Beyond Regimes

China and India Compared

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CHAPTER 3

Contesting the Right to Law

Courts and Constitutionalism in India and China

SANJAY RUPARELIA

Since the 1980s, the People's Republic of China has witnessed a massive concerted effort to introduce *fazhi* (rule by law), as set out in the 1982 Constitution.[1] A significant justification for the shift was the need to enhance "citizens' right to legal justice" (*gongmin de hefaquanyi*) (Lee 2010b, 50, 57). The Chinese Communist Party proceeded to unveil a series of legislation through the 1990s that proclaimed various rights of citizens, encompassing new procedures for civil affairs as well as laws to protect consumer rights. Indeed, by the end of the decade, the PRC had signed the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic, Social and Cultural Rights (ICESCR), ratifying the latter several years later. Interestingly, the passage of these various laws coincided with a growing tide of social activism (*shehui huodongjia*) demanding civic rights and basic entitlements, ranging from subsistence and labor to property, work, and land, codified in the new legal regime (Lee and Hsing 2010, 2). A variety of actors, from "barefoot lawyers" in the countryside and public attorneys in the cities to "rights defense" (*weiquan*) activists, mobilized the law to press various claims (Alford 1995; Fu and Cullen 2008; Xing 2004). The meaning and ramifications of these laws, and aim and character of the campaigns and movements associated with their emergence, inspire much debate. Some observers perceive incipient demands for greater civil liberty and political freedom, heralding a demand for liberal capitalist democracy (Gilley 2004; Goldman 2005; Liu 2006; He 2012).

Others argue that rights claims frequently invoke traditional socioeconomic entitlements to livelihood vis-à-vis corrupt local administrations, manifesting a form of "rules consciousness," which buttresses the legitimacy of central political authorities and the regime as a whole (Pei 2006; Perry 2008; Ching 2008). In between lie observers that foresee how "rights talk" might unwittingly encourage a spiral of claims and new movement repertoires, unleashing counterhegemonic struggles (Zweig 2010; Gallagher 2005; O'Brien and Li 2006). Nevertheless, most scholars of China agree that the emergence of substantive legal reforms and rights-based struggles is a significant historical development.

Intriguingly, India has witnessed analogous developments since the 1980s, inaugurating a new era of greater judicial intervention and rights-based campaigns. Public-spirited lawyers, new civic organizations, and grassroots social movements began to invoke the law and the 1950 Constitution, pressing the courts to uphold civil liberties, address economic deprivations, and combat social exclusion (Kothari 1984; Katzenstein, Kothari, and Mehta 2001; Baviskar 2010). As in China, rights-based legal activism generates scholarly debate in India. Many celebrate social activists and activist judges for seeking to represent the interests of deprived social groups and to expand the status of socioeconomic rights (Baxi 1985; Mehta 2007; Sibal 2010). Others worry that such rights-based struggles, given the inconsistent jurisprudence and limited capacities of the apex judiciary since the 1990s, demand far too much effort and time for relatively meager results (Rajagopal 2007; Joshi 2009). And some fear that judicializing political life undermines the separation of powers and reduces the possibility of flexible democratic governance. Yet three decades of sociolegal activism has clearly expanded the legitimacy, character, and scope of rights-based claims in India.

What explains the growth of rights-based activism, particularly through appeals to the courts, law, and constitutionalism, in India and China over the last three decades? How are these various rights justified, conceptualized, and pursued by state actors and social forces in terms of their moral imaginaries, political strategies, and social repertoires? Why have many prominent rights-based struggles in India and China simultaneously demanded greater transparency, responsiveness, and accountability from the state? What are their successes and failures to date?

Finally, do these developments constitute a fundamental transformation in the meaning and practice of citizenship in India and China in a globalized neoliberal era, or does the trajectory of rights-based legal activism in each country reveal their lineages of state formation, economic modernization, and nation building?

This chapter addresses these questions. In broad strokes it analyzes how the repertoire of rights, constitutionalism, and the law—as a technique and site of contestation—have been used to secure as well as limit civic, political, and socioeconomic entitlements in India and China since the late 1970s. Many scholars have explored the striking nexus between prosperity, corruption, and inequality in both countries since the 1980s, which inaugurated an era of high economic growth. Rapid capital accumulation simultaneously lessened absolute material poverty and exacerbated social, sectoral, and spatial inequalities, albeit in varying degrees. To be sure, the pattern and dynamics of growth entrenched many forms of corruption, generating widespread attention to the relationship between legal rights, social welfare, and political accountability. Yet few studies compare the causes, character, and consequences of rights-based struggles to demand legal recognition, political change, and institutional reform in India and China over the last three decades.[2] The surprising contemporaneous timing of these developments warrants greater scrutiny.

Suffice to say, such a comparison may seem fanciful, even bizarre. The Republic of India is a federal parliamentary democracy, which selects its rulers through relatively free and fair elections based on universal suffrage. The 1950 Constitution entrenches a separation of powers and checks and balances between the legislature, executive, and judiciary. It recognizes political liberties and civic freedoms—of speech and expression, assembly, movement and association, and the right to hold property—as fundamental rights in Part III, relegating the social and economic rights enumerated under the Directive Principles of State Policy—covering livelihood, pay, work, education, and health—to the nonjusticiable and nonenforceable provisions codified in Part IV. Last, the Constitution empowers the Supreme Court of India to adjudicate general appeals between directive principles and fundamental rights, and to resolve interjurisdictional conflicts, disputes of interpretation, and civil law through

a variety of provisions. The Court has consistently exercised its prerogative, compelling parliament to introduce many amendments to circumvent its rulings since Independence.

In contrast, the PRC is a communist regime, where a hegemonic party monopolizes formal power on the basis of democratic centralism, limiting judicial independence and political enfranchisement. In principle, the National People's Congress (NPC) is the supreme organ of state power. Formally, the Standing Committee of the NPC enjoys the authority to interpret, revise, and supervise the implementation of the Constitution, yet it reportedly never has (Kellogg 2009, 16–20). Moreover, the Constitution contains no independent mechanism to redress rights violations or review lower-level legal documents, while the civil legal system lacks the principle of precedence.[3] Indeed, the CCP does not envisage the Constitution as having direct legal application. And the Supreme People's Court (SPC) has historically renounced the power to review and apply the basic law. Hence many scholars argue that legal rights in China represent the programmatic goals of the state apparatus, rather than limitations upon its power (Nathan 1986). Comparing the origins, trajectory and consequences of rights-based legal activism in such different political-constitutional regimes may well be a misguided endeavor.

These dissimilarities are plainly significant. Nonetheless, analyzing rights-based legal activism in India and China offers a fascinating lens to grasp the changing nature of citizenship and state-society relations in both countries amid the progression of market-oriented reforms since the 1980s. In particular, the evolution of rights, law, and constitutionalism in each country over these years confirms *and* challenges the conventionally assumed significance of macro-level regime differences as well as the capacities of their respective states. On the one hand, a convergent comparative approach illustrates the limits of analyzing India and China in standard terms. First, the 1980s witnessed a massive proliferation of state-level parties in Indian democracy, greatly expanding the electoral choices available to its citizens. In contrast, post-Maoist China remained a one-party authoritarian state, compelling its citizens to stake their demands and redress their grievances either through traditional social institutions or the evolving legal system, quashing every attempt to challenge the supremacy of the CCP. Yet rights-based activism grew in both countries, indeed far more in India, despite their contrasting political regimes.

Domestic factors played a role in each case. The relative unresponsiveness of electoral politics to the basic material needs of many subaltern groups, given the ascendance of demands for recognition and representation based on identities of caste, language, and religion, drove social activists to the courts in the world's largest democracy. Conversely, the desire for greater political contestation encouraged their counterparts in China to demand greater democratic reform. Yet generative causal mechanisms and global circulatory forces also shaped each trajectory. The common historical experience of arbitrary state power, albeit significantly different in scope, scale, and severity, compelled domestic actors in each country to reclaim the law in both countries beginning in the 1980s. And the rise of rights activism and judicial review, and of social mobilization and civil society, reflected the "new constitutionalism" (Gardbaum 2001; Hirschl 2004; Tushnet 2008) and "third wave" of democratization (O'Donnell and Schmitter 1986; Huntington 1991; Linz and Stepan 1996) that characterized the larger historical conjuncture of the late 1970s.

Second, notwithstanding its tremendous constitutional authority and growing institutional autonomy in the 1990s, the magisterial pronouncements and landmark rulings of the Indian Supreme Court (ISC) often had little immediate effect. The self-restraining character of much high jurisprudence, the decreasing organizational capacity of the Court to handle an ever growing backlog of cases, and the inconsistency of its rulings, reflecting the size, fluctuating composition and protocols of its collegium, exposed the limitations of rights-based legal activism in India. Put differently, the indirect symbolic effects of Supreme Court rulings frequently outweighed their direct material impact in many domains. Hence many rights activists in India progressively utilized the Court to dramatize public concerns, mobilize social coalitions, and put political pressure upon the legislature and executive to introduce administrative reform and policy change—a strategy pursued, ironically, by their counterparts in China.

On the other hand, however, the increasingly divergent impact and fate of rights-based activism in India and China since the turn of the century reaffirms the significance of their respective political regimes and state forms. Strikingly, new ruling dispensations emerged in each country in 2004, pledging to tackle mounting political corruption and socioeconomic inequalities. In India, the Congress Party–led United Progressive

Alliance (UPA) legislated a variety of landmark welfare acts and governance reforms, pledging to uplift the *aam aadmi* (common man) through "inclusive growth." Significantly, many rights activists who had pressed the apex judiciary to secure basic socioeconomic entitlements since the 1980s played a major role in drafting these bills. In China, the new administration of Hu Jintao and Wen Jiabo similarly promised to create a "harmonious society" through a "scientific view of development" (see UNDP 2005). Yet the introduction of major welfare reforms during its tenure coincided with declining judicial autonomy, major constitutional reversals and intensifying political repression of many rights activists in the name of regime stability and social harmony. Significant countercurrents exist in both countries, admittedly. The Indian state has invoked draconian powers, sanctioned by the Constitution itself, to crush the resurgent Naxalite movement in the so-called red corridor of the country over the last decade. The apex judiciary has intervened, to some extent, to curtail these excesses. Nonetheless the anti-Maoist campaign has underscored the vulnerabilities of India's liberal democratic regime. Conversely, some rights-based struggles have won important victories in China over the last decade, helping to shape new procedures, regulations, and laws. Moreover, the coming to power of Narendra Modi and Xi Jinping since 2014, two avowed strongmen, has considerably narrowed the space of rights-based activism and political dissent in civil society and the judicial system in both countries. Yet the scale, scope, and severity of repression that has occurred under Xi in China is far greater than comparable trends in India thus far, given the constitutional authority of its apex judiciary and myriad opposition parties and successive electoral trials Modi has to face. These differences underscore why political regimes and state forms still matter.

