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DECLINE OF DEMOCRATIC NORMS IN INDIA: A LEGAL ANALYSIS

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Abstract

This research paper examines the perceived decline of democratic norms in India through a legal lens, focusing on constitutional provisions, judicial interpretations, and legislative actions that have shaped the trajectory of democracy since independence. Drawing on academic analyses, it explores mechanisms of democratic backsliding, such as autocratic legalism, suppression of dissent, and institutional erosion, while also considering counterarguments that highlight India's democratic resilience and unique framework. The analysis reveals a tension between formal democratic institutions and their practical subversion, particularly under recent administrations, but acknowledges debates on whether this constitutes a true decline or adaptive governance. Key legal tools like sedition laws, anti-defection provisions, and internet regulations are scrutinized for their impact on free speech, minority rights, and electoral integrity. The story of India's democracy today is a struggle between its historic promise of liberty and the modern pressures of state control. It is a reminder that democracy is rarely lost all at once; it is often reshaped, one law and one silenced voice at a time. The paper concludes with recommendations for strengthening democratic safeguards.

Keywords: Democratic decline, Democratic backsliding, Autocratic legalism, Institutional erosion, Executive overreach, Autocratization, Electoral autocracy.

Introduction

While India has long been celebrated as the world's largest democracy, the international community is looking more closely at the health of its democratic institutions. In recent years, that "gold standard" reputation has faced significant pressure, leading to a serious debate about whether the country's democratic foundations are weakening. To truly understand the concerns surrounding India's democratic health, we first need to take a step back and agree on what "democracy" actually looks like in practice. It's a term we use often because it carries so much

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moral weight—to call a country a democracy is to grant it a certain level of international respect and legitimacy.

At its heart, democracy is exactly what Abraham Lincoln famously described: a government "of the people, by the people, and for the people." It is a beautiful ideal, but to measure how a country is performing, we have to look past the poetry and focus on the practical "nuts and bolts" that make that ideal a reality.

India's autocratization from 2008 is also emblematic of the "third wave of autocratization", with its slow but systematic dismantling of democratic institutions. The ruling anti-pluralist, Hindu-nationalist Bharatiya Janata Party (BJP) derailing of democracy is thoroughly documented, including deteriorations in freedom of expression and independence of the media, harassments of journalists critical of the government, attacks on civil society and the opposition using laws on sedition, defamation, and counterterrorism.³ The elections in June 2024 was a setback for the BJP forcing it to govern in a coalition.⁴ 2024 is the first year since 2008 with no deteriorations on democracy levels for India but it remains an electoral autocracy since 2017. According to Varieties of Democracy (V-Dem), which produces the largest global dataset on democracy, India remains an "electoral autocracy", a zone it entered in 2017. It exhibited a decline in the Liberal Democracy Index as per the latest findings of the Democracy Report 2025, ranking globally at 100 of 179 countries.⁵

Here are the key parameters (or indicators/factors) we discussed in the research paper and follow-up on the perceived decline of democratic norms in India.

- 1. Suppression of Dissent and Civil Liberties**
- 2. Institutional Erosion and Executive Overreach**
- 3. Electoral and Political Integrity Issues**
- 4. Minority Rights and Secularism**
- 5. Broader Norm Erosion**
- 6. Decline (or erosion) of federalism**

³ Tudor, M. 2023. Why India's Democracy is Dying. *Journal of Democracy* 34(3); www.amnesty.org/en/latest/news/2024/03/india-crackdown-on-opposition-reaches-a-crisis-point-ahead-of-national-elections/

⁴ Maiorano, D. 2024. India's 2024 Elections: Has Democratic Backsliding Come to a Halt? *IAI Commentaries* (24)37.

