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Freedom in the World 2012 - India

2012 Scores

Status: Free
Freedom Rating: 2.5
Civil Liberties: 3
Political Rights: 2

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

A popular anticorruption movement maintained intense pressure on the Congress Party-led government to take action in 2011, even as new corruption scandals emerged. Discourse in the media and civil society was also instrumental in instigating parliamentary debates on other significant issues. While there were no major incidents of violence during the year, ongoing Maoist and separatist insurgencies, abuse by security forces, and general human rights violations continued to plague "disturbed areas" of the country.

India achieved independence from Britain in 1947. The secular Congress Party ruled at the federal level for nearly all of the first 50 years of independence, but the Hindu nationalist Bharatiya Janata Party (BJP) became a major factor in Parliament in the 1990s, and led a governing coalition from 1998 to 2004. The 1990s also featured significant economic reforms, with a Congress government initiating a move toward market-oriented policies following a balance-of-payments crisis in 1991. Meanwhile, a pattern of single-party governments gave way to ruling coalitions involving large numbers of parties. The change stemmed in part from the rise of new parties that held power and legislative seats in a single state or region.

After recapturing power from the BJP in the 2004 national elections, the Congress Party formed a ruling coalition with a number of regional parties, and Congress leader Sonia Gandhi handed the premiership to former finance minister Manmohan Singh. The new Congress-led United Progressive Alliance (UPA) government reversed several of its predecessor's policies, including controversial antiterrorism legislation and the introduction of Hindu nationalism into school curriculums. However, the UPA suffered internal pressures from leftist allies over economic issues, such as privatization and labor law reform. The government survived a contentious July 2008 confidence vote in

Parliament triggered by leftist 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, its closest rival. Congress itself won 206 of 543 lower house seats, and the UPA won 260 seats overall. The UPA also made alliances with several independent parties, eventually giving it a significant majority. Congress's electoral victory led to a more stable government, and India's success in weathering the global financial crisis that began in late 2008 weakened calls for additional free-market economic reforms.

In 2010, the government focused on measures designed to bolster existing legal protections and benefits for marginalized groups. The Right of Children to Free and Compulsory Education Act (RTE) took effect in April, making education a fundamental right for every child in India between the ages of 6 and 14. In addition, the RTE reserved 25 percent of the seats in private schools for disadvantaged children.

After a string of high-profile corruption scandals, including a telecommunications bribery scam thought to have cost the public close to \$39 billion and allegations of financial malfeasance related to the 2010 Commonwealth Games, anticorruption efforts dominated political debate during 2011. A hunger strike by political and social activist Anna Hazare, backed by large street demonstrations in all major metropolitan cities, was aimed at compelling Parliament to accept changes to pending anticorruption legislation that would empower a Jan Lokpal or Citizens' Ombudsman to investigate and prosecute government corruption. A version of the bill was passed by the lower house of Parliament (Lok Sabha) in December and would be up for debate in the upper house (Rajya Sabha).

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, is chosen for a five-year term by state and national lawmakers.

Under the supervision of the Election Commission of India (ECI), elections have generally been free and fair. The 2009 national polls were mostly peaceful, though Maoist militant attacks in parts of the country led to 17 deaths during the first phase of voting. Electronic voting machines, also used in 2004, helped reduce election-day irregularities. Violence declined during state-level elections in 2009 and 2010. Assam, Kerala, Tamil Nadu, West Bengal, and Pondicherry held their state-level assembly elections in 2011. The Trinamool Congress party marked a historic win in Bengal, bringing an end to the 34-year rule of the Left Front, led by the Communist Party of India-Marxist (CPM), which had been noted as the longest-serving communist-led government in a democracy. The state also elected its first female chief minister. Badly maintained voter lists and the intimidation of voters in some areas continue to be general matters of concern.

Recent attempts to address political corruption, through legislation and activism, have been driven by domestic and international pressure to counter the negative effect of graft on government efficiency. India was ranked 95 out of 183 countries surveyed in Transparency International's 2011 Corruption Perceptions Index. Though politicians and civil servants are regularly caught accepting bribes or engaging in other corrupt behavior, a great deal of corruption goes unnoticed and unpunished. The federal government has already introduced a number of initiatives to tackle the problem, such as the 2005 Right to Information Act, which has been actively used to improve transparency and expose corrupt activities. While the effects of this legislation have been transformative in the public sphere, over a dozen right to information activists have reportedly been killed since late 2009.

