

Backsliding in India? The Weakening of Referee Institutions

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Abstract: Global concerns about democratic malaise have not left India untouched. Analysts point to three new trends—rising majoritarianism, the concentration of executive power, and curbs on dissent—as threats to India’s longstanding liberal democratic credentials. Such shifts have fed anxieties that India risks becoming an “elections-only” democracy. This paper evaluates the institutional guardrails protecting India’s liberal, democratic commitments, focusing on referee institutions that promote government accountability and level the playing field for incumbents and challengers. In the face of a dominant executive, these institutions have atrophied through a combination of deference, interference, and neglect. As a result, executive power has greatly expanded. The Indian case suggests a paradox: institutional checks and balances have functioned most effectively when they are less needed (when the party system is fragmented) and least effectively when needed the most (when a single party is dominant).

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Introduction

For more than seven decades, India has enjoyed the moniker “world’s largest democracy.” In addition to this distinction, the country is also the most enduring democracy in the developing world. India adopted universal suffrage in 1947, despite an extremely low per capita income. Since then, the country has sustained its commitment to democratic governance despite poverty, inequality, unprecedented diversity, and sprawling geography (Varshney 2013). This makes India both an important outlier as well as an exemplar for poor, multi-ethnic democracies the world over (Linz, Stepan, and Yadav 2011).

However, anxieties about global democratic backsliding have not left India untouched. Recently, Freedom House (2021) demoted India’s position on its annual “Freedom in the World” report, moving it from the ranks of “Free” to “Partly Free” nations. Soon after, the V-Dem Institute (2021) echoed this analysis in its annual democracy league tables, declaring that India had transitioned from an “electoral democracy” to “electoral autocracy.”

Indeed, India is perhaps the developing world’s most potent counterpoint to the conventional understanding in political science that “stability breeds stability,” or the notion that democratic longevity provides a veneer of protection against democratic regression. As Roberts, Pepinsky, and Bunch (2022) point out in their contribution to this volume, many of the world’s showcases of democracy—including India—have given lie to the belief that consolidated democracies are “self-sustaining.”

When it comes to India’s democratic distress, scholars have articulated three principal lines of concern (Khosla and Vaishnav 2020). First, under the tenure of Prime Minister Narendra Modi and his Hindu nationalist Bharatiya Janata Party (BJP), India appears to have moved decisively in a more majoritarian direction (Varshney 2019). The BJP’s success has led revisionists to assert that India is, first and foremost, a homeland for Hindus, who comprise roughly 80 percent of the population.

Second, Modi has also centralized executive power to an extent not seen since the heyday of former Prime Minister Indira Gandhi, who famously suspended many Constitutionally enshrined freedoms during a period of Emergency Rule in the mid-1970s. For his part, Modi has consolidated authority both within his political party and across the governmental machinery. Finally, the Modi government has repeatedly demonstrated contempt for dissent and painted vocal critics of the government as “anti-national” (Palshikar 2018). India’s legal and constitutional framework has long been characterized by significant constraints on free expression; Modi has assiduously doubled down on those limits.

The objective of this paper is not to enumerate alleged democratic woes but rather ask whether India is slowly becoming an “elections-only” democracy. In India, democratic backsliding appears to progress without significant alteration to the established rules of electoral competition. To its credit, India manages to demonstrate an impressive level of

electoral vibrancy. More than 8,000 candidates representing 672 parties contested India's 2019 general election. In the same year, voter turnout hit an all-time high, clocking in at 67.2 percent—marginally higher than the previous record set just five years prior.²

Unfortunately, vibrant electoral participation belies a variety of liberal deficits (Varshney 2019). Creeping majoritarianism, rising intolerance of dissent, and the expansion of executive power have led to a crisis in Indian democracy. In light of these trends, this paper evaluates the health of institutional guardrails that protect India's democratic commitments by focusing on referee institutions that promote government accountability and ensure a level playing field for incumbents and challengers.