⁵ <https://thewire.in/politics/v-dem-india-2025-fall-liberal-democracy-index>

1. Suppression of Dissent and Civil Liberties

Sedition Law (Section 124A IPC → Replaced by Section 152 BNS)

The colonial-era sedition provision (Section 124A IPC) was stayed by the Supreme Court in 2022 due to misuse. It was repealed with the Bharatiya Nyaya Sanhita (BNS) effective July 1, 2024, but replaced by **Section 152 BNS** ("Acts endangering sovereignty, unity and integrity of India"), which critics say retains similar broad wording and potential for abuse (e.g., criminalizing speech that "excites secession," "subversive activities," or "endangers sovereignty" via words, signs, electronic communication, etc., with up to life imprisonment). Freedom House – Freedom on the Net 2024 Country Report (2024): "Though the BNS excludes the old code's Section 124A sedition clause, which was often used against journalists, it introduces a similar provision that criminalizes attempts to 'excite secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India.' The provision applies to electronic communication and carries a sentence of life imprisonment in severe cases or otherwise up to seven years' imprisonment." Indian authorities have long vague legal provisions as a political tool to silence critics, but since the BJP took office in 2014, the crackdown on freedom of expression has escalated comedians, artists, and have been among those targeted, while human rights activists and outspoken academics remain particularly vulnerable. An independent report released in May, examining over 400 criminal cases against journalists between 2012 and 2022, found "widespread misuse of vague and overly broad criminal laws" such as defamation, sedition, and public order provisions, mostly to target any criticism of public officials.⁶

Harassment of media, crackdowns on protests, and intimidation of critics.

International human rights organisations condemn the criminal complaint lodged against the award-winning journalist and fact-checker Mohammed Zubair and the continued use of sedition to target independent reporting and public interest speech.⁷ This substitution could be a huge step backwards in the development of sedition law, completely contrary to the Supreme Court's intention and direction in their stay order of Section 124A. Section 152 of the Bharatiya Nyaya Sanhita represents a pivotal shift in India's sedition law, but its implications pose significant challenges to the principles of democracy and free expression. The change from protecting the "Government established by law" to safeguarding the abstract entity of "India" expands the scope of sedition in a manner that risks undermining the constitutional guarantees

⁶ <https://www.hrw.org/news/2025/08/27/the-high-cost-of-dissent-in-india>

⁷ <https://www.amnesty.org/en/documents/asa20/8824/2024/en/>

enshrined in Article 19(1)(a). As observed in the debates during the framing of the Bharatiya Nyaya Sanhita, the legislative intent was to modernize and streamline penal laws in a way that reflects a postcolonial, pluralistic India. Yet, this evolution appears to deviate from the judiciary's painstaking efforts to narrowly interpret sedition under Section 124A, ensuring its application was confined to genuine threats to law and order. 'India' could become a blackhole from which absolutely no tweet, newspaper article, YouTube video or book could escape, a reality we already lived with the sitting Government's abuse of Section 124A. At the heart of this matter lies India's beautiful inability to be defined, which should exist for us to express through song and dance, not as legislative fetter to this expression.⁸

The government censored peaceful expression online through arbitrary and disproportionate orders to block websites or suspend social media accounts. In January, the authorities blocked the websites of Hindutva Watch and India Hate Lab, which document hate speech and attacks on India's religious minorities. In February, following a protest by farmers in Haryana and Punjab, the authorities blocked dozens of social media accounts, most of them belonging to journalists reporting on the protests, farmers and union leaders, and others supporting the movement.

The organizations are Committee to Protect Journalists, Freedom House, PEN America, Reporters Without Borders, International Federation of Journalists, CIVICUS, Access Now, International Commission of Jurists, Amnesty International, and Human Rights Watch.⁹ Authorities in BJP-led Uttar Pradesh state have repeatedly filed false charges against journalists for publishing content and social media posts critical of the government. Since 2017, after BJP leader Yogi Adityanath became the state's chief minister, the authorities have filed criminal cases against 66 journalists. Another 48 journalists have been physically attacked, according to a February 2022 report by the Committee Against Assault on Journalists. Journalists in small towns and villages reporting in Hindi language media are at even higher risk of being targeted and prosecuted by authorities.¹⁰

Frequent internet shutdowns and restrictions on online expression India has consistently ranked among the countries with the **highest number of government-imposed internet**

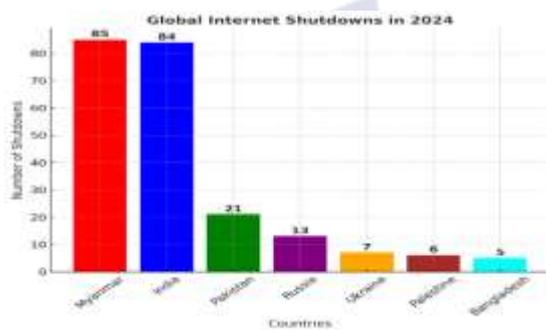
⁸ <https://clsnuo.com/2025/03/06/the-boundless-india-why-section-152-may-silence-more-than-section-124a/>

