

## India's Democracy and its Critics

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In the opening pages of "The Indian Ideology" Perry Anderson criticises leading Indian scholars for uncritical and inflated claims of India being a successful, indeed exceptional, democracy. Our subaltern historians and political analysts on the extreme left are equally dismissive. Many of the idealistic young turn to militancy persuaded that democracy is no more than a facade for an authoritarian Indian state. The radical critique deserves more extended consideration than it has received.

What underlies much of the criticism is the radicals' regret that independent India was not the outcome of a socialist revolution. Indeed the transition from colonial rule was at best a passive revolution. In two years or so, power over the lives of 330 million people passed from the British rulers to a new hegemonic Indian ruling class. This comprised the nationalist leadership and the political class; civil services, defence forces and judiciary; owners and managers of large industrial groups; professionals and academics; in all perhaps 100,000 people. Among them the governing elite, perhaps less than 10,000, created India's democratic polity. Democracy was born in difficult conditions; but the trauma of partition engulfed only Punjab and Bengal; the princely states were incorporated with minimum force. The continuity of the institutions of state in the transition to republican India precluded radical change. The transformative potential of democracy was manifested over time.

What are the standards by which India's democracy should be judged, either normatively or by comparison with old-established western democracies? The literature suggests certain defining conditions and attributes of democracy:

At a minimum:

- The authority of the state rests clearly on the consent of its subjects, and is not maintained by the threat of force by its security forces.
- A representative government established and removable on the basis of periodical elections; in which independent political parties participate under competitive conditions.

Beyond that:

- The form, structure and processes of government are determined by a stable condition.
- The Rule of Law prevails, protected by an independent judiciary.
- Active participation of citizens in the governmental process.

Recent writing suggests further characteristics of liberal democracy:

- Existence of a public sphere outside government where issues of governance can be debated.
- Governance is shared between the state and institutions of civil society.

Before considering how India’s democracy measures up under these criteria, a preliminary caveat. Discussion about the Indian polity often implicitly assumes continuity or consistency over six decades of huge demographic change. Consider the facts:

	1951	1981	2011
Population (Million)	361	683	1003
Rural %	82.7	76.6	72.2
Urban %	17.3	23.4	27.8
Literacy %	18.4	43.6	74.0
Per capita income (\$)	177	270	1450
Size of electorate (million)	173	356	717

The development of India’s democracy and its shortcomings need to be considered in a historical perspective:

### **The Indian State**

That the state in India rests on popular consent is not seriously questioned. The Pew Attitude Surveys have reported high degrees of public confidence in the institutions of state. What has been a cause for concern is the number of occasions over the years when popular violence has erupted on a scale that required the deployment of the security forces, including the Army. The critics charge of India being an authoritarian state stem from actions to suppress insurgencies by ethnic groups in Kashmir, the North-East and the

Punjab; and to control violence in the wake of protests by deprived groups led by Maoist revolutionaries.

The insurgency in the Punjab in the 1980s began with the demand of a small radical group for an independent Sikh state of 'Khalistan'. Deployment of the Army to suppress this violent group alienated the community as a whole, and expanded the insurgency, which lasted for a decade. It was ended by police actions often outside the law.

Popular disaffection in the Kashmir Valley - only was of the state's three regions - became an insurgency in the 1980s. Its course has clearly been connected with the state of India-Pakistan relations. A strong Army presence on the border and in some urban areas was found necessary to contain the sporadic violence.

In the North-East, violent movements among tribal groups from time to time were eliminated by the formation of new small states on the basis of ethnicity in the 1980's. However, two decades later a new generation of disaffected youth leaders began violence movements on behalf of even smaller ethnic groups, requiring a new process of conciliation. Again due to their proximity to the border, the Army had to be deployed in two North-Eastern States.

None of the insurgencies was the outcome of initial repression of local populations by the Indian state, or even discrimination against them. Whether the violence used by the state security forces to contain insurgencies was proportional or excessive remains an issue.

The question is whether the suppression of these insurgencies is evidence of failures of Indian democracy. Similar dilemmas faced democratic states in Western Europe, in Northern Ireland and the Basque country where state violence had to be resorted to. The

complex issues raised by the insurgencies in India could not have been resolved (as Perry Anderson suggests) simply by allowing Kashmir and Nagaland to secede from the Indian Union. Some liberal democrats in the West have recently embraced “post nationalism” that requires all nation states to recognise the right of ethnic regions to secede (applicable to the former Yugoslavia, but as yet not exercised by Scotland or Quebec). This view of democracy is unlikely to be acceptable to India in the foreseeable future.

