

Restoring Democracy: An 11-Point Common Minimum Programme for the United Opposition

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Tarunabh Khaitan

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When the Janata coalition won the 1977 elections, following the Emergency, its path to undo at least the more obvious damage inflicted on Indian democracy by Indira Gandhi was clear.

Gandhi had introduced most of her formal full-frontal assaults on democracy through the 42nd Amendment to the Constitution, and the Janata government enacted the 44th Amendment to roll back most of what she had done. If the united opposition wins the 2024 – or, if rumours are to be believed, the 2023 – general elections against the odds, it won't have the luck of the Janata government; for the [crimes of the Modi regime against the Constitution](#) have been subtle, informal, incremental, and numerous.

There is simply no clear object like the 42nd Amendment to target.

What is more, mere restoration will not suffice if the opposition really cares about Indian democracy. Many of the excesses of the Modi regime have taken advantage of existing fault-lines in our constitutional framework – weaknesses that most previous governments have also been guilty of weaponising, albeit not to the same extent and not with the same degree of constitutional shamelessness as the Modi regime. If the opposition victory is to mark a never-again moment, the new government cannot stop at restoration. It has to formulate an agenda not only for restoration, but also for democratic deepening and entrenchment.

Much of this democratic entrenchment agenda requires the recognition and empowerment of the political opposition as a legitimate part of the state, representing a significant proportion of the population. It requires an acknowledgement that in our constitutional scheme, the ruling party/coalition is only meant to dominate the higher executive and the lower house of the legislature, and only for a fixed period of time. Although these institutions of government hold the reins of state power, the state is bigger than the government, and includes judges, guarantor institutions, the bureaucracy, and the elected legislators of the political opposition as legitimate public officers. It will be tempting for the opposition parties – who have faced the undeserved wrath of a petty and brutal regime – to want to exact revenge by paying back in kind.

The idea of rewarding a Bharatiya Janata Party in opposition by entrenching opposition rights and powers could be truly galling to normal human instincts.

But it is essential that they understand opposition empowerment not as rewarding the BJP, but rather as [buying political insurance](#) for their future selves, whenever it is their turn to be once again in opposition. The long-term success of Indian democracy rests on the acknowledgement that democracy is a system in which parties lose power, and that the opposition is part of the state even as it sits outside of the government.

Finally, the united opposition must remember that – like the Janata government – a non-BJP-coalition government in 2024 that includes parties as diverse as the Shiv Sena, Aam Aadmi Party, and the Left (many of whom are the main political rivals of the Congress in the states) – will likely be unstable. Such a government will therefore have but a short period of time to justify its formation, and should act in a manner that would obviate the need for such diverse ideological bedfellows to have to come together ever again merely to ensure the survival of our democracy (on which their own survival of course depends).

Therefore, here is a list of things that should be seriously considered by the united opposition in its Common Minimum Programme to restore and entrench Indian democracy.

1. Electoral System

Perhaps the single most important thing a non-BJP government could do to entrench Indian democracy and also minority rights is to abolish the first-past-the-post system in favour of Australian-style [ranked-choice voting](#) (RCV) for Lok Sabha and Vidhan Sabha elections.

The new system would expand voter choice by giving people the option of ranking their top two or three candidates in order of preference, rather than simply endorsing a single candidate as currently happens. RCV system employs exactly the same process as the single-transferable vote (STV) the Constitution already employs for Rajya Sabha elections – the main difference being that STV is used when multiple candidates are to be elected, whereas the term RCV is typically reserved for elections in which there will be a single winner.

Counting takes place over multiple rounds, such that the candidate with the least number of first-choice votes in each round is eliminated, and her second-ranked votes are then allocated to all remaining candidates. The rounds of counting continue until one candidate crosses a 50% threshold or is the last candidate standing, once all others have been eliminated. Under RCV, the winning candidate has a greater

Rank ballot by oval marks

Instructions: Fill in the first column oval by your first choice, second column oval by your second choice, etc.

1	2	3	
☐	☐	☐	Joe Smith
☒	☐	☐	Henry Ford
☐	☐	☒	Jane Doe
☐	☐	☐	Fred Rubble
☐	☒	☐	Mary Hill

democratic legitimacy than the current system where one can win even after garnering a mere 35% or so votes, as long as the opposition votes are divided.

Also, because divisive parties like the BJP are typically either a voter's first choice or last choice, RCV forces parties to build a big enough tent to accommodate voters who may not have opted for them as their first choice but who are willing to tolerate them as their secondary preference. Furthermore, ideologically cognate parties end up transferring their votes to each other, rather than under-cutting each other, thereby better approximating voters's ideological preferences. This simple

change could not only enhance our quality of democracy but also push our politics towards the centre ground, and away from the extremes where it presently teeters.

