GOOD GOVERNANCE, DEMOCRACY AND GENDER JUSTICE IN CONTEMPORARY INDIA: AN ANALYSIS

Abdulrahim P. Vijapur

Emeritus Professor of Political Science, University of Science and Technology,
Baridua, Ri-Bhoi, Meghalaya-793101, India.
Formerly, Professor of Political Science at Aligarh Muslim University, Aligarh.

ABSTRACT

The purpose of this paper is not only to understand the meaning of "good governance", "democracy", and "Gender justice" in India but also to examine whether these concepts are entrenched deeply in the Indian political system, which claims to be the largest democratic experiment in the world. The paper also attempts to find out the extent to which the concepts of gender justice and democracy are applied in our unique socio-political settings. Are they successfully applied in the Indian political system? If not; what are the factors that do not allow them to take deep roots in India? Are there any ways to strengthen them in India? The paper aims to investigate solutions for these and other queries.

KEYWORDS

gender justice, rule of law, Indian democracy, corruption, minority rights, the scheduled castes, scheduled tribes, criminalization of politics, local self-governance

1. INTRODUCTION

According to the United Nations, "good governance" has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society (UNESCAP 2009).

No concepts are discussed in India ferociously and contested fiercely in political discourses so frequently as the concepts of "Gender Justice" and "Democracy". These two concepts constitute as characteristics of the concept of good governance all over the world and have become a "universal value". Good governance is ensured if democracy (participation) is premised on the protection of human rights, rule of law (ROL), accountability and transparency of governance. The idea of gender justice is reflected in two of the characteristics of good governance, i.e.,equitable and inclusive. Great tomes have been written on these concepts by social and political scientists, philosophers and even practitioners of politics.

The purpose of this paper is not only to understand the meaning of gender justice and democracy but also to examine whether these concepts are entrenched deeply in the Indian political system, which claims to be the youngest and the largest democratic experiment in the world. Our purpose is to understand how Indians conceptualize democracy domestically, and to find out if such

conceptualization differs from European conceptualization, where the concept of democracy not only originated but also has proved to be successfully applied to enhance good governance at the European Union level. The paper also attempts to find out the extent to which the concept of democracy is applied in our unique socio-political settings. Is it successfully applied in the Indian political system? If not; what are the factors that do not allow it to take deep roots in India? Are there any ways to strengthen it in India? The purpose of this paper is to explore answers to these and other related questions.

2. CONCEPTUALIZATION OF DEMOCRACY

Democracy has been accepted globally as a more acceptable form of government, as it respects human rights, introduces accountability of public servants through rule of law and leaves no scope for the emergence of authoritarian rulers. Periodic, fair, and transparent elections guarantee change of governments. Governments change through ballot boxes and not through bullets or revolutions.

2.1. Domestic Conceptualizations

At the outset, it must be said that the historical origins of India's democracy also present an important puzzle. Contrary to popular belief, the British did little to promote the growth of democratic institutions in India. In fact, it was the Indian nationalists from the late nineteenth century onward successfully appropriated liberal-democratic principles from the United Kingdom and infused them into the Indian political context. Mahatma Gandhi and the Indian National Congress disseminated the beliefs and principles of democratic ideas among the vast population of India. As this was occurring, writes Sumit Ganguly, "the British colonial regime was losing few opportunities to thwart or at least contain the growth of democratic sentiment and practice in India. The Indian nationalists can justifiably claim that each step toward self-rule and democratic governance was the result of sustained and unrelenting political agitation against authoritarian colonial rule" (Ganguly, 2007, pp. 30-31).

India is the largest democracy in the world, but not the best or effective one, as our analysis in the next section reveals. The founding fathers of the constitution adopted "secular", "federal" and "parliamentary form of democracy" within the republic with "fundamental rights" to underpin Indian democracy. All these features are considered by the Supreme Court as 'basic structure' of the constitution (See Krishnaswamy, 2009).

The Gandhian idea of village republic and *Panchayat Raj* Institutions (PRI) was incorporated in the Constitution. After the 73rd and 74th Constitutional amendments in 1992, local self-governments (PRI) and urban governments have deepened the roots of Indian democracy (seeMathur, 2013). Indian democracy is the only democracy which constitutionally allows affirmative action for Scheduled Castes (SCs), Scheduled Tribes (STs), and women. We find 15 per cent reservation of seats for SCs and 7.5 percent of seats for STs in the Parliament, State Assemblies and PRIs and urban governments. 33 percent of seats are reserved for women in PRI. As a result, we now have 1.4 million (precisely 1453973 as on 23 September 2020) women representatives in local governments (PIB press release). However, women's reservation in Parliament/State Assemblies and adequate representation of Muslims in these legislative bodies is conspicuously missing. Nonetheless, it must be admitted that our Parliament, State Assemblies, and PRIs are most representative as the representation of marginalized groups is constitutionally guaranteed, especially the *dalits* and tribals.

Three decades' experience of the new structure of local government has elicited both negative and positive responses: although there have been many complaints about the inability of these new structures to shake entrenched power relations and caste equations in rural India, there has also been some hope, that with time, the new *panchayats* will be able to run democratically and autonomously.

2.2. Features of Indian Democracy

Indian democracy, unlike Western European democracies, is plagued by the following problems.

2.2.1. No Inner Party Democracy

Most of the political parties in India, whether national, regional or local, do not hold periodic elections to elect office bearers, like President, Vice-President, and General Secretaries. These practices across all parties weaken the democratic values of parliamentary institutions.

2.2.2. Criminalization of Politics

Since the late 1980s, the decline of Parliament has further continued due to unprecedented increase in corruption and criminalization of politics. In the fifteenth *Lok Sabha* elected in 2009, 30 percent of MPs had criminal cases pending against them in courts. Among the two main national parties – the Indian National Congress and the Bharatiya Janata Party – the percentage of tainted members stood at 21 per cent and 38 per cent, respectively. The relevant data for other parties were as follows: Communist Party of India (Marxist) 19 per cent, Bahujan Samaj Party 29 per cent, Janata Dal-United 40 per cent, Biju Janata Dal 29 per cent, All India Anna Dravida Munnetra Kazhagan 44 percent, Dravida Munnetra Kazhagam 22 per cent, and so forth. The situation got worse in the 16th *Lok Sabha* elected in 2014, with MPs with criminal charges going up to 34 percent from 30 percent in the previous *Lok Sabha*. However, within the two major national parties, the tally of such lawmakers went down in INC from 21 to 18 per cent and in BJP from 38 to 35 per cent (Singh, 2015, p. 363). It is regrettable to note that out of the 539 winners analyzed in Lok Sabha 2019, 233 MPs have declared criminal cases against themselves. This is an increase of 44 per cent in the number of MPs with declared criminal cases since 2009 (Patel, 2019).