In every functioning democracy, there are “referee institutions” that enforce the rules of the game. Like referees on a football pitch, they ensure that contesting parties adhere to a common set of rules and sanction those who violate them. These institutions are not players on the field themselves, but instead ensure that the match is played fairly (Kapur 2005; Ahuja and Ostermann 2018).

This paper analyzes the behavior of three such institutions—the Supreme Court, the Election Commission of India, and a clutch of horizontal federal accountability institutions—and their encounters with a new dominant political entity, the BJP. In the early years of the Indian republic, the scope of these referee institutions was limited (some had not even been established). Executive power was highly concentrated in the dominant Congress Party, which held almost uninterrupted power in Delhi for a five-decade period between 1947 and 1989. This dominance left little space for institutions independent of the executive to flourish. It was neither in the interest of the Congress Party to place checks on its power, nor in the interest of the leaders of referee institutions to confront a popular political executive with demonstrated longevity.

As the Congress' grip on power faltered and coalition governance flourished, the executive branch weakened, and political power fragmented. India's referee institutions now had the political space to exert their authority without fear of confronting a dominant political force. Furthermore, political parties jockeying for power now had an incentive to support stronger institutions to ensure a level playing field. As Ahuja and Ostermann (2018) have argued, state-based or regional challengers sought strong, non-partisan federal bodies to police incumbents. At the same time, new institutions were set up to check government power.

In 2014, the BJP won the first single-party parliamentary majority in three decades. Five years later, it not only repeated that feat, but *grew* its parliamentary tally. In the interim, the BJP steadily expanded its footprint at the state level, constructing a pan-Indian political machine that rivaled that of the Congress Party of yesteryear. This political shift led some scholars to herald the dawn of a new political era—known as India's “fourth party system”—in which the BJP firmly established itself as the pole around which politics in India revolves (Vaishnav and Hinton 2019).

² Data is from the Election Commission of India, <https://eci.gov.in/>.

Against this backdrop, referee institutions have once more become subordinate to a powerful executive. Today, there are three discernible patterns of interaction between the executive and India's referee institutions: *deference*, *interference*, and *neglect*. While not all referee institutions have experienced each of these dynamics in equal measure, they have all experienced at least one. This logic suggests an important paradox: institutional checks and balances have functioned most effectively when they are less needed (when the party system is fragmented) and least effectively when needed the most (when a single party is dominant). Indeed, as Weiss and Hicken note in their contribution to this volume, institutions explicitly designed with a multi-party coalition government in mind are typically ill-suited to check governments run by a dominant party.

The empirical evidence discussed in this chapter point to a reality that has long been overlooked but is highlighted in this volume by Roberts, Pepinsky, and Bunce: the central challenge of democracy is not necessarily guarding against the subversive actions of actors who *lose* elections but rather protecting against the overreach of those who *win* them. As the India case reveals and the aforementioned scholars note, "a disciplined and opportunistic party can...undermine the separation of powers and progressively neutralize the checks and balances that are essential for horizontal accountability." Therefore, one cannot assume the automatic activation of institutional checks and balances.

The sequence of events described in this paper raises a further question: is India under Modi's BJP simply experiencing mean reversion? According to this argument, the quarter-century of coalition rule during which independent institutions enjoyed asserted themselves was a historical anomaly. Institutional subjugation, on the other hand, is the norm.

While there is truth to this argument, one key difference separates the Congress' institutional subjugation from that of the BJP: the Congress was often opportunistic in its undermining of referee institutions, while the BJP's machinations are organized around an ideological commitment to *Hindutva* (Hindu nationalism). Criticism of it and of its ideological project, therefore, is tarred as "anti-national." This term of art equates support of BJP policies with loyalty to the sovereign Indian nation. The result is institutional atrophy closely intertwined with a new imagination of the Indian "nation."

Evaluating India's referee institutions

In India, many critical referee institutions have existed on paper for decades, but their prominence is only traced back to the late 1980s and early 1990s. The Congress Party dominated politics both at the center and in India's states for the first several decades of India's independence. Its hegemony gradually weakened in the late 1960s and declined precipitously in the second half of the 1980s, ushering in a quarter century of coalition government in New Delhi (Yadav 1999). Between 1989 and 2014, no single national party could successfully exert its dominance; instead, unruly coalitions of more than a dozen political parties constructed tenuous parliamentary majorities.