⁹ <https://www.hrw.org/news/2022/05/03/india-media-freedom-under-threat>

¹⁰ <https://www.hrw.org/news/2022/05/03/india-media-freedom-under-threat>

shutdowns globally, often justified under laws like Section 5(2) of the Indian Telegraph Act, 1885 (for "public emergency" or "public safety"), or the Temporary Suspension of Telecom Services Rules, 2017. These measures include full blackouts (mobile and broadband), partial restrictions (e.g., mobile-only or social media blocks), and targeted platform bans. They are frequently used during protests, communal tensions, exams (to prevent cheating), or to curb rumors, but critics argue they disproportionately restrict freedom of expression (Article 19 of the Constitution), access to information, and essential services like banking, healthcare, and emergency reporting.

The **Supreme Court** in *Anuradha Bhasin v. Union of India* (2020) ruled that shutdowns must be necessary, proportionate, and subject to review, with no indefinite blanket bans. However, enforcement remains inconsistent, and shutdowns continue to create a chilling effect on online dissent.



- **Global Ranking of Internet Shutdowns (2024 Report)**¹¹
- **Institutional Erosion and Executive Overreach**

When authoritarian leaders take the reins, they often start by pulling power into the center and chipping away at the independence of public institutions. The executive branch grows louder and more dominant, rewriting the unwritten rules of checks and balances. In India's recent history, we've seen how majoritarian shifts in politics have reshaped the landscape, specifically by expanding the reach of the executive branch under the current BJP administration. This isn't just about political rhetoric; it's about the "referees" of democracy.

Centralization of Executive Power and Weakening of Checks/Balances Executive dominance has led to reduced constraints from legislature, judiciary, and other institutions. This includes ordinances bypassing Parliament, influence over appointments, and weaponization of agencies (e.g., CBI, ED) against opposition. The CAA provides an exemplary illustration of what

¹¹ <https://www.insightsonindia.com/2025/02/25/internet-shutdown-in-india/>

democratic-erosion scholars describe as “executive aggrandizement”. Rather than utilizing military force to overthrow democratically elected officials, those officials utilize their legislative powers and bureaucratic authority to skew the playing field and erode liberal checks and balances while maintaining elections and the structures of formal democratic governance. The CAA was enacted by the BJP-led government through Parliament, notwithstanding significant opposition to the bill, and was subsequently left dormant until the political climate became favorable enough to activate its implementation. This model is reflective of a broader trend observed in hybrid regimes, where the ruling party utilizes its legislative majority to alter the law, its control over the bureaucracy to determine how and when the law is enforced, and its dominance over the media and civil society to define the narrative. To outside observers, elections continue to occur, but to those within the system, the rules governing the game are being altered in ways that systematically disadvantage dissidents and minorities.¹²

Judicial Independence Erosion Declines in judicial autonomy, with executive influence on appointments, delays, and perceived bias in rulings favoring the government. Executive interference in judicial functions manifests in various forms, from direct influence over judicial appointments to subtle pressures in the form of political or financial incentives. This encroachment by the executive often threatens the impartiality and independence of the judiciary, compelling judges to make decisions based on political considerations rather than legal principles. The balance between the executive and judiciary is crucial for preserving the integrity of democratic governance. When this balance is disrupted by executive overreach, the independence of the judiciary is jeopardized, undermining public trust in the justice system.¹³ Constitutional jurisprudence offers a framework for understanding the boundaries between the executive and judicial branches. Most democratic systems, including those based on the separation of powers doctrine, delineate clear roles for each branch to prevent undue influence and maintain a system of checks and balances. However, in practice, the boundaries are often blurred, especially in systems where the executive holds substantial political or institutional power. The lack of effective safeguards against executive interference has led to numerous instances of judicial overreach or compromise in various jurisdictions, raising questions about the efficacy of constitutional protections for judicial independence.¹⁴ The Supreme Court of