2.2.3. Election Malpractices

In India election malpractices were quite common in the 1960s and 1970s. Booth capturing, electoral violence /killings, preventing genuine voters to exercise their vote, impersonation of voters (as voter Identity Card was not mandatory then), bribing voters through money, liquor or saris (clothes) was very common. Now, the Election Commission has introduced tough measures. These days' elections are not marred by violence (see Electoral Fraud and Manipulation in India and Pakistan, 2020).

2.2.4. Political Parties and Right to Information (RTI Act)

In a decision on June 3, 2013, the Central Information Commission (CIC) used the RTI Act to bring six national political parties—the Indian National Congress, the Bharatiya Janata Party, the Communist Party of India, the Communist Party of India (Marxist), the Nationalist Congress Party, and the Bahujan Samaj Party—under the purview of Section 2(h) of the Act. This move was made in an effort to support the growing public opinion in India toward greater transparency in governance. In view of this decision, these political parties were asked to provide information to ADR (Association of Democratic Reforms), an NGO, on whose complaint the CIC had passed

orders. When none of these political parties complied with this decision, ADR filed a petition in the Supreme Court on 19 May 2015 seeking transparency and accountability in the functioning of recognized national and regional political parties. The petition further urged the court to direct all such parties to disclose details regarding their income and expenditure. The petitioners also sought the entire details of donations and funding received by the political parties, irrespective of the amount donated as well as the full details of the donors making donations to them and to the electoral trusts. The decision of the Supreme Court will determine whether the law of the land applies to political parties or are political parties above the law. As of 1 August 2024, the case is not yet decided.

It is to be noted that, currently political parties are required to disclose information of only those donors who donate above Rs 20,000. As this is required only to enjoy tax exemption, those parties who do not submit their contribution reports are not penalized.

There is also a problem of electoral bonds introduced by the Modi government in 2017 through money bill. This law allows citizens of India and corporate houses to donate huge sums of money to political parties of their choice. The Electoral Bond Scheme, 2018 is arbitrary, unconstitutional and problematic. The amendments brought through the 2017 Act do not require political parties to mention the names and addresses of those contributing by way of electoral bonds in their contribution reports filed with the Election Commission of India annually. This will have a major implication on transparency in political party finances and will fundamentally alter the perception around political donations. The scheme gives an unfair advantage to the party in power at the centre, undermines the Election Commission's oversight role, and deprives the voters of their right to determine if the ruling party is extending undue favours to its donors. Moreover, the scheme makes the Right to Information Act redundant (Jaswal, 2019, p. 32), as the Supreme judgment of 15th February 2024 noted. The constitutional validity of the scheme was challenged in the Supreme Court by ADR and later by Common Cause, an NGO, and the Communist Party of India (Marxist).

It is gratifying to note that on 15 February 2024, a five-judge Constitution Bench led by Chief Justice D. Y. Chandrachud unanimously struck down the 2018 Electoral Bonds (EB) Scheme. The Bench held that the Scheme violated the voters' right to information enshrined in Article 19 (1) (a) of the Constitution. "Information about funding to a political party is essential for a voter to exercise their freedom to vote in an effective manner," they said. According to the judgment the Scheme facilitated anonymous donations to political parties from corporations (*Association for Democratic Reforms vs Union of India*, 15 February, 2024).

Petitioners, Association for Democratic Reforms (ADR), Common Cause, and the Communist Party of India (Marxist) had argued that the scheme allowed "non-transparency in political funding" and legitimized electoral corruption at a "huge scale." It was later found out that non-profit-making companies had bought bonds for ruling BJP to get favours from the government.

Commenting on the Supreme Court judgment, Vineet Bhalla opined that voters' right to information is far too important to be curtailed on the pretext of privacy or checking black money in electoral finance (Bhalla 2024).

3. GENDER JUSTICE

The issue of gender justice in India can be discussed under the following headings:

3.1. Constitutional and International Law Precepts

The Indian Constitution guarantees and posits formal equality under Articles 14, 15, and 16. Article 15 (1) prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. However, under Article 15 (3) power is vested in the State to make special provisions (affirmative action) for women and children. Under DPSP, both men and women are entitled for equal pay for equal work (Article 39). A provision for maternity benefit to women is provided in Article 42. Article 44 directs the State to enact Uniform Civil Code (covering family laws) to nullify the gender bias in different personal laws that are in operation in India.

International norms of gender justice are found not only in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), International Covenant Economic, Social and Cultural Rights (ICESCR) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), but the CEDAW under Article 4, provides for affirmative action in favour of women. However, it should be borne in mind that India has made reservations to Article 16 of CEDAW, which prevents it from removing all forms of discrimination against women existing in the personal laws of different communities.

3.2. Statutory Laws

Since women in India today face many problems like female feticide, infanticide, child marriage, domestic violence, sexual violence and inadequate representation in institutions of governance. To advance gender justice the Parliament has enacted many laws, such as, Prohibition of Child Marriage Act, 2006 (to replace Child Marriage Restraint Act of 1929); Dowry Prohibition Act, 1961; Maternity Benefit Act, 1961; the Equal Remuneration Act, 1976; The Immoral Traffic (Prevention) Act, 1956; Pre-conception and Pre-natal Diagnostic Techniques Prohibition of Sex Selection Act, 1994; Indecent Representation of Women (Prohibition) Act, 1986; Protection of Women from Domestic Violence Act, 2005 (This Act is a civil law. It not only defines for the first time ‘domestic violence’ and entitles women to get a Protection Order, but also contemplates various forms of reliefs such as maintenance, compensation, residence and custody); and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Muslim Women (Protection of Rights on Marriage) Act, 2019 declares the instant divorce granted by pronouncement of talaq three times as void and illegal. It provides for imprisonment for a term up to 3 years and fine to the husband who practiced instant Triple Talaq.

One of the key initiatives undertaken by the federal Government to promote gender equality has been the adoption of Gender Budgeting (GB) as a tool for mainstreaming gender in all government policies and programmes. Through GB, the Government aims to ensure the translation of Government’s policy on gender equity into budgetary allocations.