From time to time Indian democracy has been confronted with a different kind of challenge from small groups of Marxist revolutionaries, able to mobilise dispossessed, deprived or socially marginal groups in different parts of rural India. There are ideological links between communist led-peasant revolts in Telangana in the South soon after independence; occupation of land in Naxalbari in North Bengal by left-communists in the 1960’s which spread to urban violence; organisation of landless farm labour in Gangetic Bihar in the seventies and eighties; then a shift in the last two decades to focus on the grievances of tribal groups in the forested hill areas of Central India, by what are now referred to as Maoists. But it needs to be emphasised that these events, widely separated in time and space, do not constitute a single sustained insurgency, although both Maoist ideologies and Indian intelligence agencies promote this idea. The responses of the Indian state to these movements has been dual; repression of sporadic violence; and conciliation, with attempts to redress specific grievances, combined with the hope that economic and social development in the affected areas will eventually remove generalised discontent. Very recently high levels of violent encounters between armed groups and security forces in the Bastar region has lent some support to the insurgency view of the conflict.

But for the purposes of this essay it is only necessary to stress that the use of force by the Indian state to contain violence arising from the Maoist-led movements cannot be cited as evidence of authoritarianism.

### **Representative Government**

The one revolutionary step in India's transition to self-rule was the adoption of universal adult suffrage. This provided an initial electorate of 173 m. The integrity of the electoral process has never been questioned. The regularity of national and state elections is taken for granted. Political parties – fourteen in 1951-52 – compete freely for votes, operating under constitutional guarantees of freedom of speech and association and a liberal election law.

The first twenty years of democratic India were marked by political stability. Congress was the dominant party, ruling in the States as well as at the Centre, though with less than 50% of the total votes. Parliamentary democracy, with its institutions, processes and conventions, familiar to the political leadership since before independence, was easily adapted to Indian conditions. Though formally majority rule prevailed, a degree of "Consociationalism" was achieved in the composition of central and state cabinets, in which regions, communities and castes were represented.

In this period the states were reorganised on the basis of the major language groups. Hindu personal law was reformed to enhance women's rights. Feudatory rights over land were abolished and tenant farming consolidated. Comprehensive economic planning was introduced and large public investments made for expanding the industrial base, power, transport and communications.

The end of single party dominance at the end of the 1960s reflected the changing social composition of the political class, now much larger than in 1947. The polity was more representative, but the civility of political discourse declined, dissent spilled outside the legislatures, as political movements gained strength. The change from the earlier decades could be compared to the transition from the patrician politics of American democracy in 1789 to the arrival of Jacksonian democracy.

The 1970's was a period of dramatic change. The larger wing of a divided Congress Party consolidated its position in the country and in parliament after the short war with Pakistan over Bangladesh. Opposition parties were weaker, though regional parties were in the ascendant in two major southern states. Radical economic policies were approved by Parliament: laws nationalising Banks and Coal Mines; state monopoly of all stages of the petroleum industry, including downstream fertiliser and petrochemicals; imposition of ceilings on urban as well as rural land-holding for distribution to the landless. But inflation and industrial unrest in the middle of the decade led to mounting opposition-led protests against the government. That was the occasion for the declaration of a national Emergency in June 1975. The period of extraordinary unfettered Prime Ministerial rule that followed - granted constitutional validity by a subservient Supreme Court - remains a black mark in India's democratic record. Opposition leaders and political workers were detained in thousands; all civil liberties, including press freedom, were suspended indefinitely; national elections which were due, were postponed. The whole ruling class seemed paralysed by fear; there was no public dissent. The eventual electoral outcome when the Emergency was lifted - a rout for Congress and sweeping victory for opposition groups united as the Janata

Party, was an emphatic vindication of India's democracy. But the Emergency remains a salutary reminder of the need for vigilance in its defence.

For the next decades the Congress and Janata parties competed for the control of Parliament. But in a number of states regional parties prevailed over both. Except three states where communists had strong electoral support, parties were not divided by any sort of ideology, though political rhetoric claimed otherwise. Parties, national or state, were now overt caste and community alliances. Especially after 1985 the dominant issue became the extension of reservations in public employment and education to the 'Other Backward Classes'. Questions of the state's powers in relation to the centre, and states' control over resources – issues of federalism – came to the fore. National parties, too, began to lose their authority over state units.

The end of the decade saw a new ideological divide in India's electoral politics. The hindu nationalist Bharatiya Janata Party converted an old temple - mosque dispute in a small UP town into a national political issue. The destruction of the Babri Masjid in Ayodhya, led to hindi-muslim riots in different parts of India. The phenomenal electoral support for the BJP enabled the party to become the major opposition to Congress in Parliament. Neither party having a majority on its own in Parliament, they each sought support from the regional parties, the other national parties – remnants of the fragmented Janata Party - and the Communists.