Contrast this centripetal effect with the much-touted proportional representation, which incentivises smaller parties to become extremists in order to distinguish themselves from centrist parties, and can sometimes hand the balance of power to such extremist parties (as recent experience in Israel instructively demonstrates).

RCV can be introduced by a simple statutory amendment to the Representation of the People Act, for the Constitution only requires territorial constituency-based direct elections, and is completely silent on whether this should be by first-past-the-post or ranked-choice vote.

2. Independent institutions

Alongside this change in the electoral system, the new government will also need to quickly enact the Independent Institutions Bill. Such a Bill is a long-unfulfilled constitutional mandate that leaves it for parliament to specify a fair (and, therefore, multi-partisan) manner of appointments to constitutional institutions (like the higher judiciary and guarantor institutions like the Election Commission, the Auditor General, governors and so on), as well as to quasi-constitutional bodies like the Information Commission that were set up by statute.

The main way to secure this is to ensure that the political opposition is given an equal say in the appointment process alongside the ruling party. I recommended one way of

realising this mandate in this [prior column](#), involving a two-stage appointments process comprising multi-partisan shortlisting committees in the Lok Sabha or Vidhan Sabha (to draw up a shortlist of applicants/nominees based on STV) and a multi-partisan appointments committee of the Rajya Sabha (which finalises the appointee, also through preferential vote).

3. Judicial independence

Allied changes to ensure the separation of the state and the government, and their separation from the ruling party, include the raising of the retirement age of Supreme Court and high court judges to at least 68 years (which will reduce the appeal of post-retirement office somewhat), and the introduction of a cooling-off period of at least one year after retirement for any other public posts for judges.

Furthermore, we need a provision for ensuring that any post-retirement appointments can only be made by the multi-partisan mechanism in the new Independent Institutions Bill or an independent judicial appointments commission, and not by the government of the day.

4. Opposition rights

The Office of the Leader of opposition must be recognised as the leader of the government-in-waiting through a constitutional amendment, and every legislative house *must* have a leader of the opposition elected through ranked-choice-vote by all opposition legislators (in a vote administered by the Election Commission).

The Leader of Opposition must have:

- a) the right of audience with the president/governor, the prime minister/chief minister, the senior civil service, the military, the intelligence agencies, and members of all constitutional and quasi-constitutional institutions (except the judiciary),
- b) the right to be briefed regularly on all matters of national security,
- c) the right to receive copies of any draft Bills the government proposes to introduce in any House at least 24 hours before such introduction, and the right to be consulted on any draft Ordinance proposed by the government with at least 48 hours notice to record objections or amendments,
- d) the right to convene sessions of the legislative house (without needing governmental approval) and the right to set the agenda and timetable for one day of every legislative week ('opposition day'), in consultation with all opposition parties, and

e) the standing to bring any constitutional challenge before high courts or the Supreme Court, which the courts may refuse to admit only after giving detailed written reasons.

5. Equality

Given the Modi regime's treatment of all manner of minorities as second class citizens, the new government will also need to quickly enact a comprehensive, multi-sector, multi-ground [anti-discrimination law](#) that applies to the public and the private sector.

India remains one of the very few democracies still without such a law, despite the UN recently recognising that its member-states are [obliged under international law](#) to enact it.

Discriminatory laws and policies, such as the Citizenship Amendment Act, the National Register of Citizenship, the so-called 'love jihad' laws, the anti-conversion laws, the segregationist 'disturbed areas' acts, the SC/ST exclusion in the Economically Weaker Sections quota, etc. will need to be repealed.

A consultative, genuinely egalitarian, uniform civil code based on the opt-in model of the Special Marriage Act may also be considered.

6. Federalism

The damage to India's federal structure needs to be repaired. Governors must be appointed for non-renewable fixed-terms on the recommendation of a two-stage multi-partisan mechanism. Confidence chambers of legislatures could be mandated to *directly* elect a chief minister/prime minister through run-off elections in the House, without the intervention of the governor or president.

Basically, soon after the elections for a House, the three largest parties should have the right to nominate any member of the House as a candidate and all elected legislators can vote to indicate their preferred choice for the post. If one candidate crosses the 50% threshold, they become the PM/CM. If not, the top-two candidates from the first round of voting run against each other in a second round of votes by the legislators, and the winner gets elected as the PM/CM.

This system completely eliminates the discretion of the Governor/President to prefer a particular leader to form a government and *then* seek the confidence of the House.

Furthermore, the principle of asymmetric federalism under India's Constitution needs to be reasserted and strengthened as a key feature of our unity in diversity, especially

in relation to states outside the politically dominant 'mainland', such as Jammu and Kashmir and the Northeastern states.