¹² <https://democratic-erosion.org/2025/12/05/drawing-the-line-in-law-how-indias-kaa-turns-citizenship-into-a-religious-test/>

¹³ James Madison, *The Federalist No. 47* (Jacob E. Cooke ed., 1961)

¹⁴ Thomas M. Franck, *Constitutionalism and Democracy: A Theory of Judicial Review*, 97 *Harv. L. Rev.* 613, 623 (1984)

India is the highest judicial authority and the guardian of the Constitution. Its role is defined by the Constitution of India under Articles 124 to 147. As the guardian of the Constitution, the Supreme Court ensures that all laws and government actions comply with the Constitution of India and has the power to strike down unconstitutional laws (Judicial Review). It can review legislative and executive actions to ensure they align with constitutional principles established in the Basic Structure Doctrine in *Kesavananda Bharati v. State of Kerala* (1973), ruling that Parliament cannot alter the fundamental structure of the Constitution. Along with this, the Supreme Court serves as the final interpreter of law, clarifying and interpreting constitutional provisions. The Supreme Court, which is expected to be the bulwark against constitutional transgressions, has been alarmingly hesitant in taking decisive action on the matter. Despite multiple petitions challenging the new law on the grounds of violating Article 324 of the Constitution, which mandates free and fair elections, the judiciary has chosen a path of delay, similar to its approach in matters pertaining to the abrogation of Article 370 and the disqualification of MLAs in the previous Maharashtra assembly. The recent adjournment of hearings on February 19, 2025, and the next scheduled session on March 19, 2025, only deepen concerns that judicial inertia is allowing the government to cement its control.¹⁵

Compounding the issue is the government's hasty implementation of the law, appointing a new CEC and an EC despite the pending Supreme Court verdict. This blatant disregard for judicial review is a troubling sign of the executive's unchecked dominance. The opposition, particularly the Congress, has rightly questioned the urgency behind these appointments while the matter remains subjudice. But more than political opposition, it is the larger democratic framework that stands threatened.

2. Electoral and Political Integrity Issues

Electoral integrity refers to the fairness, transparency, inclusivity, and credibility of the election process, including voter registration, campaigning, voting, counting, and results acceptance. Political integrity encompasses broader aspects like ethical conduct in politics, avoidance of criminalization, money power, polarization, and institutional neutrality. In India, these have faced scrutiny in recent years, particularly under the Election Commission of India (ECI), with

¹⁵ <https://inc.in/congress-sandesh/comment/undermining-constitutional-morality-modi-govt-s-assault-on-electoral-integrity>

debates intensified in 2025–2026 amid state elections (e.g., Bihar, upcoming assemblies in West Bengal, Assam, Tamil Nadu, Kerala, Puducherry) and ongoing controversies.

In Bihar (2025), SIR led to ~6.5 million deletions (from ~79 million to ~72 million voters), including claims of dead people retained and living voters wrongly removed. Opposition parties accused rushed processes, disproportionate impact on marginalized communities (e.g., Muslims in border areas), and potential bias favoring the ruling BJP. The Supreme Court intervened (e.g., directing inclusion of Aadhaar as proof and display of deletion notices), but final rulings came post-elections (NDA win in Bihar Nov 2025). In 2025–2026, SIR expanded to multiple states (e.g., Rajasthan, Gujarat, Madhya Pradesh, Chhattisgarh, Uttar Pradesh, West Bengal, Assam, Kerala, Tamil Nadu). Congress alleged misuse of **Form-7** (objection form) for mass, coordinated deletions—often with pre-printed, incomplete, or fake details—targeting backward/marginalized voters. Reports flagged "systematic" efforts leading to lakhs potentially disenfranchised. ECI defended SIR as necessary for "error-free" rolls amid migration/urbanization, but critics (e.g., former CEC Om Prakash Rawat, opposition) called it arbitrary, lacking due process, and risking voter suppression.

Post-2023 appointment law (replacing CJI with Union Minister on selection panel), concerns persist about executive dominance. Appointments like CEC Gyanesh Kumar (Feb 2025) drew opposition claims of partisan ship. Allegations include leniency on Model Code violations, discrepancies in voting data, and errors in rolls (e.g., duplicate/fake entries despite tools like fraud-busting software reportedly skipped in Bihar). Rahul Gandhi and others labeled it "vote chori" (vote theft), eroding trust.