It was during this era of fragmentation that referee institutions—such as the Election Commission, the Supreme Court, and other horizontal accountability agencies—were granted the political space to regenerate. Most political parties found it in their enlightened self-interest to support (or at least not actively undermine) a credible umpire who could monitor their rivals — even if that meant greater scrutiny of one’s own behavior (Ahuja and Ostermann 2018).

In 2014, Modi and the BJP achieved the first single party parliamentary majority in three decades. In this era of single-party dominance—as was the case in the era of Congress hegemony—the ruling party is arguably less committed to maintaining referee institutions that might clip its wings. In turn, those institutions—and critical actors within them—face incentives to gain favor with the ruling party to perpetuate their own standing (Vaishnav 2018).

Referee institutions must now engage with a new political hegemon. Broadly speaking, there are three patterns of interaction: *deference*, *interference*, and *neglect*.

Supreme Court

The role of India’s Supreme Court in upholding democracy and the rule of law has varied over time. While the formal powers of the court are already quite broad, two developments triggered an expansive shift for the apex court in the 1970s and 1980s (Khosla and Padmanabhan 2017).

The first was the weakening of executive power. As the power and authority of India’s legislature and executive waned, the judiciary filled the breach. The Court positioned itself as one institution that could effectively respond to policy issues without succumbing to internecine political battles. In the 1970s, the Court developed what became known as “the basic structure doctrine,” whereby it limited Parliament’s power to amend the Constitution by insisting that any alternations could not materially affect the basic structure of the document. In a second development, the court expanded subjects it deemed fit for judicial intervention. This practice led to the rise of new instruments like “public interest litigation,” whereby any citizen could petition the apex court if they believe the public interest is at stake (*Ibid*).

The BJP’s rise to power tested the court’s independence. A critical warning sign that the Court’s functioning was amiss emerged unexpectedly in January 2018, when four sitting Supreme Court justices sounded alarm bells about the behavior of then-Chief Justice of India (CJI) Dipak Misra. The justices accused Misra of not only sitting in judgment in a corruption case implicating him personally, but also using his prerogative as the “master of the court’s roster”—which allows him to unilaterally assign benches to hear specific cases—to influence the outcome at the behest of the executive (Bagriya 2019).

Another manifestation of executive interference has to do with the appointment of judges to the Supreme Court and regional high courts. In India, a *collegium*—comprised of the CJI and the four-most senior justices—recommends appointments to the Supreme Court

and the state-level High Courts. Customarily, the judiciary consults the executive on its recommendations before appointments are finalized. In recent years, this informal system has deteriorated. The Modi government attempted to amend the Constitution to create a judicial appointments commission with representation from the executive and judicial branches. Though the Court struck the bill down as unconstitutional, it acknowledged that the *collegium* system suffered several infirmities, such as a lack of transparency (Robinson 2016).

Since then, the judiciary and the executive negotiated a Memorandum of Procedure to regulate appointments. Still, the executive has often undermined the spirit, if not the letter, of this agreement. Once the *collegium* finalizes its recommendations, the government should approve appointments within a few weeks. However, Kumar (2022) has found that the median appointment time is nearly twice that long. The government has also adopted a “pick and choose” model whereby it expedites the processing of some names, while sitting on others. In extreme cases, the *collegium* has been forced to revisit appointments in the wake of executive disapproval on questionable grounds. In still others, judges who clash with the executive branch have been inexplicably transferred to less prestigious courts (Shah 2019). This practice has given the government the ability to exercise a “pocket veto” over appointments.

