointed to the Commission on Saturday and took office the following Monday. What was the hurry for an appointment with such “lightning speed”, asked the Supreme Court in amazement, and ordered the government to surrender the file regarding the appointment (Sarda, 2022). Justice K. M. Joseph even admonished the government suggesting that Article 324 provides an impeachment process (to remove an errant member, or Chair), and there was no need for short-term appointments that would hurt the independence of the office (Rajagopal, 2022b). The Supreme Court in *Anoop Barnawal* (2023) decision laid down that future appointments would be made henceforth by a committee comprising the Prime Minister, leader of the Opposition and the Chief Justice, till such time a controlling law (there is none so far) is passed by Parliament.

The 2021 election in the State of West Bengal was another instance of distress. The EC decided to stagger the elections over eight different days (between April 11 and May 19, with results to be announced on May 23, 2021). Chief Minister Mamata Banerjee, leader of Trinamool Congress (TMC), protested vehemently citing that other States of similar population strength actually had gone to polls in a relatively shorter time span (since election schedules were announced) and with shorter number of days of election, some even in a single day. Her claim was that this spread was a deliberate attempt to help BJP concentrate on individual districts, serially. Instead, she would have preferred to ride the wave in one fell swoop. The EC disagreed. The depth of this seemingly innocuous controversy can be better understood by placing it within the context of all efforts of BJP government to unseat Chief Minister Banerjee, who has been a major irritant to Modi’s government.

(b) Legitimacy of elections is never challenged, but accepted without a murmur. That leads to political stability, enabling smooth transition from one government to another (of a different party or parties). The outcomes of elections, however, reflect not so a pleasant story exhibiting the phenomenon of criminalizing politics and politicizing criminals. As far back as in 1990 the Goswami Committee and the Vohra Committee in 1993 expressed their concerns in this regard.

The Supreme Court too took notice in 2018. While declaring that candidates running for election could not be disqualified simply because they were charged in a criminal case, it stipulated that all candidates must file a form (to be provided by the EC) listing criminal proceedings pending against them. Further, it advised the government to pass legislation decriminalizing politics. Accordingly, the EC issued orders that all political parties must publish the criminal and financial antecedents of their candidates within 48 hours after putting them up for election. In 2019 the Court expanded its opinion insisting that a political party address its rationale if and when selecting a candidate with criminal antecedents. In the absence of power with the Court to punish an errant political party for giving faulty

information, the burden fell on the shoulders of EC which had not so far been very active in this regard. Moreover, political parties learned to circumvent the stipulation by simply declaring that the cases against their candidates are politically motivated.

Per the EC's stipulation, all candidates running for election do disclose their criminal antecedents, besides their (and families') financial assets and liabilities. The Association for Democratic Reform (ADR) analyzed the declarations of those elected to the 543 *Lok Sabha* seats for the years 2009, 2014 and 2019 (Verma, 2020; Sharma, 2022) under two categories: Criminal Cases and Serious Criminal Cases (such as rape, kidnapping, murder, etc.). Its findings, reflecting the steady increase in the number of candidates with criminal antecedents, are shown in Table 2. Intriguingly, ADR further calculated that the chances of a candidate to be elected with no recorded criminal cases are 4.7 percent, while those with criminal records are 15.5 percent!

It is important to note that candidates' declarations are public knowledge. Yet, shady characters continue to be elected, and re-elected, running across all party lines. Taking note, former Chief Election Commissioner G. V. G. Krishnamurty observed quite some time ago that "no law-breaker should become a law maker" (Tummala, 2021). It was also reported that during the last five years as many as 13 million chose to vote NOTA (none of the above), which speaks volumes about trust in candidates and political parties they represent (Thakur, 2022).

(c) Elected legislators also indulge in switching party affiliations at will under the lure of Ministerial berths or other lucrative appointments to statutory bodies. Considering it as a fraud on the electors, the Anti-Defection Law was passed in 1985 which became part of the Constitution as the 52nd Amendment. It was further modified in 2003 (the 91st Amendment) to the effect a legislator elected on a party ticket would lose the seat if they voted against that party whip (i.e., party requiring the way they should vote), or abstain from voting, or leave that party. However, should two-thirds of members of that party defect, they would not lose their seats. But there is a flaw in practice as the Speaker (be it of the Parliament, or a State Assembly) would make the final call whether a legislator in fact defected, or not. Such power is contingent on the belief that a legislator would behave as a non-partisan on being elected as Speaker. That indeed was the norm, but no longer. Of late, speakers began behaving as partisan as anyone. Moreover, as Salam (2021) showed, a member may simply resign from the party, and immediately contest the re-election from the same constituency (given past proven electoral clout), but under a different party banner which induced the defection, and retain the seat. Consequently, the party holding the government from where the original defection took place might have fallen because of the defection.

