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Freedom in the World - India (2008)

Capital:
New Delhi

Population:
1,131,900,000

Political Rights Score: 2
Civil Liberties Score: 3
Status: Free

Overview

The ruling Congress Party–led coalition in 2007 suffered defeats in several state elections and faced opposition from leftist parties on major policy issues, raising the prospect of early national elections. The peace dialogue with Pakistan continued during the year, despite bombings by suspected Islamist militants in February and August that killed dozens of civilians. Little progress was made on ensuring justice for the victims of the 2002 communal violence in Gujarat, despite the sustained efforts of local activists and lawyers, the Supreme Court, and the National Human Rights Commission. Also during the year, Maoist insurgent movements and separatist violence contributed to increased lawlessness and human rights violations in a number of states in India’s tribal belt, particularly Chhattisgarh, as well as in the northeast.

India achieved independence in 1947 with the partition of British India into a predominantly Hindu India, under Prime Minister Jawaharlal Nehru, and a predominantly Muslim Pakistan. The centrist, secular Congress Party ruled at the federal level for much of the first five decades of independence. From the mid-1990s onward, however, the Hindu nationalist Bharatiya Janata Party (BJP) was a major factor in Parliament, leading governments on several occasions. In addition, the pattern shifted from single-party to coalition governments, typically involving large numbers of parties and an increasingly important role for parties based in a single state.

The period after 1990 was also a time of major economic reform, with the Congress government initiating a shift toward market-oriented policies following a balance-of-payments crisis in 1991. In December 1992, Hindu fundamentalists supported by major figures in the BJP destroyed a 16th-century mosque in the northern town of Ayodhya, and some 2,000 people, mainly Muslims, subsequently died in riots and police gunfire. This incident highlighted the clash between the BJP’s traditional promotion of what it regarded as Hindu cultural interests and the need to moderate its program in order to win elections and govern.

BJP leader Atal Behari Vajpayee’s formation of a government in 1998 marked the arrival of the party as a regular contender for national leadership. The government fell after a regional party defected, but it won reelection in 1999 as the lead partner in the 22-party National Democratic Alliance. In February 2002, 59 people were killed in Godhra, Gujarat, when a fire broke out on a train carrying members of a Hindu extremist group. A Muslim mob was initially blamed for the fire (an official commission later deemed it an accident), and in the anti-Muslim riots and pogroms that followed throughout Gujarat, an estimated 2,000 people were killed

and 100,000 were left homeless and dispossessed. The violence was orchestrated by Hindu nationalist groups, but had the tacit support of the BJP-led state government. Despite calls for Gujarat chief minister Narendra Modi to be dismissed, he retained the support of the party leadership and won state elections held later that year.

The rehabilitation of those displaced by the violence, as well as the prosecution of those responsible for murder, rape, and destruction of property, made little headway after the riots. Witnesses in the few cases brought to trial faced threats and intimidation by local authorities and Hindu nationalist sympathizers, as did lawyers and activists working on witnesses' behalf. On several occasions, the Supreme Court attempted to correct the Gujarat government's abysmal prosecution record, requesting that trials be moved outside the state and that closed cases and acquittals be reexamined. Although there were eventually convictions in a few cases, including the notorious Best Bakery massacre, police refused to reopen most cases, citing a lack of available witnesses. As of 2007, the majority of the victims appeared unlikely to see justice.

Buoyed by victories in several state elections and high levels of economic growth, the BJP government called early national elections in the spring of 2004. However, it was unexpectedly defeated; final results gave the BJP only 137 out of 545 seats in the lower house of Parliament, and its allies also performed poorly. Consequently, the Congress Party was able to form a coalition government with a large collection of regional parties, though its majority depended on additional parliamentary support from the Left Front, a grouping of leftist parties. In a further surprise, Congress leader Sonia Gandhi declined the position of prime minister and instead appointed former finance minister Manmohan Singh to the post. However, she retained the party leadership and wielded considerable influence over official policy.

