India's Governance Challenges: Setting an Agenda for the New Government

Niranjan Sahoo, Editor

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INTRODUCTION

Niranjan Sahoo

As Narendra Modi came to power in 2014 with an unprecedented mandate, he made a promise to deliver inclusive governance ("*Sabka Saath, Sabka Vikas*").[1] Prior to that, during the campaign, he had coined the catchphrase, "minimum government and maximum governance". This classical liberal idea of limited government—long known in the West—aroused curiosity amongst the electorate. Many perceived this as a pro-growth and good governance move that would gradually take the state away from controlling social or economic policy, or both—in other words, "the running of business". He took the prime-ministership armed with the credential of having provided a distinct governance model for Gujarat, a state he governed for three consecutive terms during 2001–14. There were huge expectations, therefore, that the same may be extended to all of India.

Upon assuming office in May 2014, the Modi government introduced noteworthy initiatives, including legislations meant to improve the country's business environment and policy ecosystems (such as the Bankruptcy Code, the Goods and Services Tax or GST, and the anti-money-laundering law). It also launched the '*Make in India*' initiative.

The new government also took a bold step towards resetting Centre-State relations by implementing the most radical recommendations of the 14th Finance Commission (amongst them, the provision for a record 42-percent transfers to states). The six-decade-old, Nehruvian Planning Commission was abolished, replacing it with the think tank called the National Institution for Transforming India (NITI Aayog), that would, according to the government, usher in an era of "cooperative federalism".

Indeed, Prime Minister Modi's first term has proved to be eventful in terms of governance and political reforms. Some of the most notable policies of those five years include demonetisation to eradicate black money (albeit controversial, with many analysts calling it a major failure); electoral reforms, in particular the implementation of the electoral bonds scheme; and urban reforms, including the launch of the Smart Cities Mission. The government of 2014–19 also implemented administrative and civil service reforms, such as

allowing lateral level entry in the bureaucracy, e-governance, and a new law governing affirmative action.

This report examines whether or not these reforms truly made a difference in India's governance ecosystem; and if they did, in what manner. The report outlines the successes and failures, highlights the lessons learnt, and recommends a governance agenda for the new government.

I open this compendium with the chapter, **The Promise of 'Minimum Government and Maximum Governance': A Reality Check.** The piece offers a critical appraisal of the Modi government's first-term performance on various governance parameters. It argues that while the government has improved the country's business environment, statist tendencies have grown with equal flourish.

Sidharth Kapoor, in the second report, **Cooperative Federalism in India: A Road Less Travelled,** finds that the Modi government began well by abolishing the centralising and socialist-era symbol, the Planning Commission, and taking the courageous step of allowing greater devolution of revenues to states. However, the government also showed its centralising instincts in key policy arenas.

Maya Mirchandani follows with the third chapter, **India's Flawed Democracy.** She makes the case that during Modi's first five years, India witnessed an erosion of its democratic values, and calls on the new government "to publicly declare an agenda for democratic renewal."

Gautam Chikermane then examines the institutional landscape in the fourth chapter, **A Discourse on the Challenges of Institution-Building.** He says the new government must "rethink institutions, their structures, outcomes and evaluations, while being cognisant of the fact that building a perfect institution is an exercise in shifting sands."

In the fifth chapter, **The Parliament, 2014–19: Weighed and Found Wanting,** Kanchan Gupta examines the productivity of the Lok Sabha and Rajya Sabha. He suggests entry points for reform to make Parliament more efficient and effective.

Ramanath Jha then reviews the administrative and bureaucratic reforms undertaken during Modi's first five years, in his chapter, **India's Civil Services: In Need of Urgent Reforms**. He deems the changes initiated by the government—including the much talked-about lateral entry—as merely

"modest." He recommends a more fundamental transformation to make the civils services more accountable and efficient.

The report closes with **Electoral Reforms 2014–19: Lost Opportunity.** Niraj Tiwari and I analyse the key electoral reforms introduced by the Modi government to address issues of transparency and accountability in India's governance ecosystems. While the government showed serious intent to clean up black money with demonetisation, its subsequent steps—such as the introduction of the electoral bonds scheme and the dilatation of corporate and foreign funding laws—have made India's electoral system even more susceptible to external influence.

This report does not claim to cover all aspects of India's governance challenges. Yet, the effort is no small measure; after all, these analyses focus on some of the most pressing public-policy challenges facing India, and seek to contribute to the highly important discourse on governance.

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THE PROMISE OF 'MINIMUM GOVERNMENT AND MAXIMUM GOVERNANCE': A REALITY CHECK

Niranjan Sahoo

During the 2014 general election campaign, the Bharatiya Janata Party's (BJP) prime ministerial candidate Narendra Modi declared, "I believe government has no business to do business. The focus should be on Minimum Government but Maximum Governance."[2] After getting elected, the prime minister would repeat these words on numerous other occasions. Remarking on its contours in greater detail at a speech in Muscat in February 2018, he claimed that his government was "making procedures simpler, abolishing unnecessary laws, reducing forms in government offices from 40-50 to four-five, bringing them on online platform, listening to people's problems with sincerity and taking action on them."[3] As the Modi government begins its second term, the question is whether or not the state's role has indeed been minimised during the first five-year term.

The first visible step of the Modi government in this direction was the dismantling of the Planning Commission, a body that represented both centralisation and a status quo. For a long time, the Commission was criticised for creating rigid schemes that did not give much discretion to the state governments in utilising the concerned share of funds. Discretionary powers were thus vested in a Central body. The premise of the change enacted by the new government was to lead a market-oriented approach towards development and remove an institution that symbolised state control.

The next major move by the Modi government was to repeal as many as 1,500 "redundant and obsolete" laws. These laws often acted as obstacles for administration and were not relevant for India's current situation. The third and most important step taken to reduce distortion and arbitrariness in indirect tax was the implementation of the GST in 2017. Notwithstanding many loopholes and complications that came with the new law, the rollout of GST represented major progress in improving business and economic freedom.

In addition to these reforms, the Modi government quickly began expanding spaces for business by bringing in the much-needed Insolvency and

Bankruptcy Code, 2016. Showing similar urgency towards improving governance and promoting inclusion, they worked on pushing the JAM ("Jan Dhan, Aadhaar, Mobile") trinity. This move aimed to bring millions of the country's poor into the formal banking system, improve service delivery, and prevent corruption by cutting down on *babudom* and middlemen.[4]

Further, the Modi government pressed for both digitisation and subsequent digitalisation to change the service-delivery landscape. The 'MyGov' digital portal was launched in 2016 with the intent to establish an interface between citizens and the government—to promote "good governance." Analysts believe the portal has been instrumental in cutting bureaucratic red tape, as it allowed for the "self-attestation" of various civic documents.

An immediate outcome of these reform measures was India's visible jump in the World Bank's Ease of Doing Business (EODB) rankings. India improved by as many as 23 points in a short period of time, and by mid-2018, the country was ranked 77, reaching the top rungs amongst South Asian nations.[5] While this is still not enough to push business and investments, it has created a positive perception about the willingness of the Indian leadership to improve systems and processes conducive to business.

