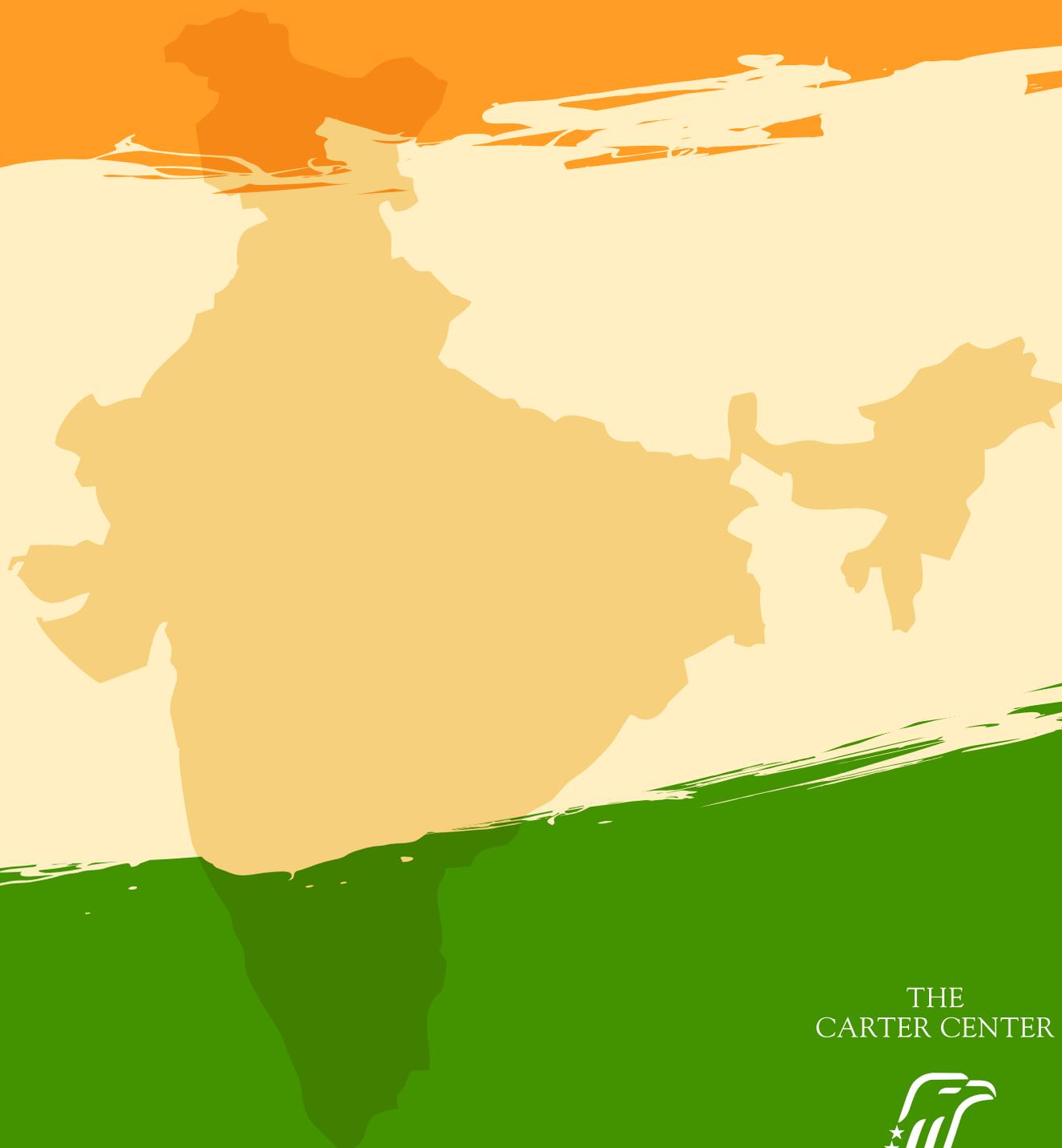


INDIA POLICY

COMMENTARY

Rising Rule of Law Risks in India

By Ted Piccone
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As the world's largest democracy, India has outsized importance in showing how a pluralist, multiethnic society can live in peace under the rule of law. Yet the risks and challenges facing India's democracy in recent years has diminished its rising star and sparked growing criticism [in the country](#) and [around the world](#).

