



ASIA MAIOR

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US-China Competition, COVID-19 and Democratic Backsliding in Asia

Edited by
Giulio Pugliese
Andrea Fischetti
Michelguglielmo Torri

viella

A large, intricate, golden-brown mandala graphic on the right side of the cover. It features complex, repeating geometric and floral patterns, resembling traditional Indian or Middle Eastern art. The mandala is partially cut off by the right edge of the page.

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DEMOCRATIC BACKSLIDING AMID THE COVID-19 PANDEMIC IN INDIA

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The outbreak of the COVID-19 pandemic led many analysts to worry about the fate of global democracy, as governments the world over centralised power and enacted emergency legislation. In India, the world’s largest democracy, this prediction has turned out to be accurate. However, this article will argue that the pandemic was a mere accelerator of existing trends there. The erosion of democratic institutions in India since the advent of the BJP-led government in 2014 has been so severe that it is no longer possible to classify India as a full democracy. In fact, as this article will show, the very core of India’s democracy, the electoral process, has been corroded so that it is very questionable whether Indian elections are still free and fair.

KEYWORDS – India; democracy; COVID-19; elections; institutions.

1. Introduction

Since the outbreak of the COVID-19 pandemic in early 2020, the quality of democracy and the respect for human rights has deteriorated in 80 countries, according to the think tank Freedom House (FH).¹ Experts interviewed by FH pointed to four dangers to democracy amid the health emergency: lack of transparency and information on the outbreak; corruption in the procurement of emergency material and disbursement of relief funds; lack of protection of vulnerable people; and government abuse of power. Elections have been postponed, protests have been disrupted and/or banned, freedom of expression eroded and virtually everywhere in the world governments have granted themselves exceptional powers. The European Union acknowledged these challenges in its EU Action Plan on Human Rights and Democracy (2020-24), which aims at strengthening the organisation’s support for democracy worldwide.²

Yet, the pandemic has merely been an accelerator of an existing trend: democracy has been in retreat for some time. According to the Sweden-based V-Dem Institute, liberal democracies decreased from 41 in 2010 to 32

1. Freedom House, ‘Democracy under Lockdown’, Washington (<https://freedomhouse.org/report/special-report/2020/democracy-under-lockdown>).

2. More details can be found at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12122-EU-Action-Plan-on-Human-Rights-and-Democracy-2020-2024>

in 2020, amounting to only 14 per cent of the world population.³ Electoral autocracies – regimes where the formal democratic architecture is maintained but where governments employ informal mechanisms of coercion and control – are now the most common regime type in the world. Together with closed autocracies, they host 68 per cent of the world population.

A major change for the fate of global democracy occurred in India which, in 2020, lost its status as a full democracy in all major indexes that measure the quality of governance around the world. The Economist Intelligence Unit degraded India to the ‘flawed democracy category’;⁴ FH downgraded India from ‘free’ to ‘partly free’ status;⁵ and the V-Dem Institute changed India’s classification from ‘electoral democracy’ to ‘electoral autocracy’.⁶ In India, too, the year 2020 and the COVID-19 pandemic were mere accelerators of processes that were already in motion.

While the severe erosion of India’s institutions and of the quality of its democracy is rarely disputed, a common caveat is that the electoral process, at least, remains robust and the minimal requirement for a democracy – free and fair elections – remains in place. In this article, I will put into question this qualification and argue that the erosion of democratic institutions reached such a point that it is a questionable whether India’s electoral process is still free and fair. I will construct my argument by outlining changes that occurred within India’s political systems in three realms: the functioning of institutions; the conduction of the electoral process and the protection of civil liberties. In all three domains there have been drastic changes since the election of the Bharatiya Janata Party (BJP) government in 2014, followed by an acceleration of these changes during 2020. The changes are so radical that it is not possible to call India ‘the world’s largest democracy’ any longer. Before outlining such changes, I will briefly put them in historical context in the next section.

2. *India’s improbable democracy*

Since the end of the colonial regime in 1947, India’s democracy has puzzled analysts. How could a country so poor, so diverse and so poorly educated

3. Nazifa Alizada *et al.*, ‘Autocratization Turns Viral. Democracy Report 2021’, *University of Gothenburg, V-Dem Institute*, 2021 (https://www.v-dem.net/media/filer_public/74/8c/748c68ad-f224-4cd7-87f9-8794add5c60f/dr_2021_updated.pdf).

4. Economist Intelligence Unit, ‘Democracy Index 2020: In sickness and in health?’ (<https://www.eiu.com/n/campaigns/democracy-index-2020>).

5. Freedom House India Country Report 2021 (<https://freedomhouse.org/country/india/freedom-world/2021>).

6. Nazifa Alizada *et al.*, ‘Autocratization Turns Viral’.

stay together under universal franchise?⁷ India was an exception in the post-colonial world, with other surviving democracies being very small (e.g. Vanuatu or Belize) or much richer (e.g. Mauritius). In fact, statistical analysis shows a strong relationship between regime type and income – richer countries tend to be democracies. India and Singapore – at the opposite ends of the spectrum – are the two most striking exceptions.⁸ And yet, India's democracy survived and even deepened.⁹ Until recently.