THE OTHER SIDE OF "MINIMUM GOVERNMENT"

Despite visible improvements on key governance indicators, the lofty promise of "minimum government, maximum governance" has remained largely rhetorical. The classical liberal idea of limited government—where the state limits its role to the protection of life and property of its citizens—was completely sidelined during the first five years of the Modi government.

First, in spite of the Modi government's initial promise of scrapping 'wasteful' flagship programmes such as the Mahatma Gandhi National Rural Employment Guarantee Scheme, these schemes have only been expanded with greater budgetary allocations. More importantly, the Union government has brought in several additional mega-schemes on health, sanitation, and agriculture, including Ayushman Bharat and the Swachh Bharat Mission. The Centre's expansion into areas of state jurisdiction via mega welfare schemes has not only been vehemently opposed by several Opposition-ruled states, but also compelled them to float their own schemes, matching the Centre in terms of both resources and scale. The more invasive aspect of this was seen to be the Union government's emphasis on states' achievements with regard to flagship

schemes in the Terms of Reference of the 15th Finance Commission. This raised various concerns from the states.[6]

The *second,* and perhaps most important, aspect of limited government is cutting down the role of the state in running business. The much-debated privatisation of state-owned firms never took place in the Modi government's first five-year tenure. The single-biggest proof of this is the ailing, state-owned Air India. Despite numerous attempts, the perennially loss-making airline remained fully under the control of the government. This was also true of public-sector banks that have seen mergers and consolidation amongst themselves—privatisation is a distant dream. The government's own think tank, NITI Aayog, had recommended 26 state-owned enterprises, but not a single unit was placed for auction by the end of the first term.

At the same time, the government has carried out, over these five years, disinvestment through acquisitions by other government entities. There have been instances such as the state-owned Power Finance Corp. Ltd.'s acquisition of a 52.63-percent stake in another state-owned entity, REC Ltd., for INR 14,500 crore. These increasing divestment collections raise serious doubts about the true success of the disinvestments. In short, after the end of the Modi government's first five years, the Indian state was still running airlines, hotels, and various other businesses and remained front and centre in the economy.[7]

Third, while the government may have succeeded in eliminating several outdated laws on critical aspects of smoothening business and reducing discretionary powers of the state/bureaucracy on matters of land and labour, it has been lacking in terms of action. While amendments of land acquisition law were faced with political resistance, the government made no genuine attempt to revamp archaic labour laws that constrain business freedoms. It is no surprise that while the government moved up the ranks on the EODB index, it fell several places on economic freedom. In 2019, the Heritage Foundation's Index of Economic Freedom ranked India at the 129th position.[8]

Fourth, a major precondition to the success of "minimum government and maximum governance" is a proactive, accountable and responsive bureaucracy. This was not witnessed in the Modi government's first five-year tenure as the entrenched permanent bureaucracy went from strength to strength under his rein.[9] The last-ditch effort of infusing competition and accountability via the lateral entry channel is not enough to address the structural problems afflicting the permanent civil services.

Other big-ticket reforms that remain largely inoperative were related to issues of corruption, transparency, and citizen grievance redressal mechanisms. For example, it took five years for the government to fill Lokpal, the much-debated anti-corruption institution. Similarly, the Citizen's Grievance Bill, 2012,[10]—a proposed legislation that has the potential to transform the service-delivery landscape, cut down corruption, and improve state–citizen interface—never received any attention from the Modi government.

The first run of the Modi government, therefore, witnessed the opposite of minimum government, as the state seems to have turned more statist on many things, particularly economy and governance. Not only has the popular old description of '*Mai-Baap Sarkar*' received a new thrust with the Central government introducing a slew of mega welfare schemes, there is a dominant trend of re-centralisation through the expansion of regulatory and discretionary powers via multiple means. The biggest paradox for "minimum government" is the all-powerful Prime Minister's Office, which has centralised decision-making powers. The government's follow through on 'minimum government and maximum governance' remains to be seen, but they have a second chance to challenge the status quo and initiate serious reform in the new term.

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COOPERATIVE FEDERALISM IN INDIA:
A ROAD LESS TRAVELLED

Sidharth Kapoor

After he assumed office in 2014, Prime Minister Narendra Modi expressed his desire to build bridges between the Centre and the states. Referring to his rich experience as chief minister, he called upon states to develop a frictionless framework and forge a model of cooperative, competitive federalism to chart a common course to progress and prosperity.[11] In what ways did the government under the first term of Prime Minister Modi address the core federal challenges facing India?

The government's earliest notable step was the scrapping in 2014 of the Planning Commission, which had served as the key tool for centralised policymaking. In his announcement, the prime minister said that the state governments had numerous complaints against the Planning Commission. "I, too, as a chief minister had a similar experience."[12] This was soon followed by the setting up of a government think tank called the NITI Aayog to replace the Planning Commission. The NITI Aayog was mandated to "coordinate" the interactions between the states and the Centre when implementing centrally funded schemes.[13]

The National Democratic Alliance (NDA) government's second significant step towards strengthening Centre–state relations was the acceptance of the 14th Finance Commission's recommendation of substantially hiking Central transfers to states.[14] In one stroke, the states' share from the divisible tax pool was increased from 32 percent to 42 percent in 2015. The government also rationalised centrally sponsored schemes, thus increasing the budgetary autonomy of states.[15]

The third and perhaps most remarkable measure was the passing of the GST Act in 2016 and its implementation in September 2017.[16] The GST Council,[17] with its decision-making role in the distribution of indirect taxes, is an added feature of cooperative federalism. While its implementation has scope for improvement, the GST is nonetheless a huge step in the right direction.[18]

These developments have made a lasting, positive impact on strengthening the country's federal fabric by providing the states more resources and space to design and implement their socioeconomic schemes as well as new forums, such as the GST Council. At the same time, however, the first five years of the Modi government have witnessed various trends towards greater centralisation.

1. Increasing the share of states in the divisible pool of Central taxes resulted in a revenue shortage for the Centre. To expand its financial base, the Centre has since increased surcharges and cess of various kinds. This has led to the shrinkage of the divisible tax pool. Moreover, the cess and surcharge introduced by the Centre are not being shared with the states.[19]

2. The NDA government has brought out several big-ticket, centrally sponsored flagship schemes, going against its declared agenda of decentralisation. The states have no role in the formulation of core goals or the design of these schemes. For instance, the government introduced a mega Central scheme called "Ayushman Bharat" to address healthcare issues, which many Opposition-ruled states see as an encroachment by the Centre.[20] Odisha, West Bengal, Telangana, Karnataka and Delhi have refused to participate in its implementation. The introduction of PM-Kisan, a Central scheme to provide income support to farmers, was also considered a bypassing of the states, adding to Central overreach. The Central government financing of state-specific subjects has increased sharply over the last five years and is pegged at 12 percent as of 2019–20.[21] The Aspirational Districts Programme is another move towards centralisation; it targets 115 of the most backward districts of India, and the state governments have had little or no role in its design and key parameters.