3.3. Legal Pluralism: The Politics of Personal Laws

Matters concerning marriage, divorce, adoption, succession/ inheritance and maintenance are governed by separate family laws of Hindus, Muslims, Christians, and Zoroastrians. These laws are based on customs, traditions of respective religions. Government does not interfere in these matters. Hindu laws were reformed during 1955-56 by enacting four Acts. Though these new Hindu laws have to some extent elevated the status of Hindu women, they still contain many

provisions of gender injustice. Many scholars and Hindus in general criticize that the Government has not reformed the laws of minorities, i.e., Muslims, Christians and Zoroastrians. The Government's policy is not to reform minority personal laws without their consent and initiative. Many feminists and secular scholars have criticized this double standard (see Agnes, 1999). But recently the N.D.A. (National Democratic Alliance) government led by Narendra Modi has passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, banning triple talaq without seeking consent of the Muslim community. The Act declares the instant divorce granted by pronouncement of talaq three times as void and illegal. It provides for imprisonment for a term up to 3 years and fine to the husband who practiced instant Triple Talaq.

There is another problem. Many secular and human rights scholars want that the Government should replace their separate personal laws by enacting Uniform Civil Code (UCC), as stipulated by Article 44 of the Constitution (See Neusbam, 2001 and Mackinnon, 2006). The minority groups are opposing any such move despite Supreme Court directives in this regard. Before a consensus on UCC draft is being achieved, all personal laws should be reformed with a view to remove gender inequality and gender discrimination, of course with the consent of respective religious communities.

3.4. Women's Reservation Bill (WRB)

In India women are not represented adequately in Parliament and State legislatures. Not more than 10 per cent of women are represented in Indian Parliament, whereas the world average is 19.2 per cent and the regional average (Asian) is 18.5 per cent; this puts India at 86 out of 186 in the Inter-Parliamentary Union league table for wom0en's representation in parliaments and 122 in the UNDP Gender Inequality Index (2008) (Rai, 2012, p. 196). Rai's article is based on a study of 23 women MPs from 1994 to 2004, one third of whom were interviewed. Rai writes that even these 10 per cent women got opportunity to become MPs due to family connections/networks (either their father, mother, brother or husband was or is MP or an influential leader of the party) (Rai, 2012, pp. 199-202). She reveals that some of the MPs were against quota/reservation saying that it will create a lot of heartburn among male colleagues, and they will respect "quota candidates, and question their ability" (Rai, 2012, p. 208).

The Indian example of low representation therefore is curious and difficult to explain, as many democracies in Latin America, East Asia and Africa, and South Asia have adopted women's quota laws but the politically progressive India is lagging behind in this regard.

Alhough there was no opposition to providing 33 percent reservation to women in local and urban governments, the proposed bill to reserve seats for women in the Parliament and State Assemblies has been opposed by the majority of the political parties. The WRB was first introduced in the Parliament by Deve Gowda government in 1996 as the Constitution (Eighty-First Amendment) Bill to provide not less than one-third of the total seats for women in Parliament and the State Assemblies. The bill, further proposed to reserve 22 per cent seats reserved for SCs and STs to women from these groups. Together, this adds up to 33 per cent reserved seats for women in national and state legislatures. During the last 28 years, many times WRB was introduced in the Lok Sabha but never got adopted for lack of support from male members. In March 2010, the Constitution (108th Amendment Bill) providing for reservation for women in the Parliament and the State Legislatures was passed by the *Rajya Sabha* but till this day the lower house has not adopted it. It appears that the 1996 bill was introduced under the pressure of 73rd and 74th Constitutional Amendments which reserved one-third seats for women in local and urban governments to make them inclusive institutions. However, it is gratifying to note that several States such as Andhra Pradesh, Bihar, Chhattisgarh, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Tripura have amended

their respective Acts to provide 50 per cent reservation for women in local bodies. In Sikkim, reservation for women is 40 percent.

For Indian democracy it is good news that on 28 September 2023 the Parliament adopted the Constitution One hundred and sixth Amendment Act, 2023, which seeks to provide 33% of political representation to women in the Parliament and state Assemblies. Additionally, this reservation will also extend to the seats reserved for SCs and STs in Lok Sabha and state legislative assemblies. The Modi government got this Bill adopted to influence the 2024 general election to Lok Sabha. The BJP thought that women voters will support BJP to win 400 seats in Parliament, although it had no influence on voting behaviour as BJP could not secure a simple majority to form the government on its own. There are other problems with this law. It stated that the Act shall come into effect only after delimitation of Parliamentary constituencies is undertaken on the basis of the relevant data of the next 2021 census are published. It must be noted that the 2021 census has not been conducted so far. Going by the government's slow procedures in undertaking delimitation after census data is released it may take more than 5 to 6 years. That means even the general election of 2029 will not be seeing its implementation. Moreover, this reservation is only for 15 years!

3.5. Role of The Supreme Court

In many cases brought before the Supreme Court between 1950 and 1975 concerning complaints of rape, restitution of conjugal rights of husband (where wife stays away from her husband for the purpose of employment), adultery by husband, the role of judiciary was very narrow, legalistic and very conservative (See for case law Sivaraman, 2000; Agnes, 1999, pp. 84-90). It was only after 1975 that courts began to recognize women's right to take up employment and stay away from husband's residence.

It was through cases of PIL on women's rights that the High Courts and apex Court took a progressive stand to deliver progressive judgments to advance gender justice (See Bhagwati, 1985; Baxi, 1985; Sivaramayya, 2000; Sathe, 2002; Sood, 2008 and Deva, 2009). The Supreme Court has made effective use of the CEDAW in advancing gender justice in a number of cases. Let us look at some cases. In *Vishaka vs. State of Rajasthan*, regarding "sexual harassment" of women at the workplace, the Court was more forthright in the use of human rights instruments for interpreting the constitutional provisions as well as the legal position of treaties that are not enacted as law. Chief Justice J.S. Verma observed:

> *In the absence of domestic law* occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all place, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with dignity in Articles 14, 15, 19(1) and 21 of the Constitution and the safeguards against sexual harassment therein. *Any International Convention not inconsistent with the fundamental rights and in harmony with its sprit must be read into these provisions to enlarge the meaning and content thereof*, to promote the object of the constitutional guarantee. This is implicit from Article 51 (c) and the enabling power of parliament to enact laws for implementing the International Conventions norms… [Italics added] [AIR 1997 SC 3011].

The Court further stated that in the absence of domestic law on the aspect, these Conventions and norms as ratified by India could be relied on by the Court to formulate guidelines for enforcement of fundamental rights. The Court had framed Guidelines concerning Sexual Harassment of women at workplace, which continued to be applied as law till Parliament enacted a law on the subject.

In *Geeta Hariharan* vs. *Reserve Bank of India* (1999 SCC 228), a provision of Hindu Minority and Guardianship Act, 1956 was challenged for its constitutionality, which regarded father as the natural guardian of the son. The Supreme Court upheld the constitutionality of the provision but accorded a different interpretation to the word "after" in the section to mean "in the absence of" rather than "after the death of the father". Such an interpretation, in the court's view, was in keeping with the mandate of gender equality enshrined in the Constitution, the CEDAW, and the Beijing Declaration, which directs all States Parties to take appropriate measures to prevent discrimination of all forms against women.