While India consolidated its democratic institutions during the 1950s and 1960s – earning the title of ‘world’s largest democracy’ – sceptics pointed out how, below the surface of (largely) free and fair elections, India’s society and the government apparatus remained highly undemocratic at the grassroots level.¹⁰ It has been argued recently that, especially for the lower classes and castes, India has never been a full democracy.¹¹ Also, according to another recent view, the democratic backsliding of the last few years has been built upon a long-term process of failed democratic consolidation and institutional decay, which, together with glaring and appalling socio-economic inequalities, left the door open for demagogues, who undermined democratic institutions.¹²

In other words, the label ‘the world’s largest democracy’ was, at least partly, inaccurate and undeserved, particularly if one looks at India’s governance system from the bottom, up. Yet, it is undeniable that India largely functioned as a democracy – albeit an imperfect one – for many decades after independence – a remarkable achievement given that «the odds against

7. This is a long-standing debate. See the special issue of the *Journal of Democracy*, April 2007, entitled ‘India’s Unlikely Democracy’, Vol. 18, Issue 2, April 2007. For a more recent overview see Ashutosh Varshney, *Battles Half Won: India’s Improbable Democracy*, New Delhi, Penguin, 2013, from which the title of this section is borrowed.

8. Adam Przeworski et al., *Democracy and development: Political institutions and well-being in the world, 1950-1990*, Cambridge: Cambridge University Press, 2000.

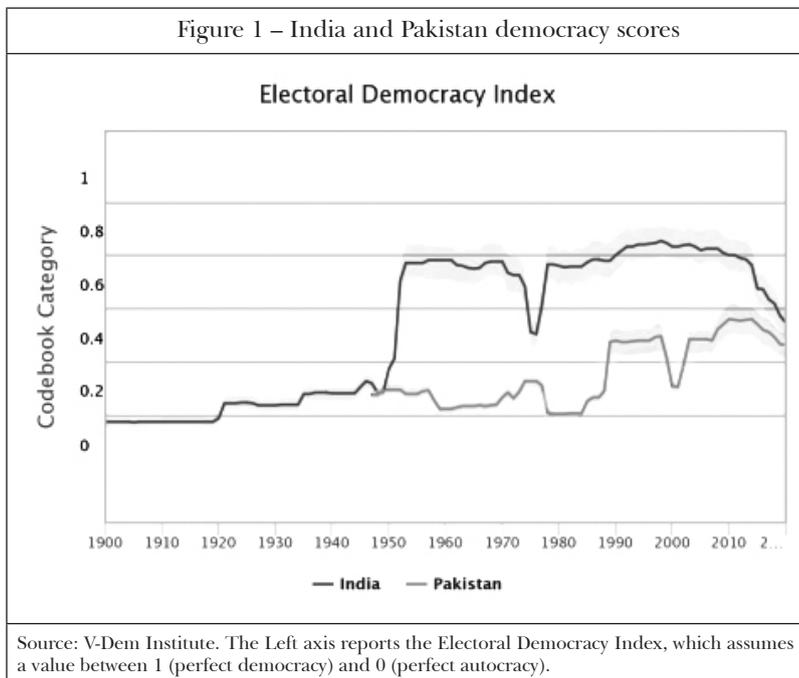
9. Christophe Jaffrelot, *India’s Silent Revolution The Rise of the Lower Castes in North India*, London: Hurst&Co., 2003.; James Manor, ‘The Electoral Process amid Awakening and Decay: Reflections on the Indian General Election of 1980’, in Peter Lyon & James Manor (eds.), *Transfer and Transformation: Political Institutions in the New Commonwealth*, Leicester and New York: Leicester University Press, 1983.

10. This includes Dr. Ambedkar, the main architect of the India’s Constitution who famously pointed out how the contradiction between India’s economic and social inequalities and its political equality put democracy in peril. See his speech to the Constituent Assembly on 25 November 1949 (https://prasarbharati.gov.in/whatsnew/whatsnew_653363.pdf). A more recent formulation of a similar argument which suggests that India and Pakistan’s trajectories are not dissimilar is Ayesha Jalal, *Democracy and Authoritarianism in South Asia*, Cambridge: Cambridge University Press, 1995.

11. Christophe Jaffrelot & Pratinav Anil, *India’s First Dictatorship: The Emergency, 1975–1977*, London: Hurst&Co., 2020.

12. Debasish Roy Chowdhury & John Kean, *To Kill A Democracy: India’s Passage to Despotism*, Oxford: Oxford University Press, 2021.

democracy in India were extremely high.»¹³ Figure 1 shows India’s democracy score using V-Dem data (and compares it with Pakistan, for reference). As is evident from the figure, today’s democracy score is almost as low as during the Emergency regime (imposed by Indira Gandhi between 1975-77), when elections were postponed, censorship imposed and political opponents jailed.



The main difference is that Mrs Gandhi’s regime was an institutionalized autocracy; Modi’s, similarly to many autocratic regimes of the 21st century, employs informal (and only occasionally, formal) means to repress dissent, persecute minorities, and tilt the playing field in favour of his own party, without dismantling the formal democratic architecture. In fact, again, similarly to many autocratic regimes across the world, elections are a means to retain legitimacy and strengthen the regime.¹⁴ Democracy in India succumbed gradually and without any radical change to its formal

13. Adam Przeworski *et al.*, ‘Democracy and Development’, p. 87.

14. Nic Cheeseman & Brian Klaas, *How to Rig an Election*, New Haven: Yale University Press, 2019.

institutional setup. This is in line with what has occurred in most instances of democratic involution across the world in the 21st century.¹⁵

In the next sections, I will provide a brief overview of the nature of India's democratic involution in three domains: the functioning of institutions; the conduct of the electoral process; and the erosion of civil liberties.