3. The abolition of the Planning Commission was a bold move to reduce discretionary powers and re-centralise fiscal federalism. However, its replacement with NITI Aayog—supposedly to fill the institutional vacuum but resulting in the overlooking of the Inter-State Council's[22] role—has met with little success. The NITI Aayog functions mostly as a policy think tank and is not responsible for any resource transfer related to broad development plans.[23] Thus, many Opposition chief ministers consider it unnecessary to attend NITI Aayog meetings.[24]

4. Some other developments in the last few years similarly point towards more centralisation. For instance, the proposal to hold concurrent general and state assembly elections in a deeply diverse country, where regional

parties have a substantial presence, is viewed by many Opposition-ruled states as an attempt to "centralise" elections.[25] The "One Nation, One Poll" idea goes against the federal character of polity, as it would give an unfair advantage to large national parties, at the expense of regional parties.[26] A bigger controversy has emerged on the issue of 15th Finance Commission's "term of reference," which aims to allocate resources to states based on the 2011 Census data, instead of the 1971 data. The southern states have protested against the proposed formula, which they believe will put them at a huge disadvantage compared to the northern states.[27]

The NDA government's first five years were marked by greater decentralisation, opening up of fiscal space, and increased state autonomy in spending. At the same time, however, it saw the Centre encroaching on state subjects. After the NDA government's massive victory in May 2019, it remains to be seen how it will set the agenda for cooperative federalism in the next five years. The abolition of the Planning Commission has resulted in the absence of an institutional platform using which states can debate or register complaints to the Centre. There is an urgent need for more federal-bridging institutions. The government must, therefore, revive and empower the moribund ISC, and make it the main vehicle for promoting cooperative federalism.

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INDIA'S FLAWED DEMOCRACY

Maya Mirchandani

Prime Minister Narendra Modi's rise to the country's highest office is proof of India's resilient democracy, one that allowed a man of humble origins to fight elections, win a massive popular mandate and become prime minister. Indeed, the prime minister has taken every opportunity to commend the strengths of the country's democracy. Ironically enough, however, India's democracy ranking saw a sharp and steady decline during his first term, between 2014 and 2019. The country was ranked 41 in the 2018 "Democracy Index." The index, compiled by a UK-based company, Economist Intelligence Unit (EIU), measures key trends such as free and fair elections, political participation and pluralism, and civil liberties.[28] While this was a one-point improvement from 2017, in the five years of Modi's first term, India had fallen 10 spots, from 32 in 2016 to 42 in 2017.[29] The EIU has classified India as a "flawed democracy," i.e. one that holds free and fair elections and respects 'basic' civil liberties, even if there are problems such as infringements on media freedoms. The same "Democracy Index 2017" report highlighted frequent internet shutdowns that affected, amongst others, journalists who report on conflict. It also commented on the stifling of dissent through the state machinery, especially the use of the "sedition law" under Section 124A, leading to a culture of self-censorship in the mainstream media.[30] It hardly comes as a surprise, therefore, that India ranks 140th out of 180 in the Global Press Freedom Index.[31] In 2017, the EIU noted that the dominance of conservative religious ideologies and the growth of vigilantism against vulnerable minorities had greatly damaged India's secular credentials.[32]

While opinions differ on the extent of the decline in India's democratic freedoms, it is undeniable that there has been a downslide. This is particularly evident in the weak enforcement of rule of law against "cow vigilantes"[33] and lynch mobs that use religious slogans to bully and abuse minorities. These instances are brushed off as ordinary crimes by the Centre, and the blame is placed on the local state police instead.[34,35,36] "Hate trackers"[37] have seen an uptick in the instances of targeted hate speech and crimes against minority groups.

The democratic public sphere—both the civic and the political—has become toxic and polarised, with poison seeping into every democratic institution: parliament, the press, even the judiciary and civil society. The spread of majoritarian politics has resulted in a loss of faith in democratic processes. In the last five years, a steady stream of ordinary citizens has consistently demanded that their democratic, constitutionally protected rights should not be infringed upon. Some scholars argue that the increasing 'Otherisation' of religious minorities is directly correlated to the disenchantment with the government's lack of delivery on economic progress and development.[38]

Some instances include the struggle of a Kerala girl to choose her partner without communal coercion;[39,40] students questioning the state's actions in university campuses;[41,42] the rising protest against the tacit social sanction for the impunity with which cow-protection squads lynch cattle traders, mostly Muslim or Dalit;[43] and people's criticism of the state's attempts to deny citizens the right to individual privacy.[44]

Some argue that social tensions over religion, caste, class and gender are not unique to the current government, having existed even when avowedly secular governments ran the country. Both sedition and defamation laws have been abused by regimes in the past (irrespective of political leanings), sometimes far more severely than they are today. Moreover, the state has always attempted to infringe the privacy of its citizens in the name of security, albeit using different methods over the years. The previous regimes must, therefore, rightly share the blame for the decline in India's democratic values.

However, the last five years have seen a markedly dramatic erosion, with the rapid stifling of the freedoms of minorities as well as independent institutions such as media and civil society groups. Civil debate in the public sphere has yielded coarse, abusive discourse on both social and mainstream media, particularly on news television. The Modi government's unwillingness to engage with those who critique policy, strategy or tactic[45] has become a leitmotif of the last five years. Now that the government is in its second term, with an even stronger mandate, should one expect an even sharper decline?

After his stunning victory in May 2019, returning him to power for another five years, Prime Minister Modi knelt before the Constitution, thereby giving it the status of a 'holy' book for all Indians, irrespective of caste or creed. For Modi 2.0 to prove its declared commitment to restoring and strengthening the country's democratic fabric and ethos, the government must improve the rule

of law and the representation of minorities and other ethnically vulnerable sections in political spheres. In a display of good faith, it is time for the new government to publicly declare an agenda for democratic renewal. Short of that, Modi's commitment to democracy will be deemed mere lip service to ensure that the underbelly of majoritarian politics does not cast its shadow on the carefully created public image of India's most popular and most powerful prime minister in nearly four decades.

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A DISCOURSE ON THE CHALLENGES OF INSTITUTION-BUILDING

Gautam Chikermane

Over the past five years, since Narendra Modi took charge as prime minister, conversations around India's democratic institutions have been enmeshed in opinions rather than analyses, driven by ideological leanings rather than serious enquiry, and based on personal anecdotes rather than hard empirics. Political allegiances have determined the direction of debates. For a member of the governing BJP-led coalition or its supporter, any change to institutional mechanisms is a correction, as seen in the morphing of the Planning Commission[46] (a body that had acquired more powers than the constitutional body, the Finance Commission) into NITI Aayog.[47] For a member of the Congress-led Opposition or for detractors of Modi, all such actions are suspect and designed to destroy institutions.[48] This is a testimony to the polarisation that India's civic and political spheres have been experiencing over the past several decades but which have risen to full glory only in recent years.

The incumbent government is being called a destroyer of institutions[49] and data delivery.[50] It has been facing institutional pushback from the Judiciary,[51] the Opposition,[52] the Election Commission,[53] the Reserve Bank of India (RBI)[54] and universities.[55] The government has answered all such allegations. The side of the ideological and political divide on which one stands, decides for them what Modi's institutional actions mean. Nonetheless, it is necessary to have political conversations regarding institutions that shape the future of the country and its citizens. This report analyses the foundations and first principles of democratic institutions; it is a prerequisite to such debates.