Reclaiming the Constitution and Law since the Late 1970s

The CCP introduced significant legal reforms starting in the late 1970s. Indeed, few states have so rapidly transformed their apparatus of law (Liebman 2011, 167). Scholars typically date the beginning of reform to a

speech given by Deng Xiaoping in 1978, which emphasized the need to establish a civil code and criminal code, regulations for procedure, and laws governing enterprises, labor, and foreign investment (Pei 2006, 66). In 1982, the party revised the Constitution, recognizing several new civic rights: to personal dignity, against false accusations, and to the sanctity of the home. It placed limits upon these new personal freedoms, stating that such "rights may not fringe upon the interests of the state, of society, of the collective, or upon the lawful freedoms and rights of others." Nonetheless, the new Constitution represented an attempt to routinize "socialist legality" (Baum 2011, 46–48), presaging broader changes. The same year the NPC introduced legislation stating that mediation, previously understood as the "primary method" for resolving disputes, should henceforth only be "emphasized" (Minzner 2011, 941). In 1986, the national legislature passed the General Principles of Civil Law, seeking to regulate economic transactions by stipulating clear relations between persons and property (Tong 1989). And in 1989, it approved the Administrative Litigation Law (ALL), allowing citizens to file private suits against state organs regarding "specific administrative acts" (*juti xingzheng xingwei*). Significantly, the new legislation exempted laws (*falu*), regulations (*fagui*), rules (*guizhang*), normative documents (*guifanxing wenjian*), and "reasonableness" (*heli xing*) of action from its jurisdiction. The statute also failed to specify substantive standards to assess administrative action (Mahboubi 2014, 142). Nonetheless, its passage capped a series of important legal reforms in state-society relations, which the regime publicized through mass education campaigns (Selden and Perry 2010, 8).

Three factors encouraged the CCP to legalize its claim to rule. First, many scholars argue that its top leadership, especially Deng Xiaoping, sought to prevent the arbitrary exercise of state power that had reached its zenith during the Cultural Revolution. According to some, Deng believed four major flaws beset the PRC: bureaucratization, unlimited tenure, extensive official privileges, and the overcentralization of power. Hence he believed that crafting a system of collective political leadership with a younger generation, and holding officials accountable through stiffer protocols and constitutional reform would strengthen party discipline and regime stability. In the mid-1980s, the CCP established a high-level task force led by Zhao Ziyang, charged to examine the value of administrative decentralization, legal reform, and greater inner-party

democracy. It produced few specific measures. Moreover, although endorsed by the 13th party congress, divisions emerged. In particular, Deng resisted the proposal of creating greater checks and balances within the regime, preferring to improve state functioning through greater administrative streamlining (Pei 2006, 47–57). Nonetheless, these high-level debates revealed a growing consensus that formal political authority required a stronger legal foundation.

Second, the strategic incremental liberalization of the economy necessitated a framework "holding law in one hand and reforms in the other" (Ocko and Gilmartin 2009, 93). The reform process gradually dismantled traditional mechanisms of resource allocation and social exchange, notably the brigades and communes during the decollectivization of agriculture. Private investment required greater regulatory clarity. The weakening of work units and neighborhood associations and the issuance of temporary residence permits in the mid-1980s induced urban migration, creating the need for laws to handle disputes among relative strangers (Alford 1993, 58; Minzner 2011, 942).

Last, many figures in the central party apparatus saw legal reform as a political instrument to impose greater control, particularly in the far-flung peripheries. Liberal figures in the NPC supported the ALL on grounds that it would encourage greater political contestation. But conservatives in the State Council backed the law in order to secure greater local accountability (Nathan 1986; Mahboubi 2014, 142). Local political leaders often cracked down on popular resistance. Yet some authorities also periodically encouraged disgruntled segments to express their grievances concerning unpaid wages, land disputes, birth control policies, and other sources of contention. New legal channels simultaneously provided a safety valve for local social discontent and prevented a vertical "bifurcation" in the party apparatus (Selden and Perry 2010, 15).

That said, the introduction of new procedures, regulations, and laws encouraged many quarters of society to press for change too. Social activism (*shehui huodong*) had grown tremendously (Lee and Hsing 2010, 2). Some groups demanded sweeping political reforms. Radical elements of the short-lived Democracy Wall movement from 1978 to 1980, inspiring the student-led mobilizations that swept major cities in 1986–87, arguably sought wholesale regime change. The labor strike wave in 1980, in contrast, articulated class demands in classical Maoist terms (Perry 2010,

22). Others sought to utilize the evolving legal apparatus directly. Individual lawsuits, the vast majority seeking to resolve "historical" grievances involving personal injuries sustained during the late Maoist era, quickly soared (Minzner 2013, 2). In between lay incipient efforts to promote the "judicialization of the Constitution" (*xianfa sifahua*) (Kellogg 2009, 224–27). In 1985, the inaugural meeting of the China Law Society established a Constitutional Law Research Committee, which recommended setting up a "constitutional supervision committee" under the Supreme People's Court and a "constitutional litigation system" (ibid. 223). Several landmark interventions suggested its possible ramifications. In 1988, the Shanghai Intermediate People's Court protected the "right to reputation" of a claimant after her husband committed her to a psychiatric hospital on false grounds in the so-called *Democracy and Law* case (ibid. 228). The same year, the Supreme People's Court ruled against the constitutionality of a private labor contract, which sought to exempt an employer, Zhang Xuezhen, from responsibility for fatal injuries suffered by her employee, Zhang Guosheng. Significantly, the Court never specified *how* the contract violated either the law or the constitution (ibid. 229). Nonetheless, these early interventions captured the attention of many legal observers in China and abroad. Indeed, the import of the law and the courts arguably lay elsewhere. Following the suppression of the Tiananmen movement in 1989, many individuals filed suits against state institutions and the CCP, including prominent figures such as Wang Meng, Dai Qing, and Guo Luoji. Significantly, all of them invoked the Constitution or the recently drafted Civil Law to seek injunctions, compensation, and apologies for defamation, seizure of constitutionally protected information, and abuses of power. Reportedly, few of them expected to win their cases. Rather, they invoked the law to juxtapose the gap between ideals and reality marred by systemic political corruption, to rally sympathetic officials by evoking "notions of justice that ran deeply through the course of Chinese history" (Alford 1993, 46), and to proselytize issues among a wider public (ibid. 57–60). Put differently, the courts provided a "singular platform to broadcast a message" for these initial rights cases, shaping legal, political, and moral vocabularies of contestation (ibid. 62).

The catalyst, scope, and pace of high constitutional reform and rights-based legal mobilization took a very different form in India in the 1980s.[4]

Unlike in China, the Supreme Court and the proliferation of new social organizations and political formations that had emerged following the Emergency (1975–77) comprised its key agents. On the one hand, the Court began to draw an intimate link between the fundamental civil liberties and political rights in Part III of the Constitution vis-à-vis the nonenforceable social and economic goals in Part IV. Beginning with *Maneka Gandhi v. Union of India* in 1978, it started to reinterpret the meaning and ambit of Article 21, which recognized the "right to life" (Thiruvengadam 2012, 348). The apex judiciary also democratized the basis and potential of public interest litigation (PIL) by relaxing *locus standi*, appointing fact-finding and monitoring commissions, and issuing *continuing mandamus* to track cases through the lower courts, and performing administrative tasks in many instances. On the other, an upsurge of new social formations, ranging from civil rights activists and women's organizations to environmental groups, used public interest litigation to push the Indian Supreme Court in a progressive direction. Arguably, the two most important comprised the People's Union of Civil Liberties (PUCL) and People's Union for Democratic Rights (PUDR), whose ranks encompassed many eminent citizens from law, journalism, and academia such as V. M. Tarkunde, Arun Shourie, and Rajni Kothari. The emergence of these innovative nonparty organizations created new political coalitions and social alliances that served as "midwives to judicial activism" (Baxi 2006, 48). The first wave of public interest litigation involved civil liberties, such as the fundamental right to bail and legal aid in *Madhav Hayawadanrao Hoskot v. Maharashtra* (1978). The second phase emphasized basic socioeconomic entitlements of severely marginalized citizens, such as *P.U.D.R. v. Union of India* (1982), which sought to protect unorganized labor from exploitation. The third phase of progressive jurisprudence highlighted environmental concerns, such as the Supreme Court injunction in 1992 against construction to protect the Taj Mahal. Governance matters comprised a central dimension of high judicial activism and sociolegal rights mobilizations in India from the start, however, when judges asserted they had a "right to information" in the so-called first Judges case (1983) and when environmental activists claimed the same in the wake of the Bhopal disaster.[5]

Suffice to say, the ability of judges in India to challenge the executive and legislature on constitutional grounds was unimaginable in China. The

scope and range of claims brought to the apex judiciary, moreover, was far more extensive in these years. Indeed, the Indian Supreme Court even began to *make* law under the authority of Article 141, issuing new rules for the adoption of children by foreigners in *Laxmi Kant Pandey v. Union of India & Anr.* (1986). Despite these obvious differences, however, the general motivation for engaging the courts and promoting the importance of constitutionalism was similar in both countries in the 1980s. The turn toward the law in India was a moment of "catharsis," seeking to grant the Court a "new historical basis of legitimation," following its abdication of responsibility during Emergency rule in the mid-1970s (Sathe 2002, 107). Although the violations of civil liberties and political rights during the Emergency were far smaller in scale and intensity than anything experienced during the Cultural Revolution, Indira Gandhi had justified authoritarian rule on grounds of radical social change. By pursuing coercive "developmental" measures, most notoriously slum clearance projects and compulsory sterilization programs, she unwittingly highlighted the significance of basic civil liberties and political rights for social well-being. Hence public interest litigation in India in the early 1980s focused on violations of fundamental civil liberties and perceived socioeconomic rights, and the intimate nexus between them. Authoritarian state practices encouraged a progressive legal turn.