3. *Democratic backsliding in Modi's India*

3.1. *Institutional erosion*

The root cause of the severe democratic erosion after the election of Narendra Modi in May 2014 is the radical centralisation of power in the hands of the Prime Minister himself.¹⁶ A crucial factor allowing for such a shift in decision-making is that in 2014, for the first time since 1984, a single party (the BJP) obtained the majority of the seats in Parliament. Given the extreme degree of centralisation within the ruling party – which is tightly controlled from above by Prime Minister Modi and Home Minister Amit Shah¹⁷ – the Parliament has effectively stopped functioning as a check on the executive.

In fact, Parliament activity has been reduced to such an extent that it is barely functioning at all. For instance, during Modi's first term, only 27 per cent of the bills introduced were referred to a committee, a proportion that decreased to 12 per cent during the second term (since May 2019). During the previous two legislatures, 60 and 71 per cent of the bills were referred to a committee for discussion. In the latest parliamentary session (Monsoon Session 2021), bills were discussed in the lower house for an average of only 34 minutes.¹⁸ While the Parliament has been malfunctioning for decades, there has been a steep acceleration under Modi.¹⁹

With the outbreak of the pandemic, India's Parliament virtually stopped functioning altogether. The Budget Session 2020 was cut short and so was the following Monsoon session (which sat for only 10 days). The Winter Session 2020 was not convened at all. In other words, the manage-

15. Steven Levitsky & Daniel Ziblatt, *How Democracies Die*, New York: Random House, 2019.

16. This has been noted by many analysts. See, for instance, the collection of essays in the *Economic and Political Weekly*, Vol. 56, No. 10, edited by Diego Maiorano and Ronojoy Sen (<https://www.epw.in/engage/article/exploring-centralisation-power-and-rise-new>).

17. James Manor, 'Narendra Modi's Power and Cult Endanger the BJP', *The Wire*, 3 September 2021.

18. Data taken from PRS Legislative Research available at: <https://prsindia.org/sessiontrack/monsoon-session-2021/vital-stats>

19. Ronojoy Sen, *House of the People: Parliament and the Making of Indian Democracy*, Cambridge, Cambridge University Press, forthcoming 2022.

ment of the pandemic has been left to the executive, without oversight from Parliament. The government even denied a request by opposition MPs to meet virtually.²⁰

The most glaring example of the side-lining of the of Parliament from the management of the pandemic was the proclamation by the prime minister that a national lockdown would be imposed on 24 March 2020, with *four hours* of advanced notice. The lack of discussion on the matter – not even the state governments were consulted, on whose shoulder the management of the lockdown was to fall – led to widespread violation of people’s rights, particularly those of internal migrants, who found themselves overnight without jobs, shelter and already with scant savings.²¹ Tens of millions travelled to their home villages, often on foot for thousands of kilometres, which led to destitution, injury, death and the spread of COVID-19 to ill-equipped rural areas.²²

Furthermore, the Prime Minister centralized the management of relief funds into a newly constituted PM CARES fund – a parallel instrument to the institutional National Disaster Response Fund (unutilized, with no explanation as to why). The PM CARES fund is not subject to any scrutiny²³ and the government has even denied right to information requests on the basis that the fund ‘is not a public authority’.²⁴

The Supreme Court stepped in to monitor government activity and to regulate inter-state conflicts in the allocation of relief funds and emergency material.²⁵ However, it is doubtful that the highest court can serve as an accountability institution. Under Modi’s regime, the Supreme Court – once one of the most respected institutions in the country – has lost much of its independence. Through a series of informal mechanisms of control, including selective appointments, promises of rewards to retiring judges and blackmailing,²⁶ the government has compromised the integrity of the Court.

For instance, in 2021 a global consortium of journalists revealed that about 1,000 Indian phone numbers were hacked with the Israeli spy software Pegasus, which allows the hacker to completely control a person’s phone, from reading texts and emails to activate the camera and microphone without the user’s knowledge. Among the phones that were hacked

20. Madhav Godbole, ‘Why Is the Modi Govt Closing Forums of Public Accountability During a Pandemic?’, *The Wire*, 14 May 2021.

21. Diego Maiorano, ‘India 2020: Under the COVID hammer’, *Asia Maior*, XXXI/2020, pp. 305-330.

22. Ibid.

23. Vinay Sultan, ‘Unhealthy Secrets’, *The Caravan*, 31 August 2021.

24. Rahul Mukherjee, ‘Covid vs. Democracy: India’s Illiberal Remedy’, *Journal of Democracy*, Vol. 31, No. 4, October 2020.

25. ‘Outreach and overreach: On judicial intervention during COVID-19 crisis’, *The Hindu*, 10 May 2021.