A haze of suspicion currently surrounds the workings of the government, and any criticism that comes its way from the Opposition or civil society is abjectly decried. Both, the BJP and the Congress Party are guilty of creating this haze, a political tool used to discredit the incumbent. A sound study of the first principles of institution-building and maintaining must precede any healthy debate, such as the alleged pliability of the Judiciary in the Supreme Court, the conflict around the functioning of the RBI, the appointments to and the

structure of the Central Bureau of Investigation (CBI), or the withholding of data on jobs generation. The current debate, however, has been framed in an extremely partisan manner, with the Opposition making allegations that Modi is an institution destroyer,[56] and the government merely returning the favour.[57] To extract answers from opinions, it is necessary to examine the fundamental and delicate thread that binds them all together—democracy.

According to well-known institutional theorists Jack Knight and James Johnson, "institutions are sets of rules (roles, procedures, offices) that emerge from and subsequently structure social and political interaction. They are persistent means of coordinating ongoing social, economic, and political interactions."[58] For Douglass C. North, they are formed to "reduce uncertainty in human exchange."[59] For any society—democracies in particular—to be able to safeguard its people, it is necessary to have institutions that ensure the rule of law. These institutions include the three pillars of democracy—the Legislature, the Executive and the Judiciary—as well as the supporting bodies such as a Central bank (RBI), an investigating agency (CBI), and an auditor of government finances (Comptroller and Auditor General).

However, institutions are run by humans, to begin with, who may not always be rational; moreover, markets are not perfect and information not symmetric. It is here that the system needs a balance. Liberal democracy demands that all major state institutions be run independently. However, democracy also calls for the same institutions to be accountable, the policy challenge for which can be resolved by balancing two goals. One, independence of the institution from political interference; and two, accountability to the governance system.[60] It is this balance between independence and accountability that must be revisited every few years, more so in disruptive times like this. It is a faulty assumption that disruptions are markers of societal change only for private citizens and that organisations and state institutions can go unscathed. The greater accountability in judicial appointments, for instance, has been a struggle across governments. Two bills—the Judicial Standards and Accountability Bill, 2010[61] and the Judicial Appointments Commission Bill, 2013[62]—attempted to bring in transparency and accountability in the process of selecting judges. However, the Judiciary quashed these, declaring them as unconstitutional.[63] At some point, the Judiciary will need to fall in line with democratic processes; it should not and cannot remain above the rule of law and Constitution.

There is a superstructure of institutions whose underlying power pivots around personal entitlements: retired civil servants from the Indian

Administrative Services (IAS) become regulators,[64] retired judges head commissions and tribunals.[65] The system drives out outsiders in the way antibiotics kill bacteria. The 33 newly appointed joint secretaries by the Modi government,[66] of which only seven are from the IAS, are a case in point regarding how non-IAS individuals are able to negotiate the bureaucratic system. Whether they end up fighting the entrenched IAS lobby or drive the change India needs and for which they have been hired, remains to be seen. New narratives are now needed to support the 21st-century India, a country that stands atop a US$3-trillion GDP, the world's fifth-largest, projected to be US$5 trillion by the next elections.

There is a bigger picture that has been missing from the institutional narrative. The policies framed in the pre-liberalisation years got their strength from state control—nationalisation of industries, high rates of taxation, or labour policies. The post-liberalisation policies are relatively more market-oriented. The institutions built between 1991 and 2001, the first decade of liberalisation—Foreign Investment Promotion Board in 1991, Securities and Exchange Board of India in 1992, Telecom Regulatory Authority of India in 1997, Insurance Regulatory Authority of India in 1999—created a base level on which to reorganise the economy. The institutions in the last decade, such as the all-digital GST in 2017 or the various schemes of the government such as the Jan Dhan Yojana, recognise change and have embedded technology into their structures. The institutional debates India had around 1991 on a US$270-billion GDP were different from those happening today. Those were the days of building institutions: the National Stock Exchange in 1994, the Foreign Exchange Management Act in 1999, and the Competition Commission of India in 2002. Today, with technology being the key driver of societies and economies, can institutions remain protected by armours of the past? Every institution must reinvent itself, expand and change to support the demands of modern India, and a key factor is public accountability.

Two aspects should inform all debates around institutional structures. First, the conflict between processes and individuals. While creating an institution, it is important to formulate processes that are individual-agnostic. Thus, the grid holding the institution together should be strong enough, such that any individual occupying a key position of authority should be able to fit into the slot if they meet the basic qualifications. However, humans cannot be straitjacketed into a delivery mechanism. A dynamic person trying to deliver outcomes may feel structures to be burdens of excess on their ability to work. Conversely, each of the carefully drafted measures of accountability can be followed on paper but not in spirit, i.e. an individual can check all the boxes yet

fail to deliver outcomes. The burden of this balance will have to be borne by citizens.

Second, the conflict between democracy, independence and accountability. Some institutions have secrecy embedded into their manifesto, national security, for instance. However, they cannot be beyond the rule of law, and thus break the process of democracy. For instance, judges of the Supreme Court reportedly seeking only male staff as a reaction to a woman making allegations against the Chief Justice of India is a knee-jerk reaction that demolishes the idea of gender equality, deftly overseen by the same institution.[67] The credibility of the Judiciary is important, no doubt. But such an action institutionalises inequality and sets a precedent for other organisations to follow. In a democracy, this demands a correction, as a statement from former law clerks seeking "gender justice" notes.[68] Stepping back, this poses uncomfortable questions. Are other institutions such as the Legislature or the Executive less important? Further, are heads of universities, companies or even individual organisations lesser in stature than the Judiciary? In a democracy, such questions can cause an institutional disturbance, but they must be answered. Actions of whims must be corrected by the rule of law and first principles.

WAY FORWARD

The Modi government is at the helm of affairs once again and must take charge. It needs to rethink institutions, their structures, outcomes and evaluations, while being cognisant of the fact that building a perfect institution is an exercise in shifting sands, a chasing of rainbows, with the destination constantly evolving. Through clashes between demands for change and the need for stability, as well as those between institutions and individuals, this democratic process of reimagining institutions, using persuasion, communication and delivery as tools of engagement, will create a new equilibrium.

"Life creates institutions," wrote Sri Aurobindo in February 1910. "Institutions do not create, but express and preserve life." In 21st-century India, India would do well to apply this dictum to its evolving institutions.

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# THE PARLIAMENT, 2014–19: WEIGHED AND FOUND WANTING

Kanchan Gupta

Popular discourse in India places great emphasis on the roles played by the Executive and the Judiciary in governance. The third branch of parliamentary democracy—the Legislature—rarely comes up for discussion. Yet, it may be the most crucial pillar of India's governance infrastructure: after all, it is Parliament that holds the government to account, scrutinises proposed laws, and approves financial expenditure. Therefore, unless there is focused, bipartisan attention on reforming Parliament and its impact on governance, little purpose will be served by discussing reforms in other spheres of government.