India's private media are vigorous and diverse. Investigations and scrutiny of politicians make the news media one of the most important components of India's democracy. While radio remains dominated by the state and private radio stations are not allowed to air news content, the television and print sectors have expanded considerably in recent years, with many of the new outlets targeting specific regional or linguistic audiences. Despite this vibrant media landscape, journalists, creative writers, and human rights defenders continue to face a number of constraints. The authorities have sometimes used security laws, criminal defamation legislation, hate-speech laws, and contempt-of-court charges to curb critical voices.

Violence against journalists by both state and nonstate actors has continued to be a problem in India. At least two journalists were killed during 2011. *Nai Dunia* reporter Umesh Rajput was shot dead outside his home in Chhattisgarh in February, though the motive remained unclear. In June, *Midday* reporter Jyotirmoy Dey, who had reported extensively on organized crime in Mumbai, was killed by unidentified gunmen. In an example of the lesser assaults faced by journalists, police in Andhra Pradesh chased and beat a television journalist in June in apparent retaliation for his reporting on student protests at Usmania University.

Internet access is largely unrestricted, although some states have passed legislation that requires internet cafés to register with the state government and maintain user registries. Under Indian internet crime law, the burden is on website operators to demonstrate their innocence. Potentially inflammatory books, films, and internet sites are occasionally banned or censored.

Freedom of religion is constitutionally guaranteed in India and is generally respected. However, legislation in several states criminalizes religious conversions that take place as a result of "force" or "allurement." Hindus make up over 80 percent of the population, but the state is secular. An array of Hindu nationalist organizations and some local media outlets promote antiminority views. In 2010, the Allahabad High Court issued a decision in a high-profile case stemming from the 1992 destruction of a 16th-century mosque in Ayodhya by Hindus who claimed it was built on a Hindu holy site. The court ruled that the land should be divided, with one-third going to a Muslim organization and two-thirds set aside for Hindus. The Supreme Court stayed the order of partition, and several parties filed appeals to the lower court's decision at year's end.

Academic freedom is generally robust, though intimidation of professors and institutions over political and religious issues sometimes occurs. Scholars and activists accused of sympathizing with Maoist insurgents have reportedly faced increased pressure from authorities.

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 whenever "immediate prevention or speedy remedy" is required. An array of state laws based on this standard are often abused to limit the holding of meetings and assemblies. Nevertheless, protest events take place regularly in practice, and the peaceful demonstrations associated with anticorruption activist Anna Hazare drew tens of thousands of people into the streets during 2011.

Human rights organizations operate freely, but continue to face threats, legal harassment, excessive police force, and occasionally lethal violence. In October 2011, police in Delhi assaulted a human rights lawyer when he went to file a complaint regarding illegal property demolitions in the city. While India is home to a strong civil society sector and academic community, foreign monitors are occasionally denied visas to conduct research trips in the country on human rights and other topics. An American activist and radio broadcaster, David Barsamian, was denied entry by immigration authorities in September 2011, apparently due to his history of critically examining human rights abuses in India.

While workers in the formal economy regularly exercise their rights to bargain collectively and strike, the Essential Services Maintenance Act has enabled the government to ban certain strikes. Article 23 of the constitution bans human trafficking, and bonded labor is illegal, but the practice is fairly common across the country. Estimates of the number of affected workers range from 20 to 50 million. Children are

also banned from working in potentially hazardous industries, though 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 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. In 2010, lawyer Prashant Bhushan asserted that many of India's Supreme Court chief justices have been corrupt, leading to contempt-of-court proceedings against him that remained unresolved at the end of 2011.

The lower levels of the judiciary in particular have been rife with corruption, and most citizens have great difficulty securing justice through the courts. The system is severely backlogged and understaffed, with millions of 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. In July 2011, for example, a 19-year-old suspect was convicted of stealing 200 rupees (approximately \$4) after spending a year in detention, despite the fact that his crime would generally carry a sentence of only three months in jail.