26. Christophe Jaffrelot, *Modi’s India: Hindu Nationalism and the Rise of Ethnic Democracy*, Princeton: Princeton University press, 2021.

was that of Rahul Gandhi, at the time, president of the main opposition party, the Congress, and that of a staffer of the Supreme Court (plus the phones of her family) who had accused the Chief Justice Ranjan Gogoi, of sexual harassment. Between the moment the staffer's phone was hacked and Gogoi's retirement, benches presided by him ruled repeatedly in favour of the government in highly controversial cases like the dispute around the construction of the Ram temple in Ayodhya, the alleged corruption in the Rafale jets procurement, human rights violations in Kashmir and the legality of recently introduced so-called 'electoral bonds' to fund political activity. (After his retirement, Gogoi was, controversially, nominated by the ruling party as a member of the Upper House). It is important to note that Pegasus's developer only sells its software to 'vetted governments'.²⁷ This was the last instance of several controversies that surrounded the Supreme Court since Modi came to power in 2014, incidents which have severely damaged the court's reputation and independence.²⁸

The above are just few examples of the erosion of independent institutions and the increasing control of the government over the state machinery. Countless other examples could be mentioned – from the Central Bureau of Investigation, to the states' governors, to the Reserve Bank of India to public universities.²⁹ Not even the Indian Council for Medical Research (India's apex health agency) has been spared and, according to an investigation by *The New York Times*, its scientists have been pressured to hide data and publish reports in line with the government's political priorities. This has had detrimental effects on the management of the pandemic.³⁰

3.2. *Free and unfair elections*

The second domain where India's democracy has been eroded dramatically is the functioning of the electoral process itself. While elections remain free, its fairness has become a question mark. In fact, India's score in the V-Dem

27. Shoaib Daniyal, 'Supreme Court, EC, Opposition: Spyware attack threatens pillars of India's electoral democracy', *Scroll.in*, 20 July 2021.

28. For more details, see Christophe Jaffrelot, *Modi's India*.

29. See Michelguglielmo Torri and Diego Maiorano, 'India 2017: Narendra Modi's continuing hegemony and his challenge to China', *Asia Maior* Vol. XXVI-II/2017 pp. 267-291; Michelguglielmo Torri & Diego Maiorano, 'India 2018: political uncertainty and economic difficulties', *Asia Maior*, Vol. XXIX/2018, pp. 265-293; Michelguglielmo Torri, 'India 2019: Assaulting the world's largest democracy; building a kingdom of cruelty and fear', *Asia Maior*, Vol. XXX/2019; Diego Maiorano, 'India 2019: The general election and the new Modi wave', *Asia Maior*, Vol. XXXI/2020 pp. 327-345; Michelguglielmo Torri, 'India 2020: The deepening crisis of democracy', *Asia Maior*, Vol. XXXI/2020, pp. 331-377.

30. 'As India's Lethal Covid Wave Neared, Politics Overrode Science', *The New York Times*, 14 September 2021.

‘Clean Election Index’³¹ decreased dramatically in recent years, from 0.86 in 2001³² – a value that was higher than that of the United States – to 0.58 in 2020 (lower than that of Morocco). The decline has been particularly steep since 2013 (when the value was 0.77). By 2019 «electoral competition was no longer a level playing field».³³

Three factors contributed the most to tilting the field in favour of the government.³⁴ First, the autonomy and integrity of the electoral watchdog, the Election Commission (EC), has been compromised. The techniques used by the government to influence (or even control) the EC were similar to the ones used for the Supreme Court: selective appointments – like that of A. K. Joti in 2017, former principal secretary to Narendra Modi when he was the chief minister of Gujarat – and outright intimidation.

The most glaring example of intimidation concerns the former commissioner, Ashok Lavasa. During the 2019 electoral campaign, the EC repeatedly allowed Modi to violate the code of conduct³⁵ and turned a blind eye to the widespread use of tax raids against opposition leaders and party offices during the electoral campaign.³⁶ Lavasa, contrary to his two colleagues, had ruled against the prime minister and had taken a harsher approach towards the misuse of tax raids for political purposes. Shortly afterwards, his phone number was added to the list of phones hacked with the Pegasus software. His wife was investigated for tax evasion³⁷ and the government also investigated Lavasa for ‘undue influence’ in favour of his wife’s company.³⁸ Lavasa then accepted a job at the Asian Development Bank, thus renouncing to become (because of seniority) Chief Election Commissioner.

Second, the BJP – also thanks to recently introduced instruments for the funding of political activity – receives a disproportionate amount of funding. While it is relatively common for incumbents to enjoy greater financial resources, the gap between the BJP and what other political parties receive is such that it is difficult not to question the fairness of the whole

31. This is an aggregate measurement assessing the autonomy and capacity of the election management body, voter registration procedures, voting irregularities, government intimidation, electoral violence and the general freedom and fairness of the electoral process.

32. As all V-Dem indexes, the values range from 0 to 1.

33. Christophe Jaffrelot 2021, *Modi’s India*, Kindle Location 6335.

34. Christophe Jaffrelot and Gilles Verniers, ‘The BJP 2019 Election Campaign: Not Business as Usual’, *Contemporary South Asia*, 28, No. 2, 2020, pp. 155-77. Christophe Jaffrelot, *Modi’s India*, Kindle Location. 6761.