Switching parties is further abetted by poaching legislators by political parties either to topple a sitting government, and/or form a government of their own. Such a practice has become the norm (Ramakrishnan, 2021) as legislators are spirited out, willingly or not, and lodged in safe hotels and resorts, sometimes even out of State, wined and dined and even bribed otherwise, to keep them beyond the reach of other parties who might indulge in similar practice. Party loyalties thus are bought and sold leading to a new nomenclature in political discourse: "Resort Politics".

Type of cases	2009	2014	2019
Criminal	30%	34%	43%
Serious Criminal	14%	21%	29%

Source: Compiled by the author from Verma (2020)

Table 2.
Candidates Elected
with Criminal and
Serious Criminal Case

By analyzing 443 cases of legislators (both from the Assemblies and Parliament) since 2016 [ADR \(2021\)](#) found 170 left the opposition Congress party alone, and a total of 182 joined the ruling BJP. Twelve members of *Lok Sabha* switched, five of them from BJP. Seventeen switched in *Rajya Sabha*, seven of them from Congress. A total of 44 percent switched to the ruling BJP, not unexpectedly. It also found that there was a 39 percent increase in average assets of those switching parties (suggesting the flow of money).

The 2021 election in West Bengal is very instructive. Several defectors from TMC joined BJP with the belief that Banerjee would be beaten by BJP. But when Banerjee was triumphantly elected back to power, almost all of the defectors had returned to TMC. The most bizarre case in this context is that of a Mukul Roy. He left TMC in 2017, joined BJP and became its national Vice President in 2020, and was elected as a member of West Bengal Assembly on that party ticket in 2021. But he returned to the TMC fold within a month after the election without resigning (as required by the 91st Amendment of 2003, cited above). Following his example, as many as 200 BJP workers (who moved out of TMC prior to elections), also returned, had their heads tonsured, and holy water from river Ganges sprinkled over them, per Hindu tradition of penance. TMC in its turn received them all with open arms. Keeping grudges is inimical in politics! Strangely, just as Roy was claiming that he is a BJP legislator (and Banerjee agreed) news began circulating that he had brain surgery and has been suffering from several other ailments, his own son (who is a TMC legislator) maintained that his father was deranged!

(d) Given such shifting faiths and loyalties, how well Parliament could work as a deliberative body, and keep the government honest? Parliament in fact gets adjourned frequently as a consequence of unruly behavior of its members (MPs) disrupting its business. Opposition parties have turned out to be more obstructionist, than serving as “constructive opposition”. Former President of India, Pranab Mukherjee, who was a distinguished parliamentarian himself for long, said in despair that Parliament became a “combative arena” ([Tummala, 2021](#)). Former Vice President M. Venkaiah Naidu, *ex officio* Chair of *Rajya Sabha*, bemoaned literally saying that “(H)e Couldn’t Sleep Due To Ruckus In Rajya Sabha” ([Abraham, 2021](#)).

Some laws are passed in haste, consequently. For example, the Budget session of March 2021 was adjourned *sin die* two weeks earlier than planned (after passing the budget). At the midpoint of the following short-lived monsoon session just 12 Bills were passed with an average discussion time of seven minutes each ([Nair, 2021](#)). In consequence to hasty and ill-considered legislation, as many as 35 Acts and Amendments are contested before the Supreme Court since 2016 — a fact admitted in Parliament by Law Minister Kiren Rijju as quoted in [The Economic Times \(2022\)](#).

(e) To be fair, some commendable laws indeed were passed during Prime Minister Modi’s first term (2014-2019), such as the creation of General Services Tax (akin to VAT) to replace a hodgepodge of prevailing tax laws, and another declaring corruption as a heinous crime with both the bribe giver and taker punishable, and fast tracking corruption cases ([Tummala, 2021](#)). That to this day they are still figuring out what should be taxed how much, and what share of GST the State governments should get, or how many bribe givers have been caught and punished are altogether different administrative issues.