Accustomed to regard the stable two-or three – party systems in western democracies as the norm, India has struggled in the last decade to adapt to the need for multi-party coalitions. These make formulating national policies difficult and raise new problems in federal resource allocations. Fortunately the idea, floated from time to time, of replacing

parliamentary democracy by a presidential system, with the attendant danger of authoritarianism, has never gained much traction in India. The political class as a whole deserves some credit for its ability to adapt to changing conditions in the practice of parliamentary democracy.

### **Constitutionalism**

Democracy in India was shaped by the Republican Constitution of 1950. It was criticised at first for its inordinate length, covering institutional structure and political processes in great detail, and compared unfavourably with the classical style and brevity of the American Constitution. However, over the years, as it has enabled the Supreme Court to resolve complex issues in the governance of a diverse polity, it has come to command public respect. It is now well understood that a Constitution is much more than a prescriptive document for stable government; that it constrains the state from arbitrary action, limits the scope of majority-rule and protects minority opinion and ways of life.

The Constitution maintained the political, administrative and judicial structures created in the last phase of colonial rule, 1936-47; renamed the central and state legislatures, and replaced the former Federal Court (under the Privy Council's jurisdiction) with an apex Supreme Court. Pre-independence laws continued in force unless repugnant to provisions of the Constitution. Judicial review was expressly provided for, to ensure the conformity of laws and executive acts the Constitution. Special provisions were made to ensure the independence of the higher judiciary. The usual processes for accountability to parliament and independent Audit were provided for.

The parliamentary form of government was adopted by the Constitutional Assembly after full debate, rejecting the alternative presidential system. Universal adult franchise was provided for virtually without debate. Indian subjects became citizens by virtue of the bill of rights incorporated in the Constitution. In the constitutional innovation, the aspirations for rapid improvement in the lives of citizens, and for greater social equality, were set out. However, actions of the state in pursuance of these goals were not to abridge any of the civil rights of citizens.

The constitutional scheme has proved to be flexible, accommodating the transition from the early days – when the central government, besides its own sphere of defence and foreign affairs also dominated decision-making in internal security and formulating all economic and social policies – to distributed powers today, leading to a federal polity in which the state government are pre-eminent within their own borders. The provision in the constitution for changing state borders and the relative ease constitutional amendments has meant that the Indian Union of 12 states now comprises 27 states formed on the basis of linguistic and cultural ethnic groups. Variations in the way of asymmetrical federalism and autonomous sub-state structures have also been resorted to. However, even with the growing assertion of states' rights, the Constitutional arrangements enforce 'cooperative federalism', through the list of concurrent powers and the distribution of tax sources (which leave the central government with surplus funds for conditional transfers to states). The central government is able to formulate coherent macro-economic policies for the nation through the Central Bank, and control over external capital flows and domestic borrowing. The unified system of development planning (not foreseen by the Constitution) completes India's cooperative federalism.

The durability of the Constitution over six decades of political change is proof of the stability of India's democracy. Reviews of the Constitution by two high powered Commissions (Sarkaria, 1970 and Venkatachalliah, 1997) did not recommend any significant changes. The contentious issue of Article 356, which permits the central government to remove state governments from power under certain circumstances – a provision that was hard on many occasions – was resolved by the Supreme Court decision, (Bommai, 1994) which laid down a transparent and judicable process for the application of the Article. Earlier the Supreme Court considered at length the issue of limits to Parliament's power to amend the constitution; opinion was divided, but the court held that 'basic features' of the constitution could not be amended. (Kesavananda, 1973). This could be considered as limiting democracy: but it protects Indian democracy from being subverted by any future legislative majorities, as happened under Germany's Weimar Constitution in 1933, leading to a dictatorship.

### **Rule of Law**

This means two things:

- (a) The state acts not arbitrarily but in accordance with law and principles of fairness and justice.
- (b) The civil and political rights of citizens are protected by law, enforced by independent judicial review.

### **Administrative Law**

In India, as in other Common Law regimes, every executive act does not need to be related to a specific legal power as required under European Civil Law. The Executive enjoys as

large area of discretion. Patent abuse of this discretion can be challenged in the courts. However, obligations can be imposed on citizens or their rights restricted only by law (e.g. taxation, control of external trade, regulation of industry). Administrative law is well developed in these areas, providing for appeals against executive decisions. To relieve the pressures on the courts, Administrative Tribunals were established over the years in respect of direct and indirect taxes, grievances of civil servants. The system of tribunals has also been extended to hear public grievances in respect of pensions, insurance claims. The writ jurisdiction of the higher courts extends to autonomous bodies created by the Executive, such as public sector enterprises.