35. Christophe Jaffrelot, *Modi’s India*, Kindle Location 6933.

36. ‘11 Raids In A Month On Opposition, Tax Department Says Can’t Give Details’, *NDTV*, 10 April 2019.

37. James Manor, ‘A New, Fundamentally Different Political Order: The Emergence and Future Prospects of ‘Competitive Authoritarianism’ in India’, *Economic and Political Weekly*, Vol. 56, No. 10, 2021.

38. Christophe Jaffrelot, *Modi’s India*, Kindle Location 6941.

electoral process. According to the analysis of the association for Democratic Reform (ADR), the BJP's declared income – very likely only a fraction of the party's actual income – for 2019/20 was 75% of the income declared by *all* national parties combined. In absolute terms, the BJP's income was three times higher than all national parties put together.³⁹

Another element that makes political funding an obstacle to the conduction of free and fair elections is the opacity of the recently introduced 'electoral bonds'.⁴⁰ These were introduced in 2017 by the BJP-led government. In 2019/20 the bonds, issued by the State Bank of India (SBI, a public bank), constituted 88.64% of the declared income of political parties.⁴¹ The bonds guarantee anonymity to the donor, who can deposit them in the bank account of a political party of their choice. However, the government can access data on donors – a privilege not extended to other political parties, leave alone to citizens. This constitutes yet another major violation of the fairness of the electoral process. Not surprisingly, the ruling BJP secured 75% of the donations through the electoral bonds. The main opposition party, the Congress, secured just 9% of the total donations.⁴²

Finally, the media have been under increasing pressure not to criticise the government, resulting in visible instances of self-censorship.⁴³ A key mechanism is the business model of the large majority of the media conglomerates, which relies substantially on government advertisement for their revenues. This represents a large chunk of traditional media's revenues and has increased substantially since Modi came to power in 2014. On average, the Congress-led government between 2009 and 2014 spent about 8 million euros on advertising. In contrast, the Modi-led government between 2014 and 2018 increased the expenditure nearly twofold, to 13 million euros.⁴⁴

While this by itself does not, in principle, erode the media's freedom, the fact is that the Modi government has allegedly 'punished' media groups that criticised it. A report by Reuters claimed that the government banned advertisement on at least three news groups (which publish, among others,

39. These are the data collected by the Association for Democratic Reform (ADR) available at: <https://adrindia.org/content/analysis-income-and-expenditure-national-parties-fy-2019-20-0>.

40. Milan Vaishnav, 'Electoral Bonds: The Safeguards of Indian Democracy Are Crumbling', *Carnegie Endowment for International Peace*, 25 November 2019.

41. ADR data available at: <https://adrindia.org/content/analysis-sources-funding-national-parties-fy-2019-20-0>.

42. 'In 2019-20, BJP got 75% of poll bonds sold, Congress just 9%', *The Indian Express*, 10 August 2021.

43. Christophe Jaffrelot, *Modi's India*, Kindle Location 6761.

44. 'The Central Government spent close to Rs 10000 crore on Publicity in the last 16 years 19', *Factly*, 4 May 2018.

The Times of India, The Hindu and The Telegraph).⁴⁵ Additionally, the government has been accused of using the state machinery to intimidate unfriendly media houses, especially through tax raids.⁴⁶ Furthermore, pressure on media's owners allegedly resulted in the sacking of journalists critical of the government. For instance, an investigation by *The Wire*, claimed that Bobby Ghosh, former editor-in-chief of *The Hindustan Times*, was asked to resign after the newspaper's owner met with Prime Minister Modi. Following this meeting, several government and BJP's officials expressed discontent with Ghosh's editorial line (which was critical of the government, particularly with reference to the rights of religious minorities).⁴⁷

The government's increasing intolerance towards criticism has extended to social media as well. Since the end of 2019, the Indian government has sought to regulate social media. On the one hand, during the first half of 2020, requests by the Indian government to remove content on Twitter increased almost four times,⁴⁸ while requests to all major social media tripled between 2019 and 2020.⁴⁹ This was a period when online criticism of the government was increasing in connection with protests against a new (and controversial) citizenship law, the first lockdown and the subsequent management of the COVID-19 pandemic and the widespread farmers' protests that erupted at the end of 2020 and are, at the time of writing in September 2021, still ongoing.

On the other hand, the government issued fresh guidelines to regulate the publication of content on social media in February 2021, which the Internet Freedom Foundation, an Indian NGO, dubbed as «antidemocratic and unconstitutional».⁵⁰ Among other things, the new rules mandate that social media must take down any content that the government deems to fall under a vague set of definitions, and require that companies set up a compliance team that resides in India (whose members have been threatened with imprisonment by the government).⁵¹

45. 'Modi government freezes ads placed in three Indian newspaper groups', *Reuters*, 28 June 2019.

46. 'India tax authorities raid media companies critical of Modi gov't', *Al Jazeera*, 22 July 2021; 'TT surveys on premises of newsportals in Delhi; NewsClick faces action by third agency', *The Indian Express*, 11 September 2021.

47. 'Hindustan Times Editor's Exit Preceded by Meeting Between Modi, Newspaper Owner', *The Wire*, 25 September 2017.

48. Shoaib Daniyal, 'Why is the Indian government at war with Twitter?', *Scroll.in*, 8 July 2021.

49. '6k social media content takedown orders this year', *Hindustan Times*, 8 June 2021.