The 16th Lok Sabha (2014–19) may have given the impression of being perpetually disrupted by unruly parliamentarians.[69] However, statistics collated by PRS Legislative Research[70] show that it spent 32 percent of its time on legislative business, the second-highest amongst previous Lok Sabhas. The average time spent on legislative business was 25 percent. Additionally, the MPs spent 13 percent of the time on Question Hour, 10 percent on short duration discussions, and 0.7 percent on calling attention notices. These numbers tend to camouflage the fact that the 16th Lok Sabha recorded the second-lowest hours of work compared to their predecessors: 20 percent higher than the 15th Lok Sabha but 40 percent lower than the average clocked by full-term Lok Sabhas. Further, on lawmaking, the 16th Lok Sabha debated more Bills for more time but fewer (25 percent) Bills were scrutinised by committees.

For its part, the Rajya Sabha's performance was worse during the period coinciding with the 16th Lok Sabha's tenure. While the average Lok Sabha productivity was 80.3 percent (see Figure 1), for the Rajya Sabha, it was a mere 58 percent. The Rajya Sabha held 18 sessions and 329 sittings and passed 154 Bills, for an average of less than one Bill in two sittings. This legislative output is 34 Bills lesser than the 188 passed during 2009–14. Between 2014–19, the Upper House could make use of only 60 percent of the time available, losing 40 percent of the valuable time of the House owing to disruptions. Across the total

18 sessions over the last five years, the productivity of the House has been below the five-year average of 60 percent in respect of eight sessions.[71]

Figure 1: Parliamentary Productivity (2014–19)
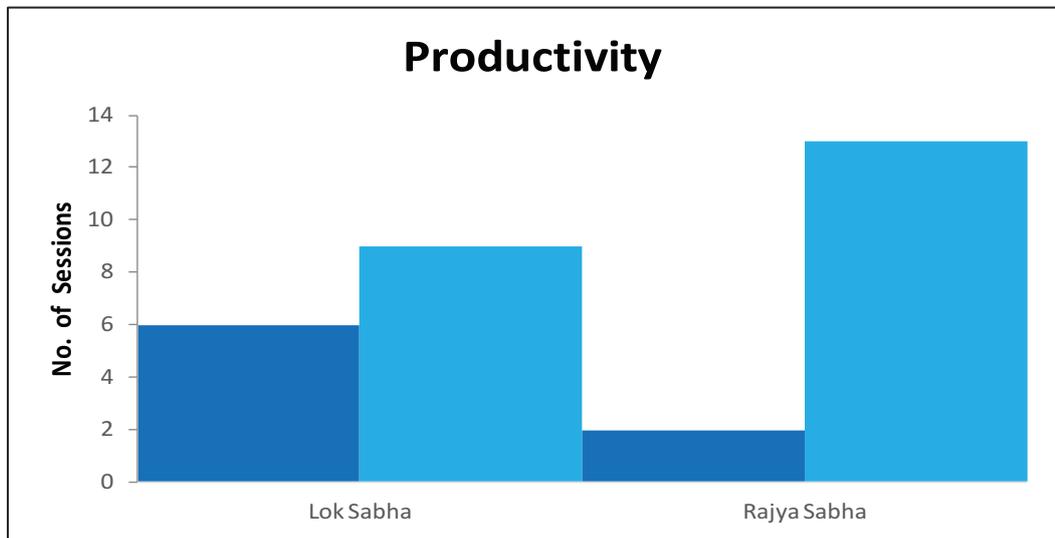
Source: Adapted from PRS Legislative, 2019.

This is not to discount the contribution of the Rajya Sabha in the last five years. The following are some of the most important pieces of legislation passed by the Upper House from 2014 to 2019:

- GST Bill, which merged state and Central taxes on goods and services to create a single and uniform tax for the entire country;[72]

- Fugitive Economic Offenders Bill, 2018, which enables and empowers Central agencies to confiscate the property of a person upon being declared an FEO;[73]

- Insolvency and Bankruptcy Code, 2016, which has streamlined the process of resolving bank loans and other debts of bankrupt companies while protecting the interests of creditors;[74]

- Real Estates (Regulation and Development) Bill, 2016 to protect the interests of buyers and enhance confidence in and the credibility of Real Estate Sector;[75]

- AADHAR (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Bill, 2016 to plug leakages in the delivery of public services and subsidies;[76] and

- Constitution (124th Amendment) Bill, 2019 providing 10 percent reservation for economically weaker sections and taking quotas beyond narrow caste identities.[77]

Overall, the 16th Lok Sabha saw the passage of 133 Bills compared to 179 Bills passed in the previous term. What is worrisome is that both houses spent most of their time on non-legislative businesses. Around 34 percent and 39 percent of business hours were spent in non-legislative activities in the Lower House and Upper House, respectively. The Lok Sabha spent the least amount of time on financial issues in its monsoon and winter sessions. The pattern was the same for the Upper House.

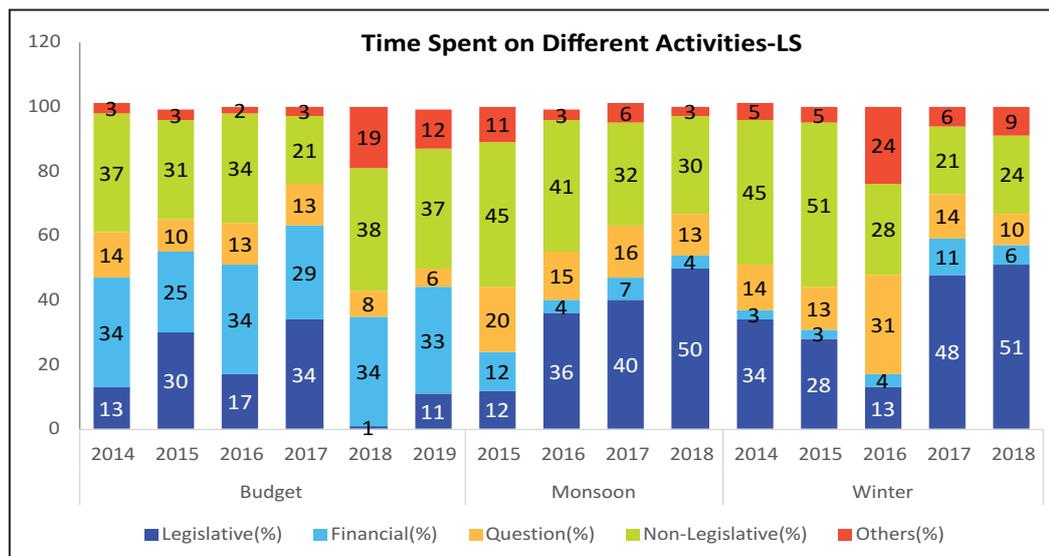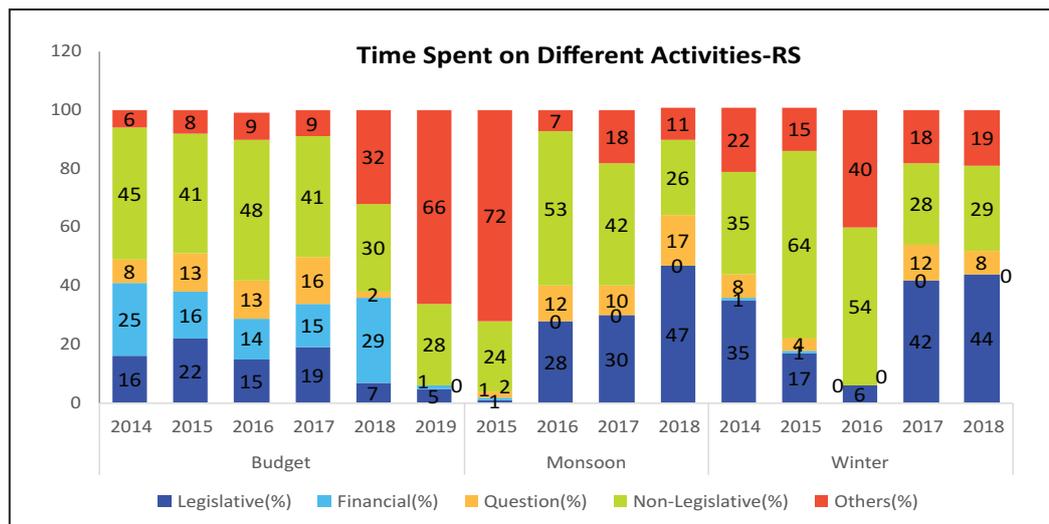**Figure 2a: Time Spent on Various Activities, 16th Lok Sabha**