In the last decade the area of executive discretion has been narrowed by the open government movement, and the citizens' ability to enforce the delivery of public services enhanced. The Right to Information Act (RTI) has opened up government records to public scrutiny. Under the system of Public Interest Litigation (PIL) civil society organisations can challenge executive decisions in the higher courts for lack of fairness or integrity and other grounds. This is leading to the increased judicialisation of decision-making in government: a mixed blessing, as it is likely to make the process even slower.

### Civil Rights

Religion: The Constitution protects the rights of all religious communities to their practices and rituals and maintenance of places of public worship. Institutions established by minority communities have a special immunity from any state regulations. The personal laws on inheritance, marriage, divorce and so on of different religious communities were largely unified and reformed in the first decade after independence, and secular alternatives were created. But Muslim personal laws have been left unchanged, with adverse

implications for women's rights. There is no bar to political parties being formed to promote the interests of religious groups; election laws prohibit any appeal to religion as such in seeking votes. That the state must be secular, in the sense that it is neutral as between religions, is not contested in principle, but state and central governments have not always lived up to it. The most recent failures were in Ayodhya in 1992, the killing of Sikhs in Delhi in 1984 and of Muslims in Gujarat in 2002.

### Equality

The great promise of democracy – equality in conditions of life, status and power for all citizens – has been realised approximately, in a few countries: the north European democracies, Australia, Canada. In India the ideal (even reasonably defined as progressive reduction in inequality) faces apparently insurmountable problems. The constitution provides for equality under law i.e. non discrimination: that is not difficult, requiring only some protective laws for dalits and tribals. But beyond that, even assuring equal access to education and public employment for vast numbers divided into linguistic, religious and caste groups, with their economic and social stratification, is a great challenge facing Indian democracy. There are obviously limits to what social policy can achieve. Affirmative action, in the form of reservations or quotas for dalits and tribals in higher education and government jobs, continuing from before independence, achieved significant results. The constitution having provided for the extension of these measures to 'other social and educationally backward classes' – OBC's – this was conceded under political pressure in the 1990's from various intermediate caste groups. Political demands have continued – for inclusion of more castes and subdivision of quotas. The Supreme Court, has laid down a limit of 50% to reservations to protect the basic equality clauses of the constitution.

## Property

The right to property, among the fundamental rights in the constitution, was removed by a constitutional amendment in the mid 1970's, following differences between the Executive and the Supreme Court over nationalisation. But since rights under the common law of property and contract remained, neither individuals nor corporations suffered. In particular due process and compensation for expropriation were not affected.

## Civil Liberties

Rights of Citizens to free speech and assembly, immunity from arbitrary arrest and so on are among the fundamental rights, protected by independent judicial review. Interpretations of the Supreme Court have widened their scope to include freedom of the press; right to life now means the right to live with dignity, leading to the creation of civil rights of access to adequate food, education and health care. These positive rights accord with the new 'rights approach to development'. The protection of civil liberties reached a low point during the Emergency, when in ADM Jabalpure (1976) the Supreme Court held that all rights and remedies had been constitutionally suspended. However, in Maneka Gandhi (1978), the court reversed itself, not only restoring individual freedoms but even extending them.

There are, however, continuing 'democratic deficits', in this area:

- (i) Preventive Detention – imprisonment for an indeterminate period of persons for anticipated violence – was deemed constitutional by the Supreme Court in Gopalan (1950). The enabling law, temporary at first, has become permanent, with quasi-judicial oversight. It has been applied not only to deal with communal

violence and insurgency, but also organised crime in major cities and even economic offences. Similar laws have been resorted to rarely in other democracies, e.g. in N. Ireland, and after 9-11 in the U.S.

(ii) In the last two decades, in the wake of insurgencies and terrorism controversial new laws were introduced enhancing police powers and changing the law of evidence to facilitate the conviction of offenders. When the Army had to be deployed for internal security, the empowering law provided for their immunity from any action against them in the ordinary courts.

(iii) Also in recent years there have been a number of cases of acts of violence by the security forces against insurgents or suspects amounting to extra-judicial killings. These were prominent in the last phase of the Punjab insurgency, and have been reported more recently in so-called encounters in Kashmir and elsewhere. Allowing for the very difficult conditions in which the Security forces have to operate, these actions cannot be condoned, and in some cases action has been taken against offenders.

However, there are active civil society organisations tracking such abuses of power, and the National Human Rights Commission, established recently, has become an effective instrument for safeguarding civil liberty.