A second discernible pattern has to do with judicial deference to the executive. This practice involves the court willfully declining to take up controversial matters that might place it in opposition to the ruling party. In August 2019, the government unilaterally nullified Article 370 of the Constitution, which had long granted partial autonomy to the state of Jammu and Kashmir. Furthermore, it bifurcated the state into two parts and changed their status to federally administered “union territories.” In October, the Court refused to entertain a stay on this constitutionally dubious move. In fact, it adjourned the hearing to a future date following the bifurcation and demotion, rendering the challenge moot.

The apex court’s deference does not end there. When the government altered Jammu and Kashmir’s status, it preemptively detained hundreds of political leaders across the state in the name of public order and security. Those detentions prompted hundreds of *habeas corpus* petitions to be filed before the Jammu and Kashmir High Court and the Supreme Court.³ But neither the High Court nor the Supreme Court has demonstrated any semblance of urgency to defend one of the most fundamental rights democratic citizens enjoy (Bhatia 2019). The Kashmir case is an apt example of the judiciary using national security to justify deference to the executive branch.

Another example of deference pertains to political finance. One of the Modi government’s most touted electoral reforms was the introduction of a political funding instrument known as “electoral bonds.” Using this instrument, individuals and firms wishing to donate to political parties could purchase time-limited bonds that would be

³ According to a report by the Jammu and Kashmir Coalition of Civil Society (2020), 412 habeas corpus petitions were filed between August 5 and December 31, 2019.

deposited into parties' registered bank accounts. The transactions occur through the banking system and, therefore, produce a digital paper trail. However, neither donor nor recipient must publicly report the transaction. Thus, there is no public record of who bought each bond and to whom the funds were given (Vaishnav 2019).

While the government introduced such bonds under the guise of "enhancing transparency," the bonds are shrouded in opacity. The Supreme Court, which had amassed an admirable record of supporting efforts to promote electoral transparency, did not grant a stay on the scheme in advance of the 2019 general elections. The Court claimed the issue was a "weighty" one and lamented having "limited time" before the poll. Even though the ECI attested that the new bond scheme could facilitate the spread of black money, the Court has yet to rule on their legality (*Hindu* 2020).

In sum, within just a few years, an apex court that was uninhibited in confronting political power turned deferential in the extreme. What is striking about this abrupt shift is that it was not the result of any constitutional reimagination of its powers, but rather a complex mix of political hardball and an unwillingness or inability to confront a popular executive.

Election Commission of India

Given India's record of electoral vibrancy, it is not surprising that its apex elections agency, the ECI, is one of the most revered federal institutions in the country. Under India's Constitution, the ECI is given wide berth to prepare, supervise, and conduct all aspects of election management at the state and national levels. Since the early 1990s, strong-willed election commissioners upset incumbents and challengers in equal measure when cracking down on electoral malpractice, impropriety, or undue government influence (Sridharan and Vaishnav 2017).

However, the ECI's shine has dulled in recent years. In several high-profile cases, its judgment has been questioned (Kumar 2021). Most of these cases fit the pattern of deference. In October 2018, the agency broke from established convention by announcing election dates in one state (Himachal Pradesh) while staying silent on polls in another (Gujarat), even though polling was to take place roughly simultaneously. Although the incumbent CEC claimed the delay was due to flood relief work in the state, it escaped few people's attention that the delay allowed the BJP government in Gujarat to speedily roll out several electorally lucrative welfare schemes before the election-time "Model Code of Conduct" [MCC], which prohibits the announcement of new public schemes, kicked in (*Scroll.in* 2017).⁴

⁴ The Model Code of Conduct, or MCC, is a voluntary set of principles promulgated by the ECI that guide the conduct of candidates, parties, and incumbent governments during election time. The BJP narrowly won the 2017 Gujarat elections, although one cannot make a causal connection between the welfare schemes and their victory.

A second deferential move is the ECI's sudden reversal on electoral bonds. When the scheme was first announced in 2017, the commission told Parliament it was a “retrograde step” that would “compromise” electoral transparency. Yet, a year later, then-CEC Joti suddenly changed his tune, publicly proclaiming that the bond scheme was a “step in the right direction” (*Financial Express* 2018).

