



INDIA ELECTS 2019

# Transforming State Capacity in India

MILAN VAISHNAV

## INTRODUCTION

Over the past quarter century, India has undergone four important transformations. Politically, one-party dominance has given way to a highly competitive, multiparty electoral system and, more recently, to the political resurgence of the Bharatiya Janata Party (BJP) under Prime Minister Narendra Modi. Another part of India's political transformation has been the dramatic upending of the social basis of politics, as previously disadvantaged castes and communities have experienced a political awakening. In economic terms, India has traded its socialist, autarkic model for a more market-based approach that is more integrated into the global trading system. And, finally, when it comes to foreign policy, the country has pivoted from a posture of nonalignment to a warmer embrace of the United States and the West.

While one can debate the merits—not to mention the speed and extent—of each of these transformations, one area has remained relatively untouched: India's governance institutions. Unfortunately, India's core

governing apparatus has not enjoyed the same kind of rejuvenation that has touched these four other domains. In many ways, India is a twenty-first-century economic and diplomatic entity powered by a [nineteenth-century state](#).

The frailties associated with governance in India fall largely into three categories—what can be thought of as the three Ps: personnel, paperwork, and process. Despite the talk of India's overbearing government, a closer look reveals that the state is actually highly undermanned. Compared to its G20 peers, India has the [smallest number of bureaucrats per capita](#). When it comes to the state's core sovereign functions—revenue collection, public goods provision, public order, and justice—the Indian story is one of [scarcity rather than surplus](#). The reason the Indian state is often characterized as intrusive has more to do with the other two Ps: paperwork and process. While India lags behind in terms of personnel, it is overly bureaucratized when it comes to rules and regulations. Those who claim that the License Raj—the byzantine thicket of government licenses, permits, clearances, and permissions born of



India's socialist history—is a thing of the past must not have tried to set up a business in India, navigate the bureaucracy to obtain a license, or adjudicate a legal dispute in the courts. Thanks to this mismatch of personnel and paperwork, the processes that ordinary citizens endure to interact with the state are nothing short of Kafkaesque. There is a saying in India that, in a legal dispute, litigants fear the process of reaching a resolution more than the eventual judgment rendered by a court of law. In short, the process *is* the punishment

The resulting mismatch between the positive transformations India has experienced and the quality of governance has allowed a great many **infirmities to flourish**. For starters, the system practically invites corruption—state actors easily leverage their discretionary authorities to speed up or slow down the gears of the state, as they so desire. Second, governance suffers from innumerable operational inefficiencies as onerous state-citizen interaction lowers productivity, slows innovation, and stifles growth. Perhaps most crucially, the failures of the state can undermine the very legitimacy of democracy itself. Indeed, around the world, an era of **democratic malaise** has set in. This disenchantment is not necessarily linked to democracy's ideational failures as much as **its perceived inability**, in many countries, to deliver.

In India, the state capacity agenda is vast. Over the years, numerous commissions—from the Second Administrative Reforms Commission to the National Commission to Review the Working of the Constitution to the Law Commission of India—have filled thousands of pages with expert analysis on what plagues Indian governance and what should be done to resolve those shortcomings. Now, three areas—corresponding to the three major branches of government: the executive, the legislature, and the judiciary—offer India's new government the opportunity to take urgent action and begin redirecting the ship of state.

## UPGRADING THE EXECUTIVE BRANCH

Of the many issues in the hands of the executive branch, reforming the bureaucracy is arguably of signal importance. While the public sector still attracts world-class talent, it must navigate an increasingly complex set of policy dilemmas, armed with bureaucrats who are trained as generalists and recruited through an examination process that is not necessarily primed for the challenges of twenty-first-century governance. Critics who argue that the apex bureaucracy receives outsized attention compared to lower reaches at the state and local levels are most certainly correct. For instance, recent research by **Aditya Dasgupta and Devesh Kapur** demonstrates the very real capacity shortfalls that hinder the performance of frontline functionaries who are typically the first points of contact for average citizens.

However, this reality does not absolve the upper echelons of the civil service, who are typically members of the Indian Administrative Service (IAS) and who constitute the nerve center of India's governing apparatus (what was once referred to by the British as the country's "**steel frame**"). In recent years, even members of that elite civil services have warned of several areas of weakness that limit their operational effectiveness. These vulnerabilities include declining levels of human capital, diminished independence from the political executive, growing worries about malfeasance and corruption, a lack of specialization, and weak incentives for professional advancement.