Figure 2b: Time Spent on Various Activities: Rajya Sabha

Source: PRS Legislative.

Figure 2 captures only some of the key indicators of Parliament's work in the last five years. The large number of lapsed Bills serves to underscore the need to rethink Rajya Sabha's prerogative to block laws that have been debated

and/or amended by the Lok Sabha. A balancing role cannot become hostage to partisan politics, forcing the government to tread the Ordinance path, which is not how democracies should ideally work.

In this regard, the new government should nudge the Legislature, through discussion and—if possible—through consensus, to bring about changes that would strengthen the democratic process and ensure higher scrutiny of the Executive's decisions and performance. The following are recommendations for possible reforms for Parliament:

- Both Rajya Sabha and Lok Sabha should meet in continuity, with breaks, and not in quarterly, truncated sessions. This is how Parliaments function in democracies that take lawmaking and parliamentary oversight seriously.

- While staging walk-outs in protest can remain a privilege, no party or individual should be able to disrupt the pre-decided agenda of either House. Penalties must be swift and serve as deterrents.

- All Bills should be referred to committees for scrutiny and discussion, including public and stakeholder participation. Committees will work within a stipulated time frame.

- Question Hour needs to be mandatory and oral replies for starred questions must be provided without fail by the minister concerned. 'Prime Minister's Question Time' should be a new and permanent feature.

- Meaningful intervention needs to be encouraged by way of an increase in the quantum of Member of Parliament Local Area Development (MPLAD) funds.

- Disqualification laws must be reviewed to provide for the disbarment of habitual offenders.

- Every MP must disclose details of income and assets, and potential conflict of interest. Presiding officers should then place this information in the public domain to empower citizens.

- Investments in the stock market by MPs should be placed in a blind trust.

- Potential conflicts of interest must be prevented while selecting MPs for parliamentary committees.[78]

These are only some of the most urgent measures that need to be undertaken to make India's Parliament more productive and effective. Parliament is accountable to the Indian people, and this accountability needs to be restored.

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INDIA'S CIVIL SERVICES: IN NEED OF URGENT REFORMS

Ramanath Jha

Since India's independence, the matter of civil service reforms has been of abiding interest to successive governments and an ensemble of national stakeholders. Over seven decades, various committees have been set up to consider changes to the country's bureaucratic architecture. While the idea of civil service reforms has been discussed and has resulted in dozens of reports, there have been little concrete results on the ground. Some changes have been attempted that are, at best, modest. These have left the fundamental bureaucratic foundations unaltered.

Some of the latest civil service reforms attempted during the first five years of the NDA government led by Prime Minister Narendra Modi, are: the amendments to the Prevention of Corruption Act, the allocation of service post-Foundation Course, and the lateral entry into civil services. From the point of view of the civil services, two significant amendments were made to the Prevention of Corruption Act, 1988 (PC Act). A civil servant can no longer be prosecuted for their official decisions—irrespective of their qualitative value—without establishing clear *mala fide* (bad faith). Furthermore, prior government sanction would be required to initiate a probe on serving officers as well as superannuated public servants.[79] Under the earlier UPA government, the prosecution of officers, either serving or retired, for decisions that were considered against public interest but without the establishment of any bad faith or corrupt intent, had resulted in an angry bureaucracy. This, in turn, impeded public decision-making.[80] The Modi government moved to fix the problem by affording due protection to civil servants through these amendments.

A notable step, albeit a long-pending reform, was the introduction of lateral entry into the civil services. After plenty of debate and months of delay, in April 2019, the NDA government appointed nine non-governmental professionals to the rank of joint secretaries in key ministries, including finance, commerce, and road transport and highways.[81] Many welcomed this as a step to infuse talent from the private sector to career bureaucracy, although the manner of its

implementation was questioned.[82] However, none of these measures sought to take the narrative of reform to the level of fundamental change. Even the government's controversial proposal to club scores from the Union Public Service Commission (UPSC) and Foundation Course for the allocation of a specific service—which has generated criticism[83]—cannot fully address the core issues that negatively affect the performance of civil servants.

The government has avoided the tough road of picking key recommendations made by past committees. This is true, in particular, on the questions of civil service autonomy, administrative decentralisation and de-emphasis of hierarchy, domain specialisation, fixity of tenure, empowerment of local institutions (73rd and 74th Constitutional Amendments), bureaucratic capacity-building, and downsizing the civil services.

RECOMMENDATIONS

In the next five years, three major changes are vital for India's civil services to become more efficient, transparent, and accountable.

The first step is to push for decentralisation. One of the impediments to good governance in India has been its excessive centralisation, a remnant of its imperial past, which the nature of power has rendered difficult to dismantle even in independent India. The very essence of good democratic governance is the principle of subsidiarity, i.e. a Central authority should have a subsidiary function, performing only those tasks that cannot be performed effectively at a more local level. This entails decentralisation, from the Centre to the states, the states to districts, and the districts to local bodies. It further comprises the transfer of political, fiscal, and administrative powers from a higher government to district and local governments. While the Parliament pushed the 73rd and 74th Constitutional Amendments, states have dragged their feet and failed to bring about true decentralisation. Consequently, a number of local decisions are taken at higher levels than where they more logically need to be taken. Decentralisation has the innate ability to promote democracy by taking decision-making close to the scene of action. It allows direct, continuous, and more meaningful participation by citizens in the development process of their area. This heightens a sense of ownership and commitment from citizens for the democratic cause. A true effort, therefore, ought to drive decentralisation through the various rungs of decision-making.