Popularizing Rights, Law, and Constitutionalism Post-1991

The CCP renewed efforts to establish its political supremacy, the parameters of law, and the superiority of socialism over liberal bourgeois values in the aftermath of the Tiananmen incident. In 1991, the State Council released the First White Paper on Human Rights, which reiterated the priority of social and economic rights and privileged the "right to subsistence" (*shengcun quan*) (Trevaskes and Nesossi 2012). Nevertheless, the CCP pursued legal reform, empowering new social actors to press various claims against the state. In 1991, the NPC ratified the Civil Procedure Law, making court mediation voluntary and requiring courts to issue decisions in the absence of an agreement (Minzner 2011, 941). The

state established some 270,000 arbitration committees at the enterprise level to channel labor disputes and demobilize worker discontent (Lee 2010a, 62). And the passage of the Consumer Protection Law in 1993 encouraged a boom in public interest litigation. Initially, the latter mostly catered to the concerns of the urban middle classes, suing companies for excessive telephone charges, fake goods, or poor safety measures for food products. Workers and peasants often took their everyday grievances to the streets, fomenting direct protests, which quadrupled in number over the decade.[6] But the possibilities of the Consumer Protection Law soon encouraged various advocates, such as Guo Jianmei, Zhou Litai, and Tong Lihua, to take advantage of public interest litigation on behalf of the rights of women, labor, and children, respectively (Fu and Cullen 2011, 1–6, 19–20). The rhetoric of equality inherent in the law, the relative accessibility, transparency, and predictability of the courts, and the lack of genuine alternative venues spurred these suits (ibid. 3–4). The passage of the Lawyers Law in 1996, which recognized attorneys as independent "legal practitioners providing legal services," and the expansion of legal-aid institutions, encouraged further recourse to the courts (Liebman 2011, 181). If anything, the CCP continued to emphasize the significance of law in matters of governance. The NPC had passed 255 laws and 84 pieces of legislation between 1979 and 2000 (Pei 2010, 46). In 1999, the NPC incorporated a provision, "Ruling the country *by* law" (*yifa zhiguo*), into Article 5 of the Constitution (Lee 2010b, 50).

The growing legalization of rule manifested itself in a variety of ways. The overall percentage of cases resolved by mediation fell substantially, from approximately 70 percent in the 1980s to 30 percent by the end of the 1990s (Minzner 2011, 943), while litigation skyrocketed (Pei 2010, 46). Suits filed under the ALL increased from less than 2000 in 1989 and roughly 35,000 in 1994 to greater than 90,000 by the end of the decade. A growing percentage of cases concerned claims against urban demolition and rural dispossession (Mahboubi 2014, 144–45). The shift toward public interest litigation seemed to reflect a deeper change among political dissidents too. Many began to champion workers' rights, the need to battle political corruption and environmental concerns on behalf of ordinary citizens during the 1990s.

Yet championing rights claims through the law had clear limits. Attempts to push the scope of change too far provoked a backlash. This was

plain in the formal political realm. In 1997, a number of well-known dissidents who had been previously jailed, perceived a gradual political thaw.[7] The death of Deng Xiaoping, the signing of the ICCPR as well as the ICESCR by the PRC, and planned visits by U.S. president Bill Clinton and the UN high commissioner for human rights, Mary Robinson, intimated an opening. Hence they established a number of groups—such as Corruption Watch, Religion Watch, Peasant Watch, Labor Watch, and Law Relief Hotline—signaling their concerns. Invoking the rights and duties of citizenship and justice, they signaled their intention to establish a China Democratic Party (CDP) in 1998, calling for free multiparty elections and a separation of powers. Significantly, the leading members of the incipient party sought to register the latter with the authorities, underscoring the moderate aims and legal methods that characterized the dissident movement generally. But the 1982 Constitution, which enunciated a right to form parties, had no legal procedures for doing so. Moreover, many provincial authorities created new regulations that made it harder, such as requiring proof of funds and details of members and disallowing former political detainees from leading such organizations. Frustrated, more radical elements established party branches, which invited a harsh political crackdown, divided its leadership, and crushed the movement. The lesson was twofold. On the one hand, the formation of various "watch" groups signaled the increasing perceived nexus between corruption and inequality among important sections of Chinese society in the late 1990s, and the importance of legality and everyday civic surveillance to combat it. On the other, though, the extremely brief existence of the CDP underscored how the state could use the law in conjunction with brute coercive power to prevent the emergence of organized political opposition.

Ordinary citizens seeking to use the law to defend everyday interests also encountered a more constrained environment. Litigation had limits, as the trajectory and performance of the ALL revealed (Mahboubi 2014, 143–45). Public authorities issued new ancillary laws through the 1990s providing for greater state compensation, as well as administrative reconsideration, licensing and punishment. The remit of the ALL also expanded, by "not applying" (*bu shiyong*) norms at the level of rules and below that conflicted with higher law, and by deploying the general "abuse of authority" standard to assess "reasonableness." Indeed, the Supreme

People's Court discarded the "positive listing" of justiciable cases in 2000, maintaining only the "negative" list, enabling citizens to scrutinize where the law was silent. However, the number of suits filed under the ALL, of which approximately 20 percent earned a favorable ruling, leveled after 1998. Indeed, the percentage of suits withdrawn by litigants increased over time, from 30 to 60 percent. Local party officials intervened with greater frequency, making it difficult to secure legal representation, while courts increasingly refused to accept cases or enforce rulings. The trajectory of suits under the ALL mirrored the decline in litigation generally by the turn of the century, and a growing progovernment bias in judgments and settlements. Indeed, some observers claimed that many citizens increasingly saw the judiciary as corrupt (Pei 2006, 68, 71), in marked contrast to the relatively high public esteem of the Indian Supreme Court in the 1990s.

Still, a significant number of activists and lawyers in China retained faith in the law to catalyze political change. The passage of the Legislation Law in 2000, which stated that laws should conform to the Constitution, created the possibility that various subnational laws and regulations could be unconstitutional and thus subject to revision or nullification (Kellogg 2009, 220). The promise of constitutionalism became tantalizingly real with the *Qi Yuling* case in 2001, when the Supreme People's Court ruled that the claimant had had her right to education violated by the defendant, Chen Xiaoqi, who had stolen her school test scores to gain admission into a local business school in Shandong province a decade earlier. Significantly, the Court failed to pass any judgment on the law, claiming that it merely sought to fill a legal gap (ibid. 231–34). Nonetheless, the ruling encouraged many others to appeal to the courts. Perhaps the most successful was Sincerity/Yirenpeng (*gandan xiangzao*), a self-help group that brought a series of antidiscrimination suits on behalf of individuals who had lost their jobs and access to schooling because they had contracted hepatitis B, violating the right to equality codified in the Constitution. National media attention grew in 2003 with the *Zhang Xianzhu* case, brought by Professor Zhou Wei, who reportedly accepted it to establish the legitimacy of judicial review. Again, the Wuhu court refrained from passing judgment on the constitutionality of the relevant laws. But it pronounced that local authorities had failed to apply standards properly. The case galvanized social pressure, provoking a wave of

suits, leading state authorities to revise government regulations in the matter (ibid. 237–46). But perhaps the most striking evidence of popular constitutional mobilization was the case of Sun Zhigang, a college student wrongfully apprehended and beaten to death in police custody under a law permitting the detention of rural migrants. His death caused an outcry, leading three young legal scholars, Yu Jiang, Teng Biao, and Xu Zhiyong, to issue a letter to the Standing Committee of the NPC requesting it to review the constitutionality of the so-called Custody and Repatriation measure:

> To the Standing Committee of the National People's Congress, As citizens of the People's Republic of China, we believe that the Measures for the Internment and Deportation of Urban Vagrants and Beggars which was enacted by the State Council on May 12, 1982 and has been since in force to this day goes against the Constitution and relevant laws. We hereby propose to you that the Standing Committee of the National People's Congress re-examine the Measures for the Internment and Deportation of Urban Vagrants and Beggars.[8]

The proposal drew immediate support from eminent legal scholars, including Jiang Ping, He Weifang, Sheng Hong, Shen Kui, Xiao Han, and He Haibo, who collectively issued another letter requesting a special investigation procedure. Shortly thereafter, the State Council released a new decree, Measures on Aid and Management for Urban Vagrants and Beggars, abolishing the 1982 regulation. Again, the NPC failed to issue a public opinion that clarified the rationale behind the pronouncement (Pils 2006, 1233–35), limiting the scope of genuine constitutional reasoning. Nonetheless, the "constitutionality review system letters" written by these intellectual activists set a rare precedent.

Indeed, the timing of their appeal converged with a broader social upsurge in 2003, which some commentators christened the "Year of Citizenship Rights." Workers claimed the "right to labor and subsistence," pensioners the "sacred right not to have to labor," migrants the right to form unions (Li 2010, 47). The passage of the 2003 Rural Land Contracting Law, which empowered contract holders as property owners and established a market for land use rights, triggered "protracted court battles" and social mobilization (Lee 2010b, 60). The commanding heights of the

party seemed to recognize the legitimacy of these various struggles, ratifying the ICESCR. The failure of the PRC to endorse the ICCPR signaled its persistent deep suspicion of classic bourgeois rights. Yet the emergent trends of the late 1990s, which saw greater participation by unskilled workers in social protests and allowed various activists to mobilize public opinion across a far larger scale with greater speed through new media technologies, expanded the repertoire of social protest (Wright 2002, 919–21). The onset of the SARS epidemic, provoking widespread calls for the "right to be informed" in a manner that recalled similar demands by the environmental movement in India in the 1980s, and expectations that the impending administration of Hu Jintao and Wen Jiabao would be progressive, led many observers to hail the potential of constitutionalism (Pils 2006, 1226–29).