V-Dem Democracy Report 2025 reaffirms India's "electoral autocracy" status (since 2019), with declines in credible elections, free/fair processes, and institutional independence—India among major autocratizers. 2024 is the first year since 2008 with no deteriorations on democracy levels for India but it remains an electoral autocracy since 2017.¹⁶

3. Minority Rights and Secularism

The decline of minority rights and secularism in India has been a central concern in recent analyses (2025–early 2026), particularly under the BJP-led government since 2014. India's

¹⁶ https://www.v-dem.net/documents/60/V-dem-dr__2025_lowres.pdf

Constitution enshrines secularism (added to the Preamble in 1976) and equality (Article 14), non-discrimination (Article 15), and freedom of religion (Articles 25–28).

As the world's most populous democracy, India contains complex political, geographic, and religious dynamics that have implications for freedom of religion or belief (FoRB). While India's constitution provides protections for religious minorities, the implementation of national and state-level laws create severe restrictions on religious freedom across the country. Since 2014, Prime Minister Narendra Modi's Bharatiya Janata Party (BJP) has enforced policies that closely align with Hindutva ideology, discriminating and disenfranchising members of India's religious minority communities.¹⁷ Reporting indicates that hundreds of Christians and Muslims have been arrested under state-level anticonversion laws and dozens more under the UAPA. While some cases have resulted in the accused being released from custody relatively quickly, other cases feature long pre-trial detention or prison sentences. Data suggest that 70 percent of inmates within India's criminal justice system are under trials or are non-convicts, meaning they are not serving a jail sentence but are instead under trial or in detention. In most states, a disproportionate share of non-convicts is composed of religious minorities, with a large overrepresentation of Muslims and Sikhs.¹⁸ According to a 2025 review by South Asia Justice Campaign (SAJC), despite clear directions from Supreme Court of India to observe due process, several state and municipal authorities carried out demolitions, often referred to as "bulldozer justice", in majority-Muslim areas, razing houses, shops, mosques, and graveyards in the name of "redevelopment" or "anti-encroachment." Between January and March of 2025 alone, more than 7,400 homes were reportedly demolished across India, rendering over 41,000 people homeless; about 37 percent of those demolitions targeted Muslims.¹⁹ Between June and August, there was a surge in violence by Hindu vigilantes, assaulting Muslim men on suspicions of consuming beef or transporting cattle for slaughter. In August, local Hindus in Haryana killed a 26-year-old Muslim migrant worker from West Bengal for allegedly consuming beef. In Maharashtra, a 72-year-old Muslim man was harassed and beaten on a train over suspicions of carrying beef. In August, Hindu vigilantes shot dead a 19-year-old Hindu teenager, suspecting him of being Muslim and smuggling cows.²⁰

¹⁷ UNITED STATES COMMISSION on INTERNATIONAL RELIGIOUS FREEDOM November 2025

¹⁸ <https://www.uscirf.gov/sites/default/files/2025-11/2025%20Issue%20Systematic%20Religious%20Persecution%20in%20India%20%28002%29.pdf>

¹⁹ 2025 review by South Asia Justice Campaign (SAJC)

²⁰ <https://www.hrw.org/world-report/2025/country-chapters/india#5dfeca>

More recently, the BJP's push for a Uniform Civil Code ahead of the 2024 election was justified on the basis that it would ensure equality and national integration by replacing laws specific to different religious communities with a single legal framework. But the code disproportionately targets Muslim personal laws and undermines India's commitment to secularism.

The enactment of the Waqf (Amendment) Act, 2025, has raised further concerns about the erosion of the country's secular principles. The act seeks to amend a long-standing law governing waqf properties — religious endowments donated by Indian Muslims over centuries, estimated to be worth 1.2 trillion rupees (US\$14.2 billion). The amendment act involves stricter ownership regulations and mandates the inclusion of non-Muslims on the waqf board, which has traditionally managed these assets.²¹ Authorities continued to exploit antiterror and financing laws, including the Unlawful Activities Prevention Act (UAPA) and the Foreign Contribution Regulation Act (FCRA) to crack down on civil society organizations and detain members of religious minorities, human rights defenders, and journalists reporting on religious freedom. The government also replaced its criminal code with new legislation, leaving religious minority susceptible to targeting if it deemed them as “endangering the sovereignty, unity, and integrity of India”²² India Hate Lab/CSOH Report (January 2026): Documented 1,318 hate speech events in 2025 (up 13% from 1,165 in 2024; 97% rise since 2023). Most led by Hindu majoritarian groups/BJP affiliates, at rallies, processions, etc. Muslims primary targets; anti-Christian incidents rose 41% (162 in 2025 vs. 115 in 2024), often alleging "forced conversions."²³