In *AKC hopra case* (AIR 1999 SC 625, P. 634), the Court referred not only to ICESCR but also to CEDAW and observed that sexual harassment of females at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated.

In *Gaurav Jain's* case (AIR 1997 SC 3021), Supreme Court reiterated the principles of CEDAW and has acknowledged that human rights for women including girl child are inalienable, integral and an indivisible part of the universal human rights. The full development of personality and fundamental freedoms and equal participation of women in political, social, economic, and cultural life are concomitants for national development, social and family stability and growth-cultural, social and economic. In this case, the Supreme Court directed the Ministry of Women and Child Development (MWCD) to frame appropriate rescue and rehabilitation for sex- workers and prostitutes.

In *Municipal Corporation of Delhi vs. Female Workers* (Muster Roll) (AIR 2000 SC 1274) Supreme Court held that Constitution and the contract of service between the Delhi Municipal Corporation and women employees and by doing so these women become immediately entitled to all the benefits conceived under the Maternity Benefit Act, 1961.

In *Vasantha vs. Union of India,* 2001 (ii) LLJ 843, the Madras High Court has struck down the provisions of Section 66 of the Factories Act. This section prohibits women from working in night shifts and has laid down certain guidelines and welfare measures for the female workers who come forward to work during the night shifts.

Notwithstanding some of these positive developments towards advancing gender justice in India, women still are facing many atrocities. The National Crime Records Bureau publishes each year data of such crimes against women, under the title, *Crime in India.*

4. DEGREES OF DEMOCRACY

In India, there are degrees of democracy, meaning that each State of India has a different degree of democracy. For instance, because of different histories of caste reform movements, democracy in South India has taken deeper roots than in the North. In Southern states, democracy is marked by more political participation and significant achievements on the social development front. The most distinct departure from the general pattern, however, is the case of the State of Kerala. In this State, there has been greater political and economic integration of subordinate classes. The frequent inter-caste and inter-community (Hindu-Muslim) conflicts and violence in North Indian states, coupled with the lack of political participation of minority and subordinate groups, has weakened democratic institutions in these states. Journalists have coined a word, BIMARU (in Hindi language bimaru means sick), to describe the political, economic and social developments of North Indian states of BIMARU (i.e., the States of Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh) (Heller, 2000, p. 486).

If democracy in Kerala worked better than in the rest of India, it is in large part because individuals have been equipped with the basic human capacities required for citizenship. Literacy in Kerala was 100 per cent in 2001, whereas for the rest of India it was around 64.84 per cent Kerala had made a policy of providing universal primary education as a priority. Because of 100 Percent literacy per capita circulation of newspapers in Kerala was the highest in India. There was greater political participation of marginalized groups like women and dalits. This reflected in voter participation in elections, as their participation rate was 15 to 20 per cent higher than the national average. Thus, according to Heller, the case of Kerala is especially instructive, as its democracy bears a strong resemblance to European social democracies (Heller, 2000, p. 517).

4.1. Under-Representation of Muslims in Governance

Many studies have been conducted on the plight of minorities, especially dealing with the questions of their security, educational backwardness, religious and cultural rights, representation in political bodies, opportunities for employment and economic development. Let us elaborate on some aspects of these issues. Among the various minorities the plight of Muslims is very deplorable as far as their representation in Parliament/State Assemblies and government jobs is concerned. According to one study their members in *Lok Sabha* were around 5 percent (average). For instance, in 1952 they constituted 4.4 per cent; in 1962, 4.7 per cent; in 1967, 5.5 per cent; in 1977, 6.2 per cent; 1980, 9.2 per cent (it was highest number so far); in 1984, 8.7 per cent; in 1989, 5.4 percent and in 1996, 4.9 per cent. In some State Assemblies there was not a single member from their community. For instance, under this category were following States: Madhya Pradesh (1993), Orissa (1961), Pondicherry (1977), Goa, Daman & Diu (1972 & 1974) and Nagaland (1974 & 1987) (Ansari, 1998, pp. 222-23, see note no.2). Rajeev Bhargava argues aggressively that the Indian Muslims are a marginalized minority who have been persistently underrepresented in political institutions, particularly in the Indian Parliament. He strongly recommends four measures to rectify this: (i) Multi-member constituencies; (ii) Proportional representation in the form of preference voting; (iii) Intra-party quotas in proportion to population; and (iv) The identification by the election commission of the constituencies where intra-party quotas are to be allotted. (Bhargava, 2007, p. 117).

4.2. Sycophancy

One distinct problem Indian democracy is afflicted with is that of sycophancy. In June 1993, one State Chief Minister was weighed against gold-plated silver coins with his face engraved on the obverse side. The coins were a tribute from a junior minister in his cabinet. A few weeks later, a 160-page book – which took all of five days to write – was published in praise of the Chief Minister with a colour photograph of him on the cover and a postage stamp-size photograph on the top left corner of every page. A commentator noted that “The book oozes sycophancy and unaltered flattery” (Cited in Thakur, 1995, p. 336).

4.3. The Decline of Parliament

Parliament is the first and foremost authoritative mechanism of law making and deliberative democracy, as the Parliament was made the custodian of making laws for the country, keeping executive accountable to the people through their representatives in the Lok Sabha (Chakrabarthy and Pandey 2008: pp.103-104). Over the years its performance and role have been gradually on decline. Following empirical data corroborates that there is a democratic deficit.

(i)The successive sessions of Parliament have been shortened. There has been a sharp reduction in the number of sittings. In 2012, the *Lok Sabha* had only 74 sittings, whereas, it had 103 (1952), 151 (1956), 51 (1999), 77 (2006), and 87 (2010) sittings in earlier years. This has affected its law-making function. For instance, in 1952, 82 bills were passed and in 2006, 65 bills and in 2011 only 36 bills were passed (Singh, 2015, pp. 364-65). In 2006, Kapur and Mehta (Kapur and Mehta, 2006) conducted a noteworthy study that revealed that the number of actual days of sitting, or the amount of time Parliament spends discussing laws, has been steadily declining. This is only a third of what it was fifty years ago in India. Even worse, there can be even less official activity than in the past due to a sharp rise in adjournments.

(ii) During the first three *Lok Sabhas*, on an average each year 135 hours of discussion on budgets took place, whereas this figure has shrunk to 35 hours each year in the last three *Lok Sabha*s before the general election of 2014 (Singh, 2915, p. 367). A large number of bills, i.e., non-money bills, are not debated at all; most are passed by the voice vote, and without recording how individual MPs voted. This dilutes transparency and accountability of the representatives to the electors. Recording of votes should be made compulsory (ibid. p. 369).

