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Freedom in the World 2010 - India

Capital: New Delhi

Population: 1,171,029,000

Political Rights Score: 2 *

Civil Liberties Score: 3 *

Status: Free

Explanatory Note

The numerical ratings and status listed above do not reflect conditions in Indian-controlled Kashmir, which is examined in a separate report.

Overview

The ruling United Progressive Alliance, a coalition led by the Congress Party, won a decisive victory in the April-May 2009 parliamentary elections, allowing Prime Minister Manmohan Singh to remain in office. The Congress-led alliance also maintained its majority in state elections in Maharashtra and Arunachal Pradesh in October, and won a plurality of seats in Haryana. While the year was relatively peaceful, ongoing Maoist and separatist insurgencies contributed to lawlessness and human rights violations in a number of states.

India achieved independence from Britain in 1947, as predominantly Muslim portions of British India were split off to form Pakistan. The centrist, secular Congress Party ruled at the federal level for nearly all of the first 50 years of independence. In the mid-1990s, however, the Hindu nationalist Bharatiya Janata Party (BJP) became a major factor in Parliament, leading a number of subsequent governments. 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 1990s also featured major economic reform, with a Congress government initiating a shift toward market-oriented policies following a balance-of-payments crisis in 1991.

The BJP, which had held power since 1998, was unexpectedly defeated after calling early national elections in 2004. The Congress Party formed a ruling coalition with a number of regional parties, but Congress leader Sonia Gandhi decided to hand the premiership to former finance minister Manmohan Singh. The new Congress-led United Progressive Alliance (UPA) government agreed to reverse several of the previous government's policies, including controversial antiterrorism legislation and the injection of Hindu nationalist ideology into state-run schools. However, the UPA faced internal rifts and opposition from the Communist Party of India-Marxist, one of its leftist allies,

on economic issues such as privatization and labor law reform. The government survived a contentious July 2008 confidence vote in Parliament triggered by the Communists' objections to a nuclear pact with the United States, though the vote was marred by bribery allegations.

The UPA gained strength in the April-May 2009 parliamentary elections, decisively defeating the BJP-led National Democratic Alliance, which remained its closest rival. Congress itself won 206 of 543 lower house seats, compared with 116 for the BJP, and the UPA won 260 seats overall. Moreover, the coalition made alliances with several independent parties, eventually giving it a majority of 322 seats. Mayawatti, the chief minister of Uttar Pradesh and a leader of low-caste Dalits, was thought to be a potential contender for the premiership before the elections, but her Bahujan Samaj Party (BSP) did not perform as well as expected, securing only 21 seats. Average voter turnout over all five phases of the election was approximately 60 percent.

Congress's electoral victory led to a more stable government, though the absence of communist parties from the ruling coalition did not lead to any major economic changes in its first budget, released in July. Liberal attempts to introduce reforms were weakened by India's comparative success during the global economic crisis.

A peace dialogue that began after India and Pakistan came close to war in 2002, but which faltered in 2008 due to a series of terrorist attacks attributed to Islamist militants, resumed in June 2009. The fresh talks came after Pakistan took steps to acknowledge the role of the Pakistani-based militant group Lashkar-e-Taiba in a November 2008 terrorist assault on hotels and other sites in Mumbai that killed 171 people. After a round of talks in July, India and Pakistan issued a joint statement declaring that acts of terrorism would not have any impact on the peace process, although the Indian government was forced to backtrack on the issue following vocal domestic criticism.

Political Rights and Civil Liberties

India is an electoral democracy. Members of the lower house of Parliament, the 545-seat Lok Sabha (House of the People), are directly elected for five-year terms (except for two appointed members representing Indians of European descent). The Lok Sabha determines the leadership and composition of the government. Most members of the less powerful 250-seat upper house, the Rajya Sabha (Council of States), are elected by the state legislatures using a proportional-representation system to serve staggered six-year terms; up to 12 members are appointed. Executive power is vested in a prime minister and cabinet. The president, who plays a largely symbolic role as head of state, is chosen for a five-year term by state and national lawmakers.

Under the supervision of the Election Commission of India (ECI), recent elections have generally been free and fair. The 2009 national polls were generally peaceful, although Maoist militant attacks throughout the country led to 17 deaths during the first phase of voting. Electronic voting machines, also used in 2004 elections, have helped reduce voting day irregularities such as booth capturing. Violence has also declined during state-level elections, which were held in 2009 in Andhra Pradesh, Orissa, Sikkim, Arunachal Pradesh, Maharashtra, and Haryana. Incumbents retained power in all elections. Badly maintained voter lists and the intimidation of voters in some areas continue to be matters of concern, although the ECI has made efforts to make voter lists available online.