Leaked government documents reveal that some within the ECI privately attempted to derail the scheme, citing concerns on foreign funding, the preservation of a corrupt business-politics nexus, and the potential of dubious shell companies to make political donations (Sethi 2019). However, the ECI's reluctance to make its objections public damaged its cause and allowed the executive to circumvent the body.

Not all election commissioners have been equally deferential. In the run up to the 2019 general election, several complaints of violating the MCC were filed against BJP leaders—including the Prime Minister and BJP President Amit Shah. The ECI exonerated Modi and Shah of any wrongdoing despite objections from election commissioner and former bureaucrat Ashok Lavasa. Although Lavasa was outvoted, he requested that the CEC publicly release his dissenting opinions; his requests were denied (Chopra 2019a). Lavasa later clarified that he was following through on a Supreme Court directive that the commission urgently resolve MCC violations during elections (Chopra 2019b).

After the Modi government came back to power, retribution against Lavasa began immediately. In August 2019, the government searched for evidence of “undue influence” that Lavasa might have exerted during his earlier stint in the power ministry (Sarin 2019). The next month, the media reported that tax and anti-money laundering authorities initiated investigations in Lavasa, his wife, sister, and son (Siwach et al. 2019). After no wrongdoing was uncovered, Lavasa was reassigned to a foreign posting. This punishment demonstrates that those who stand apart from their deferential colleagues find themselves actively undermined by the executive, strengthening executive rule.

Accountability institutions

This section considers three accountability institutions, two of which are relatively recent creations—the Lokpal and the Central Information Commission (CIC)—and the much older Central Bureau of Investigation (CBI). The varied ages of these institutions shed light on how the Modi government approaches three types of bureaucracies: one it created (Lokpal), another that was young when the BJP rose to power (CIC), and a third (CBI) that has been around for decades. While the party has largely neglected the Lokpal and CIC, the CBI continues to be a venue for political interference.⁵

Lokpal

⁵ For an aligned account of the weakening of “fourth branch” institutions in India, see Khaitan (2020).

In 2011, India was rocked by powerful street protests against a series of high-profile corruption scandals facing the incumbent, Congress-led United Progressive Alliance (UPA) government. Those protests spawned a nationwide anti-corruption movement that lobbied for a federal “Lokpal” or anti-corruption ombudsman to ensure timely and fair investigation and prosecution of public corruption cases (Vaishnav 2017; Baloch 2022). The agitation successfully pressured Parliament into legislating the new position and fueled the BJP’s rise to power in 2014 on a platform of anti-corruption, clean governance, and inclusive development.

Ironically, having profited from the Lokpal agitation, the BJP has steadfastly marginalized the new ombudsman. Indeed, it took the government more than five years to set up a committee to name a chairperson and subordinate members of the Lokpal (Bhatnagar 2018). It only deigned to do so in March 2019 after the Supreme Court entertained a contempt petition challenging its deliberate inaction. Once the government-sponsored committee selected the Lokpal’s inaugural leadership, the government again threw sand in the gears by slow-walking the formalization of the rules and regulations governing the Lokpal’s operations. These rules were finally promulgated in March 2020 (*Scroll.in* 2020).

The story of the Lokpal is one of calculated neglect—intended to deactivate a potential check on executive power (Johri and Bhardwaj 2020). The ruling party campaigned in favor of the Lokpal when it was in the opposition and the ombudsman’s attentions would be trained on its rivals; it has been less passionate since it has come to power and is the object of the watchdog’s vigilance.

Central Information Commission (CIC)

Another tale of neglect lies with the CIC. In 2005, the Congress-led UPA government passed comprehensive legislation to improve government transparency. Under the Right to Information (RTI) Act, public servants are financially penalized if they do not respond promptly or adequately to citizen requests for information about government operations. The CIC acts as the ultimate appellate authority in RTI cases (Jha 2020).

The Modi government has purposefully undermined the CIC by neglecting to fill key vacancies. At the start of 2020, nearly 35,000 cases were pending before the CIC, which struggled to resolve the backlog as its leadership ranks thinned. The government dawdled on making new appointments to fill vacancies as information commissioners have retired. As Bhardwaj (2020) points out, “not a single information commissioner has been appointed in the CIC since May 2014 without the intervention of the courts.”