(iii) When the bills are not passed timely, the governments resort to issuing ordinances. Until 2013, 600 ordinances (temporary laws whose validity is only for six months or till that ordinance is legislated as law by both the Houses of Parliament) have been promulgated by the President: in 1952, 32 by Nehru's government; during 1975-76 (period of national emergency) 61, in 1993 (during PV Narsimha Rao's tenure), 34 (largest in a single year), and between 1996 and 1998, 83 ordinances were promulgated. If the saner voices of Pandit Hariday Nath Kunzru and M.V. Kamat were accepted, who had suggested in the Constituent Assembly that the provision of ordinances should be abolished or diluted further, we would not have seen the misuse of the provision. Moreover, it would have further enhanced Parliament's role in enacting laws (Singh, 2015, p. 369).

(iv) Disruptions to debate in India's Parliament by members have generated concern among critics, who have associated disruptions with a larger narrative of the decline of India's political institutions. The violation of debate through disruption is perceived by Parliament as a threat to its prestige, legitimacy, and therefore its institutional reproduction (See Spary, 2010). The precedent of frequent disruptions of Parliamentary proceedings by opposition parties is another serious problem. It has affected, especially the practice of parliamentary questions. Under the rules every sitting MP is entitled to raise questions about the working of a ministry or department for the ministers concerned to reply and explain. un-starred questions get written replies, while the starred questions are replied orally, and MPs get opportunity to ask supplementary questions. However, Parliament suffers from serious practical and structural limitations in this regard. In the 15th*LokSabha* (2009-2014) only 648 or 10 percent of listed questions were orally answered on account of 40 per cent scheduled time being wasted by interruptions by the opposition. Unlike its British counterpart, the Parliament does not allow time for Prime minister's question hour every Wednesday for interdepartmental affairs. Question hour is a powerful instrument of government accountability (Singh, 2015, pp. 361-62).

(v) In the first 65 years of India's parliamentary history only 14 private member's bills have been passed, the last one was in 1970. When we compare this with the "Mother of all Parliaments", the British Parliament, it appears insignificant, as the latter has passed 17 private member's bills in the three years since the 2010 elections! (Singh, 2015, p. 369)

There has been a continuing decline of parliamentary democracy. A recent study documents the emerging grim realities after 2014 regime change (Chatterjee, 2022).

(a) The percentage of bills referred to Parliamentary Committees has drastically reduced from 71 per cent in the 15th Lok Sabha (2009-14) to 27 per cent in the 16th Lok Sabha (2014-19), and to only around 13 per cent since 2019.

(b) Between 2004 and 2014, 61 ordinances were passed at an average of around six ordinances per year. After 2014, more than 80 ordinances have been passed in eight years, at around ten per year.

(c) In the 14th (2004-09) and 15th Lok Sabha, a total of 113 short duration discussions were held. In the 16th and 17th (2019-present) Lok Sabha, it has declined to 42.

(d) In the 14th and 15th Lok Sabha, 152 calling attention notices were allowed. In the 16th and 17th Lok Sabha, this declined to 17.

(e) Between 2004 and 2014, 99.38 per cent assurances were implemented. After 2014, this has dropped down to 79 per cent, with 2021 seeing the lowest ever record of less than 30 per cent assurances being implemented.

Notwithstanding these deleterious effects of Indian democracy, some institutions that had fallen into disuse have shown renewed vigor. For example, the National Election Commission (NEC), once a glaring failure at its mission of conducting elections free of intimidation or fraud, has over the past two decades become a robust and highly effective body. No government or politician dares publicly to challenge its prerogatives. Regardless of which individual holds the office of Chief Election Commissioner (CEC), the writ of the NEC is now mostly beyond question or reproach. This example provides much hope and comfort to champions of Indian democracy. The credit for restoring this glory to NEC goes undoubtedly to former CEC, T. N. Sheshan, who brought many electoral reforms in the name "Model Code of Conduct" for political parties during elections. His ruthless and impartial enforcement of this Code, which is not legally binding, made Deccan Chronicle, a newspaper from Hyderabad, to publish a cartoon depicting CEC as "one day's sultan (king) (See Gilmartin, 2009).

Also, it is encouraging to note that the Parliament has long ceased to be an Anglicized, upper-caste-dominated institution and is now a genuinely representative body. Granville Austin rightly remarks "Hindu apathy is a thing of the past. The oppressive effects of hierarchy are waning as the open society up warps national talents. Awareness of rights is becoming unquestionable… Representative government and constitutional democracy are firmly established … Public dissatisfactions with the current state of affairs are an affirmation of democracy's spread *not a denial of it [italics added]*" (Austin, 1999, pp. 667-68). India has become a democratic open society and politics is debated in metropolitan cities, towns and villages of the country and elected representatives from *Panchayat* to Parliament, including Prime Minister, Ministers, and Chief Ministers are always asked to defend their acts of Omission and Commission (Bhambri, 2007, p. 97).

4.4. Rampant Corruption in Government Offices

Corruption in India is a common problem since time immemorial. Aristotle's contemporary, Chanakya in his classic, *Arthshastra***,** talks about corruption. He had said:
Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least a bit of the King's revenue. Just as fish under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out taking money [Kautilya's Arthashastra, pp. 93-94].

During the last ten years, under UPA governments (2004-2014) many scams (such as Coal Allocation Scam, 2012, involving Rupees 1.86 lakh Crores, 2G spectrum Scam, 2008, worth 1.76 lakh Crore, Commonwealth Games Scam, 2010, involving Rs. 70,000 Crore) came to light and have been investigated and cases on them are ongoing in Supreme Court or High Courts. In some cases, conviction has taken place. For example, in January 2013 a Delhi Court sentenced Om Prakash Chautala, former Chief Minister and son of Mr. Devi Lal (former Deputy Prime Minister) and his son Ajay Singh Chautala, deputy Chief Minister of Haryana, for ten years imprisonment under various provisions of the IPC and the Prevention of Corruption Act for teachers' recruitment scam. Chautala was found guilty of illegally recruiting over 3,000 unqualified teachers. A CBI investigation was ordered by the Supreme Court based on a writ filed by the former director of primary education Sanjeev Kumar, a 1989 batch IAS officer.

There are other examples, the monsoon session of Parliament (August-September 2015) was a total wash out and no business could be transacted due to the demands of resignations of Shivaraj Singh Chauhan (then Chief Minister of Madhya Pradesh) for VYAPAM scam, of Mrs. Vijayraje Scindia (former Chief Minister of Rajasthan) for Lalitgate Scandal, and late Mrs. Sushma Swaraj, Foreign Minister of Modi-led BJP government, for facilitating Lalit Modi to fly to London to escape investigation of IPL Cricket Scam.