A wide range of political parties operate freely. Due to the rising popularity of regional and caste-based parties, coalition governments have become the norm at the national level. The trend toward coalition governments is not as strong at the state level, although larger states are commonly led by coalitions.

Government effectiveness and accountability are undermined by criminality in politics, decrepit state institutions, and widespread corruption. India was ranked 84 out of 180 countries surveyed in Transparency International's 2009 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, although a great deal of corruption goes unnoticed and unpunished. During the 2009 election campaign there were widespread allegations of vote-buying: police in Andhra Pradesh seized \$600,000 in cash that was allegedly set to be used for bribes, while 500 cases of liquor destined for distribution to voters were seized in Karnataka. 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 at least in part dependent on unreported money continue to win election and serve as lawmakers, as do a number who face serious criminal charges. The 2005 Right to Information Act has reportedly been used heavily and successfully to improve transparency, although many information requests are still denied because of poor record-keeping by government agencies. Those who try to expose bureaucratic corruption often receive threats or are otherwise penalized in terms of career prospects.

The predominantly private media are vigorous and diverse, and their investigations and scrutiny of politicians form an important component of India's democracy. Nevertheless, journalists continue to 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 to censor security-related articles. Authorities have also on occasion used other security laws, criminal defamation legislation, hate-speech laws, and contempt-of-court charges to curb critical voices, though a 2006 amendment to the Contempt of Courts Act introduced truth as a valid defense. In January 2009, B.V. Seetaram, chairman and chief editor of Chitra Publications, was arrested in Karnataka on defamation charges. He was released weeks later. In February, a Calcutta-based editor and a publisher with the *Statesman* newspaper were arrested under religious speech laws after reprinting a British news article that sparked protests by Muslim groups.

Journalists remain subject to intimidation. On a number of occasions during 2009, reporters were attacked, threatened, or detained by local authorities, right-wing groups, or insurgents. Members of the press are particularly vulnerable in rural areas and insurgency-racked states such as Chhattisgarh, Kashmir, Assam, and Manipur. In March 2009, Anil Majumder, editor of the *Aji* newspaper in Assam, was shot and killed as he arrived home. While the motive behind the killing was unknown, the media speculated that Majumder was killed due to public support for peace talks between the government and the guerrilla group, the United Liberation Front of Asom. Police had not yet apprehended the perpetrator by year's end.

Internet access is largely unrestricted, although some states have passed legislation that requires internet cafes to register with the state government and maintain visitor registries. Under Indian internet crime law, the burden is on website operators to demonstrate their innocence. Potentially inflammatory books and films are occasionally banned or censored. In August 2009, the BJP government in Gujarat banned a book about Pakistan's founder, Mohammed Ali Jinnah, due to "defamatory references" to India's first home minister, Vallabhbhai Patel; in addition, the book's author was expelled from the BJP. However, the book ban was reversed by a court in September.

Freedom of religion is constitutionally guaranteed and generally respected. Hindus of various strains and ethnicities form a majority of the overall population, but the state is secular. Violence against religious minorities remains a problem in certain states, and prosecution of the culprits has been inadequate. Members of the so-called Sangh Parivar – a group of Hindu nationalist organizations that includes the BJP – and some local media outlets promote antiminority views. In 2007 and 2008, dozens of churches and Christian homes in Orissa were destroyed by Hindu militants. An estimated 30 Christians were killed and 3,000 homes destroyed in Kandhamal, the state's most violent district. A UN religious freedom report released in January 2009 noted the "increased ghettoization and isolation" of Muslims in some parts of Gujarat, and commented that a "pervasive fear of mob violence" exists in many parts of the country. In August 2009, the U.S. Commission on International Religious Freedom placed India on its watch list, noting an increasing culture of impunity for those who perpetrate religious attacks. In

2009, Varun Gandhi, a Hindu nationalist youth leader, was jailed under the National Security Act for inciting religious hatred. During a speech, he had called a Muslim rival "Osama bin Laden" and proclaimed that he would cut off the hand of any Muslim who threatened a Hindu. Legislation in several states criminalizes religious conversions that take place as a result of "force" or "allurement." Academic freedom is generally quite robust, though intimidation of professors and institutions sometimes occurs.