The executive has also interfered in the operations of the CIC. In July 2019, Parliament amended the RTI Act to grant the central government power to decide matters of tenure, salary, and allowances for information commissioners. This move was problematic for at least two reasons (Aiyar 2019). First, the amendment undermines the status of the commissioners, which previously enjoyed a fixed, five-year term and a salary tied to that of election commissioners. Second, the executive granted itself power to interfere in the

operations of the commission by claiming the authority to set the terms of members' appointment and removal.

Central Bureau of Investigation (CBI)

The government's actions with regards to the CBI, India's analogue to the United States' Federal Bureau of Investigation, shows it is not only culpable of sins of omission, but has also actively interfered the function of accountability institutions.

There is a backstory worth recalling here, however; every central government—regardless of partisan affiliation—has sought to undermine the credibility and independence of the CBI. Indeed, successive governments use the CBI as a carrot or stick to keep allies in line and enemies on the backfoot (Wasan forthcoming). Thus, the CBI has often been called “the handmaiden of the sitting government,” or in the more colorful language of the Supreme Court, “a caged parrot.” It is with good reason that the CBI used to be colloquially known as the “Congress Bureau of Investigation;” multiple Congress Prime Ministers wielded the agency as a cudgel (Srivastava 2013).

The BJP government doubled down on such machinations rather than upholding its campaign pledges to abstain from them. The most stunning example of interference took place in October 2018 when the government authorized a midnight raid of the CBI's headquarters. That endeavor ended with the abrupt ouster of the CBI chief Alok Verma, who theoretically enjoyed a fixed tenure under the law (Venkataramakrishnan 2018).

The Modi government deflected resulting negative press by claiming it acted at the behest of the Central Vigilance Commission (CVC), a federal agency that oversees the CBI. This explanation did not pacify critics, who argued that the CVC's powers are limited to investigative, as opposed to administrative, issues, rendering the CVC an implausible scapegoat. To compound matters, Verma enjoyed a protected tenure of two years (which had not been completed) (Yamunan 2018).

Unpacking institutional abdication

The previous sections paint an unflattering picture of referee institutions under the Modi government. In certain cases, as with the ECI, the agency seems to have almost willingly ceded ground to the executive through inaction or deference. In other cases, the executive has pursued policies of explicit interference or neglect to undermine the autonomy and performance of the institution.

The preceding analysis suggests two difficult puzzles. First, why have some institutions willingly abdicated their responsibilities? Second, is the current era of institutional weakening distinct from the Congress era?

What explains institutional abdication?

Of the three mechanisms at work—deference, interference, and neglect—the first is the hardest to explain. In many troubled democracies, the executive branch uses its authorities to alter appointment powers, rewrite the constitutional mandate of referee institutions, or simply terminate meddlesome institutions. In India, however, many institutions have ceded ground without formal changes to their powers. Why?

While answers to this question are necessarily speculative, there is suggestive evidence for at least four mechanisms. First, leaders of referee institutions might be ideologically aligned with the ruling party and thus see no reason to oppose potentially majoritarian, illiberal, or anti-democratic policy measures. For instance, former CJI Tarun Gogoi enthusiastically sided with the ruling party's desire to hastily implement a National Register of Citizens (NRC) in the northeastern state of Assam, Gogoi's home state. The NRC was intended to distinguish between rightful citizens of India and undocumented immigrants predominantly from neighboring Bangladesh. As Bhatia (2019) explains, Gogoi, in "messianic" fashion, drove the NRC process even prior to becoming CJI. Gogoi betrayed deep sympathy for an expeditious NRC and implicated the Court in a highly consequential *administrative* process with explosive political ramifications. Perhaps as a sign of his ideological alignment with the ruling party, the BJP nominated Gogoi as a Member of Parliament in India's upper house once he retired as chief justice (Chhibber 2020).