While Prime Minister Narendra Modi's government refrained from enacting deep-seated administrative reform in its first term, it did initiate a few changes to modernize India's bureaucratic apparatus as it relates to the IAS. First, it began a modest experiment to recruit experts for key bureaucratic positions via lateral entry. In June 2018, the Union government opened up ten senior posts at the joint secretary (JS) level to

individuals working outside the government. The [announcement](#) sought experts for a range of positions stretching from civil aviation to farmers' welfare, offering a three-year contract (extendable up to five years based on performance). In August 2018, the [government announced](#) that over 6,000 people had applied for the posts. According to [media reports](#), the Union Public Service Commission—the apex body that screens recruits to the civil service—is set to formalize the appointment of nine lateral entrants by the end of June 2019.<sup>1</sup>

Second, the Modi government has instituted a new performance assessment tool for senior members of the civil services (who are due for promotion to either additional secretary or secretary) as a supplement to existing evaluation methods. Prior to the new system, officers received annual performance reports prepared by their superior officers. These reports—written on the basis of consultations with peers and subordinates—are screened by an expert panel, a Civil Services Board, and then finally approved by the Appointments Committee of the Cabinet. The new, [360-degree assessment](#) introduces an additional layer of scrutiny that can, in theory, override the standard annual performance assessment.

Going forward, the new government must evaluate the lessons of this drive to poach fresh talent from the private sector. If the experiment is successful, it should be expanded to new domains. Lateral entry is a sensitive subject that often raises the hackles of career civil servants. But, if implemented smartly, it can also benefit the civil service in at least two ways. First, lateral entry should be the first step toward engendering open competition among civil servants for positions at the JS level and above. For instance, there is no reason why a financial securities expert who is below the JS level should not be able to submit their application for a relevant position in the Finance Ministry solely because they lack seniority. The goal of increasing competition within the talent pool is to ensure the most qualified

officer with specialized expertise is placed in any given post. But lateral entry would also help civil servants in a second way: it can be used to break the IAS's monopoly on coveted posts. There is [no reason](#) why qualified officers in other services (such as the Indian Economic Service or Indian Revenue Service) should not have a fair shot at high-level positions if they have the talent and expertise required.

With regards to evaluation, there are undoubtedly ways of improving on the status quo system. Concerns about the new 360-degree assessment center around the tool's lack of publicly available details. Any evaluation system will have its detractors; the key is institutionalizing principles of transparency, accountability, and the rule of law, so that the system enjoys wide, institutional buy-in. A key parliamentary committee has already [raised concerns](#) about the new system's opacity and the absence of a robust appeals process. In addition, the [advent of Big Data](#), especially on measurable outcomes that can be traced to a specific officer's tenure, paves the way for innovative mechanisms to evaluate performances and promotions. With such fine-grained data now readily available, seniority—which traditionally guides civil service promotions—is an inferior instrument for deciding who advances and who does not. And data-driven performance metrics could be used not only for promotions but also to help guide salary and remuneration decisions. To be clear, data need not be the only criterion on which officers are judged. However, data could be one critical component to an improved system of evaluation.

## FIXING PARLIAMENT

In India's parliamentary proceedings of late, dramatic oratory and spirited debate have too often given way to disruption and obstructionism. A cursory look at data on parliamentary performance shows that there is a real decline in the ability of India's legislature to function as the framers of the constitution imagined.



Data from PRS Legislative Research illustrate how parliamentary efficiency—measured by the number of sitting days in the Lok Sabha (India’s lower house) and bills passed by the Lok Sabha and Rajya Sabha (India’s upper house)—is on a clear downward trend. There are multiple reasons behind Parliament’s waning performance. For starters, the number of parties represented in Parliament has increased significantly over time. In the 2019 general election, for instance, thirty-seven political parties earned seats in the Lok Sabha. This diversity of opinion makes consensus more difficult to achieve. Some commentators have argued that the introduction of [televised coverage](#) of parliamentary proceedings has provided new incentives to grandstanding lawmakers. Still [others lament](#) the declining quality of representatives, manifested by the growing number of members of parliament (MPs) who boast criminal records.

While all of these factors undoubtedly play a role, there is little that can be done to reverse these trends in the short run. Increased transparency of parliamentary proceedings is here to stay, and the trend is likely toward even greater openness (like allowing cameras into committee rooms, which are thus far off limits). Political fragmentation is a fact of life—although the BJP has emerged as a hegemonic force of late, there are myriad opposition parties arrayed against it. And the election of MPs suspected of criminal involvement is ultimately a matter for the voters. But two structural constraints that inhibit parliament’s performance can be remedied through government action.