Some laws, however, were pushed through Parliament with no Committee(s) inputs, or any outside expert consultation, or public participation. Three such might be cited: Demonetization of high-end currency in November 2016, Citizenship Amendment Act 2019, and a set of three Acts affecting farmers in 2020 (Farmers’ Produce Trade and Commerce [Protection and Facilitation] Act; Farmers [Empowerment and Protection] Agreement on Price Assurance and Farm Services Act; Essential Commodities [Amendment] Act).

Demonetization was sprung as a surprise. In the name of curbing the power of “black money” (money stashed away, internally or externally, in the form of gold, jewelry, real estate,

or in cash—all to avoid taxes, and/or used to influence elections) all ₹500 and ₹1,000 currency notes were voided overnight. Together such notes amounted to 86 percent of all money in circulation. Removing them out of circulation with no new notes immediately available to replace the old ones, and restrictions imposed on withdrawal of money from individual bank accounts, led to harsh unemployment and untold misery to 82 percent of daily wage earners in the unorganized sector in particular, as they were paid at the end of the day in hard cash of higher denominations as a matter of convenience. It is not known how much difference it made for curbing corruption either (Tummala, 2013; 2021). However, the Supreme Court in a 4 to 1 majority in January 2023 gave its imprimatur to demonetization setting aside several challenges, including one claiming that the Reserve Bank of India was not taken into confidence.

Citizenship Amendment Act enabled refugees from neighboring countries of all religions to fast track towards Indian citizenship, with the singular exception of Muslims. Considered as anti-Muslim — the largest religious minority in the nation, this Act is being challenged with nearly 240 different cases pending before the Supreme Court.

Agricultural sector employs nearly 60 percent of India's population, contributing about 20 percent to its Gross Domestic Product (GDP), annually. But it has been beset with serious problems, the most important being non-remunerative prices to the produce leading many farmers into debt and suicides stemming from their inability to repay. Data compiled by the National Crime Records Bureau (NCRB) show that in 2019 alone a total of 42,480 suicides (both farmers and daily wage earners) occurred, of which 10,281 were farmers (Tripathi, 2020). That was 28 farmers daily! Thus, there has been a long-standing crying need for reform of the agriculture sector. In response, the Modi government passed three Acts in September 2020 (following an Ordinance approved earlier by the Cabinet). Farmers were not consulted; they never in fact sought these laws. While the government claimed that these Acts provide more venues to farmers to sell their produce to the private sector at competitive prices, farmers in the States of Haryana, Punjab, and Uttar Pradesh (joined by some in other States in course of time), felt that the new laws in fact would adversely affect them by eliminating prevailing minimum support price (MSP, set by government) by letting large corporations directly influence, even manipulate, the purchasing price. They also feared that their usual role in the *mandis* (Marketing Committees) might diminish. Consequent agitation against these laws went on for more than a year. But given the obstinacy of both the government and farmers, finding any compromise proved to be futile. Responding to several challenges, the Supreme Court stayed the Acts in January 2021, and appointed a panel to report on the concerned Acts. Ironically, all the four members of the panel had previously supported the contested Acts. Not unexpectedly their 98-page report, which was kept under wraps by the government, but was released by one of the members in early April 2022, basically defended the laws (Rajalakshmi, 2022).

Something astonishing followed: The government turned *volte face*. Without consulting his Cabinet, and not taking the farmers into confidence, Prime Minister Modi on November 19, 2021 made a surprise announcement nationally that he was going to repeal the contested laws as the first act of the immediately forthcoming meeting of Parliament. True to his word, on the very first day of the Winter session on November 29, 2021 both Houses of Parliament passed a Bill repealing the laws, in the same way as the original laws were passed, with no debate. All the demands of farmers were meant to be met. Instead of putting the issue to rest, the repeal only raised more questions. What made the Prime Minister do it? Did he capitulate? Why was the announcement made on the 19th when Parliament was scheduled to meet from the 29th on? The 19th could be understood important as it was the birthday of Guru Nanak, the revered religious figure of the Sikhs who had been at the forefront of the farmers' agitation. And elections were due in Punjab (which is predominantly Sikh), along with four other States in March 2022. (It did not help; BJP lost the elections in Punjab.) However, after months of

inaction on the promises made by the government, the leader of farmers' agitation, Rakesh Tikayat, led a march to Delhi to continue the agitation on March 20, 2023. How this is going to be resolved depends upon the yet to come Supreme Court decision on its stay order.