50. Internet Freedom Foundation, 'Why India's new rules for social media, news sites are anti-democratic, unconstitutional', *Scroll.in*, 27 February 2021.

51. 'Twitter Blocks Accounts in India as Modi Pressures Social Media', *The New York Times*, 10 February 2021; 'India Threatens Jail for Facebook, WhatsApp and Twitter Employees', *The Wall Street Journal*, 5 March 2021.

The pandemic led the government to tighten its grip over the media. In March 2020, the government went as far as requesting the Supreme Court to bar media from publishing any content related to the pandemic without ‘fact-checking’ through government-provided mechanisms.⁵² The Court did not grant the request. In any case, dozens of journalists have been arrested after they published pieces critical of the government’s response to the pandemic.⁵³

To sum up, the combination of these three factors – the erosion of the independence of the EC, the disproportionate amount of funds available to the ruling party and its monopoly over the information on donors and the increasing pressure on media not to criticise the government – have severely stacked the deck in favour of the ruling party. As a result, while elections remain largely free, their fairness has been seriously compromised. In other words, the most defining feature of a democratic system – free and fair elections – cannot be taken for granted anymore in the ‘world’s largest democracy’.

3.3. *The erosion of civil liberties*

Finally, the third domain where the quality of India’s democracy has been eroded and has descended into the realms of authoritarian governance is that of civil liberties. This is a crucial component of any democratic system and, in particular, of liberal democracies. In this article, I will not deal with civil liberties – or, rather, the lack thereof – in Kashmir and in other problematic areas of the country (some of the north-eastern states).⁵⁴ I will limit myself to ‘mainstream’ India, where conflict or security reasons cannot be used to justify violation of civil liberties.

Two areas are particularly problematic: freedom of expression and the protection of religious minorities (particularly Muslims, roughly 14% of the population). Starting with the former, the problem is twofold. On the one hand, as mentioned above, media houses are under pressure to secure revenues from the government, which might be in jeopardy if news outlets adopt too a critical editorial line. On the other hand, individual journalists, activists, intellectuals, and students have been threatened, sued, arrested and even killed, with alarming frequency.⁵⁵ In September 2020, Amnesty International shut down its operation in India, citing «an onslaught of at-

52. ‘Government Urges Supreme Court To Bar Media From Publishing Covid-19 Info Before Vetting Facts’, *Quint*, 31 March 2020.

53. ‘India arrests dozens of journalists in clampdown on critics of Covid-19 response’, *The Guardian*, 31 July 2020.

54. For a recent exposition of the situation in Kashmir, see Michelguglielmo Torri, ‘India 2019: Assaulting the world’s largest democracy; building a kingdom of cruelty and fear’.

55. See Michelguglielmo Torri, ‘India 2020: The deepening crisis of democracy’, section 2.3 and footnote 58 for further references.

tacks, bullying and harassment by the government»,⁵⁶ a scenario similar to the one described by Human Rights Watch in its 2020 Report.⁵⁷ For reasons of space, I will limit myself to two instances of the increasing abuse of state power against dissidents.

The first one is a key change in legislation – one of the few examples of a formal mechanism designed to repress civil liberties vis-à-vis countless informal ones. This was an amendment to the Unlawful Activities (Prevention) Act (UAPA) passed by the Indian Parliament in August 2019. The Act (1967) was already considered a draconian piece of legislation, as it allowed the government to restrict freedom of expression and association on the basis of an exceedingly vague definition of a «terrorist act»: «any act committed with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country». ⁵⁸ The one element that offered some protection to civil liberties was that only organisations could be declared 'terrorist'. The 2019 amendment changed this key provision of the law, which, in effect, became an instrument for arresting individuals who *might* have the *intent* to threaten India's unity and integrity.⁵⁹ The law was used to arrest numerous activists, including prominent students-leaders Devangana Kalita Natasha Narwal and Asif Iqbal Tanha who were kept in jail for over a year without trial.⁶⁰ In the decision that finally granted them bail the Delhi High Court remarked that in the view of the central government the «line between the constitutionally guaranteed right to protest and terrorist activity seems to be getting somewhat blurred.»⁶¹

The second example of state abuse of power concerns the violence which occurred at Bhima Koregaon (Maharashtra) on 1 January 2018. Every year, Dalit groups celebrate the battle of Bhima Koregaon (1818), when Dalit troops of the British Indian army defeated the Maratha Peshwa Bajji Rao II (a Brahmin). In 2018 violence erupted, which resulted in one casualty. Over the following months, a dozen very prominent activists and scholars – most of whom were not in Bhima Koregaon on that day – were arrested and accused of being part of an urban cell of the Communist Party of India (Maoist), which is deemed a terrorist organisation by the Indian

56. 'Amnesty International to halt India operations', *BBC*, 29 September 2020.

57. The report is available at <https://www.hrw.org/world-report/2021/country-chapters/india>.

58. See Chapter IV of the Act (<https://www.mha.gov.in/sites/default/files/A1967-37.pdf>)

59. 'What are the UAPA amendments? When is an individual designated a «terrorist»?', *The Indian Express*, 4 August 2019.