The latest data from the [World Justice Project's Rule of Law Index 2022](#) confirms these trends and highlights specific areas of concern.

[India's global ranking on rule of law](#) — as measured by the index's eight factors, ranging from checks and balances and fundamental rights to open government and effective justice systems — has declined modestly in comparative terms from the 42nd percentile to the 47th percentile (-1.7%) since 2015. Its current overall rule of law score of .50 places India at No. 77 out of 140 countries. The underlying data, however, tells a larger and more worrisome story.

On the positive side, India's scores, which are tabulated based on primary source surveys from legal practitioners and nationally representative households in the country, have improved significantly since 2015 on such factors as open government (up 4.9%), order and security (up 10.9%), and regulatory enforcement (up 4.4%). Due process in administrative proceedings, reduced civil conflict, official response to complaints regarding public services, and the right to information have driven this progress. This is an encouraging sign of the gradual improvement in the state's management of public agencies in accordance with good democratic governance. Over time, India also scored higher in such indicators as accessibility of civil justice and corruption in the legislative branch. The passage and implementation of the [right to information law](#) of 2005, pushed hard by civil society groups, has proved to be an important if fragile building block for some of these improvements.

These rather encouraging signs of progress, however, coexist with a more troublesome story when it comes to civil liberties and accountability. Since 2015, India experienced significant declines, for example, in constraints on government powers (-6.3%) and fundamental rights (-12.8%), leading indicators of a rise in authoritarian behavior. Low or falling scores on sanctioning official misconduct, the probity of police and military officials, respect for freedoms of religion and expression (particularly [affecting Muslim minorities](#) and around disputed claims in Jammu and Kashmir), and equal treatment and nondiscrimination drove some of these declines. [According to the U.S. State Department](#), specific concerns include arbitrary arrests and detentions, extrajudicial killings, violence against religious minorities, curbs on free expression and media (including unjustified prosecution of journalists), overly restrictive laws on funding of nongovernmental and civil society organizations, and government harassment of domestic and international human rights organizations.

Negative trends in the overall performance of the criminal justice system (-17.7% since 2015) are also noteworthy. The Rule of Law Index score for effectiveness of the criminal investigation system, for example, declined by a worrisome 40.9% since 2015. The score for the correctional

system's ability to reduce criminal behavior dropped by 24.5%. Falling marks for improper government influence (-17%) and corruption in the criminal justice system (-16.9%) further contribute to a prevailing sense of crisis when it comes to India's ability to deliver fair and effective crime control.

While some of these trends were exacerbated by the contingencies of the pandemic, they remain long-standing deficits of both Indian law and practice, as well documented by the [India Justice Report](#), an independent evaluation of state-level justice systems across the four pillars of police, prisons, courts, and legal aid. According to its 2020 report, "overcrowding has increased and a disproportionately high percentage (69 per cent) of the prison population continues to comprise of people trapped in the system while awaiting the tortuous processes of investigation and trial." The number of outstanding civil and criminal cases rose from 29 million pending cases in 2018 to 48 million in 2022. "The number of cases filed and disposed of every day is unimaginable," Chief Justice Nuthalapati V Ramana [reported](#) to Prime Minister Modi in May 2022. The ineffectiveness of the justice system is [leading people to take justice into their own hands](#), a further erosion of the rule of law.

In sum, India in the last several years on balance has experienced a significant decline in what was already a troublesome record of respect for civil liberties, minority rights, and religious freedom. The rise of Hindu nationalism, coupled with attacks on independent media and civil society, is threatening fundamental principles of India's democratic constitution. Even the relatively independent Supreme Court, which in recent years has made important pronouncements protecting human rights, is becoming [increasingly silent](#) when it comes to checking the executive's actions. While the country is deservedly proud of its positive track record on conducting free and fair elections, the liberal ecosystem around them is decaying, creating risks of further concentration of power in the hands of the charismatic prime minister.

The prospects for India's claim for leadership in a world of increasing polarization between the democratic West and the authoritarian pole of China and Russia are cloudy. Will it get back on a more liberal track by building a stronger state that also protects fundamental rule of law values and practices? Or will it continue democratic erosion in which healthy practices of media freedom and minority rights are curtailed or stifled?

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