The first has to do with increasing the agency of individual legislators. In 1985, the constitution was amended to incorporate a new anti-defection law. This law, enacted in the wake of tremendous fragmentation and allegations of political horse trading, stipulates that any MP can be expelled from their party and disqualified from Parliament if they do not follow the party whip. Parties in India are largely top-down affairs in which party bosses reign supreme, and the anti-defection law has only served to strengthen their iron grip on party

subordinates and strip MPs of their agency. At the end of the day, MPs have [little incentive](#) to meaningfully participate in the legislative process, other than to vote in accordance with the party whip or risk grave consequences.

A second structural impediment to smooth parliamentary functioning is the limited agenda control granted to the opposition. As [Jessica Seddon](#) has persuasively argued, India’s opposition has little procedural headway to do anything other than disrupt proceedings when its demands fall on deaf ears. Unlike in other parliamentary systems, the opposition in India has no say over the agenda and has only limited ability to move amendments on legislation. To compound matters, the aforementioned anti-defection law limits the potential for cross-party cooperation among individual legislators if opposition party leaders issue a whip to vote against the government’s motion.

The new government should move to repeal the anti-defection law. The law, as it stands, reduces the individual agency of MPs, disincentivizes serious legislative scrutiny, and breaks the accountability link between voters and their elected representatives. If a full-scale repeal of the law is untenable, [one possibility](#) suggested by a Congress Party MP, Manish Tewari, is to limit the application of the law to highly select instances (such as votes of confidence or adjournment motions). If the anti-defection law is repealed or substantially modified, a complementary reform suggested by [M.R. Madhavan](#) is to require that each vote taken in Parliament (or, at least, each vote on pending legislation) be a recorded vote. At present, most parliamentary motions are only subject to a voice vote, unless an MP specifically requests a formal vote. The advantage of a recorded vote is that it establishes a paper trail of how an individual legislator has voted, which is pertinent information to voters. Moving toward requiring a recorded vote [would increase](#) both transparency as well as efficiency.

The new government should also consider providing the opposition with enhanced parliamentary powers

that would reduce the perceived benefits of disruption. Analysts [have suggested](#), for instance, that India could follow the examples of the United Kingdom or Canada, where the opposition is given a fixed number of days during which it can determine the agenda. In addition, Parliament could introduce rules that would allow a determined number of MPs to initiate [open discussion](#) on a topic. Neither of these reforms on their own will rectify what ails Parliament, but they would both substantially improve the body's functioning over the long run.

## REFORMING THE JUDICIARY

As Parliament's authority has waned in recent years, the judiciary's role has concomitantly increased. This rise in so-called [judicial sovereignty](#) is a double-edged sword, given that the judiciary itself suffers from a great many maladies. For starters, the court faces a massive backlog of cases. According to [data collected](#) by the Supreme Court, there were nearly 33 million pending cases across the justice system at the end of 2017. Second, the courts are plagued by endemic personnel shortfalls at every level. Of the Supreme Court's thirty-one seats, six lay vacant at the start of 2018.<sup>2</sup> As many as 37 percent and 25 percent of high court and district court positions, respectively, were unfilled. The vacancy rate in the district and subordinate judiciary is even more concerning, since this is where the vast majority of cases get their first hearing: 87 percent of pending cases reside at this lowest tier of the judiciary. Last but not least is the crucial question of procedural delays. These delays have myriad causes: poor infrastructure, personnel shortfalls, constant adjournment requests, and inadequate judicial planning. According to data compiled by the National Judicial Data Grid, nearly one in four cases below the high court level has been pending for five years or more. The number of [pending criminal cases](#) outnumbers civil cases by more than two to one.

There are no shortcuts to cure what afflicts the judiciary. But recent tensions between the executive

and the judiciary have exacerbated an already poor situation. Thanks to an evolution in the process of judicial appointments, judges are currently nominated to the Supreme Court and the various high courts by a body known as the collegium, which consists of the chief justice of India and the four senior-most justices on the court. This body has been heavily criticized for its opacity and slow pace in making appointments. In 2014, Parliament moved to scrap this system and replace it with a National Judicial Appointments Commission (NJAC), which required amending the constitution. The NJAC was to be chaired by the chief justice of the Supreme Court but would also include representatives of the government, other justices, and a panel of eminent persons. Shortly after the NJAC came into force, the [Supreme Court ruled](#) that it was unconstitutional because it violated the "basic structure" doctrine.