There are some restrictions on freedoms of assembly and association. Section 144 of the criminal procedure code empowers the authorities to restrict free assembly and impose curfews; officials occasionally use it 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. In February 2009, the authorities cracked down on protests in Tamil Nadu against the treatment of the Tamil minority in Sri Lanka; several hundred protesters were arrested following clashes with the police. Prior to the demonstrations, the state government had shut down universities to discourage students from taking part.

Human rights organizations generally operate freely. However, they have expressed concern about threats, legal harassment, the use of excessive force by police, and occasionally lethal violence. In Gujarat, advocates for justice following anti-Muslim riots in 2002 – in which an estimated 2,000 people were killed and 100,000 displaced with at least tacit support from the BJP-led state government – have faced harassment, including police or tax investigations and threatening telephone calls, according to Human Rights Watch. Due in part to public protest over his imprisonment, Binayak Sen, a doctor who was active in organizing local health care in Chhattisgarh and had been a vocal critic of the government's conduct in combating Maoist Naxalite rebels, was released on bail in May 2009 after 22 months of detention. Sen had been detained for allegedly passing letters to a Naxalite prisoner he was treating. 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, semipolitical, communal, or religious in nature or is related to human rights," although this prohibition is often ignored. Foreign monitors are occasionally denied visas to conduct research trips to 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. Children younger than 14 are banned from working as domestic servants or at hotels, restaurants, or roadside food stalls, although in practice the law is routinely flouted.

The judiciary is independent of the executive branch. Judges have displayed considerable activism in response to public-interest litigation on official corruption, environmental issues, and other matters. However, in recent years judges have initiated several contempt-of-court cases against activists and journalists who expose judicial corruption 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.

The lower levels of the judiciary in particular are reportedly rife with corruption, and most citizens have great difficulty securing justice through the courts. In August 2009, following a public debate over judicial accountability, India's 29 Supreme Court justices announced that they would disclose their assets publicly on the court's website. The court system is severely backlogged and understaffed, with about 38 million civil and criminal cases pending. This leads to lengthy pretrial detention for a large number of suspects, many of whom remain in jail beyond the duration of any sentence they might receive if convicted. A 2009 report by the Chief Justice of the Delhi High Court indicated that at the current pace it would take 466 years to clear the backlog.

Despite legal reforms in recent years, the criminal justice system still generally fails to

provide equal protection to minorities, lower castes, and tribal members. Muslims, who make up some 13.4 percent of the population, are underrepresented in the security forces, with only 29,000 serving in an army of 1.1 million, according to the *Christian Science Monitor*. Muslims are also underrepresented in "influential" or "sensitive" areas of government such as the foreign and intelligence services. A 2006 report released by the Sachar Committee – a high level government committee convened to address the social and economic status of Muslims in India – suggested several measures to combat inequalities, but the report has had little impact.

Particularly in rural India, caste *panchayats* (informal councils) or Muslim religious leaders often issue edicts concerning marriage, divorce, and other social customs. While these bodies play a role in relieving the overburdened official courts, their edicts sometimes result in violence or persecution aimed at those perceived to have transgressed social norms, especially women and members of the lower castes.

Police often torture or abuse suspects to extract confessions or bribes. Custodial rape of female detainees continues to be a problem, as does routine abuse of ordinary prisoners, particularly minorities and members of the lower castes. The Asian Centre for Human Rights reported in 2009 that between 2001 and March 2009, 1,184 deaths in police custody were reported, nearly all as a result of torture. The group estimates that the actual number of deaths is far greater. The National Human Rights Commission (NHRC) 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 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. The rehabilitation of displaced victims and the prosecution of the perpetrators has consequently made little progress, as witnesses and victims' advocates have faced intimidation by local authorities and Hindu nationalists. In 2006, a Mumbai special court sentenced nine people to life imprisonment for their role in the Best Bakery massacre, and 13 people were convicted in 2008 for their roles in the riots, with 11 receiving life sentences. However, the majority of victims appear unlikely to see justice.

Security forces operating in the context of regional insurgencies continue to be implicated in disappearances, extrajudicial killings, rape, torture, arbitrary detention, and destruction of homes. Despite several calls for its repeal, 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. Security forces also continue to hold suspects under the 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 2006, with broad language allowing three-year detentions for "unlawful activities" and criminalizing the provision of support to the Naxalite rebels, even if under duress. The criminal procedure code requires the federal or relevant state government to approve prosecution of security force members, but such approval is rarely granted, leading to impunity for personnel implicated in human rights abuses.