4. Broader Norm Erosion

Decline in mutual toleration (treating opposition as rivals, not enemies) and institutional forbearance (restrained use of power). In India, opposition leaders from parties like AAP, Congress, TMC, JMM, and others have faced numerous investigations and prosecutions by central agencies such as the Enforcement Directorate (ED) and Central Bureau of Investigation (CBI). Opposition parties and critics allege these are politically motivated or "fake" cases designed to harass, detain, or discredit rivals, often under laws like the Prevention of Money Laundering Act (PMLA) that make bail difficult. A key pattern is high numbers of cases but

²¹ <https://eastasiaforum.org/2025/05/08/hindu-nationalism-threatens-indias-secular-foundations>

²² 2025 USCIRF Annual Report

²³ India Hate Lab/CSOH Report

extremely low conviction rates, suggesting the process itself serves as punishment (prolonged detention, legal costs, public stigma). National Herald Case: Court rejects ED's plea against Rahul, Sonia. According to data presented by the Ministry of Finance in March 2025, 138 of the Enforcement Directorate's cases against serving and former MPs, MLAs and political functionaries were filed between 2019 and 2024, reflecting a sharp rise during the government's second term. The highest annual spike came in 2022–23, when 32 cases were registered. The Ministry also clarified that it does not keep any breakdown of these cases by political party, state, or whether the individuals involved belonged to the ruling or opposition benches.

The Union government reported 193 ED cases against politicians in the past decade, but only two convictions, fuelling questions about political targeting and low prosecutorial success. High-profile opposition leaders, including Arvind Kejriwal, Rahul Gandhi, Akhilesh Yadav, Hemant Soren, Farukh Abdullah, etc. face ED action, reinforcing perceptions that investigations disproportionately target non-ruling parties.²⁴

Constitution (130th Amendment) Bill The Indian government tabled a new bill earlier this week in parliament under which a prime minister, state chief minister or other federal or state minister can be removed from office if they are facing criminal investigations – even before they are convicted. The draft law proposed by Prime Minister Narendra Modi's Bharatiya Janata Party (BJP) mandates the automatic removal of elected officials if they are detained for 30 consecutive days on charges carrying a minimum sentence of five years.²⁵

5. Decline (or erosion) of federalism

What "Federal Structure" Actually Means India's federal structure is not merely a division of powers between the Centre and the States. It rests on three functional pillars:

Cooperative Federalism — States are autonomous but constitutionally obligated to cooperate with central institutions exercising lawful authority.

Neutral State Authority — States must enforce law impartially, regardless of political alignment or electoral consequences.

²⁴<https://www.outlookindia.com/national/fresh-questions-over-eds-political-targeting-193-cases-just-two-convictions>

²⁵ <https://www.aljazeera.com/news/2025/8/23/a-new-indian-bill-punishes-jailed-politicians-why-has-it-sparked-outrage>

*Judicial Supremacy — Court orders bind both Centre and States; autonomy does not include discretion over compliance.*²⁶

The Governor: Constitutional Sentinel or Political Agent?

In a truly cooperative federation, the Governor is supposed to act as a constitutional bridge between the Centre and the State as a neutral arbitrator.

In the Indian federal structure, the Governor holds a unique position. The Governor is formally appointed by the President, which in practice means by the Union Council of Ministers, yet they are supposed to act on the aid and advice of the State's Council of Ministers.

The Advisory Panel on the Union-State Relations, commonly known as the Sarkaria Commission, recognised the danger of politicisation of the Governor's position as a result of these arrangements and that they might be inclined to act on the instructions of the Union, rather than on the aid and advice of the State's Council of Ministers. This is because under Article 163(1) of the Indian Constitution, the Governor is constitutionally authorised to exercise certain functions in his discretion, independent of the aid and advice of the Council of Ministers.