The new Congress-led United Progressive Alliance (UPA) government agreed to a Common Minimum Program that promised a renewed focus on effective governance, a social-democratic budget, and the reversal of several policies initiated by the previous government, including the repeal of controversial antiterrorism legislation and the removal from state-run schools of textbooks that had been imbued with Hindu nationalist ideology. However, the UPA found it difficult to implement some of its economic policies because of tensions among its disparate coalition partners and opposition from the Communist Party of India–Marxist (CPI-M), one of its leftist allies, on issues such as the privatization of public sector assets and labor law reform. The government also faced widespread protests in May 2006 over proposals to expand existing public sector affirmative-action programs to cover private sector jobs and educational institutions. In April 2007, the Supreme Court blocked the implementation of legislation requiring a 27 percent quota for so-called other backward classes (OBCs) in elite educational institutions, leading the prime minister to accuse judges of encroaching on the powers of the executive and legislature.

As an opposition force, the BJP remained weak and plagued by infighting over party leadership and ideology. Meanwhile, the growing popularity of regional and caste-based parties, coupled with the Left Front's renewed strength, continued to hinder Congress's efforts to reestablish itself as a national force and implement key economic reforms. In February 2007 state elections, Congress lost the states of Punjab and Uttarakhand but held Manipur. Both Congress and the BJP performed

poorly in the key Uttar Pradesh state elections several months later, while the regional pro-Dalit ("untouchable" caste) Bahujan Samaj Party won an outright majority. These losses weakened the Congress-led central government, stalling its reform agenda by year's end. A particular controversy erupted over the government's planned nuclear deal with the United States, which was vociferously opposed by various coalition members as well as the Left Front.

A peace dialogue between India and Pakistan continued in 2007 despite new violence linked to Pakistan-based militant groups. After the two countries came close to war in 2002, sustained diplomatic pressure from the United States and others led to an easing of tensions. A ceasefire was instituted in November 2003, and formal talks were initiated in January 2004 on eight baskets of issues, including the disputed territory of Kashmir. A number of confidence-building measures—such as improved nuclear safeguards, reopened transport links, and an increased diplomatic presence—were gradually implemented, with direct rail links recommencing in January 2006. The peace process has been threatened but not thrown off course by terrorist violence, most notably a series of coordinated blasts on commuter trains in Mumbai in July 2006 that killed over 200 people and injured more than 700 others. In February 2007, almost 70 civilians were killed in a bomb attack on the Samjhauta Express, the train service connecting India and Pakistan, and Islamist militants were also suspected of carrying out twin bombings in Hyderabad, India, that killed more than 40 people in August.

Political Rights and Civil Liberties

India is an electoral democracy. The 1950 constitution provides for a lower house of Parliament, the 545-seat Lok Sabha (House of the People), whose members are directly elected for five-year terms (except for two appointed seats for Indians of European descent). The Lok Sabha determines the leadership and composition of the government. Members of the 245-seat upper house, the Rajya Sabha (Council of States), are either elected by the state legislatures or nominated by the president, and serve staggered six-year terms. Executive power is vested in a prime minister and a cabinet. The president, who serves as head of state, is chosen for a five-year term by state and national lawmakers.

India is a mature democracy that has held regular and reasonably free elections since independence, and sitting governments are thrown out of office with increasing frequency. Under the supervision of the vigilant Election Commission of India (ECI), recent elections have generally been free and fair. The last national elections, held in spring 2004, featured a decline in election-related violence, but some vote fraud and other minor irregularities occurred in Bihar despite the introduction of electronic voting machines throughout the country. Violence has also declined during recent state-level elections. However, badly maintained voter lists and the intimidation of voters in some areas continue to be matters of concern.

A wide range of political parties operate freely, and there are no restrictions on peaceful political activism. However, due to the rising popularity of regional and caste-based parties, coalition governments have become the norm, and effective governance has suffered as a result.