Developments in law and politics in India in the 1990s, once again, diverged in significant ways from China. If anything, the Supreme Court greatly enhanced its relative institutional autonomy, arguably becoming the most independent in the world. In 1993, in *Supreme Court Advocates on Record Association v. India,* the apex judiciary arrogated the final power of appointment and promotion regarding its own collegium as well as high courts unto itself, claiming that judicial independence was necessary to protect the rule of law and fundamental rights. It also declared in *S. R. Bommai v. India* that a state legislative assembly could not be dissolved without parliamentary assent, constraining the power of the executive branch. Yet the shifting composition and strategic abdication of the ruling political establishment in New Delhi, in government as well as parliament, also served to enhance the clout of the Court. The increasing electoral participation of historically subordinate groups, encouraging the proliferation of new state-based parties, engendered high electoral volatility and greater parliamentary fragmentation. Minority governments, often ruled by diverse multiparty coalitions, became the norm. Elected politicians, keen to "legitimize unpopular decisions that they did not have the courage to take and to avoid taking decisions that were likely to incur unpopularity," began to refer many sensitive questions to the Court (Sathe 2004, 247, 263, 272). Hence the latter sought to "force other institutions of governance to do what they are supposed to do by using new and powerful methods of investigation and monitoring . . . for illegality, unreasonableness and procedural lapses" (Dhavan 2000, 326, 333).

Despite the growing political clout of the Supreme Court, however, rights-based activism in India confronted various setbacks in the 1990s. First, public interest litigation was self-limiting. Perhaps most importantly, the Court accepted less than 2 percent of all writ petitions filed in the 1990s.[9] Constitutionally, it was perhaps the most accessible apex judiciary in the world. But rights activists had a hard time getting their cases heard. Moreover, in many cases regarding basic socioeconomic rights, the Supreme Court essentially highlighted the failure of the executive to meet its self-declared obligations to specific citizens who had suffered harm. Put differently, the Court enunciated a notion of "conditional social rights," limiting their scope (Khosla 2010, 739–56). Many of its interventions failed to address the real concerns of most disadvantaged citizens. The apex judiciary played a "limited" and "indirect" role in ensuring the most basic elements of public health and primary education, for instance, especially in rural areas and poorer regions.[10] Indeed, some observers claimed that many of its widely hailed rulings expressed a "jurisprudence of exasperation." The imprecise case law and a case-by-case approach of the Supreme Court often failed to define the content of the right being claimed, leaving much discretion and unpredictability (Rajamani and Sengupta 2010, 90; Shankar and Mehta 2008, 178).

Second, the apex judiciary failed to adopt a consistent orientation toward many socioeconomic rights claims. On the one hand, the Supreme Court issued its most assertive judgment ever in 1992, stipulating that "every child of this country has the right to free education until he completes the age of 14 years. . . . [T]he state cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law."[11] Yet the Supreme Court generally took a less progressive stance toward the provision of education and health after economic liberalization began (Shankar 2012, 166). A number of judgments effectively weakened the thrust of the 73rd and 74th amendments, which sought to empower local elected representatives over state bureaucrats (Mehta 2007, 80). Similarly, the Court issued several rulings curtailing the rights of labor, tenants and students (Sathe 2002, viii–ix). And by the late 1990s it had taken a series of controversial environmental decisions, which had enjoyed progressive jurisprudence. In 2000, the apex judiciary ruled against the Narmada Bachao Andolan, a grassroots anti-dam movement that sought to protect local tribal communities from being evicted along the

Narmada river, arguing: "The displacement of these people [local tribal communities] would undoubtedly disconnect them from their past, culture, custom and traditions, but then it becomes necessary to harvest a river for the larger good . . . [displacement] would not per se result in the violations of their fundamental or other rights."[12]

Finally, the increasing tendency to turn to the courts to resolve political disputes and social problems created a massive predicament. The staggering case overload facing the judiciary—20,000 in the Supreme Court and 3.2 million in the high courts by 2001—made routine justice extraordinarily hard (Shankar and Mehta 2008, 154 n. 32). "Due process," many lamented, "*is* the punishment" (Mehta 2007, 72). In short, the direct material effects of high judicial activism in India, especially with regard to basic socioeconomic provisions, often failed to live up to its vaunted rhetoric.

That said, social activists and activist judges in India began to express growing concern over a state "riddled with corruption . . . on a disturbingly excessive scale" (Dhavan 2000, 333), echoing public sentiments in China. On the one hand, the Supreme Court pressed the Central Bureau of Investigation to pursue officials suspected of illegal financial activities, including many senior politicians implicated in the *hawala* (informal money transfer) scandal in the mid-1990s (Rudolph and Rudolph 2001, 134–35). The Court also tried to reduce political interference in high criminal investigations concerning political officials, seeking to strengthen the autonomy of the CBI in *Vineet Narain v. Union of India* and conferring statutory power to the Central Vigilance Commissioner in the late 1990s, even issuing orders regarding processes of selection, transfer, and tenure regarding the latter (Rajamani and Sengupta 2010, 88). And in 2002 the Court declared, in *Union of India v. Association for Democratic Reforms,* that citizens had the right to know whether candidates standing for election had been implicated in past or pending criminal offences, what the assets and liabilities of their family and dependents were, and their educational qualifications (Sathe 2002, ix–xii).

On the other hand, many activist campaigns and grassroots organizations began to highlight the scourge of corruption too. The most notable was the Mazdoor Kisan Shakti Sanghathan (MKSS) from Rajasthan. The MKSS demanded access to local government records to see whether poor rural laborers had been paid their minimum wages in food

relief projects as mandated by the state. Critically, its key slogan, *Hum janenge, hum jiyenge* ("If I know, I shall live"), evoked landmark Supreme Court rulings of the 1980s. The MKSS eventually collaborated with other civic organizations and grassroots movements to spearhead the National Campaign for the People's Right to Information (NCPRI). More broadly, sociolegal activists popularized the idiom of constitutionalism in their fight against the everyday corruption of the local state in order to secure the welfare of the poor. Their struggles ultimately led to a breakthrough. In 2001, the PUCL filed a writ petition, *P.U.C.L. v. India & Ors.,* detailing the widespread incidence of malnutrition and hunger in the country despite excess food stocks rotting away in public granaries. Acknowledging that the health of school-age children impinged directly upon the right to education, and recognizing the problem of unequal resource entitlements, the Court instructed every state government to introduce cooked midday meals in all government-related primary schools within six months (Chandhoke 2005, 10). The landmark decision helped to galvanize many activists to mobilize for change, catalyzing the Right to Food and Work Campaign, Campaign for Dignity and Survival, and several others. Although relatively few in number, these landmark rulings galvanized important sections of civil society in the 1990s, whose rights-based discourse slowly penetrated the wider political arena.

Reexamining the Nexus between Rights, Welfare, and Accountability in India since 2004

The formation of the United Progressive Alliance (UPA) in 2004, a large multiparty coalition led by the Congress, crystallized a new phase in India. Seeking inputs from leading rights activists during the campaign, its electoral manifesto pledged to legislate a "right to information" and "right to work" as well as other welfare measures. Upon capturing office, the dynastic leader of the party, Sonia Gandhi, established the National Advisory Council, inviting a distinguished group of intellectuals, activists, and former government servants to devise the promised welfare legislation. The UPA passed a series of landmark acts, seeking to enhance the civic rights, social opportunities, and economic security of its most

disadvantaged citizens during its two consecutive terms in office (2004–9 and 2009–14). It introduced three flagship initiatives in 2005. The Right to Information Act (RTI) mandated all government agencies to release information regarding their activities to individual citizens upon request in a timely manner. The National Rural Employment Guarantee Act (NREGA) granted adult members of every rural household the right to demand 100 days of unskilled work at stipulated minimum wages from the state. And the National Rural Health Mission (NRHM) sought to expand basic services in the rural sector by amplifying public spending and encouraging social participation and governance reform in local institutions. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), passed in 2006, empowered these communities the right to own traditionally cultivated land and to protect forests. In 2008, the government passed the Unorganized Workers' Social Security Act to cover informal labor (see chapter 5 by Dillon in this volume for greater analysis). And at the end of its first term, the UPA introduced the Right of Children to Free and Compulsory Education Act (RTE), which made the enrollment, attendance, and completion of schooling of every child between the age of six and 14 the obligation of the state. The second avatar of the UPA exposed substantive policy differences among its leadership, engendering considerable paralysis. The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of Their Grievances Bill, introduced in 2011, required all public authorities to publish citizens' charters detailing specific benefits and timelines regarding their delivery. The bill lapsed due to inadequate parliamentary support. A similar fate befell the LokPal Bill, 2011, which established a national public ombudsman with the power to investigate and prosecute cases of corruption implicating all public servants, including the executive. Nevertheless, the governing coalition eventually legislated further welfare reforms. In 2013, the UPA passed the National Food Security Bill, which entitled 50 and 75 percent of the urban and rural population respectively to highly subsidized food grain per month, as well as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act (LARRA). The latter required the state to gain the consent of local communities whose land it sought to designate for compulsory acquisition, compensate landowners between two to four times extant market valuations, and provide for rehabilitation and resettlement to all persons whose livelihoods depend on designated land.