Therefore, corruption is becoming a ubiquitous issue in modern-day India. According to a 1997 survey, 20–33% of slum inhabitants in major cities like Madras, Ahmedabad, and Bangalore—not to mention the middle class—had to pay "a bribe for getting a service or solving a problem with a public agency." In a 1995 six-city survey, more than half of the 1,556 participants said that bribes were necessary to get even the most basic of services, such as a driver's license or an electrical connection. India's rural areas are impacted by corruption. Rajiv Gandhi conceded in 1989 that only 15% of the funds meant for rural development actually made it to the intended recipients. Maintaining village records, the patwaris are infamous for their malpractices, including giving preference to landlords who are inclined to (Jaffrelot, 2002, p. 77).

There is more to it. The 14 *Lok Sabha* candidates interviewed by Arun Kumar mentioned that they paid journalists for covering their election campaign and proprietors of local press were paid by the column centimeter (cited in Jaffrelot, 2002, p.115).

Corruption has not declined during the NDA (National Democratic Alliance) rule of Modi government during the last nine years. A recent report of Comptroller and Auditor General India, a big scam has been uncovered in the construction of Dwarka Expressway. The report states that the road, for which an approval of Rs 18 crore per km was given, was built at a cost of Rs 251 crore! ("CAG audit flags huge cost overruns in Dwarka Expressway project", *The Economic Times*, 14 August 2023).

4.5. Weak Ombudsman at National Level

In December 2013, Parliament enacted *Lok Pal* and *Lokayuktas* Act, in the backdrop of civil society's pressure, especially the agitation led by Anna Hazare's India against Corruption Movement. Originally introduced in Parliament in 1968, it took 45 years to pass the bill to institutionalize the Ombudsman in India. After the passage of the Act, the federal government of Mr. Modi has although appointed *Lok Pal*, it has neither shown any activity or activism nor has made any news (as the incumbent is not even known). It may be recalled that when Modi was Chief Minister of Gujarat, there was no *Lok Ayukta* for almost 8 years!

4.6. Marginalization of Minorities, Dalits and Tribals

At the outset it must be said that India falls far short of meeting EU standards on Human rights, especially regarding group/minority rights. Let us briefly recall here the EU norms in this respect. The 1995 Framework Convention on National Minorities (FCNM) provides many norms for the protection of minorities. Article 4 (1) of the Convention obligates the States Parties to undertake to guarantee persons belonging to national minorities the right to equality before the law and of equal protection of the law. In this respect any discrimination based on belonging to a national minority shall be prohibited. Further, under Article 5 (1) of the FCNM the States undertake to promote the conditions necessary to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions, and cultural heritage. Article 5 (2) stipulates that States shall refrain from policies or practices aimed at assimilation of minorities against their will and shall protect these persons from any action aimed at such protection (FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, 2023). Moreover, the Organization for Security and Co-operation in Europe (OSCE – Helsinki Declaration) appointed in 1992 the High Commissioner for National Minorities (HCNM). It has several roles based on observation, negotiation, and recommendation. Its mandate is to give early warning of crises involving minorities. It works as a conflict prevention mechanism. Its job is to maintain status quo among States and people/minority groups. On the whole it is a confidence and security building institution.

In comparison to European norms and practices, India's record is poor. Atrocities against minorities, the Scheduled Castes, and the Scheduled Tribes occur frequently. Preventive detention laws still exist on statute books. Misuse of these laws can be seen especially against persons belonging to minorities. It is worth recalling here **Mahatma Gandhi's words on minority rights. He had once said that "a civilization can be judged by the way it treats its minorities"**.In the light of this statement, we can analyze where India stands today in the community of civilized nations as far as minority rights are concerned.

The concept of rule of law is sometimes compromised due to political interference in the functioning of police. This is starker with regard to police response to safeguard life and property of persons from minorities during Hindu-Muslim riots. It is true that police sometimes directly or indirectly sides with the majority community in communal riots (see Engineer and Narang 2006). Following excerpts from the reports of government-appointed judicial enquiry Commissions on such riots corroborate this inference.

i. Justice Madon Commission on Bhiwandi, Jalgaon and Mahad (Maharashtra) riots (1970) indicted the Jan Sangh (former Hindu rightist political party, now since 1980 re-emerged as Bhartiya Janta Party. The Justice Madon report said, "the working of the Special Investigation Squad is a study in communal discrimination. The officers of the squad systematically set about implicating as many Muslims and exculpating as many Hindus as possible irrespective of whether they were innocent or guilty. The police practiced discrimination in making arrests and concentrated upon Muslim rioters turning a blind eye to what Hindu rioters were doing. No investigation was conducted into the composition and activities of Hindu-communal and allegedly communal organizations operating in Bhiwandi but only in respect of Muslim communal and allegedly communal organizations. Deputy superintendent of police S.P. Saraf held private conferences and discussions with several leaders of Hindu organizations including many who were implicated by Muslims in offences of arson and murder". (*Report of the Justice D.P. Madon Commission on the Bhiwandi, Jalgaon and Mahad of 1970*, https://www.sabrang.com/srikrish/antimin.htm). In almost all riots, it is mainly the members of the minority who face injuries and deaths caused by the police firings. The courts have acquitted many persons from the majority community, who

were accused of involvement in riots, and many have remained unaffected from the rule of law. For example, the Bhagalpur lower court acquitted 39 persons accused in one of the cases related to the killing of 24 persons in Bhagalpur riots in 1989 (Khan, 2006, pp.149).

ii. In the anti-Sikh riots in November 1984 that followed the assassination of the Prime Minister Indira Gandhi by two of her Sikh bodyguards, the death toll of the Sikhs killed in Delhi was 2,733 or one every 30 seconds. This was one of the most well-organized communal riots in connivance with the ruling party (Indian National Congress) in power. Despite the submission of reports by three commissions of enquiry – Justice Ranganath Misra Commission report (1987), Jain-Agarwal Committee report (1990) and Justice R.S. Narula panel report (1994), all of which had indicated 72 police officers, two Union Ministers and a congress MP, no prosecution has been initiated against any one of them so far. It is well known that the Delhi carnage was instigated by local Congress party MPs and even with the passive complicity of the security forces (Peoples Union for Democratic Rights and Peoples Union for Civil Liberties (PUDR and PUCL), *Who are the guilty*? Report of a joint enquiry into the causes and impact of the riots in Delhi from 31 Oct to 10 Nov (PUDR & PUCL, 1984).