Government effectiveness and accountability are also undermined by pervasive criminality in politics, decrepit state institutions, and widespread corruption. India was ranked 72 out of 180 countries surveyed in Transparency International's 2007

Corruption Perceptions Index. The electoral system depends on “black money” obtained through tax evasion and other means. Politicians and civil servants are regularly caught accepting bribes or engaging in other corrupt behavior. In one recent incident, 11 members of Parliament (MPs) were forced to resign after being filmed taking cash in return for asking specific questions in Lok Sabha sessions. Moreover, a number of candidates with criminal records have been elected, particularly in the state legislatures. Despite laws requiring candidates to declare their financial assets, criminal records, and educational backgrounds, those with links to organized crime or whose election victories were dependent on unreported money continue to serve as lawmakers, as do a number of MPs who face serious criminal charges. More positively, the 2005 Right to Information Act has reportedly improved bureaucratic transparency by giving citizens better access to records. However, whistleblowers and other activists who try to expose corruption within the bureaucracy often receive threats or are otherwise penalized in terms of career prospects.

The predominantly private media remain vigorous and are by far the freest in South Asia, although journalists face a number of constraints. The constitution protects freedom of speech and expression but does not explicitly mention media freedom. The government occasionally uses its power under the Official Secrets Act (OSA) to censor security-related articles. State and national authorities have also on occasion used other security laws, contempt-of-court charges, and criminal defamation legislation to curb the media and other critical voices. In 2006, Parliament passed an amendment to the Contempt of Courts Act that introduced truth as a defense. However, in a troubling test case that was condemned by local professional groups, a New Delhi court in September 2007 sentenced the publisher of the *Mid-Day* newspaper, as well as two editors and a cartoonist, to four-month prison terms for contempt of court after they ran an article accusing a former senior judge of issuing a ruling that benefited his son; the four were eventually freed pending an appeal.

Journalists remain subject to intimidation. On a number of occasions during 2007, reporters were attacked or detained by police or others while attempting to cover the news. Some were abducted or threatened by right-wing groups, insurgents, or local-level officials, and newspaper offices were attacked. Members of the press are particularly vulnerable in rural areas and insurgency-racked states such as Chhattisgarh, Kashmir, Assam, and Manipur. Conditions in Manipur worsened in 2007, according to the Committee to Protect Journalists, as journalists faced threats from competing militant groups as well as a new state government directive banning the publication of any statements made by “unlawful organizations.” At least twice during the year, media outlets responded to pressure by temporarily ceasing operations. Internet access is largely unrestricted in India, although some states have proposed legislation that would require the registration of customers at internet cafes. Potentially inflammatory books and films are occasionally banned or censored by the national or state governments.

Freedom of religion is constitutionally guaranteed and generally respected in this officially secular but Hindu-majority country. However, violence against religious minorities, including attacks on clergy and the destruction of churches and mosques, remains a problem, and prosecution of the culprits has been inadequate. In December 2007, dozens of churches and Christian homes were destroyed in attacks by Hindu militants in the eastern state of Orissa, leading to tit-for-tat violence in which at least eight people were killed. Members of the Sangh Parivar,

a group of Hindu nationalist organizations including the BJP, and some local media outlets promote antiminority propaganda. Legislation on the books in several states criminalizes religious conversions that take place as a result of “force” or “allurement.” These laws have been opposed by human rights activists and religious groups, who argue that their vague provisions could be misused. Academic freedom is generally respected but occasionally threatened by intimidation of and attacks on professors and institutions.

There are some restrictions on freedoms of assembly and association. Section 144 of the criminal procedure code empowers state-level authorities to declare a state of emergency, restrict free assembly, and impose curfews; officials occasionally use Section 144 to prevent demonstrations. Police and hired thugs sometimes beat, arbitrarily detain, or otherwise harass villagers and members of nongovernmental organizations (NGOs) who protest forced relocation from the sites of development projects. Amnesty International has documented a number of instances in which police have used excessive force against demonstrators, particularly in the context of ongoing protests against the Narmada Dam project.