Moreover, Article 163(2) of the Indian Constitution states that the decision of the Governor while acting under his discretion "shall be final, and the validity of anything done by the Governor shall not be called into question."

Although the Governor is merely a formal head appointed by the Centre, with the actual executive power lying with the State's Council of Ministers, the Governor can, under his discretionary powers, act as an agent of the Union and impede the constitutional functioning of the elected State government.²⁷

Discretion under Article 200: Constitutional Loophole as Political Weapon

The politicisation of the Governor's role under Article 200 of the Indian Constitution has emerged as a significant flashpoint in the erosion of federalism, transforming a constitutional

²⁶ <https://medium.com/@ajay.travelure/federalism-is-not-collapsing-in-india-it-is-being-quietly-emptied>

²⁷ <https://www.iconnectblog.com/cooperative-federalism-to-coercive-federalism-how-gubernatorial-discretion-in-practice-is-rewriting-indian-federalism/>

safeguard into a tool for central interference in state legislative processes. Article 200 empowers Governors to assent to bills passed by state legislatures, withhold assent and return them for reconsideration (with a message), or reserve them for the President's consideration. However, the provision's silence on any time limit for action—particularly when withholding or reserving—creates a constitutional loophole that allows indefinite delays, effectively suspending the will of elected state assemblies without outright rejection.

This practice has become a recurring mode of interference, especially in opposition-ruled states, as documented in the Annual Survey of State Laws in India – 2023 by NALSAR University of Law (Hyderabad).²⁸ The Survey highlights how gubernatorial inaction undermines legislative sovereignty and shifts Indian federalism toward a coercive model.

- **Chhattisgarh:** The Governor withheld assent to reservation bills for months, prompting the state government to challenge the delay in the High Court.
- **Himachal Pradesh:** The Governor withheld assent and later reserved a bill repealing an act granting pensions to those jailed during the 1975 Emergency, referring it for Presidential consideration.
- **Punjab:** The Governor reserved key bills for Presidential assent, leading to Supreme Court intervention.
- **Tamil Nadu:** Multiple bills (some pending over a year, including university governance reforms) faced prolonged withholding, culminating in Supreme Court proceedings where the state sought relief against indefinite delays.
- **Kerala:** Several bills, including those to replace the Governor as Chancellor of universities, remained pending for extended periods, causing political deadlock and reaching the Supreme Court.
- **West Bengal:** Similar patterns of inaction were noted, contributing to federal tensions.

The Supreme Court addressed this issue in landmark rulings:

- **State of Tamil Nadu v. Governor of Tamil Nadu (April 8, 2025)**
A bench ruled that Governors cannot indefinitely withhold assent, imposing timelines (e.g., action within 3 months) and using Article 142 to deem assent on pending bills in cases of prolonged inaction. This was seen as a strong affirmation of federalism and legislative autonomy.

²⁸ NALSAR Annual Survey of State Laws in India (2023 edition, with ongoing relevance in 2025 discussions) State of Tamil Nadu v. Governor (2025 INSC 481)

- **Presidential Reference (In Re: Assent, Withholding or Reservation of Bills by the Governor and the President, November 20, 2025):** Following the April ruling, President Droupadi Murmu referred 14 questions under Article 143. A five-judge Constitution Bench (led by CJI B.R. Gavai) clarified:
 - Governors have only three options under Article 200: assent, withhold and return with reasons, or reserve for the President—no fourth option of indefinite inaction.
 - No fixed judicial timelines can be imposed (overruling aspects of the April judgment on rigid deadlines).
 - Prolonged, unexplained, or indefinite inaction invites limited judicial scrutiny (e.g., mandamus directing action within a reasonable time, without interfering in merits).
 - No "deemed assent" mechanism exists constitutionally.

Conclusion

India's democracy today stands at a crossroads that feels both familiar and deeply unsettling. On paper, the institutions that define it—the Constitution, the judiciary, the Election Commission, free elections, a free press—are still standing. Yet beneath the surface, many of those same institutions have been quietly reshaped, stretched, or pressured in ways that make them less independent, less neutral, and less protective of the very people they were created to serve.