The recent spread and growth in influence of the Naxalites are a serious concern. There are an estimated 14,000 armed fighters supported by 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 *Christian Science Monitor* reported in 2009 that Maoists operate in 20 of 28 states, and control some rural areas outright. Focusing on the tribal areas in states such as Andhra Pradesh, Orissa, Bihar, Chhattisgarh, and Jharkhand, they aim to establish a communist state on behalf of marginalized groups, including tribal peoples, lower castes, and the landless poor. According to a 2008 Human Rights Watch

report, they have imposed illegal taxes; requisitioned food and shelter from villagers; engaged in abduction and forced recruitment, including recruitment of child soldiers; hampered aid deliveries; and planted land mines that have caused civilian casualties. In June 2009 the government banned the Communist Party of India-Maoist and labeled it a terrorist group. The move will give security forces greater leeway in arresting and detaining suspects.

Naxalite-related violence killed more than 998 security personnel and civilians during 2009, according to the South Asia Terrorism Portal (SATP). Particularly after the 2005 launch of the anti-Maoist Salwa Judum campaign in Chhattisgarh, local civilians who are perceived to be progovernment have been targeted by the Naxalites. The government, often working with the Salwa Judum militia, has routinely raided suspected Naxalite-controlled villages in recent years, with attacks continuing through 2009, often targeting civilians. A 2008 Human Rights Watch report documented a pattern of beatings and murders by security forces in the area. Around 50,000 civilians have been displaced by Naxalite-related violence and live in government-run camps.

In India's seven northeastern states, more than 40 insurgent factions – seeking 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. Approximately 843 troops, militants, and civilians were killed in these northeastern states in 2009, according to the SATP. Tens of thousands of civilians have been displaced, and many live in squalid camps. In January 2009, the Assam Legislative Assembly passed the Assam Preventive Detention (Amendment) Act, lifting the maximum period for preventive detention of terrorist suspects from six months to two years.

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 became India's first Sikh prime minister, and in 2007 the BSP, formed chiefly to represent Dalits, won an absolute majority in Uttar Pradesh, India's most populous state. 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. A government proposal to reserve an extra 27 percent of places in universities and technical institutes for OBCs – taking the total portion of reserved slots to 49.5 percent – was approved in 2008. Indian Muslims are disproportionately more likely to be poor and illiterate, and less likely to have access to government employment, medical care, or loans.

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. While many states have laws to prevent land transfers to non-tribal groups, the practice is widespread, according to a 2008 Asian Indigenous and Tribal People's Network report. The 2006 Forest Rights Act gave tribal groups ownership rights over forestland they farmed, although recent reports suggest that the law has yet to be effectively implemented. A long-running protest by 1,738 landless Dalit families in Kerala, who demanded land held by a private rubber plantation, was resolved in 2009 when the government granted the families money to build housing elsewhere.

Each year, several thousand women are killed or driven to suicide, and countless others are abused or deserted by husbands, in the context of domestic disputes. Despite the criminalization of dowry demands and hundreds of convictions each year, the practice continues. Rape and other violence against women are serious problems, and lower-caste and tribal women are particularly vulnerable. A 2006 law banned dowry-related harassment, widened the definition of domestic violence to include emotional or verbal abuse, and criminalized spousal rape. However, reports released in 2009 by the Delhi-

based Lawyers' Collective indicated that enforcement of the law was poor in many states. So-called honor killings, in which women are murdered by relatives for perceived sexual or moral transgressions, 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, as does the banned but growing use of prenatal sex-determination tests to selectively abort female fetuses. These trends have contributed to a significant imbalance in the male-female birth ratios in a number of states. In 2008 the government announced an award of nearly \$3,000 for families that raise female children. The trafficking of women and children to, from, and within India – primarily for prostitution and forced labor – remains a significant problem.

In a landmark decision in July 2009, a court scrapped colonial-era laws that banned homosexual behavior. The laws had contributed to the harassment of gay men and the NGOs that work with them, according to Human Rights Watch, and the court ruling came after a protracted campaign against the statutes by rights groups. Gay activist groups organize openly, despite harassment and occasional violence.

**Countries are ranked on a scale of 1-7, with 1 representing the highest level of freedom and 7 representing the lowest level of freedom.*

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