This ruling set off a protracted struggle between the executive and the judicial branches of the government. While both sides agreed that the status quo was no longer tenable, they furiously disagreed over the proposed remedy. In March 2017, the collegium delivered a memorandum of procedure that set forth new guidelines to govern judicial appointments. While the collegium accepted that the government could object to a candidate on national security or public interest grounds, it [refused to allow](#) the government definitive veto authority: the judiciary, not the executive, would have the final say. The rift [grew public](#) in mid-2018, when the two sides battled over the elevation of a high court justice to the apex court and four Supreme Court justices aired their public disappointment with alleged interference on the part of government, among other issues. In April 2019, the collegium recommended four names for elevation to the Supreme Court. Although the government initially objected to two of the four names over concerns about regional representation and seniority, the collegium [cleared](#) all four names just a few weeks later. The two sides remain deadlocked on the specific contours of the procedural memorandum and, as a result, the new changes have not yet taken full effect.



The new administration must move quickly to resolve this impasse between two branches of government. Letting the issue fester will not only exacerbate the problem of judicial vacancies but will also further erode the functioning of the judicial branch, which already faces challenges on multiple fronts. The Supreme Court itself [acknowledges](#) that the collegium system is flawed and cannot “remain static or unconcerned even when problems are patent.” The government must prioritize finding an adequate resolution that balances its desire to protect national security and public integrity with judicial independence.

For its part, the judiciary would be on a stronger footing in this dispute if it rededicated itself to getting its own house in order. The obstacles most citizens face when interacting with the courts not only threaten to delegitimize the rule of law but might also force citizens into seeking out [questionable alternative dispute mechanisms](#) (such as embracing strongmen or criminal figures who promise to swiftly adjudicate disputes and enforce contracts). On this score, there are at least two reforms the judiciary must consider. The first is to adopt [digital alternatives](#) to inefficient, time-consuming procedures. Thanks to the smartphone revolution and innovations such as IndiaStack (a set of open application interfaces), it is now feasible for India to digitize the most basic elements of the judicial process—such as the issuance of summons and notices, the filing and management of new cases, the submission of basic court documents, and even perfunctory hearings. Obviously, technology introduces its own complications, as the recent [debate](#) over the constitutional validity of the Aadhaar biometric identification scheme demonstrates. But the judiciary must seek out creative ways to pilot new digital programs that could reimagine routine judicial procedures.

Second, there are certain tasks the judiciary currently performs that could be usefully outsourced to others. Right now, judges are tasked with carrying out both judicial and administrative functions. Given the complex logistics of operating a court, especially one

besieged by a growing docket, every hour a justice spends on administrative matters has a clear opportunity cost in terms of their judicial function. In India, justices can be involved with a range of matters, from real estate to payroll to technological support. A novel proposal advanced by [Pratik Datta](#), aimed at improving the performance of Indian tribunals, would be to create a new tribunal administrative services agency—akin to the back-end judicial support offices that prevail in the United States, United Kingdom, and elsewhere. This new tribunal services agency could provide back-end support, in the first instance, for tribunals, and would handle all financial, human resource, and information technology needs of tribunals, freeing up more of the court’s time for judicial work. If successful, such an agency could be scaled beyond specialized tribunals to work with the broader justice system.

## CONCLUSION

Revamping India’s public administration is a multigenerational task. But for a new government committed to pursuing institutional reform, there is plenty of low-hanging fruit to pluck. Enacting modest reforms to upgrade the functioning of three critical branches of government would be a welcome start. Furthermore, these reforms have the virtue of being under the purview of the Union Government to kick-start, if not fully implement—thereby bypassing traditional veto points such as Parliament and India’s state assemblies. In 2014, then candidate Modi campaigned on a plank of reforming the state to improve governance and deliver inclusive growth to India’s 1.3 billion citizens. Over five years in office, the Modi-led BJP government largely ignored administrative reforms that would bolster India’s state capacity. Having earned a second consecutive parliamentary majority with a decisive victory in the 2019 general election, Modi and his colleagues have been given five more years to deliver on this promise. They should not squander this unique opportunity.

## ABOUT THE AUTHOR

**Milan Vaishnav** is a senior fellow and director of the South Asia Program at the Carnegie Endowment for International Peace. His primary research focus is the political economy of India, and he examines issues such as corruption and governance, state capacity, distributive politics, and electoral behavior.

## ACKNOWLEDGMENTS

The author is grateful to Jamie Hinton for excellent research assistance. A previous version of this article was submitted as a background paper for a report produced by the Pune International Center, *Innovating India—2019-2024: Public Policy Agenda*.

## NOTES

- 1 Although the government initially sought applicants for ten positions, it only ended up filling nine.
- 2 The remaining vacancies on the Supreme Court were filled in May 2019, finally placing the court at full strength of thirty-one judges.

*For your convenience, this document contains hyperlinked source notes as indicated by teal-colored text.*