What we have witnessed is not a dramatic military coup or the sudden abolition of elections. It is something slower and more insidious: a steady accumulation of small, legal changes—new criminal codes that revive old repressive tools, appointment processes tilted toward the executive, prolonged gubernatorial delays that paralyze state legislatures, voter-roll revisions that disproportionately affect the most vulnerable, and a surge in hate speech and targeted demolitions that leave entire communities living in fear. Each step is justified in the name of sovereignty, security, unity, or administrative efficiency. Together, they create a landscape where dissent is more expensive, minority voices are more precarious, opposition leaders are more entangled in legal battles, and the federal bargain that holds this diverse nation together feels increasingly lopsided.

The 2024 general election reminded everyone that Indian voters remain powerful and unpredictable. The ruling party lost its outright majority, coalitions returned to the centre stage, and turnout remained high. That moment of democratic pushback was real and should be celebrated. But a single strong election does not reverse structural trends. It buys time. The deeper erosion—of judicial independence, of institutional forbearance, of mutual toleration between political rivals, of genuine federal balance—continues unless deliberate corrective steps are taken.

Suggestions for Strengthening Democratic Safeguards

None of these recommendations require rewriting the Constitution. They ask for fidelity to its existing spirit and for the courage to choose restraint over maximum power.

- 1. Restore temporal discipline to Article 200** Parliament should enact a clear, reasonable time-limit (three to six months) for Governors to act on state bills—assent, return with reasons, or reserve. Indefinite inaction should be statutorily deemed a refusal that can be challenged immediately. This single legislative fix would remove one of the most effective current tools of central interference in state governance.
- 2. Neutralise the appointment of Election Commissioners** Return to the principle laid down by the Supreme Court in the Anoop Baranwal judgment: the selection committee should include the Prime Minister, the Leader of Opposition, and the Chief Justice of India (or a judge nominated by the CJI). The 2023 Act’s replacement of the CJI with a Union Minister should be repealed or substantially amended to restore genuine bipartisanship and judicial oversight.
- 3. Tighten safeguards against misuse of central agencies** Introduce statutory guidelines requiring the ED, CBI, and other central agencies to publish annual statistics broken down by political affiliation of the accused, conviction rates, and average duration of pre-trial detention. A bipartisan parliamentary oversight committee should review high-profile political cases annually.
- 4. Reform internet shutdown protocols** Make every shutdown order subject to mandatory pre-publication review by an independent committee (including judicial and civil-society members) and automatic expiry after 48–72 hours unless renewed with fresh justification. The proportionality test laid down in Anuradha Bhasin must be enforced in practice, not merely in theory.
- 5. Protect minority rights through enforceable guidelines** Enact a national framework that prohibits “bulldozer justice” without due process, mandates compensation for

unlawful demolitions, and creates a fast-track mechanism for complaints of hate speech and targeted violence. Anti-conversion laws should include safeguards against misuse (e.g., mandatory magisterial inquiry before arrest).

- 6. Encourage judicial timeliness and transparency** The Supreme Court and High Courts should set internal benchmarks for disposing of cases involving federalism, electoral integrity, and fundamental rights. Regular public disclosure of pending constitutional matters and average disposal times would build public trust and exert gentle pressure on the system.
- 7. Revive genuine cooperative federalism** Replace conditional central grants with a higher proportion of untied devolution. The Finance Commission should be empowered to recommend enforceable penalties for withholding approved funds. NITI Aayog should return to functioning as a genuine forum for state–centre dialogue rather than a top-down policy dissemination body.

Democracy in India has always been improbable and hard-won. It survived poverty, partition, linguistic diversity, multiple insurgencies, and the Emergency. It can survive the present moment too—but only if enough people inside the system choose restraint over dominance, dialogue over polarisation, and constitutional fidelity over short-term political advantage.

The story is not over. It is being written every day—in courtrooms, polling booths, newsrooms, protest sites, and quiet conversations across the country. The question is not whether India will remain a democracy in name. The question is whether it will remain one in substance, where every citizen—regardless of faith, language, region, or political belief—can speak, vote, and live without fear that the rules of the game have been quietly rewritten against them.

That choice belongs to all of us.