The second crucial reform pertains to the independence of the civil services in performing its constitutional role. The Constitution of India (Art 311)

expects that the civil services will not be the handmaiden of any political party or individual, but will perform its functions in accordance with laws and in public interest. Without such an ability, the administration of justice, equity, and fair play will remain a mirage. Its absence, however, is increasingly evident as political power is brought into play to browbeat bureaucracy into submitting to political will. This is unambiguously apparent in the states where the bulk of work happens, given the federal nature of the Indian Constitution.[84] Bureaucratic reluctance to take decisions and the lack of domain expertise is often on account of frequent transfers, meaningless postings, and pressures exerted to toe a particular line. This has worsened over the decades, leading to situations in certain states where the normal three-year tenures are an exception rather than the rule. The objectives of efficiency, professionalism, and commitment are served when the political class promotes the purity of the working environment. It is vital to devise methods that stop the erosion of governance principles and reinstate the independence of the civil services.

At the same time, civil service autonomy must be counter-balanced by its responsibility towards the public. Increased autonomy of an institution requires robust instruments of accountability. This has become less difficult with the advent of technology that allows organisations to achieve relatively higher degrees of transparency. This, in turn, will aid the process by which institutions and their functionaries could be held to account in relation to functions they are charged to perform.

The third area of civil service reform is to craft two broad arms of the civil services: one, to perform the traditional functions of security, revenue collection, regulation, and policy formulation; and the second, to engage with the provision of infrastructure and services and to implement governmental schemes and programmes of development and welfare. The former has been the traditional role of the civil services that it should continue to perform. However, a radical departure is required for implementing development programmes. It is proposed that this be done through contractual arrangements where external agencies and stakeholders take on the challenge of advancing development. It could be open to members of the permanent civil services to opt out of traditional roles and join the developmental stream. A natural outcome would be to rid the programmes of an overwhelming emphasis on processes and regulations that impede speed and efficiency. The permanent civil services can be charged with clearing bottlenecks that emerge out of the first group of functions and directing ground assistance and facilitation. Substantially, however, a different set of people and organisations can be

tasked with delivering developmental programmes that have targets, timelines, and accountability, coupled with incentives and penalties. This strategy could also address the question of lateral entry by way of its engagement with external groups.

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ELECTORAL REFORMS 2014–19: LOST OPPORTUNITY

Niranjan Sahoo and Niraj Tiwari

The NDA government, which assumed power after a landslide win in 2014, proposed a wide array of reforms to strengthen the country's governance process. One of the priority areas in the coalition's agenda was to revitalise long-pending electoral and political reforms. Not only were there proposals to cut down the role of illicit cash flow to the political system distorting the democratic processes, the NDA—led by Prime Minister Narendra Modi—promised to clean up the growing "criminalization" in politics.[85]

PM Modi demonstrated his government's commitment to stem the use of illicit money by quickly amending the 2002 anti-money-laundering law, enacting stringent measures on Benami transactions,[86] and implementing the controversial demonetisation drive in November 2016 that banned high-value denominations. While demonetisation did not achieve its core objectives of curbing the circulation of black money, and created trouble for key sectors of the economy,[87] it at least brought to the fore the government's determination to break the 'business as usual' attitude on illicit money.

As a follow-up to its resolve to end the scourge of black money and cut down unaccounted cash flow to the electoral system, the Modi government introduced a number of important measures in the 2017 Finance Bill. For the first time in the nation's electoral history, the Union Budget 2017 devoted a full section on electoral funding reforms. The most talked-about reform was the launch of the 'Electoral Bonds' scheme.[88] While this has opened up a new avenue for political parties to raise donations, in their larger goal, bonds were meant to check cash donations (a euphemism for black money) by introducing mandatory online or cheque payments.[89]

The other noteworthy measure was the amendment to Section 29(1) of Representation of the People Act, 1951, which dealt with the disclosure of donations of over INR 20,000 received by political parties. According to the government, the exception clause to political parties (for undisclosed sources of donations below INR 20,000) had led to widespread misuse of the campaign

finance law. The new amendment was meant to stop political parties by checking anonymous donations. This would prevent them from using this lacuna to escape the scrutiny of their accounts by the tax department. The government, especially the finance ministry, claimed[90] that steps such as the reduction of cash contribution from INR 20,000 to INR 2,000 and issuance of electoral bonds using cheque and digital payments would make political donations more transparent.

The other significant move was the implementation of amendments to the Companies Act, particularly the removal of the earlier 7.5-percent limit on corporate donations to political parties. In addition, companies are now allowed to keep the names of political parties confidential in their accounts.[91] Finally, the Finance Bill, 2017 introduced a provision making it mandatory for every registered political party to file its Income Tax Return within the prescribed limit to enjoy exemption from payment of income tax. According to the finance minister at the time, this amendment was needed to stop the political parties from openly flouting the law in filing timely tax returns. This amendment of Section 13A clause (d) of the Income Tax Act, 1961 intended to bring some semblance of accountability by penalising political parties violating campaign finance law. In short, the 2017 Union Budget introduced significant reforms surrounding clean finance and accountability in the electoral system.

Yet, an examination of these recent measures reveals many contradictory trends with regard to electoral reforms. *First,* while the amendment to drastically cut cash donations to one-tenth (from INR 20,000 to INR 2,000) is certainly a welcome barrier to unknown sources of donations, it has still left enough room for political parties to misuse the amended provision by multiplying the number of fictitious donors.

Second, while many hailed the electoral bonds scheme as a revolutionary measure to "infuse democratic processes with white money"—as it promotes cheque and digital payments, thus recording the identity of donors—its most glaring failure lies in preserving the anonymity of donors.[92] Though the scheme is an improvement, since the identities of anonymous donors are maintained in the form of cheques and digital transactions, it hardly advances the cause of full disclosure and transparency. With the government allowing (again through the Finance Bill route) political donations by foreign companies under the Foreign Contribution (Regulation) Act, 2010 (FCRA), electoral bonds have now emerged as a channel for corporate donations, most likely from foreign sources. Recent evidence emerging from purchased bonds clearly suggests that

individual corporates who earlier used to make their contributions through Electoral Trusts are now routing these through the new channel. The proof of this is that nearly all bonds (99.9 percent) purchased are of high-value denominations, between INR 10 lakh and INR 1 crore, implying that corporates now prefer bonds channels for political donations.[93]

Chart 1: Donations Flowing through the Electoral Bonds Scheme
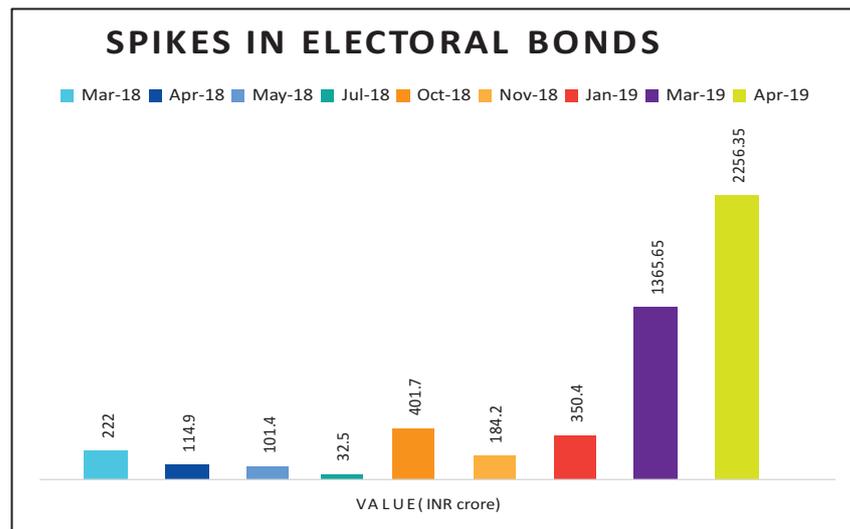
Source: Adapted from ADR data (figures up to March 2019).