Human rights organizations generally operate freely. However, rights groups have expressed concern over the intimidation of human rights defenders through threats, legal harassment, the use of excessive force by police, and occasionally lethal violence. In Gujarat, individuals and organizations that have pushed for justice following the 2002 communal riots have faced harassment from state authorities, including police or tax investigations and threatening telephone calls, according to Human Rights Watch. Human rights defenders also met with heightened threats and harassment in Chhattisgarh during 2007. The work of rights activists may be hindered by a 2001 Home Ministry order that requires organizations to obtain clearance before holding international conferences or workshops if the subject matter is “political, semi-political, communal, or religious in nature or is related to human rights.” Foreign monitors are occasionally denied visas to conduct research trips in India on human rights issues.

Workers in the formal economy regularly exercise their rights to bargain collectively and strike. However, the Essential Services Maintenance Act enables the government to ban strikes in certain industries and limits the right of public servants to strike. Estimates of the number of child laborers vary widely, from 12 million to 55 million. Many work in the informal sector in hazardous conditions, and some are bonded laborers. In October 2006, new legislation banned children younger than 14 from working as domestic servants or at hotels, restaurants, or roadside food stalls.

The judiciary is independent of the executive. Judges have displayed unprecedented activism in response to public interest litigation over official corruption, environmental issues, and other matters, and this expanded role has received considerable public support. In April 2007, the Supreme Court overturned the Ninth Schedule, a constitutional provision putting certain areas out of the purview of the judiciary, leading the prime minister to complain of judicial overreach. However, in recent years, judges have initiated several contempt-of-court cases against activists and journalists, raising questions about their misuse of the law to intimidate those who expose the behavior of corrupt judges or question verdicts. Contempt-of-court laws were reformed in 2006 to make truth a defense with respect to allegations against judges, provided the information is in the public and national interest.

Weak performance on rule of law issues has been a long-standing concern. Although several positive legal reforms have been passed in recent years, particularly in the area of safeguarding the rights of minorities and underprivileged groups, implementation has been significantly lagging. The judiciary, particularly at the lower levels, is reportedly rife with corruption, and most citizens have great difficulty securing effective justice through the courts. The court system is severely backlogged and understaffed—there are currently more than 30 million civil and criminal cases pending—which results in lengthy pretrial detention for a large number of people. In general, the criminal justice system still fails to provide equal protection to minorities, lower castes, and tribal members. Muslims are underrepresented in the police force and army, with only 29,000 serving in the 1.1 million-strong army even though they comprise an estimated 14.5 percent of the population, according to the *Christian Science Monitor*.

Particularly in rural India, parallel justice is often dispensed by caste *panchayats* (informal councils) or Muslim religious leaders, who issue edicts concerning marriage, divorce, and other social customs. In the worst cases, such edicts result in violence or persecution aimed at those perceived to have transgressed social norms, particularly women and members of the lower castes.

Police often torture or otherwise ill-treat suspects to extract confessions or bribes. Custodial rape of female detainees continues to be a problem, as does routine abuse of ordinary prisoners, especially minorities and members of the lower castes. The National Human Rights Commission (NHRC), whose profile has grown since its creation in 1993, is headed by a retired Supreme Court judge and handles roughly 80,000 complaints each year. However, while it monitors abuses, initiates investigations, makes independent assessments, and conducts training sessions for the police and others, its recommendations are often not implemented and it has few enforcement powers. The commission also lacks jurisdiction over the armed forces, which severely hampers its effectiveness.