Parliamentary debates in general brim with a great deal of posturing and sloganeering while civility in discourse is lost. The then Chief Justice of India (CJI), N. V. Ramana, lamented this "sorry state of affairs". He also raised an important issue by noting that there was "a lot of ambiguity in laws" hastily passed, triggering litigation and causing inconvenience to citizens, courts and other stakeholders (Mathur, 2021a). The courts find themselves unable to fathom the intent and objectives of a law. In other words, absence of decent legislative history in itself tends to be an impediment to justice.

Control information

Reliable and timely information is of prime importance in a democracy as it facilitates informed citizen participation, provides transparency and ensures accountability. The hold on information, however, is also a powerful tool of control. The Modi regime has demonstrated a remarkable reticence in answering questions. The Purchase of Rafale jet fighters from France in 2015 to augment the capabilities of Indian Air Force provides a glaring example. Several questions were raised such as how the Prime Minister, circumventing established consultative procedures, did unilaterally announce such a decision while visiting Paris? Why the choice of the French product when a cheaper one was presented from another European consortium? What was the saving, if any, compared with the previous United Progressive Alliance government of Prime Minister Manmohan Singh? Why was an established and experienced Indian public sector entity (HAL) ignored and the contract given to a firm formed just days before the announcement? (Tummala, 2020). No satisfactory answers were given, to date. The government took umbrage behind the Supreme Court's refusal to inquire into the pricing and purchasing policy, and the clearance provided by the Comptroller and Auditor-General.

In this context, two different items need to be examined: (a) the right to information and (b) the use of social media.

(a) Enforcement of accountability is predicated upon free flow of information. But governments often have negated this vital process by invoking the colonial era's 1923 Official Secrets Act, which is retained intact. The Supreme Court, however, recognized in 1975 that right to information is an inherent right to freedom of expression guaranteed by the Constitution as a Fundamental Right under Article 19(1)(a). Subsequently the Right to Information Act (RTI) was passed in 2005. Available data confirm that the intent of RTI is being met, but with mixed results (Jhansi Rani, 2021). For example, Bambawale (2019) showed that between 2005 and 2019 a total of 30 million requests were made for information, but as many as 23,541 complaints of nondisclosure were pending as of April 2018. It was also found out that 40 percent of RTI requests were denied, with no valid reason given (*thehindu.com*, 2021; Deshmukh, 2021).

A collateral damage was noted in that since 2005 as many as 84 RTI activists were murdered, another 169 were assaulted and 183 others were harassed or threatened (Dabas, 2019). "Reporters Without Borders" placed Prime Minister Modi in the unenviable company of "Press Freedom Predators" such as Mohamad bin Salman of Saudi Arabia, Bashir al-Assad of Syria, Vladimir Putin of Russia (Mir, 2021).

(b) Dissemination of information, or disinformation, via the internet and other social networks has of late become the norm. Prime Minister Modi, a known skeptic of conventional media—print as well as television—claims 70 million followers on Twitter alone. Cutting off information by disrupting the internet is a useful tool to prevent possible law and order troubles, but also to stem criticism of government. It is reported that there were more than 400 internet lockdowns in the last 4 years. The internet was shut down for 223 days in J&K alone between August 4, 2019, and March

4, 2020, consequent to the abrogation of Article 370 ending that States' special status Constitutional provisions (Sharma, 2021).

Suppress dissent

Dissent is an essential part of the democratic process which is guaranteed by freedom of expression as a Fundamental Right. But the BJP regime had shown less than tolerant towards opposition in general, and the opposition parties in Parliament in particular. Frequently used instruments in this context are Sedition, the 1967 Unlawful Activities (Prevention) Act (UAPA), and the 1980 National Security Act.

Sedition is defined under Section 124A of the Indian Penal Code (IPC) as “hatred or contempt, or excite or attempt to excite disaffection towards government.” IPC is the legacy of the British colonial government since 1860, and Section 124A was added to it in 1870 to deal with any opposition to the British Raj. But why would/should independent India continue with this colonial legacy (Deka, 2021a; 2021b)? It is reported that during 2010 and 2020, a total of 10,938 persons were booked for sedition. This practice caught the attention of the Supreme Court which in 2021 agreed to hear challenges to the constitutionality of Section 124A. (Final word is yet to be heard.)