60. 'Delhi court passes release order for Devangana Kalita, Natasha Narwal, Asif Iqbal Tanha', *Hindustan Times*, 17 June 2021.

61. 'Delhi riots: HC grants bail to Devangana Kalita, Natasha Narwal, Asif Iqbal Tanha in UAPA case', *The Indian Express*, 15 June 2021.

government. What all of them had in common was that they were public intellectuals, critical of the Modi government (and, to be fair, of most previous Indian governments as well) and had associations with people actually present at the celebration.

The accused were later charged of a number of extremely serious offences, including a plot to assassinate Prime Minister Narendra Modi. However, in at least two cases, there is proof that the crucial pieces of evidence – including Word documents found on the laptops of the accused in which they allegedly admitted to being part of the CPI(M) and involved in the plot to kill Modi – was planted by unknown hackers.⁶² (The telephone numbers of family members and associates of some of the accused in the Bhima Koregaon case were later added to the list of phones hacked through the Pegasus software mentioned above).⁶³

Furthermore, when the Maharashtra elections in 2019 saw the defeat of the incumbent BJP in the state, the new government publicly declared that keeping the activists in jail was «wrong and vengeful» and that they would start looking into the case to released them. However, the central government transferred the case to the centrally-controlled National Investigative Agency, with the result that, at the time of writing, the accused remain in jail, over two years after their arrest and with the beginning of the trial not in sight.⁶⁴ Given the stringency of the UAPA under which they were arrested, it is unlikely that they will be granted bail anytime soon. Consider that one of the accused, Stan Swami, an 84-year-old Jesuit priest with Parkinson's disease, was denied bail, even after he contracted COVID-19. He died in custody in May 2021.

Another domain where civil liberties have been eroded substantially is the protection of the rights of the minorities. Several prominent scholars described Modi's India as an ethnic state or an ethnocracy,⁶⁵ a term first used by the Israeli sociologist Oren Yiftachel to describe his own country. Yiftachel defines such a regime as one «where a dominant ethnos gains political control and uses the state apparatus to 'ethnicise' the territory and

62. 'Evidence found on a second Indian activist's computer was planted, report says', *The Washington Post*, 6 July 2021; 'They were accused of plotting to overthrow the Modi government. The evidence was planted, a new report says.', *The Washington Post*, 10 February 2021.

63. 'Indian Activists, Lawyers Were "Targeted" Using Israeli Spyware Pegasus', *The Wire*, 31 October 2019.

64. Apoorva Mandhani, '2 years, 3 charge sheets & 16 arrests — Why Bhima Koregaon accused are still in jail', *The Print*, 31 October 2020.

65. Indrajit Roy, 'India: From the World's Largest Democracy to an Ethnocracy', *The India Forum*, 30 August 2021; Katharine Adeney, 'How can we model ethnic democracy? An application to contemporary India', *Nations and Nationalism*, Vol. 27, No. 2, 2021; Christophe Jaffrelot, *Modi's India*

society in question».⁶⁶ This aptly describes what the Modi government, with the support of organisations such as the Rastriya Swayamsevak Sangh (RSS, to which Modi belonged for a substantial part of his life), has been engaged with during its terms.

The 2019 election represents a shift in this respect.⁶⁷ While during Modi's first term the Hinduisation of the state was mainly pursued through societal mechanisms – in particular, the legitimisation of vigilante groups in defence of the cow or of supposedly helpless Hindu girls falling 'prey' to Muslim boys – in 2019 the government decided to use the full power of the state towards the creation of a *de jure* Hindu Rashtra.⁶⁸ It is on the latter (and more recent) development that I will focus in the last part of this article.

Three key changes occurred shortly after the 2019 elections. First, the government, suddenly and unexpectedly – and without debate in Parliament – took away the «special status» of Jammu and Kashmir in August 2019. The special status had granted a higher degree of autonomy to the only Muslim-majority state of the Indian Union. Its revocation had been one of the pillars of the Hindu nationalist movement since independence.⁶⁹ The government revoked the special status and, additionally, deprived Jammu and Kashmir of its statehood, making it a Union Territory governed directly by New Delhi. At the same time, it increased military and paramilitary presence in the area, (which was already one of the most militarized in the world), blocked all forms of communications within and outside the territory for over a year, restricted access to journalists and arrested thousands of citizens, who were often jailed for long periods without trials or even formal charges.⁷⁰ The loss of Kashmir's special status was particularly significant because it embodied India's rejection of the two-nation theory according to which India was not a Hindu state – as claimed by the proponents of the theory – but was the homeland of all the people of the subcontinent, regardless of their faith. In August 2019, this ceased to be the case, also from a symbolic and legal point of view, illustrating «a strategy to *subordinate* Muslim-majority territories to Hindu majority ones».⁷¹

The second key change was an amendment to the Citizenship Act adopted in December 2019. The amendment legally put «one religion –

66. Quoted in Indrajit Roy, 'India: From the World's Largest Democracy to an Ethnocracy'.

67. Christophe Jaffrelot, *Modi's India*, chapter 10.

68. The creation of a Hindu Rashtra, or Hindu state or country is a long-time objective of Hindu nationalist groups such as the RSS and indeed the BJP.