Three features distinguished the new welfare architecture erected by the UPA. First, much of it was enacted by Parliament, making these new entitlements legally enforceable rights. Second, many of them cited prior landmark rulings of the Supreme Court. The RTI Act, 2005, acknowledged several judicial precedents, beginning with *S. P. Gupta v. Union of India* in 1982 and culminating with *Association for Democratic Reforms v. Union of India* 20 years later. NREGA cited the 2001 writ petition filed by the PUCL. And the RTE Act invoked the famous 1992 ruling by the Court. The fact that it took almost two decades to enact the bill underscored the limits of high judicial activism. Nonetheless, its passage reflected the historic role played by the Court. Finally, perhaps the most distinctive feature of the new welfare regime was its effort to enhance political transparency, responsiveness and accountability. This was the overt purpose of the RTI. Yet a number of ostensibly "social" acts sought to achieve similar goals. The NREGA devolved the responsibility of planning, implementing, and monitoring work projects to the *gram sabha* (village assembly), enjoined the latter to disclose information proactively through wall writing, public boards, and new information systems, and authorized villagers to hold and participate in social audits of local public officials. Similarly, the LARRA obliged local state officials to consult affected village assemblies of their intent to acquire land, conduct a social impact assessment involving village assembly representatives and nongovernmental experts, and minimally gain the consent of 70 percent of project affected persons in order to proceed. Indeed, amongst other provisions, it also enjoined state governments to create a Land Acquisition, Rehabilitation, and Resettlement Authority, headed by High Court judges with the power to call witnesses, summon records and impose a schedule of penalties. Whether the preceding accountability mechanisms in these bills could sever the "structural mutuality between democratic clientelism and identity politics" (see the introduction by Duara and Perry to this volume) that in practice marred such welfare schemes preoccupied their architects and critics alike. Nonetheless, India's new welfare regime symbolized the cumulative struggles of three decades of rights-based legal activism.[13]

In China, similar moves took place. The new political dispensation under Hu Jintao and Wen Jiabao, which espoused the "primacy of social

justice" (Lee and Hsing 2010, 1), also unveiled a series of reforms to ameliorate the myriad socioeconomic inequalities that had grown rapidly since the 1990s. The new policy framework had begun in 2002 with the establishment of the urban minimum income guarantee program. However, like the UPA in India, the Hu-Wen administration focused its attention toward the countryside. In 2003, it introduced the Rural Tax and Fee Reform, abolishing many levies, and established the New Cooperative Medical System (CMS), seeking to resurrect the provision of rural health care that had gradually collapsed after agricultural decollectivization. The Hu-Wen administration subsequently increased rural subsidies and eliminated the agricultural tax, seeking to address growing sectoral imbalances. It also sought to improve social opportunities in the countryside, launching the New Expense Guarantee System for Rural Education in 2006, Rural Minimum Standard Security Scheme in 2007, New Rural Pension Scheme in 2009, and Social Insurance Law in 2010 (see chapter 5 by Dillon in this volume for greater analysis). The passage of these new policies, despite their failure to reverse the terms of trade, had positive effects. Net per capita rural incomes, even in poorer regions of the southwest, rose substantially. Rural land contracting assured a critical safety net and enhanced the leverage of small peasants vis-à-vis large agribusinesses. And rural public services for education and health improved, albeit insufficiently (Donaldson 2014).

The contemporaneous introduction and sectoral focus of the new welfare regimes in India and China seem quite uncanny in retrospect. The conjunction of distinct causal forces, domestic and international, explains their macro-level convergence. First, by the late 1990s greater economic liberalization had enhanced socioeconomic disparities within many regions of the world. The articulation of the Millennium Development Goals, promulgated by the United Nations in 2000, highlighted the persistence of basic human deprivations in large expanses of the global South. The formation of the World Social Forum in 2001 expanded the global justice movement, leading to calls for alternative developmental paradigms. And many external institutions that had spearheaded neoliberal policies, most notably the World Bank, began to advocate more universal welfare measures in light of the negative social consequences wrought by rapid structural adjustment (see the chapter by

Dillon in this book). Hence many states in Asia, Latin America, and Africa had devised new welfare regimes since the millennium.

Second, despite the different content, sequence, and impact of market-oriented reforms in each country, the specific developmental trajectories of India and China in the 1990s gradually compelled their respective political elites to address the nexus between prosperity, corruption, and inequality. The post-1992 reforms of the PRC transformed China into a global manufacturing powerhouse. Yet severe problems of urban eviction, rural dispossession, and environmental pollution generated fierce social protests. The official number of "mass group incidents"—likely an underestimate—rose tenfold from approximately 8,700 in 1993 to 87,000 in 2005 (Perry 2010, 11). The liberalization of trade and investment stimulated astonishingly high levels of industrial growth and urban migration in the booming coastal regions, but at the cost of escalating class inequalities within most provinces and between the poorer interior regions and the coast. And the increasing political clout of state-owned enterprises (SOEs) and pursuit of unbridled economic growth fostered a system of "crony capitalism," marred by "grand theft and insider looting" (Huang 2009, 285).

The inherently opaque context of corrupt transactions, and their frequently overt politicization, makes it hard to determine exact trends. Nonetheless, purportedly both the number of officials investigated for corruption and amount of money at stake expanded massively in China in the 1990s, reflecting the enormous increase in off-budget revenues gained through coercive land grabs as well as new exit options created by liberalized investment laws, fewer travel restrictions, and greater financial autonomy of state-owned enterprises. The devolution of power to the provinces, which had unleashed industrial growth through greater horizontal competition, produced a "decentralized predatory state" (Pei 2006, 132–56).

Similarly, the material well-being of many citizens in India improved tremendously by the turn of the century, albeit less dramatically and more narrowly than in China. Liberal economic reforms stimulated faster aggregate growth, structural diversification and technological change. The deregulation of trade, industry, and investment expanded the size and diversity of the corporate capitalist class, especially in information

technology, biotechnology, and business outsourcing, creating global leaders in these fields (Chatterjee 2011, 23). But chronic human destitution in many regions and widening socioeconomic disparities provoked many counter-reactions. Significantly, the pattern of growth in India showed remarkable parallels with the trajectory in China, broadly conceived. The rate of absolute poverty reduction and wage growth, though still positive, substantially decelerated in the 1990s due to a more pro-urban reorientation (Bardhan 2010, 93–94). In addition, the devolution of power to the regions following economic liberalization unleashed dynamic interstate competition for scarce private investment and foreign capital, encouraging many chief ministers to style themselves as "chief economic officers." Yet the reforms inaugurated by New Delhi in 1991 failed to eradicate many older forms of corruption while generating new opportunities. On the one hand, the deregulation of industry, trade, and foreign exchange reduced the scope for bureaucratic manipulation. On the other, politicians and officials continued to accrue many rents post-liberalization as fixers of local development services, controllers of public sector employment and purveyors of national defense contracts (Jenkins 1999, 86–106).

Indeed, since many state-level governments in India introduced economic policy changes in the 1990s through stealth, ambiguity, and improvisation, new opportunities for graft and theft were fashioned by privatization, dereservation, and subcontracting. High electoral volatility and levels of anti-incumbency shortened political time horizons, which encouraged greater rent seeking. Compulsory land acquisition in India for industry, mining, and infrastructure was lesser in scale than in China. Nonetheless, it still generated considerable social resistance, not least given the historically poor record of compensation, rehabilitation, and resettlement of earlier governments (Bardhan 2010, 139–41). Hence these processes of accumulation by dispossession encouraged "protests of negotiation" in both countries, whose terms, tactics, and trajectories suggest broad developmental parallels despite obvious regime-level differences: of rural inhabitants seeking to claim state entitlements as equal citizens (see chapter 4 by Nair in this volume). Such developments helped to reignite a Maoist insurgency against the extraction of minerals and commodities in the severely neglected parts of the tribal-dominated hinterland, led by the so-called Naxalites, challenging the sovereignty of the state in almost a third of its districts by 2006. In short, the deepening

"probusiness tilt" of the state and new economic opportunities in post-liberalization India expanded the scale of corruption in the 1990s (Kohli 2012, 55–56), mirroring the trajectory many perceived in China. The groundswell of demands for greater social equity in each country circa 2004 highlighted a serious failing with their patterns of growth, distribution, and reform.[14]

While the UPA integrated rights-based laws and innovative accountability reforms into the new welfare agenda in India, however, the Hu-Wen administration increasingly tried to sever their linkages in China. Indeed, it discouraged legal adjudication and rights-based activism, reimposing the socialist hierarchy between various rights. In 2004, the CCP advocated a return to "big mediation" (*da tiaojie*) to resolve complex disputes, especially land seizures and mass layoffs. Crucially, it recommended that such mediation should occur without the participation of the nominal parties to the dispute (Minzner 2011, 946). The new resolution aimed, ostensibly, to build "a harmonious society" (*hexie shehui*). Translated into practice, it sought to make sure that "small problems do not leave the village, large problems do not leave the township, and conflicts are not passed up to higher authorities" (ibid. 938). In addition, the CCP revised Article 33 of the Constitution, declaring "the state respects and protects human rights." Yet the same article emphasized the inseparability of rights and duties (*quanli yiwu xiang yizhi*). If anything, the new political order stressed the importance of protecting society, resurrecting a slogan previously touted by Deng: "Stability crushes everything else" (*wending yadao yiqie*). "Stability maintenance" (*weiwen*) and "social management" (*shehui guanli chuangxin*) framed policy henceforth (see Trevaskes and Nesossi 2012). Violent rural protests against punitive levies, invoking legal rights and social citizenship, compelled the state to introduce many of the major welfare reforms noted above. Yet the meaning, sequence, and techniques that characterized these mobilizations revealed the long-standing practice of rural peasants appealing to central authorities to curb predatory local officials, repertoires of protest that defined the revolutionary era and before (Perry 2010, 20).

Accordingly, the official bar association issued new rules in 2006, deterring lawyers from taking on "mass cases" (Minzner 2013, 5). The Supreme People's Court issued an opinion the following year, encouraging lower courts and judges to prefer mediation, especially in cases "involving

large numbers of people" and "that are very sensitive, receiving significant social attention" (Minzner 2011, 945–48). Labor-related suits, following the passage of the Labor Contract Law and the global financial crisis in 2008, doubled in number (Lee 2010a, 75). But civil and political rights, and judicial independence, became increasingly scrutinized. In 2008, the CCP appointed a former provincial public security chief, Wang Shengjun, as the president of the Court. Wang proceeded to launch the "Three Supremes" campaign, instructing judges to adjudicate according to party interests, public opinion, and legal rules. Indeed, the Court proceeded to withdraw its landmark interpretation in the *Qi Yuling* case. Underlining the new political dispensation, the State Council charged the Court's vice president, Huang Songyou, who had played a key role in the famous 2001 ruling, with political corruption in Guangdong (Kellogg 2009). By 2010, the CCP had tied the promotion of mediation to the larger goal of creating a "harmonious society": "Mediation has priority, and trials should be fused with mediation" (*tiaojie youxian, tiaojie shenpan jiehe*). The percentage of cases mediated by the Supreme People's Court doubled from 31 percent in 2004 to 62 percent in 2009 (Minzner 2011, 943–44). Consolidating the shift, the NPC passed the Law on People's Mediation in 2010, which revised the previous target responsibility system. Apart from stipulating explicit quotas, the act issued clear sanctions and offered material incentives to judges to force judicial settlements (*qiangzhi tiaojie*) in cases involving labor disputes and domestic violence (ibid., 945, 949–64).