The *third* and most worrisome development with regard to the integrity of the country's electoral democracy is the amendments made to the FCRA 2010 and the Companies Act. The brazen manner in which the NDA government effected changes in the FCRA, to circumvent the judgement of the Delhi High Court[94] banning overseas corporations from funding political parties, clearly reveals the counterproductive stand taken by major political players on accountability and transparency norms. The NDA government passed a retrospective amendment that did away with the scope of scrutiny to foreign funding to political parties, with effect from 1976. It may be recalled that the FCRA was passed in 1976, and it had banned foreign contributions to political parties.[95] The Act was repealed and replaced with the FCRA, 2010 by the UPA government. In doing this, the BJP-led NDA government proved it is no different from the Congress Party that had tried to cover up its exposure to foreign contributions.[96] However, much worse was the removal of the cap on corporate donations, along with non-mandatory disclosure of names of parties paid in account books.[97] These changes have made it convenient for corporates to donate money to political parties without even disclosing the matter to the public.

Finally, while the Modi government's tenure is marked by the absence of any major corruption scandals in the Central government, it has had a

lacklustre record in cleaning up criminal elements from electoral politics. During the course of campaigns for the 2014 general elections, Modi, on several occasions, claimed that he would stop the criminalisation of politics by setting up fast-track special courts.[98] Since then, his government has set up 12 special courts to speed up trials of criminal legislators. However, this has had no serious effect on the overall pendency rates (see Chart 2). Importantly, these actions have had no bearing in preventing politicians with criminal records getting elected in the 2019 Lok Sabha polls. The 16th Lok Sabha saw a record 43 of elected MPs with criminal cases against them on various counts, including heinous ones such as multiple murders, rape, and riots.[99]

Table 1: Rise of Criminal MPs

	TOTAL NO. OF WINNERS	TOTAL NO. OF WINNERS WITH DECLARED SERIOUS CRIMINAL CASES	PERCENTAGE OF WINNERS WITH DECLARED SERIOUS CRIMINAL CASES
Lok Sabha 2019	539	233	43%
Lok Sabha 2014	536	115	21%
Lok Sabha 2009	519	86	17%
Lok Sabha 2014	514	60	12%

Source: Adapted from ADR data.

Chart-2: Pendency of Cases against MPs and MLAs in Special Courts
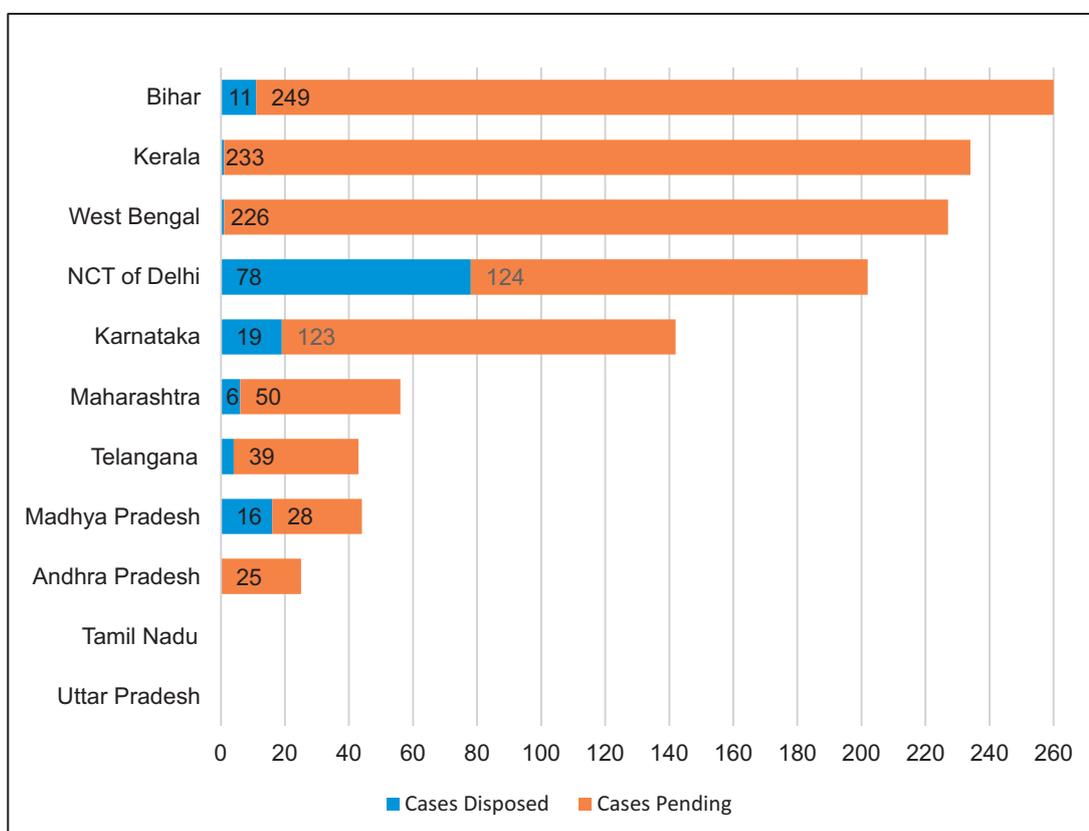
Source: Centre's affidavit in Supreme Court, (December 2018).

RECOMMENDATIONS

- Restore the upper cap on corporate donation (7.5 percent) and ensure that identities of donors are revealed to the public for the sake of disclosure and transparency.

- Overhaul the electoral bonds scheme; in particular, remove the anonymity clause.

- Undo the FCRA amendments that allow for unrestricted foreign donation to political parties.

- Do away with cash donations (INR 2,000 limit) and make all donations accounted for.

- Initiate a nationwide discussion on setting up a 'National Electoral Fund' to bridge growing inequality in political funding and reduce the dependency on private business/corporate sources.

- Take urgent measures to fast track the disposal of pending cases against politicians accused of crimes.

- Make the appointment of members of Election Commission much more broad-based, involving the Chief Justice of India and the leader of the Opposition, as practised in other constitutional posts, such as the CBI.[100]

The Modi government—which began its innings in 2014 with the promise of bold electoral and political reforms—has gone slow on many key reform areas involving transparency and accountability. As has been illustrated in this piece, the NDA government squandered a great opportunity to clean up India's opaque political finance regime that has historically incentivised political corruption, subversion of governance, and citizen's loss of faith in the democratic process. It may be recalled that it was the BJP-led NDA government that had brought one of the boldest electoral reforms in the form of the Election and Other Related Laws (Amendment) Act in 2003, empowering civil society, press and election watchdogs to monitor election funding. One hopes the new government will now display more political courage. ⊛RF

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