Second, senior officials within institutions might have careerist incentives not to cross a powerful executive. For instance, government officials in India face a mandatory retirement age of sixty-five. This requirement forces officials facing the end of their government careers to look for post-retirement work. The practice has led some scholars to speak of a "sinecure state," in which pliant bureaucrats and officials are gifted comfortable post-retirement posts in exchange for policy or regulatory forbearance (Dubash 2017). Indeed, Aney, Dam, and Ko (2017) uncovered systematic evidence that Supreme Court decisions in India are directly affected by judges' career concerns. Judges who decide cases in favor of the incumbent government are more likely to be appointed to post-retirement jobs in the public sector.

A third possibility is that officials worry about executive branch retribution. In the aforementioned Lavasa case, the former election commissioner became the subject of investigative scrutiny as soon as he publicly expressed his desire to sanction Modi and other top BJP leaders. The example of Justice Akil Kureshi, who developed a reputation for fierce independence while serving on the Gujarat High Court, is also instructive. He ruled against the desires of the BJP government several times when Modi was the state's chief minister. When the collegium recommended Kureshi be appointed to the Madhya Pradesh High Court, the BJP central government objected. After considerable delay, the collegium instead named him to the Tripura High Court, a less prestigious post. Kureshi was never elevated to the Supreme Court, a decision some have interpreted as backlash (Tripathi 2022).

Fourth, officials associated with referee institutions might be reluctant to be perceived as opposition to a popular government. For instance, although there is robust debate about

the mechanisms of transmission, some scholars have found that public opinion has a direct causal impact on U.S. Supreme Court decisions (see Casillas, Enns, and Wohlfarth 2011). It is plausible that public opinion could have a similar effect on India's apex court.

Mean reversion?

A second vexed question is whether the current weakening of checks and balances is fundamentally different from what took place under the Congress Party. Indeed, under the Congress, many referee institutions ceded significant ground to the dominant and popular executive. For instance, the office of the Presidency has often been seen as an important bridge-builder and figure of national unity. But, just hours after a meeting with Prime Minister Indira Gandhi, President Fakhruddin Ali Ahmed famously issued a proclamation declaring a national emergency that allowed the Prime Minister to rule by decree, suppressing political opposition and muzzling the media. Similarly, the Supreme Court also legitimized many of Gandhi's anti-democratic maneuvers by upholding the constitutionality of draconian internal security laws, the politically motivated dissolution of state governments, and limits to habeus corpus (Bhuwania 2017).

Is India witnessing an equivalent situation today? While the similarities are striking, there is one key difference: the BJP's Hindu nationalist vision for India, or what Khosla and Vaishnav (2020) have called the "ethnic state." Taken together, the unwillingness of the ECI to punish candidates who flout hate speech regulations, the Supreme Court's silence on the Modi government's decision to alter Jammu and Kashmir's constitutional status, and the weaponization of investigative agencies against dissidents who criticize Hindutva bolster the ideological hegemony of Hindu nationalism. While the weakening of referee institutions may mirror that under Congress rule, the ideological component of today's process creates unique conditions for their operation.

Conclusion

In the presence of a new political hegemon, India's referee institutions have been largely tamed by a powerful executive. Whether through deference, interference, or neglect, the credibility of these institutions stands diminished. Referee institutions, which performed admirably under fragmented power and coalition governance, have faltered under single-party dominance.

The BJP may continue to suffer electoral setbacks at the state and local levels, but there is little to suggest that the Modi's popularity (and, by extension, that of the party) has appreciably dipped at the national scale. While the deterioration of independent institutions and India's path toward an elections-only democracy certainly did not start with the BJP, it might be responsible for completing it.

However, referee institutions are far from the only actor that could halt, slow down, or reverse democratic backsliding. Other backstops do exist—for instance, the media, civil society, political opposition, and foreign pressure. Yet, the available evidence suggests

that all four actors suffer from infirmities that limit their ability to act as an effective check.