During 2018-20, as many as 4,690 people were arrested under the UAPA but only 3 percent were convicted. Just as the Supreme Court is ready to examine the application of this law, while referring to the Naxal (violent Communist faction) menace, Prime Minister Modi declared that in fact the law provided great impetus to the fight against the gun and the pen (terrorism and fake news whipping up emotions, respectively) declared (Singh, 2022). Table 3 reflects the increase in these cases from 2015 to 2019.

The 1980 National Security Act allows preventive detention of people suspected of harming national security for up to 12 months. While Article 22 of the Constitution and Section 20 of the Criminal Procedure Code guarantee the right to consult, be defended, be notified of grounds of arrest, and the right to bail, National Security Act denies them all. Not even the First Information Report (FIR) is made public. Thus, the National Crimes Record Bureau (NCRB) cannot, and does not, provide any data on these cases. Hence the opaque nature and the inequity (Agarwal and Sharma, 2020). Consequently, Freedom House (2022) labeled India as “partly free”.

Taking notice, former CJI Ramana wondered aloud how a colonial law used against nationalist leaders (Noorani, 2021) could survive 75 years after India's independence (Rajagopal, 2021). He further demanded to know why the government did not throw out the sedition law along with the hundreds of other “stale laws” it had expunged (and is continuing to do) from the statute books. Proclaiming that criticism of government is not tantamount to sedition, he went on to suggest that it is time for the Supreme Court to visit its own judgment in *Kedarnath Singh* (1962), which upheld Section 124A. (That ruling, however, provided that sedition charges could not be invoked against a citizen for criticism of government actions, as Fundamental Rights guarantee free speech and expression.)

All the above instruments threaten Rule of Law where the precept is that no one is above the law, and all laws be applied equally. An egregious example stemming out of Lakhimpur,

Year	UAPA	Sedition
2015	894	30
2019	1,224	92

Source: Ramakrishnan and Trivedi (2021)

Table 3.
Number of people
Detained under UAPA
and Sedition:
2015-2019

Uttar Pradesh (UP), may be cited. A vehicle, allegedly driven by an Ashish Mishra on October 3, 2021 resulted in the death of four agitating farmers; four more died in the ensuing melee. It took nearly a week for the BJP controlled UP government to apprehend Ashish. Reflecting on the delay in filing a status report it sought, the Supreme Court on October 20, 2021 expressed its dismay that the UP government was “dragging its feet”, seemingly soft peddling the case (Mathur, 2021b). Moreover, the Allahabad High Court (in UP) let Ashish out on bail on February 10, 2022 which was set aside by the Supreme Court on April 18, 2022 rebuking the High Court for its unprincipled and extraneous considerations. (The Supreme Court on appeal reversed, and granted bail in 2023.) Ajay Mishra, the suspect’s father, initially claimed that his son was not even in the city, and the vehicle in question was not even theirs. He is the junior Minister of Home Affairs whose responsibility is to maintain law and order in the nation; he continues in that office. Not a word was heard from the government.

The attacks on Rule of Law anguished the Supreme Court so much that it made on October 14, 2022 the following comment while dealing with the stay of the order of the Bombay High Court in the case of G.N. Saibaba (and five others) arrested in 2007 under UAPA by the Maharashtra government alleging that he was connected to the banned Communist Party of India. “Empirical evidence suggests that departure from the due process of law fosters an ecosystem in which terrorism burgeons and provides fodder to vested interests whose singular agenda is to propagate false narrative.” The High Court itself said though “terrorism poses an ominous threat to national security... a civil democratic society can ill-afford sacrificing the procedural safeguards legislatively provided and which is an integral facet of the due process of law at the altar of perceived peril to national security” (Rajagopal, 2022a). (The High Court dismissed the case, but the Supreme Court ordered the High Court to reopen it in April 2023.)

Conclusions

Several conclusions are drawn from the above analysis. First, Prime Minister Modi’s commitment to parliamentary procedures appear to be suspect. He had shown a preference for ruling by Ordinance even when Parliament was in session which irked President Pranab Mukherjee, who gently chided in his farewell message that Ordinances be used sparingly as they are meant to deal with exigencies when Parliament is not in session.

Second, the Indian electorate in general has to take a large share of responsibility for keep electing a Parliament of “law breakers”.

Third, political parties have to take the major share of the blame as their only goal appears to be capturing power, not “public service”.