The criminal justice system fails to provide equal protection to marginalized groups. Muslims, who make up some 14 percent of the population, are underrepresented in the security forces as well as in the foreign and intelligence services. Particularly in rural India, informal councils often issue edicts concerning social customs. While these bodies play a role in relieving the overburdened official courts, their decisions sometimes result in violence or persecution aimed at those perceived to have transgressed social norms, especially women and members of the lower castes.

Police torture, abuse, and corruption are entrenched in the law enforcement system. The police also suffer from understaffing, as according to a 2009 Human Rights Watch report, there is one officer for every 1,037 civilians, less than a third of the global average. 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. Between 2001 and March 2009, there were 1,184 reported deaths in police custody, nearly all of which were caused by torture, according to the Asian Centre for Human Rights. The group estimated 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, one of the principal agents of abuse in several parts of the country, further hampering its effectiveness.

Security forces operating in the context of regional insurgencies continue to be implicated in extrajudicial killings, rape, torture, arbitrary detention, kidnappings, and destruction of homes. The criminal procedure code requires the government to approve the prosecution of security force members, but such approval is rarely granted, leading to impunity for personnel implicated in human rights abuses. The Armed Forces Special Powers Act (AFSPA) grants security forces broad authority to arrest, detain, and use force against suspects in restive areas; civil society organizations and multiple UN human rights bodies have called for the act to be repealed. An activist in the "disturbed area" of Manipur, Sharmila Chanu, has been on a hunger strike for 11 years to demand the revocation of the AFSPA, but has faced continual arrests and forced feeding by the authorities. A number of other security laws allow detention without charge or based on vaguely worded offenses.

The Maoist insurgency in several parts of India has been of serious concern to the government. There were over 600 Maoist-related deaths across nine states in 2011, according to the South Asia Terrorism Portal (SATP), though that represented a sharp decline from the previous year's 1,180. Among other abuses, the rebels have allegedly

imposed illegal taxes, seized food and shelter, and engaged in abduction and forced recruitment of children and adults. Local civilians who are perceived to be progovernment have been targeted by the Maoists. Tens of thousands of civilians have been displaced by the violence and live in government-run camps.

Separately, 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. Such fighters have been implicated in numerous bombings, killings, abductions, and rapes of civilians, and they also operate extensive extortion networks. However, the number of killings of civilians, security personnel, and militants in the northeastern insurgencies have fallen sharply in recent years, reaching 247 in 2011, compared with 852 in 2009, according to the SATP.

The constitution bars discrimination based on caste, and laws set aside quotas in education and government jobs for the so-called scheduled tribes, scheduled castes (Dalits), and other backward classes (OBCs). Women and religious and ethnic minorities are represented in government; as of 2011, the president was a woman, the vice president was a Muslim, the prime minister was a Sikh, and the speaker of the Lok Sabha was a Dalit woman. A number of states were headed by female chief ministers, including one Dalit. However, members of the lower castes and minorities continue to face routine discrimination and violence. Dalits are often denied access to land and other public amenities, abused by landlords and police, and forced to work in miserable conditions. Indian Muslims are disproportionately more likely to be poor and illiterate, with less 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 nontribal groups, the practice is reportedly widespread.

Rape and other violence against women are serious problems, and lower-caste and tribal women are particularly vulnerable. Despite the criminalization of dowry demands and hundreds of convictions each year, the practice continues. According to a recent National Health Survey, on average, one in three married women between 15 and 49 has experienced physical violence. 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 indicate that enforcement is poor. The National Crime Records Bureau reports that about 6,000 females are killed every year for dowry-related issues alone. Muslim personal 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.

A landmark court decision in 2009 struck down Section 377 of the Indian penal code, which criminalized homosexual behavior. However, an appeal of the ruling was pending at the Supreme Court at the end of 2011, and widespread discrimination continues. At a May 2011 conference on HIV/AIDS, the health minister referred to homosexuality as "unnatural" and a "disease," adding to the difficulties faced by activists combating harmful social stigmas regarding both issues.

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