The media, ostensibly dedicated to holding government accountable, faces deep structural and regime-specific challenges (Ninan 2019). In structural terms, mainstream media in India is deeply beholden to the government; the regime can wield its power as a principal ad buyer to keep the media in check. The government also exerts multiple regulatory levers to shape a private firm's media behavior, resulting in increased self-censorship and, occasionally, actual censorship (Dev 2018).⁶

Civil society in India, more generally, works under severe constraints. Through the selective application of the Foreign Contribution Regulation Act (FCRA), the government can deny organizations foreign funding—an important source of income. This restriction has squeezed civil society coffers.⁷ Another hindrance to civil society is the absence of an absolute right to free speech in India. Individuals are subject to a wide range of “reasonable restrictions” on free speech, which allows the ruling party to use defamation or sedition charges to curb speech antithetical to the government's priorities (Singh 2020). This power is not new to the Modi government but has been applied with greater alacrity than in the past (Purohit 2021).

Furthermore, not all civil society actors are concerned with restraining the ruling incumbent's power, as Weiss and Hicken's chapter in this volume makes clear in the case of Southeast Asia. Greskovits (this volume), too, highlights that way in which right-wing civil society in Hungary helped pave the way for Viktor Orban's transformation from opposition figure to entrenched incumbent. In India today, the country's most influential civil society actors are part of the BJP's ideological coalition; they represent the more than three dozen affiliate organizations of the BJP known as the “Sangh Parivar,” or family of Hindu nationalist-oriented organizations. The potency of the BJP's hegemony is buttressed not simply by its dominance of state institutions but also by its ability to direct and influence raw “people” power.

Another potential guardrail is the political opposition. The BJP's principal national rival, the Congress Party, suffers from three simultaneous deficits: a lack of credible leadership, absence of clear ideological vision, and a weak organizational apparatus. At the time of writing, it has been routed in two successive national elections and its state-level footprint has been reduced to just two states—its lowest tally in history. While several regional parties have managed to keep the BJP at bay in their respective states, the opposition has

⁶ Beyond the world of advertising, the media also faces real challenges in its day-to-day job or reporting and newsgathering. The Modi government possesses a great skepticism about the intentions and biases of mainstream media. As a result, it has pursued a communications strategy that largely eschews it: the Prime Minister's Office has no media advisor; the Prime Minister has yet to address a single press conference; and the Prime Minister travels only with official (state-run) media on overseas visits.

⁷ An amendment to the FCRA law, passed in 2020, further tightened restrictions on civil society organizations' ability to receive foreign funding. See Chander (2022).

been unable to overcome regional divisions, differences over leadership, and ideological disputes to act collectively. In a first-past-the-post electoral system, such dynamics allowed the BJP to win 37.5 percent of the national vote and an overwhelming majority of parliamentary seats.⁸

A final guardrail worth considering is foreign pressure. As a large democracy with a history of resisting foreign meddling, India has rarely proved vulnerable to international pressure. But even without efficacy questions, it is unclear whether foreign countries would press India on issues of democracy and rights given the foreign policy, economic, and security dimensions of their relationships with India.

For many of India's diplomatic partners, especially in the West, the calculation to accommodate Modi is grounded in realpolitik. Led by the United States, the West has made significant bets on India: that it presents the only viable challenger to China in the Asia-Pacific; that its economy represents the consumer market of the future; that bilateral trade and investment ties are lucrative and enduring; and that, as a democracy, it will pursue policies largely in sync with western democracies (Blackwill and Tellis 2019).

India's domestic churn may represent a new set of irritants but, given the larger stakes surrounding the "India bet," a move to sanction, penalize, or ostracize India (as was the case after India's controversial 1998 nuclear tests) is highly unlikely (Ayres 2020). Furthermore, given ongoing crises in Ukraine, North Korea, Afghanistan, and elsewhere, not to mention their own domestic politics, Western powers are also likely to be consumed by other matters for the foreseeable future.

⁸ In previous eras, it was the Congress Party that exploited this disproportionality between votes and seats. In fact, despite the Congress' deep reservoir of support in the post-independence era, it never won more than fifty percent of the all-India vote.

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