The turn to greater mediation concealed persistent variation in judicial practices. Progressive motivations and practical concerns also mattered. Local courts continued to experiment, fashioning new rules and procedures in ambiguous circumstances and where the law was silent. In some cases, they directly contravened higher existing norms, laws, and procedures (Liebman 2011, 169). More generally, many judges genuinely sought to enhance "justice for the people" (*sifa weimen*) by reducing court fees, emphasizing legal education through *pufa* campaigns, improving the accessibility of judges, and ensuring that problems were solved. Eventually, the surge in disputes, especially regarding labor, began to overwhelm the courts (Liebman 2014, 99). Hence genuine populist motives led the Supreme People's Court to proactively seek out leading experts to understand public opinion and push local courts to publicize filings, hearings, and decisions (Liebman 2011, 171, 178–83). Many judges sought to ensure that aggrieved litigants received some compensation, especially in cases involving medical negligence, disputes over labor and land, and corporate bankruptcy, even if no legal basis existed (Liebman 2014, 99–101). Such actions resonated with wider regime-level initiatives. The Second White Paper on Human Rights and the first National Human Rights Action Plan (2009–10), both issued by the State Council, maintained the priority of social and economic rights. In fact, they provided legitimacy to the new social welfare system by placing greater emphasis on redistributive rights, including new entitlements regarding labor, environment, and health (Trevaskes and Nesossi 2012). The leadership of the CCP genuinely believed that its legitimacy, especially in an era of rapid change, required greater emphasis upon political responsiveness rather than procedural litigation. In doing so, they merely invoked powerful legal traditions dating back to the revolutionary era, and even before (Liebman 2014, 103).

In addition, the return to mediation failed to halt litigation. Civil lawsuits almost doubled during the Hu-Wen era (ibid. 102). Public interest advocates continued to deploy the language of rights. The most successful organizations contested discrimination, such as Yirenpeng, mobilizing public support through new media strategies to pressure substantive policy changes. Similarly, public interest advocates with close ties to the state, such as Zhicheng, pursued evidence-based case research in order to convince sympathetic government officials to improve the law.[15] Despite losing the majority of cases, environmental lawyers made important strides through public lawsuits, winning approximately 30 percent according to the estimates of one prominent organization. Indeed, even when judges ruled against them due to insufficient material evidence or pressure from powerful commercial interests, higher political authorities often proceeded to shut down the accused companies and arrest complicit officials.[16] And many labor activists persisted with litigation in order to "showcase" "mistakes and holes" in the law.[17] They demanded collective bargaining rights within the existing union structure. On the one hand, pursuing claims through the courts produced decreasing returns. Lengthy arbitration processes sapped limited organizational resources and failed to alleviate the immediate socioeconomic vulnerabilities of workers. In any event, the lack of precedence in the legal system limited the impact of

successful individual cases. On the other, insisting that workers had a right to bargain collectively "sounded more economical," whereas "freedom of association . . . sounded political."[18] And Maoist slogans of anti-imperialist class struggle often accompanied such demands, making them harder to ignore. These mixed outcomes demonstrated the indirect responsiveness of state institutions to legitimate social grievances. Yet they underscored the limits of using the courts to politicize sensitive issues, especially regarding matters that had the potential to mobilize large numbers, and the unwillingness of authorities to accept such claims directly.

In India, despite the very real gains made regarding political transparency and social welfare under the UPA, the Indian rights movement confronted very sharp limits in other domains too. Prominent activists risked harassment, arrest, and imprisonment by the state for criticizing the war against the Maoist insurgency in the "red corridor" of the country. Perhaps the best known case involved Binayak Sen, the vice president of the PUCL, who had worked for decades to improve basic health services for poor Adivasi communities in Chhattisgarh. In 2007, the state government charged him with sedition for allegedly helping the Naxalites. Some rights activists managed to sway the apex judiciary to intervene in related matters. Several prominent intellectuals filed a writ petition to the Supreme Court to investigate the failure of the Chhattisgarh state government to implement the land and tribal forest rights of the Adivasis guaranteed by the Constitution and to improve basic public services of education and health. The petition also requested the Court to rule on the legality of the Salwa Judum, a vigilante militia of tribal youth organized by the state to fight the Naxalites. In 2011, the apex judiciary instructed the state government to disband the militia and implement basic constitutional guarantees, reprimanding the latter for engendering "a miasmic environment of dehumanization of youngsters of the deprived sections of the population, in which guns are given to them rather than books, to stand as guards, for the rapine, plunder and loot in our forests . . . [creating] a regime of gross violation of human rights . . . as [have] done Maoist/Naxalite extremists."[19] The ruling set an important precedent. Historically, the Supreme Court often deferred to the executive in national security matters on constitutional grounds. Special provisions enabled the government to legislate preventive detention measures for such purposes. But the practical effect of the ruling was short-lived:

the state government simply changed the name and formation of the militia. The persistence of repressive paramilitary operations against self-declared Naxalites and their alleged sympathizers since 2006 lays bare several illiberal constitutional provisions of the world's largest democracy.

But the scope for dissent in China, as the fate of many "rights defense lawyers" (*weiquan lushi*) over the last decade highlights, was far smaller. One of the most prominent organizations to emerge was the Sunshine Constitutionalism Social Science Research Center, later renamed Gongmeng/Open Constitution Initiative, established by Xu Zhiyong and Teng Biao shortly after their successful appeal against the custody and repatriation of rural migrants in 2003. Gongmeng sought to protect freedom of speech and of belief, and to oppose torture. In 2004, the organization supported a colleague, Gao Zhisheng, after he released an open letter requesting the regime to stop persecuting a Falun Gong adherent named Huang Wei, who had been accused of distributing propaganda and sentenced to reeducation through labor (*laojiaosuo*). The Buddhist-inspired religious movement had developed regional appeal, encompassing many distinct social groups, characteristics that suggested the possibility of an incipient counterhegemonic movement in the eyes of the CCP (Selden and Perry 2010, 23). Gao defended Huang, arguing that his arrest and detention, neither of which had been authorized by the Procuracy or the People's Court, had violated procedure as well as the Constitution.[20] The authorities released Huang on health grounds after six months. Yet they failed to declare his innocence. The Legislation Law and the ALL, under Article 12(2), only permitted "concrete [legal] challenges." Moreover, Article 5 of the Constitution required legal violations to be "investigated" only, not "invalidated." Gao proceeded to initiate a "relay hunger strike" with Zhao Xin and Hu Jia, invoking Mahatma Gandhi and Martin Luther King, to fashion a "congregation of passive fasters in new virtual public sphere" and raise the power of civil society. Their daring act, which challenged the Guiding Opinion of the All China Lawyers Association Regarding Handling Cases of a Mass Nature, instigated further repression.

The appeal of impact litigation, designed to court media support and the wider public in order to pressure state officials, inspired Gongmen to escalate its activities. The organization criticized the household registration system, *hukou*, for denying migrant workers' children equal access

to education, and offered pro bono litigation. It demanded through nonviolent protests that public officials should disclose their assets, reminiscent of similar transparency demands made by rights activists in India in the 1990s. And its leaders arranged, through online petitions and writing, signature and leaflet campaigns, "same-city dinner gatherings." The immediate focus of these activities was to promote justice in each case. Yet the larger strategic aim was "publicization"—to expose how the law actually operated (Pils 2006, 1242).

Strikingly, a key focus of Gongmen became the new Regulations of the People's Republic of China Open Government Information (OGI Regulations). Promulgated by the State Council, the new regulation sought to "safeguard the public's right to know, the right to participate, and the right to supervise" and to "help curb corruption at its source, largely reducing its occurrence."[21] Like the RTI in India,[22] the OGI allowed citizens to request "information recorded and preserved . . . by administrative agencies in the course of carrying out their duties" and receive it within 30 days, encouraging proactive disclosure by government agencies as well. Unlike the RTI, however, the OGI Regulations attached many restrictive conditions. Public authorities could only disclose information that was "fair," "accurate," "coordinated with other agencies," and which did not threaten "state security, public security, economic security, or social stability," including "important policy decisions on state affairs" and "economic and social development." Indeed, the regulations imposed potential administrative penalties for not establishing mechanisms protecting secrecy as well as criminal sanctions for "disclosing information that should not be disclosed." In short, the right to information encountered stiff obstacles in China, imposing tough penalties for perceived improprieties.

In 2009, local state authorities shut down Gongmeng for tax evasion, citing legal irregularities. The move portended a wider crackdown. The Beijing Number 1 Intermediate Court sentenced Liu Xiaobo, who co-drafted Charter '08, to 11 years in prison for inciting subversion. The members of Gongmeng regrouped, renaming themselves the New Citizens Movement. Yet many potential benefactors, sensing the risks, refrained from supporting their activities.[23] The open call for rule of law and constitutionalism, and for officials to disclose their assets publicly, had crossed a line.