Reports by the NHRC, Human Rights Watch, and a number of other groups allege that the Gujarat state government instructed police not to intervene during the 2002 communal violence, and that police have since been reluctant to register complaints against or arrest those accused of murder, rape, or complicity in the rioting. After the state's justice system was deemed to be biased, the Supreme Court stepped in on several occasions to order retrials or reviews of previously closed cases. In 2006, a Mumbai special court sentenced nine people to life imprisonment for their role in the Best Bakery massacre, and almost 1,600 closed cases were reexamined on instructions from the Supreme Court. However, in 2007, Gujarat police stated that the majority of these cases could not be reopened due to a lack of witnesses, and the vast majority of tried cases have resulted in acquittals.

Police, army, and paramilitary forces continue to be implicated in disappearances, extrajudicial killings, rape, torture, arbitrary detention, and destruction of homes, especially in the context of ongoing insurgencies in Kashmir, the tribal belt, and several northeastern states. The high level of custodial deaths is a particular concern, with hundreds of cases recorded each year. The Armed Forces Special Powers Act (AFSPA) and the Disturbed Areas Act remain in effect in a number of states, granting security forces broad powers of arrest and detention. In June 2005, a government-appointed review panel unanimously recommended that AFSPA be repealed, but the government has not yet complied. Security forces also

continue to hold suspects under the broadly drawn National Security Act, which authorizes detention without charge for up to one year, as well as the Unlawful Activities Prevention Act. In response to spiraling Naxalite-related violence, the Chhattisgarh state government passed the Special Public Protection Act in March 2006. Its broad language—allowing detentions of up to three years for “unlawful activities” and criminalizing provision of support to the Naxalites, even if under duress—was criticized by Human Rights Watch. The criminal procedure code requires the central or relevant state government to approve prosecution of security force members, but such approval is rarely granted, leading to impunity for security forces implicated in human rights abuses.

In India’s seven northeastern states, more than 40 insurgent factions, who seek either greater autonomy or complete independence for their ethnic or tribal groups, attack security forces and engage in intertribal violence. The rebels have been implicated in numerous bombings, killings, abductions, and rapes of civilians, and they also operate extensive extortion networks. More than 1,000 troops, militants, and civilians were killed in 2007, according to the South Asia Terrorism Portal (SATP), with the states of Manipur and Assam registering the highest levels of violence. In January 2007, some 80 mostly Hindi-speaking migrant workers were massacred in a remote area of Assam, probably by the United Liberation Front of Asom (ULFA) separatist group; smaller but similar attacks continued throughout the year. Meanwhile, tens of thousands of civilians have been displaced, and many live in squalid camps and are unable to return to their homes.

The recent spread and influence of the Naxalites is cause for serious concern. There are an estimated 10,000 armed fighters supported by a further 40,000 cadre members, organized into a number of groups that since late 2004 have been loosely allied as the Communist Party of India (Maoist). The *Economist* has reported that they operate in 170 of India’s 602 districts, controlling some rural areas outright. Focusing on the tribal areas in states such as Andhra Pradesh, Orissa, Bihar, Chhattisgarh, and Jharkhand, their stated aim is to establish a Communist state on behalf of marginalized groups, including tribal peoples, lower castes, and the landless poor. According to Human Rights Watch, they have imposed illegal taxes; requisitioned food and shelter from villagers; engaged in forced recruitment, extortion, and abduction; and hampered the delivery of aid to the isolated rural areas whose inhabitants they claim to represent.

Naxalite-related violence, including bombings and assassinations, killed more than 450 security personnel and civilians during 2007, according to the SATP. Particularly after the June 2005 launch of the anti-Maoist Salwa Judum campaign in Chhattisgarh, local civilians who are perceived to be progovernment have been targeted. Around 60,000 civilians have been displaced by armed clashes between Naxalites and security forces, and live in temporary government-run camps.