iii. Justice Srikrishna observed in his report on Mumbai riots (1992-93) that
There was a general bias against the Muslims in the minds of average policemen which was evident in the way they dealt with Muslims. …The response of police to appeals from desperate victims, particularly Muslims, was cynical and utterly indifferent. On occasions, the response was that they were unable to leave the appointed post; on others, the attitude was that one Muslim killed was one Muslim less… police officers and men, particularly at the junior level, appeared to have inbuilt bias against the Muslims which was evident in their treatment of the suspected Muslims and Muslim victims of riots… The bias of policemen was seen in the active connivance of police constables with the rioting Hindu mobs, on occasions, with their adopting the role of passive on-lookers on occasions, and finally their lack of enthusiasm in registering offences against Hindus even when the accused was clearly identified….
(Report of Srikrishna Commission, 1992-93).

iv. The Concerned Citizen's Tribunal headed by Justice V.R. Krishna Iyer, in its report on Gujarat riots of 2002 indicted the Bhartiya Janta Party government in Gujarat headed by Mr. Narendra Modi, the present Prime Minister of India. The report is a comprehensive one and stated that in the "genocide" over 1000 Muslims were killed (*Times of India*, 22 November 2002). It was reported that *Sangh Parivar* Cadre openly were boasting "*Yeh andar ki baat hai , Police hamare saath hai*!" (It is inside information, the police are with us!), [*Combat Communalism*, March-April 2002, p. 114]. This statement proves that there was the state complicity and connivance in the organized pogrom against minorities in Gujarat. There is more to it. On February 28, as carefully planned mass killings were engineered in 30 different locations all over the state, two senior cabinet ministers, Ashok Bhatt, Gujarat State health minister and I K Jadeja, state urban development minister, sat in the police control room in Ahmedabad and the State control room in Gandhi Nagar respectively, and directly influenced the police not to act. Top police officials countrywide, according to *Communalism Combat* (March-April 2002) said, it was "shocking and unheard of" that politicians sit in police control rooms and try to influence the independent functioning of the police in utter disregard of ROL. It was due to State complicity that the US Government cancelled Mr. Modi's Visa after issuing it to him. Between 2005 and 2014 (till he assumed the office of the Prime Minister) Modi was not allowed to visit the US, the U.K. and other countries.

v. The fact of communal bias on the part of the police is worse than the role of Hindu communal outfits in inciting violence against minorities. This is a fact on which not only the officially appointed commissions of enquiry have adversely commented upon, even the sixth report of the National Police Commission, dated March 1981, was constrained to say: "[In] several instances police officers and policemen have shown an unmistakable bias against a particular *community* while dealing with communal riots" (Cited in Anand, 1999, p. 157). The frequent occurrence of such incidents prompted an Allahabad High Court Judge to remark that *the police represent the most organized group of criminals in India* (Amnesty International, 1993, p 76). A statement of Vibhuti Narain Rai, a senior serving IPS police officer in the Uttar Pradesh cadre, in this regard may be recalled here: "no [communal] riot can continue for more than 24 hours unless the state wants it to continue" (cited in Mirchandani, 2009, p.187).

vi. Terrorist and Disruptive Activities Act (TADA) was misused. According to India's then Minister of State for Home Affairs, M.M. Jacob, a total of 26,915 people had been detained under TADA between 1988 and 1991. Surprisingly, the highest figures were recorded in Gujarat (9569 people) where the menace of terrorism was extremely low compared to Punjab, Jammu and Kashmir and Assam. According to the report of Amnesty International, TADA was disproportionately used against tribals and Muslims. In Gujarat three quarters of those held under TADA at the end of 1989 were Muslims (Amnesty International, 1991, p. 114). Political violence against the minorities reached its peak with the consolidation of *Hindutva* forces (under the umbrella of Bhartiya Janta Party's rule in some States), leading to the communalization of institutions of governance like the police and the administration. In Gujarat, e.g., of the 300-400 persons arrested, only three were Hindus. The provisions of TADA and POTA have been often misused to arrest persons belonging to minorities. A study conducted by People's Tribunal, an NGO, in 10 States in July 2004 found that 99.9 per cent of those arrested under POTA were Muslims (cited in Manchanda, 2009, pp. 187-88).

vii. A report of the National Commission for SCs and STs records that between 1981 and 1986, 4, 022 SC/STs were murdered by high caste people or the State, i.e., the rate of murder exceeded one per day. Rights of *dalits* are violated throughout India despite the Protection of Civil Rights Act (1975) and Prevention of Atrocities Act (1989). The official statistics for the decade 1990-2000 indicate that a total of 285,871 cases of various crimes against *dalits* were registered countrywide, of which 14,030 were registered under the Protection of Civil Rights Act and 81,796 under the Prevention of Atrocities Act. This means that an average of 28,587 cases of practice of untouchability and atrocities against SCs were registered every year during the 1990s. These include 553 cases of murder, 2, 9990 cases of grievous hurt, 919 rapes, 184 kidnappings/abductions, 47 dacoities, 127 robberies, 456 cases of arson, 1,403 cases of caste discrimination and 8,179 cases of atrocities. In other words, every hour more than three cases of atrocities against SCs are registered, and every day three cases of rape and at least one murder are reported (Shah, *et al*, 2006, p. 134; Also see HRW, 1999). The National Crime Record Bureau (NCBR) data shows that atrocities against people of SCs have increased by 27.3 per cent in 2018 as compared to 2009. The NCRB 'Crime in India' report for the year 2022 shows Dalits in India continue to be vulnerable to caste-based atrocities. A total of 57,582 cases were registered for committing crime against SCs, an increase of 13.1% over 2021 (50,900 cases). The crime rate registered an increase from 25.3% in 2021 to 28.6% in 2022. Thus, every passing year records more atrocities.

4.7. Double Standards in Applying Rule of Law (ROL)

About minorities ROL has been compromised. The best example in this regard is that the State of Maharashtra has successfully prosecuted the persons involved in Mumbai bomb blasts that

occurred in March 1993. Many persons have been given sentences of imprisonment and one convict, Mr. Yakub Memon, awarded death sentence, was recently hanged. On the other hand, those who were involved in killing of Muslims in Mumbai riots during December 1992-January 1993 in the aftermath of demolition of Babri mosque by Hindu fundamentalists and have been indicted by the report of Justice Srikrishna Commission of Enquiry have not been prosecuted even after 30 years.