7. State capture

The role of money in politics needs serious attention too. The electoral bonds scheme needs urgent repeal, and all foreign funding for political parties must be prohibited – it is astonishing that the BJP government has allowed so much foreign and corporate control of our politics.

A State Capture Commission – along the lines of the [Zondo Commission](#) in South Africa – to investigate the alleged capture of state institutions and public assets by a handful of crony capitalists in cahoots with the ruling party, needs to be established to allocate accountability and to recommend measures to protect against state capture.

8. Anti-defection

The use of money to break up opposition parties needs to stop too – it requires strengthening anti-defection laws through a constitutional amendment, such that a candidate *automatically* loses their legislative seat if they reject their party leadership's whip on a confidence vote or a finance bill.

Such a move will need to be balanced against the freedom of expression of legislators by removing the threat of anti-defection law on all other matters of legislative business, whereby defiance of the party whip can only be dealt with by internal party discipline, and does not result in loss of one's seat. Needless to say, any such move will also require clear rules to determine who leads the legislative party: one such method being to require each party's elected legislators to elect the leader of the legislative party, administered by the Election Commission using ranked-choice-vote (to ensure the winner has the support of more than 50% legislators).

Written requests to the Election Commission by a fixed percentage of the membership of the legislative party – say 30% – should be able to trigger a fresh leadership election. Such a system would do away with the concept of a *split* in the party: a legislative party always remains intact under one leader, democratically elected. If the dissenting members are unhappy with the elected leader, nothing prevents them from resigning their seats, thereby triggering a by-election and running under the banner of a new or different party.

This is but one option that needs to be considered: how Operation Black Lotus is genuinely decommissioned would clearly require a serious constitutional debate.

9. Lawfare

The last nine years have seen numerous allegations that public officers have weaponised the law against political dissenters, including journalists, activists, academics, protestors, and politicians.

A Truth & Justice Commission, aided by a special investigative team, should be established to prosecute all such crimes by public servants. Some mitigation in sentencing should be allowed for officers who come forward to make full and truthful public confessions. Whistle-blowers should be protected and rewarded.

The manner in which the officialdom has victimised dissenters must never be permitted again, and ensuring this requires the political courage to bring to book all corrupt officers who violated fundamental rights at the behest of their political patrons or politicians who ordered such violations.

10. Civil liberties

The criminal justice system needs a complete overhaul. All procedural shortcuts and [impunity provisions](#) that shield public officers in laws such as Armed Forces (Special Powers) Act, Unlawful Activities (Prevention) Act, National Investigation Agency, etc. will need to go. So too will colonial-era crimes like sedition, criminal defamation and so on.

Laws suppressing freedom of association and speech, such as the FCRA, and unnecessary procedural hurdles to assemble for protest, also need to be reformed. Genuine professionalisation and departisanisation of the police forces, intelligence agencies and prosecutorial offices is long overdue.

A high-level Commission for the Democratisation of the Criminal Justice System to recommend measures to give civil liberties the respect they deserve in a democracy would need to be constituted.

11. Knowledge institutions

Finally, a Commission on Media Freedom and Academic Freedom should look into the capture of or aggressive lawfare against truth-telling [knowledge institutions](#) like the media and the universities. The power of the government to fund advertisements in media clearly needs to be checked.

Laws ensuring media pluralism – such as the Australian requirement of at least five different media outlets with distinct ownership and editorial controls – need to be given serious consideration. Requiring all news media outlets and universities to register as not-for-profit companies or charities is another reform necessary to protect these freedoms from corporate capture. Universities need to be released from the

clutches of political masters, and the UGC needs to be reformed to remove the power of the government to direct its funding powers.

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Needless to say, the list above is intended to spark a debate. It is not meant to be comprehensive, nor is it intended as a proposal of definitive plans. It leaves out major structural issues like political economy, gender justice, caste and other forms of inequality, which any government worth its salt should attend to.

The 11 proposals above are presented in a manner that most parties in the united opposition should be able to agree with – even though, on merits, I think the institution of governors and the power to issue ordinances merit complete abolition, rather than mere reform. The various Commissions I have proposed are necessary because the facts and the shape of required reforms are very unclear in the current context, even though readers would be forgiven their cynicism for commission-led solutions.

Strong political will would be required to do even half of what is proposed. The main purpose of this list is to remind the united opposition that although the need to focus on winning the next general elections is difficult to overstate, winning is only the first step. It also needs to spare some intellectual and political capital for setting out to shape what its Common Minimum Programme might look like.

Tarunabh Khaitan is the Head of Research at the Bonavero Institute of Human Rights (Oxford) and the Professor of Public Law & Legal Theory (Oxford). He is shortly due to take up the role of Professor (Chair) of Public Law at the London School of Economics and Political Science.