The constitution bars discrimination based on caste, and laws set aside generous quotas in education and government jobs for the so-called scheduled tribes, scheduled castes (Dalits), and other backward classes (OBCs). In addition, women and religious and ethnic minorities are represented in national and local government; in 2004, Manmohan Singh, a Sikh, became India’s first prime minister from a minority group, and in 2007, Pratibha Patil became India’s first female president. However, members of the lower castes and minorities continue to face routine unofficial discrimination and violence. The worst abuse is experienced by the country’s 160 million Dalits, who are often denied access to

land and other public amenities, abused by landlords and police, punished by village councils or members of the upper castes for alleged social transgressions, and forced to work in miserable conditions. However, a government proposal to reserve an extra 27 percent of places in universities and technical institutes for OBCs—which when combined with existing reservations would take the total portion of reserved slots to 49.5 percent—triggered widespread protests in May 2006, with critics alleging that many reserved places would remain vacant and that official policy should concentrate on improving opportunities at lower levels of the educational system. In November 2006, the government-initiated Sachar Committee report—which found that Indian Muslims were disproportionately more likely to be poor and illiterate, and less likely to have access to government employment, medical care, or loans—spurred debate over the necessity of providing official assistance for Muslims.

Tension between different ethnic groups over land, jobs, or resources occasionally flares into violent confrontation, and sporadic Hindu-Muslim violence remains a concern. Other forms of discrimination against Muslims are sometimes excused in the context of ongoing tensions with Pakistan and the global campaign against terrorism. Tens of thousands of displaced people live in makeshift camps in various areas of the country, including Gujarat, due to past or ongoing violence. Although India hosts several hundred thousand refugees from neighboring countries (mostly Tibetans, minority groups from Burma and Bangladesh, and Sri Lankan Tamils), it has no federal refugee law, and the treatment of displaced persons varies widely, according to Refugees International.

Property rights are somewhat tenuous for tribal groups and other marginalized communities, and members of these groups are often denied adequate resettlement opportunities and compensation when their lands are seized for development projects. In 2007, there was increased violence associated with a planned special economic zone in Nandigram, West Bengal, that would lead to the acquisition of farmland. Over the course of the year, more than 30 people were killed, hundreds were injured, and more than 10,000 people lost their homes amid clashes between supporters of the state's ruling CPI-M party and farmers who were trying to block the land appropriations.

Each year, several thousand women are burned to death, driven to suicide, or otherwise killed, and countless others are harassed, beaten, or deserted by husbands, in the context of domestic disputes that sometimes include dowry-related issues. Despite the fact that making demands for dowry is illegal and hundreds of people are convicted each year for the crime, the practice continues. Rape and other violence against women are serious problems, and lower-caste and tribal women are particularly vulnerable. Muslim women and girls were subjected to horrific sexual violence during the 2002 communal riots in Gujarat, and there have been few official attempts to provide rehabilitation for surviving victims or to prosecute their attackers, according to Amnesty International. The Protection of Women from Domestic Violence Act, which took effect in October 2006, banned dowry-related harassment, widened the definition of violence to include emotional or verbal abuse, and criminalized spousal rape. So-called honor killings, in which women are murdered by relatives for perceived sexual or moral indiscretions, remain a problem, especially in the northwestern states of Punjab and Haryana.

Muslim personal-status laws and traditional Hindu practices discriminate against women in terms of inheritance, adoption, and property rights. The malign neglect

of female children after birth remains a concern. Sex-determination tests are increasingly used during pregnancy, after which female fetuses are more likely to be aborted, despite a prohibition on tests being conducted for this purpose. The trend, coupled with the practice of female infanticide by those who cannot afford the tests, has contributed to a significant imbalance in the male-female birth ratios in a number of states, particularly in the northwest. The criminalization of homosexual behavior has led to harassment of gay men and the NGOs who work with them, according to Human Rights Watch. A high-profile campaign is currently challenging this discriminatory, colonial-era legislative framework in the Indian court system. The trafficking of women and children to, from, and within India—primarily for the purposes of prostitution, domestic servitude, and forced labor—continues to be a significant problem.