4.8. Delay in Justice Delivery System

Courts are overburdened with cases. Currently more than 50 million cases are pending in Indian Courts. In this regard, the analysis of Justice Rao, Judge of Andhra Pradesh High Court, is worth mentioning. On 5 March 2010, Justice Rao stated that courts in India will take 320 years to clear a backlog of 31.28 million pending cases in various courts. If these cases are distributed to all judges, each judge will have an average load of 2,147 cases. India has 14,576 judges as against a sanctioned strength of 17,641, including 630 High Court judges. This works out to a ratio of 10.5 judges per million people. The Supreme Court in 2002 had suggested 50 judges per million people. If the norm of 50 judges per million becomes a reality by 2030, the number of judges would go up to 1.25 lakh dealing with 300 million cases (*Times of India*, 6 March 2010).

The above analysis of Justice Rao needs to be revisited in the light of current data. As of 1 July 2023, the Parliament was informed by the Union Law Minister that there are 60.62 lakh cases pending in the high courts and 4.41 crore cases pending in the district and subordinate courts. As per the data retrieved from the Integrated Case Management System (ICMIS), there are 69,766 cases pending in the Supreme Court. ("More than 5 crore cases pending in courts in India", *Times of India*, 22 July 2023).

A 2019 NGO report to the UN Human Rights Committee by SAHRDC (pp. 5-6) further sheds light on the problem of judicial delay in India. This report noted that "the current judges-to-population ratio in India is estimated at 17 judges for every million citizens." This number is far lower than the United States, which has 151 judges per million and China, which has 170 judges per million people. The *Business Standard* stated that, "some experts estimate that at current rates of disposal the backlog would take 466 years to clear." This reflects how far India is in establishing good governance in the justice delivery system.

4.9. Poor Services Delivery System

During the last two decades India is experiencing the growing crisis of governability. The first National Democratic Alliance government during 1998-2004 could not win elections because the common people received poor service deliveries from government machinery. When administration fails to perform its duties, the Supreme Court or High Courts under their judicial activism compel governments to do their duties. Many times, the higher courts take *suo moto* cognizance of the government's failure to administer their policies and programmes. To improve the system Parliament enacted, due to pressures from NGOs, the Right to Information (RTI) Act in 2005. This act has greatly helped in bringing transparency in administration. But many RTI activists have been killed for exposing corruption or high-handedness of authorities.

5. CONCLUSIONS AND ASSESSMENT

Before arriving at conclusions and summary observations, let us quote Ramchandra Guha, one of India's leading historians, who wrote in 2005:

> In comparative terms, it is intriguing to think of India as being both Europe's past, in that it has reproduced, albeit more fiercely and intensely, the conflicts of a modernizing, industrializing, and urbanizing society. But it is also its future, in that it anticipated, by some 50 years, the European attempt to create a multi-lingual, multi-religious, multi-ethnic, political and economic community.

Philipp Dann while quoting him writes that "Guha compares the Indian experience with the European, and formulates the interesting thesis that we can find both in India: a mirror of Europe's *past* at the same time a taste of Europe's *future*. If one takes him seriously, the Indo-European comparison should be of great value for both sides [italics in original]". (Dann, 2011, p. 160)

What is discussed in the preceding pages combine facts with analyses regarding the various facets of the Indian conceptualization of Democracy and their comparison with EU carry their own derivative evaluation. The concept of democracy in India is by far the very best and strong in theory or on paper at the least and can be compared to those prevailing in EU countries, but its actual functioning is problematic. Empirical data contained in this paper suggests that the concept of democracy has little meaning and use for the common citizen (or especially for a person belonging to some marginalized groups) who are poor, illiterate and marginalized. Let us recapitulate some broad summary observations.

First, there is a great democratic deficit. There is a general decline of democratic institutions in India. Indian democracy is weakened because of frequent disruptions of parliamentary proceedings, criminalization of politics, electoral malpractices, lack of intra-party democracy, inadequate or under-representation of women and minorities, especially Muslims in Parliament and State Assemblies and so on. It is only the Supreme Court and the Election Commission of India who ruthlessly try to uphold democratic values. The elected preventatives and the executive are mostly responsible for this decline.

Second, it is true that the constitutional provisions guarantee gender equality and justice. To advance it the Constitution allows Affirmative Action in favour of women. Many statutory laws have been enacted to provide gender justice. Despite this gender justice is very fragile in India. Women face many problems. All religion-based personal laws are discriminatory towards women. There is a need to reform them with an objective to achieve gender equality. There is no consensus on enacting Uniform Civil Code to replace different personal laws in view of strong opposition from religious minorities. Moreover, crimes against women are on the increase. All this could be attributed to traditional Hindu Law of Manu which treated women of all castes as having the same socio-legal status that a *Shudra* or a low caste person had. India's reservations to CEDAW should also be seen with this perspective.

Third, "Collective or Group Rights" have been historically recognized in the Indian sub-continent. Religious, linguistic, cultural, caste (like *dalits*), ethnic and tribal minorities have been given special group rights, like freedom of religious rights, retention of religious or culture-based personal/family laws, provision of primary and secondary education in one's mother tongue, the right of minorities to establish their educational institutions and to reserve up to 50 per cent of seats to the students of minorities, etc. This is a unique feature of the Indian Constitution that it recognizes and protects simultaneously both the "individual" and "collective rights". Both these sets of rights are "core" rights in Indian understanding. There is more to it. The policy of "Affirmative Action" for marginalized groups like *dalits*, tribals, women, and Other Backward Classes (OBCs) has been introduced by the Constitution or the government as a measure of social justice to ensure and guarantee these groups *de facto* equality and equal opportunity.

Fourth, ROL, enshrined in the constitutional and statutory laws, is marred by biased/ partisan police, rampant corruption, poor justice delivery system or services delivery system. Thousands of accused and under trials are languishing in jails without convictions for long years or decades.

Fifth, while, due to criminalization of politics and erosion of moral values in public life, most of the institutions of governance are unaccountable, inefficient, and declining continuously, the role of two institutions – the Election Commission of India and the Supreme Court – in promoting democracy in the continental size of Indian State is both exemplary and unparalleled. Commenting on the latter on the 50th Anniversary of the Indian Supreme Court, Dr Adarsh Sein Anand, the then Chief Justice stated:

… [The Court] has… intervened to protect democracy and the rule of law… guided by the Latin *boni judic is est ampliare jurisdictionem* (law must keep pace with society to retain its relevance) … to create a civil society in which respect for human dignity is the corner-stone of its functioning, the Supreme Court has zealously protected the human rights of individuals… In expanding the ambit of the right to life and personal liberty, the Court has evolved compensatory jurisprudence, implemented international conventions and treaties, and issued directions for environmental justice. It has given directions, and also prescribed guidelines for the enforcement and achievement of human rights of various groups such as children, women, disabled, scheduled castes, scheduled tribes, bonded labourers, minorities, and socially and economically backward classes [‘Foreword’ in Verma and Kusum, 2000, p. vi].

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