### **Participation**

In the early years popular participation in governance did not extend beyond institutions of 'local self-government' created before independence: Municipalities in larger towns, and District Boards to oversee the development of rudimentary services in rural areas such as public health measures to deal with epidemics. The first effort to engage rural populations

in works to improve the conditions of their lives was the ‘Community Development’ programme in the 1950’s. It failed in its stated purpose, but led to administrative decentralisation, with the creation of development blocks below the subdivision or tahsil level. The cooperative movement, mainly to meet tenant farmers’ credit needs, expanded steadily, with periodic restructuring. Efforts by the central government to establish effective local development through elected panchayats, in three phases between 1960 and 1975, culminated with the 73<sup>rd</sup> Amendment to the Constitution, which laid out an elaborate framework for politically elected rural local government institutions at three levels, and provisions for devolving financial and executive powers to them. As this was the responsibility of the state governments, the implementation of the constitutional project has not been uniform across India. Some states, notably Kerala, West Bengal, Tamil Nadu and Maharashtra have evoked enthusiastic participation in peoples’ participation in the development of infrastructure and services. In the last decade, a scheme for guaranteed employment in rural areas for 100—days in the year has stimulated participation by the most disadvantaged local groups.

However, whether the panchayat system will eventually evolve into institutions of local government as in Western democracies, running schools, clinics, even their own police, only time will tell.

### **Deliberative Democracy**

Democracies vary in their historical origins and the cultural and political environment that shape them. As Tocqueville perceived, democracy in America, born in a society marked by cultural equality, with strong associational ties, was very different from contemporaneous political institutions in past-revolutionary Europe: democratic politics emerged in Europe

only in the mid – 19<sup>th</sup> century. Indian and other post-colonial democracies grew under a wholly different environment, where discussion and debate was possible only within a narrow ruling class. In the first decade of independence, the political class dominated constitution-making and the formulation of economic and social policies, with only the English – language press and a few eminent professionals making any contribution to the debate. Business leaders were content to defend their own interests. The political executive took the initiative in seeking academic and professionals opinion through the Planning Commission and Commissions on health, education, labour, agriculture and industry.

The public sphere expanded in the following decades, with the development of a country – wide public radio network, the rapid growth of the vernacular press and journals of opinion and large public investment in higher education, creating new universities and research institutions. The political class grew rapidly and division and dissent among the parties meant the debates on policy took place increasingly outside the legislatures. All this, of course, was within the ruling class whose numbers however increased several-fold.

There has been a phenomenal growth in the public debate on policy in recent years, through some of the discussions on proliferating news channels on TV for instance contribute to confusion rather than national debate. More important is a growth of think-tanks, and non-governmental organisations that access debates on of policy-making within the political executive by the use of RTI and question these policies. The contribution of the print-media – not reduced to tabloids and as in most of the West – to serious public debate, and policy-oriented research in the social sciences in leading Universities, have also been important for India's deliberative democracy.

## **Civil Society**

A significant role for civil society actors in governance as a measure of democracy comes from the experience of transition from Communism in Eastern Europe in the 1990's. Post-colonial democracies came into being earlier and under wholly different conditions. In India in 1947 civil society in the modern sense hardly existed. The associational life of people was within communities, centred around temples, maths, gurudwaras, mosques, seminaries, caste - panchayats. These associations were either indifferent to the democratic transition or hostile to its secular character. There could be no question of co-opting them in the structure of governance, beyond the management of religious institutions and protection of tribal institutions of self-government. Some of these groups entered the political process through religion-based political parties.

With a liberal state and constitutional freedom, civil society in the western sense emerged within the ruling class and developed over time; cultural associations, social service institutions, professional groups, bodies to promote civil rights and entitlements, environmental protection and so on. Some non-governmental groups (NGO's) are part of world-wide movements. In the last decade there has been a marked increase in their concern with governance issues such as dispossession of tribal populations for irrigation and mineral development projects, expansion of rural employment opportunities and adequacy of food supplies to the poor. On the whole relations between these NGO's and the government have been positive. A major problem is that most of the NGO's lack financial resources and become dependent on assistance from the central and state governments, especially if they are conduits for the delivery of services.

In three sectors – health care, higher education and information – which were previously state monopolies – private agencies have become important players. In that sense they are part of the structure of governance. As these are commercial or non-profit privately - financed institutions, whether these can be classed as part of civil society is the question.

To conclude, India's democracy is no doubt imperfect, but it is also in some ways exceptional. And if every nation needs its foundation myth, surely India could do worse than put democracy at the centre of its narrative.