Shortly after becoming general secretary of the CCP in late 2012, on the 30th anniversary of the 1982 Constitution, Xi Jinping publicly affirmed the rule of law. Prominent liberals such as Mao Yushi, He Weifang, and Dai Qing released an open letter, demanding an independent judiciary and democratic reforms. They subsequently appealed, less stridently, for China to ratify the ICCPR. In early 2013, the State Council appointed Zhou Qiang, a known legal reformer, as president of the Supreme People's Court (Minzner 2013, 10). Yet the regime suppressed further calls for constitutionalism, shutting down its liberal party magazine, *Yanhuang Chunqiu*, for publishing the following statement: "If we hold our constitution against our reality, we discover a huge gap between the constitution and the behavior of our government created by the system, the policies and laws currently in force. Our constitution is basically void." The *Southern Weekend*, releasing an editorial that invoked the "dream of constitutionalism," was similarly censored.[24] Shortly thereafter, the Xi administration released an announcement identifying the "Seven Don't Mentions": universal values, freedom of the press, civil society, civic rights, historical mistakes committed by the Communist Party, elite cronyism, and an independent judiciary.[25] Some NGO leaders privately supported the strategy, claiming that many individuals "are not ready for rights. . . . [T]hey don't understand the difference between procedures and outcomes. . . . [R]ule of law takes generations [to build]."[26] But more radical activists expressed scorn: "There is a popular joke: a villager lost his house, so he complained to the official in charge, land seizures are unconstitutional. But the official just laughed. 'The Constitution is not written for you, it is written for us!' In modernity, a dictator cannot say he is a dictator."[27]

At the Third Plenum in late 2013, the Xi administration pledged to strengthen the concept of "rule of law China" (Liebman 2014, 97). Among other measures, it promulgated decisions to abolish reeducation through labor on grounds that it violated the Constitution, to relax the one-child policy for parents with no siblings, and to improve the delivery of justice by instructing courts to abide by the revised Criminal Procedure Law, which prohibited torture. It also vowed to attack the specter of sleaze, theft, and bribery that engulfed the polity, to capture "tigers and flies," inaugurating the most sweeping anticorruption campaign since the revolution. The main instrument in the battle against venality, however, was the

Discipline Inspection Commission of the CCP, whose extensive powers of investigation and detention lacked any judicial oversight (ibid. 105). Conspicuously, prominent legal rights activists had championed each of the preceding measures for years, including the blind "barefoot lawyer" Chen Guangcheng, who captured international attention following his exile to the United States in 2012. But the authority to introduce such reforms, or even to demand them, was the prerogative of ruling political elites. In early 2014, despite being under house arrest, political authorities charged Xu Zhiyong with disturbing public order, sentencing him to four years in prison. His downfall foreshadowed a wider assault on rights activists in the run-up to the 25th anniversary of Tiananmen and beyond.

Concluding Remarks

A convergent comparison of rights-based activism in India and China since the late 1970s offers a number of insights—comparative, theoretical, and historical in nature. Such an approach suggests both the significance and irrelevance of classical political differences for understanding the relationship between the nation-state paradigms, logics of rights and citizenship, and the ramifications of globalization in each country across the three stylized temporalities informing this volume. First, despite manifest differences in their respective political regimes, the trajectory of rights-based activism in India and China underscores the significance of courts, law, and constitutionalism as sites, techniques, and discourses of contestation. Common experiences and convergent patterns played a role in both countries: the experience of arbitrary political excesses of the 1970s, desire of key state organs to recover political legitimacy and institutional stability in the 1980s, and the growing causal nexus between prosperity, corruption, and inequality since the 1990s. The broader shift to the new constitutionalist paradigm that emerged across the world in the 1970s, concomitant with the third wave of democratization, highlights the play of global circulatory forces.

That said, these macro-level convergences reflected the conjuncture of distinct causal factors rather than general underlying mechanisms,

which typically produce constant effects and even uniform outcomes. The key state institution in India was the Supreme Court, seeking to restore its credibility after the Emergency. In contrast, the principal state organ in China was the all-powerful CCP, seeking to impose collective discipline and political stability. Political circumstances diverged significantly too. The 1980s witnessed growing electoral participation by historically subaltern groups and the proliferation of new state-based parties in India, undermining Congress dominance and inaugurating the demise of single-party majority governments in New Delhi after 1989. The Democracy Wall movement and growing student mobilizations revealed powerful aspirations for greater political liberalization in China. Yet their suppression, culminating in Tiananmen in 1989 and the dismantling of the CDP a decade later, underscores the difference. Similarly, accelerating market reform and global economic integration provided a major rationale for constitutional revision and legal development in China in the 1980s and 1990s, respectively.[28] In contrast, the distinguishing trait of high constitutionalism in India in the 1980s was progressive social litigation. The reorientation of the Supreme Court in the 1990s, when it began to question rights of labor, indigenous communities, and the environment, indicates some convergence with Chinese developments. Both countries witnessed considerable public interest litigation on behalf of relatively disadvantaged groups in these years, as political corruption, economic insecurity, and social dispossession mounted. Still, the imperatives of liberalization and globalization exerted less influence upon high judicial activism in India. These differences mattered.

Nonetheless, the trajectory of rights-based activism in India and China since 1980 reveals the limitations of using regime-level variables to explain some important developments. Many Chinese dissidents frequently argue that securing civil, political, and socioeconomic rights presumes the existence of representative democratic institutions. Yet the record of democracy in India since the 1980s, despite its deepening, demonstrates the importance of courts, law, and constitutionalism for recognizing, protecting, and expanding such rights.

Second, despite their massively differential powers, rights-based activism in India and China often encouraged their respective apex judiciaries to articulate "political jurisprudence." Again, the specific causes of this macro-level convergence differed significantly: the self-restrained

jurisprudence regarding socioeconomic rights, weak enforcement, and judicial overload of the Indian Supreme Court versus the conflicting internal values of the constitution and strict political limits imposed upon the Supreme People's Court. Of course, the Indian Supreme Court expanded its vast constitutional authority over the last 30 years, accumulating extraordinary powers in various domains. Indeed, if every legal question eventually became political in China (Liebman 2014, 103), every political question in India usually became legal. Nevertheless, rights-based legal activism produced ironically similar outcomes more often than theoretical explanations based on political regime typologies would suggest. The use of the law and the courts as a "springboard" encouraged a rich interactive dialogue between activists, scholars, and judges in both countries, helping to form new civic networks, generate media attention, and enhance social awareness (Fu and Cullen 2011, 3, 15–16, 22–23). The indirect symbolic ramifications of landmark judicial rulings, either to implement the law or reinterpret constitutional values, outweighed their direct material impacts. Hence the measure of rights-based activism, its realization, has often been administrative reform and policy change.

Third, the justification, conceptualization, and pursuit of rights-based activism in India and China over the last 30 years reveal important distinctions in terms of their moral imaginaries, political strategies, and social repertoires. Significantly, the successes and failures of such campaigns reflect the lineage of their different political regimes, logics of national citizenship and state formation, and patterns of development. Many scholars argue that contemporary rights mobilizations in China frequently summon Maoist idioms of justice: peasants and workers claim the "right to rebel" against corrupt local officials (Perry 2008, 45). "Protests of desperation" invoke violated social contracts. Of course, many aggrieved groups join "protests against discrimination," highlighting the violation of new legal contracts (Lee 2010b). Yet these claims of citizenship and legal justice, skeptics argue, simultaneously bureaucratize and depoliticize conflicts (Lee and Hsing 2010, 9–10). Suffice to say, the emergence of the *weiquan* movement in China over the last decade challenges sweeping generalizations, given its explicit political embrace of modern democratic constitutionalism. Moreover, a number of perspectives inspire its myriad followers, from neoconservatives like Hayek and liberals such as Berlin to figures such as Mahatma Gandhi and Martin Luther King.

Such a mélange of influences risks generating incoherence. And the arguments put forward by many rights lawyers sometimes imply that regime change will independently resolve basic class struggles. Still, the increasingly radical demands of the rights defense movement over the last decade clearly represented an attempt to *politicize* the rules of rule, leading to its hard suppression. In the absence of widespread economic crisis, a charismatic oppositional leader with a genuine counterhegemonic ideology and state collapse, however, the majority of rights-based mobilizations in contemporary China likely strengthens the authority of the current political regime (Perry 2010, 28).

In relative contrast, rights activism in India over the last three decades has largely sought to establish an alternative paradigm of social citizenship and democratic governance. The origins, identity, and character of these movements, to be sure, embodied older historic idioms too: *Adivasi* claims, Naxalite discourses, and Gandhian precepts. Nonetheless, the social activists and activist judges who spearheaded these campaigns since the late 1970s largely sought to exploit conceptual tensions in the 1950 Constitution, incorporating socioeconomic entitlements. They subsequently converted these legal victories into parliamentary legislation over the last decade by forging coalitions with sympathetic politicians. Moreover, many of these newly legislated rights deliberately seek to ameliorate socioeconomic inequalities by enhancing the transparency, responsiveness, and accountability of the state. Achieving the former in a neoliberal era, needless to say, demands more than simply ensuring the latter. It requires attacking the growing structural inequalities—which inspired the Maoist insurgency to reemerge in India over the last decade—that afflicts many Asian societies. Nonetheless, the fusion of new welfare entitlements and mechanisms to reduce official corruption tests many existing principles, rules, and methods of rule, *politicizing* the latter. The increasingly divergent impact and fate of rights-based activism in India and China since 2004 reaffirms the importance of regime differences and state forms.

The rise of two self-avowed strongmen in India and China since 2014, part of a wider global phenomenon since the 2008 financial crash, challenges this assessment to some degree. Programmatically, Narendra Modi and Xi Jinping espouse a number of common overarching aims: to lessen political corruption, pursue the next phase of economic modernization,

and project national power in the evolving global order. Strategically, both leaders have centralized state power within their parties and offices to a degree unseen in recent decades, surrounding themselves with loyal disciples from their provincial bases in Gujarat and Zhejiang, producing respective cults of personality. Concomitantly, they have sought to narrow the scope for critical reporting, social activism, and political dissent in state and society, eroding the independence of institutions. By framing many of their actions in singular nationalist tropes, Xi and Modi have questioned the legitimacy of rival political views.