69. Christophe Jaffrelot, *The Hindu Nationalist Movement in India and Indian Politics*, London: Hurst&Co., 1996.

70. Michelguglielmo Torri, 'India 2019: Assaulting the world's largest democracy; building a kingdom of cruelty and fear'.

71. Indrajit Roy, 'India: From the World's Largest Democracy to an Ethnocracy'.

Islam – [...] on a lower footing than others»,⁷² by recognising the right to apply for citizenship to non-Muslims who illegally migrated to India from neighbouring countries. This might have repercussions in the state of Assam, where the recent update of the National Register of Citizens found 1.9 million people to be illegal immigrants, making them, effectively, stateless. Non-Muslims will have the opportunity to apply for citizenship, while Muslims – a substantial share of the total – face deportation or indefinite detention in prison-like camps currently under construction. (It is unclear where they could be deported).⁷³

Third, in July 2020, the Supreme Court ended a decades-long controversy over the land where the Babri Masjid once stood, a 15th century mosque destroyed by Hindu zealots on 6 December 1992. The Supreme Court ruled that, even though the mosque was illegally destroyed, the destroyers should be given control of the land to construct a temple dedicated to Ram – another long-time project of the Hindu nationalist movement. Prime Minister Modi laid the foundation stone of the temple on 5 August 2020 – exactly (and probably not coincidentally) one year after the revocation of the special status of Jammu and Kashmir. The temple is scheduled to be finished by the next general elections in 2024. Its construction further represents the subjugation of the Muslims to the Hindu majority.

The COVID-19 pandemic has seriously exacerbated the Indian state's slide towards majoritarianism. One glaring example was the different treatment of two religious gatherings held over the course of 2020 and 2021. The first one, organized by the Muslim group Tablighi Jamaat, was staged in March 2020 and was later held responsible by government officials for spreading the virus throughout the country. Some BJP leaders talked of a «corona jihad»⁷⁴ – adding to the list of 'jihads' invented by BJP leaders, which includes «love jihad»⁷⁵ (supposedly a plan by Muslim men to marry Hindu women to tip the demographic balance in their favour) and «land jihad»⁷⁶ (a plan to turn urban areas into a «mini Pakistan»). In all three cases, Muslims were attacked by vigilante groups.⁷⁷ Besides the demonisation of the Muslim gathering, the Indian government adopted measures to contain

72. Madhav Khosla & Milan Vaishnav, 'The three faces of the Indian state.' *Journal of Democracy*, Vol. 32, No. 1, 2021, p. 113.

73. Angana P. Chatterji, Mihir Desai, Harsh Mander & Abdul Kalam Azad, 'Detention, Criminalisation, Statelessness: The Aftermath of Assam's NRC', *The Wire*, 14 September 2021.

74. 'How the coronavirus outbreak in India was blamed on Muslims', *Al Jazeera*, 18 April 2020.

75. Diego Maiorano, 'Early Trends and Prospects for Modi's Prime Ministership', *The International Spectator*. Vol. 50, No. 2, 2015, pp. 75–92.

76. Indrajit Roy, 'India: From the World's Largest Democracy to an Ethnocracy'.

77. 'In India, Coronavirus Fans Religious Hatred', *The New York Times*, 12 April 2020.

the spread of the virus, including contact tracing and punishment for the organisers.

On the other hand, the government took a completely different approach towards a major Hindu festival, the Maha Kumbh Mela, which was held in March-April 2021, just as the second wave of the virus was about to hit the country.⁷⁸ In fact, the government allowed the festival to take place one year in advance of its original schedule, because of the particularly auspicious date on the astrological calendar. The BJP chief minister of Himachal Pradesh, where the festival was held, was sacked and replaced, apparently because of his insistence on safety measures and restriction of access to the festival venue, which eventually attracted some 14 million people, including senior BJP leaders and Cabinet members (the Tablighi Jamaat gathering had about 8,000 people). Thousands later tested positive to the virus.⁷⁹

4. Conclusion

This article sought to outline the severe democratic erosion that has occurred under the premiership of Narendra Modi since 2014. While building on a somewhat authoritarian soil, the degree to which institutions have been eroded, the electoral process compromised and the civil liberties violated, leaves little doubt that India has joined the (growing) club of 'competitive authoritarian' systems. These are regimes that, while maintaining the formal democratic architecture, employ informal coercive methods to maintain control, suppress dissent and ultimately skew the playing field in their favour.

The argument has been necessarily brief and could not detail all the instances where democracy has decayed. This is mainly because the problem is now so widespread that the functioning of virtually every public institution has been compromised. Furthermore, an aggressive policy of appointment of people belonging to the Hindu nationalist movement and their organisations (like the RSS) to prestigious public posts – from universities to hospitals, from school boards to museums – means that the effects of the Hinduisation of society and politics will be felt for years to come, even if the BJP eventually lose power.

In sum, the COVID-19 pandemic has accelerated an existing trend in India. On the one hand, the health emergency was used to tighten the government's grip on media (traditional and social media). On the other hand, the government has used this emergency as a justification to further centralize power into its hands (similarly to what has happened in many countries in the world).

78. 'BJP fired ex-Uttarakhand chief minister TS Rawat for restricting Kumbh gatherings', *The Caravan*, 8 May 2021.

79. 'India Covid: Kumbh Mela pilgrims turn into super-spreaders', *BBC*, 10 May 2021.