Fourth, majoritarian governments may enable fast action, but are deleterious for the normal working of a representative government. Out of the 543 seats in *Lok Sabha*, BJP garnered 282 seats in 2014, and 303 seats in 2019. By 2018 BJP and its allies controlled 21 State governments covering 70 percent of Indians (Sasi, 2018). By 2022 Congress rule is reduced to two States.

Fifth, BJP’s ascendancy is also the product of the near emasculation of all Opposition Parties. The Congress, known as the Grand Old Party, has not only been festered with internal conflicts, leading to the formation of the Group of 23 (G-23), but several left the party to start their own parties such as TMC. While one hears the frequent chorus that all Opposition Parties should unite to fight the BJP, nothing concrete ever emerged. Thus, Prime Minister Modi finds a fertile ground for his BJP, enabling him to control a log-rolling majority in Parliament. That is the “tyranny of the majority” (Venkatesan, 2015).

Sixth, free and frequent use of outdated laws such as Sedition, UAPA and invocation of national security, and unleashing the Enforcement Directorate of the Department Revenue in the Ministry of Finance to cow down opposition and even some civic groups, challenges the notion of Rule of Law as a major democratic precept.

Seventh, in an otherwise secular and historically tolerant nation, the very push towards Hindutva among non-Hindus is a very complex and contentious issue on which a critical lot has already been written, the last important one being by Jaffrelet (2021). Prime Minister Modi, as a person and a leader, helped. He is charismatic, with a great gift of the gab and mesmerizing oratorical skills. These are also recognized as traits of an autocrat. Complaints of autocratic behavior haunted Prime Minister Modi ever since his time as Chief Minister of the State of Gujarat. They only are noisier now.

But Prime Minister Modi enjoys over 70 percent support as is evident from the “Mood of the Nation Survey” conducted by *India Today* (Chengappa, 2021; 2022). The same journal — *India Today* (2023), had its cover story: “Modi all the way” showing 72 percent approval rating as of January 2023. That sounds like a paradox, but can be explained thus.

Given the splintered Opposition Parties the BJP holds a majority among the minority (of parties) with only just over a third of total votes polled in 2019 elections. Its relentless efforts to control the States as well continues unabated. Three factors are in favor of BJP. One, it has a top-notch grass roots organization with a substantial number of cadres (though weak in southern India). Two, the Party is flush with cash. ADR (2023) reports that in 2021-2022, the BJP claimed ₹ 6 billion (which constituted nearly 80 percent of all donations) against the Congress’ take of ₹95 million. Third, perhaps the most important aspect is that Prime Minister Modi and his Party sold a dream, followed by catchy and unifying slogans in the name of Hindutva (though often denied). Given the slogans are largely in the vernacular, they are easily understood by the masses making majority of the Hindus, in a majority Hindu nation, happy. Apologists might argue that the decline of democracy is not a new phenomenon. The Emergency declared by Prime Minister Indira Gandhi (1975-1977), and her decision to attack the Sikh Golden Temple in Amritsar, Punjab, in 1984 are given in support of that argument. But there are important differences. She was defeated in 1977, showing the Indian electorate’s commitment to democracy and Rule of Law. She paid the price of attacking Temple with her life as she was assassinated. Prime Minister Modi’s regime all along claimed the high ground that they in fact are the defender of faith, commanding the confidence of an absolute majority of Indians. The prime architect of Indian Constitution, B. R. Ambedkar (1948), was prescient enough to caution thus, even before the Constitution was formally accepted: “It is perfectly possible to pervert the Constitution without changing its form by merely changing the form of administration.” That is the crisis now.

The alternatives before Prime Minister Modi, who appears to continue in that position for some time to come, are two-fold. With his mass majority support, he can take the country towards a constitutional democracy by respecting the Opposition, welcoming criticism and backpedaling Hindu nationalism. Or, he could push near autocratic rule treating the Opposition as enemies, critics as non-patriots and security risks, and keep pushing Hindutva as an ideology to the detriment of minorities, more so the largest in the nation — Muslims. The choice is stark, and crucial. Which way would Prime Minister Modi lead is a hazardous guess.

A final note of caution is imperative. Nothing of the above is meant to discount the many developmental accomplishments of the Modi regime. India now is a major world player. The nation surpassed the United Kingdom as the fifth largest economy in the world. The lament here, however, is about the fundamental issue of the decline of constitutional democracy. If the Indian populace is willing to ignore that in favor of whatever prosperity they can enjoy, they could probably be making a Faustian bargain.

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