Nevertheless, to date the scale, scope, and severity of repression launched by Xi far exceeds analogous developments spearheaded by Modi. Beginning in 2013, the Xi administration began allowing charities and community service organizations to register themselves independently. Yet internal CCP documents claimed that efforts to promote civil society represented "an attempt to dismantle the party's social foundation . . . [and] a serious form of political opposition."[29] Mounting pressures faced by rights lawyers, independent media, and labor unions in the judicial system and public sphere underscored this highly restrictive interpretation of social autonomy. Journalists suspected of "picking quarrels and provoking troubles" online could lose their press cards and face criminal indictment.[30] The harsh crackdown on rights lawyers in the summer of 2015, facing charges ranging from "creating a disturbance" to "inciting subversion of state power," led to many covert detentions and forced public confessions. By early 2016, the central administration declared that media "must speak for the party's will" and "protect the party's authority," and that statements by retired party cadre must be consistent with the views of Xi as "core leader."[31] The subsequent passage in the spring of the Foreign Non-Governmental Organizations Management Law prohibited religious groups, required all projects receiving foreign support to be registered and enabled certain associations to be deemed "unwelcome," including such prominent organizations as the Ford Foundation and Asia Society.[32] By the summer the government began implementing an older regulation that made it illegal to hire reporters or publish content from anonymous sources, muzzling outlets such as Tencent, Sina, and Caijing that "[did] not adhere to correct guidance of public opinion," and introducing similar regulations to prevent lawyers from mobilizing online support for their clients.[33] The judicial system remained active, pushed by

the government to address the growing problem of severely indebted companies, compelling judges to impose settlements based on the 2007 bankruptcy law. Yet it disproportionately targeted small and medium enterprises.[34] Indeed, despite the sweeping anticorruption campaign against many party officials, state administrators, and military personnel, which reportedly had ensnared up to 750,000 individuals associated with rival political factions, the vast majority received minor disciplinary warnings. Only roughly 5 percent were prosecuted for the highest penalties by the courts.[35] The high-level campaigns and mobilizational approach of Chinese party-state, which remains distinct from the legal-bureaucratic orientation of its Indian counterpart (see chapter 1 by Frazier in this volume), remains conceptually insightful. The concentration and personalization of power by the Xi administration, which increasingly seeks to delegitimize claims to rights-based constitutionalism and institutional autonomy in the judicial system and civil society, has deepened the fusion of power that formally defines China's underlying political regime.

The general orientation of the Modi government toward rights activists, civil society, and the higher judiciary in India bears a striking resemblance to these developments.[36] Since 2014, it has intensified the drive to control domestic NGOs supported by foreign donors and international NGOs, which had been initiated by the previous UPA administration. Disparaging such organizations as "monkey traders" that "[try] to pull Modi down" (Mody 2015), the Union government has either suspended or revoked the licenses of approximately 10,000 NGOs receiving funds under the Federal Contributions Regulation Act, 2010, roughly one-quarter of the total number active in India.[37] The failure of many social organizations to file annual statements as required by law was a valid concern. Yet labeling NGOs that campaigned against nuclear energy, genetically modified seeds, and extensive mining activities as "anti-development," "antinational," and having "subversive links" has stifled the activities of organizations from Greenpeace to the Ford Foundation. These moves intended to delegitimize social criticism and political dissent.

Similarly, the Modi government assailed many of the landmark social acts introduced by the UPA, which granted statutory rights to information, education, forests, employment, and land, for frustrating the pursuit of rapid industrialization. Many of these programs had suffered from relative neglect by their architects in the second UPA administration,

sometimes even opposition. The need to generate decent employment and rising wages through greater structural diversification and faster economic growth was a legitimate concern too. By delaying the appointment of key officials overseeing the RTI, weakening prolabor provisions of and restricting funds for the NREGA, and seeking to undermine the social consent safeguards in the Land Acquisition and the Right to Resettlement and Rehabilitation Act (LARRA) through executive ordinance, however, the Modi government has sought to undermine civil liberties, political transparency, and social entitlements in the name of economic modernization.

Finally, pressures on rights activists and apex judges have grown. In the spring of 2015, Modi counseled the chief justices of the higher judiciary not to be swayed by "five-star activists," including prominent critics of the prime minister. He also lamented at the number of tribunals and backlog of cases in the system. Both were serious legal concerns. Yet the Modi government also introduced the 99th amendment, the National Judicial Appointments Commission (NJAC) Act, to wrest greater power over such matters to the executive branch. Again, the power of the Indian Supreme Court to appoint higher justices and its general institutional accountability was a genuine political concern that enjoyed growing support among many legal observers as well as rival parties. Yet the composition of the proposed high-level commission threatened to undermine judicial independence (Mehta 2015). In short, these attempts by the Modi government to curb the autonomy of rights activists, social organizations, and legal actors in the judicial system and civil society exhibit a striking convergence with developments under the Xi administration.

Yet divergences persist. The failure of the Modi government thus far to galvanize sufficient backing in parliament to amend the LARRA through legislation, and the fact that recent state-level elections have enabled opposition parties to damage the aura of the prime minister, underscores the differences. Indeed, the decision of the Supreme Court to strike down the 99th amendment on constitutional grounds and the generally favorable orders given by the courts to NGOs seeking to reinstate their regulatory status under the Foreign Contribution Regulation Act (FCRA) (Bhatnagar 2016), demonstrates the continuing salience of regime-level differences. The backlog in the courts, which the Modi government has exacerbated by blocking recommended judicial appointments (Sharma 2016), is growing worse. But the scope for rights, law, and constitutionalism in India, despite mounting threats, is still far greater than in China.

Notes

1. I wish to thank Prasenjit Duara and Elizabeth Perry for their probing questions and helpful suggestions on an earlier draft of this essay, and the Inter-Asia Program of the Social Science Research Council and India China Institute of the New School, which supported my fieldwork in India and China.

2. For comparative historical analysis, see Ocko and Gilmartin 2009.

3. I thank Arun Thiruvengadam for emphasizing this point to me.

4. I analyze the evolution of high judicial activism in India, and the role of rights-based social activists in PIL, in "A Semi-Progressive Juristocracy: The Unexpected Social Activism of the Indian Supreme Court" (under review). The following discussion of the Court, unless otherwise noted, summarizes the details and arguments of this paper.

5. Interview with leading social activists, Delhi.

6. See table 1.1 in Pei (2010, 37).

7. The following paragraph entirely relies on Wright 2002.

8. See "Sun Zhigang's death and reform of detention system." http://www.humanrights.cn/zt/magazine/20040200482694708.htm.

9. See Nicholas Robinson, "Hard to Reach," *Frontline*, February 12, 2010.

10. For details, see Shankar and Mehta 2008, 152–63.

11. *Miss Mohini Jain v. State of Karnataka & Ors.*, 1992. Quoted in Shankar and Mehta 2008, 151. A larger bench of five justices supported the ruling in a subsequent case, *Unni Krishnan, J. P. & Ors. etc. v. State of Andhra Pradesh & Ors.*, 1993 (1) SCC 645.

12. *Narmada Bachao Andolan v. Union of India and Ors.* (2000) 10 SCC 664. See Rajagopal 2007, 157–86.

13. Suffice to say, the performance of this new welfare regime varies tremendously, both in terms of distinct policy domains and state-level performance. I assess its record in forthcoming work.

14. As far as I know, little evidence suggests that either the Hu-Wen administration or the Sonia Gandhi–Manmohan Singh government had explicitly discussed their new welfare regimes or sought to imitate each other. A number of contacts and exchanges between rights-based organizations in India and China had reportedly occurred through the World Social Forum (WSF). I explore whether these interactions led to exchanges of ideas, strategies and tactics in forthcoming work.

15. Interview with a prominent legal activist, Beijing, June 9, 2014.

16. Interview with a prominent environmental lawyer, Beijing, June 10, 2014.

17. The following insights are based on interviews with prominent labor activists conducted in Hong Kong, January 20 and 23, 2015.

18. Ibid.
19. Quoted in Ramachandra Guha, "The Continuing Tragedy of the Adivasis," *The Hindu*, May 28, 2013.
20. The rest of the paragraph draws explicitly on Pils 2006, 1229–61.
21. The following discussion of the OGI Regulations summarizes Jamie P. Horsley, "China Adopts First Nationwide Open Government Information Regulations," May 9, 2007. http://www.freedominfo.org/2007/05/china-adopts-first-nationwide-open-government-information-regulations/.
22. It may not be a coincidence. Xu Zhiyong studied the RTI in India.
23. Interview with prominent legal activists, Beijing, June 8, 2014.
24. *Financial Times*, January 5–6, 2013.
25. See http://chinadigitaltimes.net/2013/05/sensitive-words-seven-say-nots-and-more/.
26. Interview with a prominent NGO official, Beijing, June 9, 2014.
27. Interview, Hong Kong, June 2, 2014.
28. I thank Liz Perry and Ho-Fung Hung for emphasizing this point to me.
29. *Financial Times*, July 28, 2016.
30. *New York Times*, February 22, 2016.
31. *New York Times*, February 16 and March 19, 2016.
32. *Financial Times*, April 29, 2016.
33. *New York Times*, July 5 and July 26, 2016; *Financial Times*, October 12, 2016.
34. *Financial Times*, June 23, 2016.
35. *Financial Times*, October 10, 2016; *New York Times*, November 20, 2016.
36. Unless noted, the following summary highlights developments I have explored in greater detail in Ruparelia 2015.
37. *Hindustan Times*, June 17, 2016.

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CHAPTER 4

State-Embedded Villages

Rural Protests and Rights Awareness in India and China

MANJUSHA NAIR

In 2006, Kevin O'Brien and Lianjiang Li proposed the term "rightful resistance" for the protests that took place in the Chinese countryside against the malfeasance of local state government authorities, specifically those at township and county levels. These protests were more limited in scope than social movements, and noisier, more public and consequential than everyday forms of resistance. They were "a form of popular contention that operates near the boundary of authorized channels, employs the rhetoric and commitments of the powerful to curb the exercise of power, hinges on locating and exploiting divisions within the state, and relies on mobilizing support from the wider public" (ibid. 2). O'Brien and Li pointed to many examples of such resistance in contemporary rural China: among them, the practices of increasingly citing laws when challenging malpractices of local government bodies, and of withholding tax payments because people had not received the fertilizer or fuel subsidies that the state was obliged to provide. In one of the poorest villages in Henan, a group of villagers, while contesting a fee, cited the state council regulations that had been distributed at the prefectural level, implying that they would take their case up to the prefecture if the county officials refused to abide by the rules (Cheng 1994, 11–12, cited in O'Brien and Li 2006).

Huaiyin Li distinguished "rightful" from "righteous" resistance as emerging from two different cultures of the peasants (2009, 51–52). The "righteous" actions of peasants derived from an ethics based on the