

India's New Rights Agenda: Genesis, Promises, Risks

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ABSTRACT

Since 2004, India has introduced a series of progressive national bills that enact a right to new civic entitlements, ranging from information, work and education to forest conservation, food and basic public services. What explains the emergence of these laws? How are the rights conceived by these acts conceptualized, operationalized and pursued? What are the promises, challenges and risks—legal, political and economic—of enshrining socioeconomic entitlements as formal statutory rights? This paper engages these questions. In part 1, I argue that three slow-burning processes since the 1980s, distinct yet related, catalyzed India's new rights agenda: high socio-legal activism, rapid uneven development and the expanding popular foundations of its federal parliamentary democracy. Significantly, all three processes exposed the growing nexus between political corruption and socioeconomic inequality. Equally, however, each raised popular expectations for greater social justice that were only partly met. Part 2 of the paper evaluates India's new rights agenda. The promise of these new laws is threefold: they breach the traditional division of civil, political and socioeconomic rights, devise innovative governance mechanisms that enable citizens to see the state and provide fresh incentives for new political coalitions to emerge across state and society. Several risks exist, however. Official political resistance from above and below, the limited capacities of judicial actors, state bureaucracies and social forces and the relatively narrow base of many of these new movements endanger the potential of these reforms. The paper concludes by considering several imperatives that India's evolving rights movement must confront to realize its ambition.

KEYWORDS: India, rights, inequality, corruption, accountability.

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Introduction¹

Since 2004, India has enacted a series of national legislative acts that enshrine new civil liberties and socioeconomic entitlements through legally enforceable rights. The Right to Information Act (RTI), 2005, mandates government agencies to release information regarding their

¹ I benefitted from discussions with Tanni Mukhopadhyay, John Harriss, Reetika Khera, Rob Jenkins, Yamini Aiyar and Atul Kohli over various aspects of this paper, and the suggestions of two anonymous reviewers. Any remaining mistakes are mine.

activities to individual citizens upon request in a timely manner. The National Rural Employment Guarantee Act (NREGA), 2005, grants adult members of every rural household the right to demand 100 days of wage-employment from the state. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, empowers tribal communities with the right to own and use traditionally cultivated land and to protect and conserve forests. The Right of Children to Free and Compulsory Education Act, 2009, makes the enrollment, attendance and completion of schooling of every child under 14 the obligation of the state. Indeed, the desire to entrench new citizenship rights has recently inspired the Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of Their Grievances Bill, 2011, and the National Food Security Bill, 2012. In short, the introduction of these acts has encouraged growing political demands to extend their purview to other domains of social policy.

The emergence of India's new rights agenda merits scholarly attention for several reasons. First, it represents a "new welfare architecture" with a distinct "social contract" in modern Indian democracy.² Since achieving independence in 1947, successive governments have introduced an extraordinary range of social welfare initiatives. These have ranged from area-based interventions and compensatory discrimination policies to specifically targeted schemes for women and children as well as resettlement programs.³ The vast majority fell under the purview of the Directive Principles of State Policy in the Constitution, however, making them non-justiciable. Moreover, like its South Asian neighbours, the provision of welfare in post-independent India constituted an "informal security regime": the state offered minimal social protection on a residual basis, leaving its citizenry to rely on various informal networks.⁴ The introduction of India's new rights-based acts marks a break by setting new standards for genuine social citizenship.

Second, the development of progressive social policy in the twentieth century has generally taken two historical routes.⁵ In the first, struggles by left-wing parties, workers' movements and encompassing trade unions for universal franchise and labour rights during periods of rapid industrialization and mass democratization engendered in varying degrees the formation of social democracy in western Europe and state corporatism in Latin America.

² Pratap Bhanu Mehta, "Public advisory," *Indian Express*, 6 April 2010.

³ See Stuart Corbridge, Glyn Williams, Manoj Srivastava and René Véron, *Seeing the State: governance and governmentality in India* (Cambridge: Cambridge University Press, 2005), 47-84.

⁴ Geof Wood and Ian Gough, "A comparative welfare regime approach to global social policy," *World Development* 34, no. 10 (2006), 1705.

⁵ See Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton: Princeton University Press, 1990); Yusuf Bangura, ed., *Democracy and Social Policy* (Basingstoke: Palgrave Macmillan, 2007); and Wood and Gough, "A comparative welfare regime approach to global social policy," 1708.

In the second, the desire for prosperity and security led the authoritarian political elites of East Asia to fashion “productivist welfare regimes,” which raised the human capital and living standards of labour at the cost of severe political repression. The genesis of India’s new welfare paradigm, as I show, exhibits various elements of these earlier paradigms. Despite the remarkable historical achievement of consolidating a constitutional representative democracy in a poor agrarian society and the persistence of a vibrant parliamentary left, India’s national politics have proven relatively unresponsive to popular social demands for greater material equality. Social movements seeking to defend such interests have more often pressed their claims vis-à-vis the bureaucracy and judiciary. Their respective struggles have rarely penetrated the national electoral arena, a domain that has been dominated by the politics of identity, especially since 1989.⁶ Hence the significance of many of India’s recent landmark acts, which culminated from social activists and activist judges working in tandem with progressive party politicians.

Finally, the last decade has witnessed the expansion of ambitious welfare programs throughout Asia in response to worsening socioeconomic inequalities.⁷ These range from massive universal health insurance programs in Indonesia and the Philippines, ambitious pension schemes in Thailand and China, and minimum income support for poorer citizens in South Korea. Indeed, the speed and scale of these initiatives is remarkable, given that classic welfare states of Europe took half a century to develop. A distinctive feature of India’s new welfare paradigm, however, concerns its efforts to promote greater political transparency, responsiveness and accountability. This is the purpose of the Right to Information Act, of course, as well as the so-called Citizens Grievances Bill. Yet similar concerns also inform the novel design features of the NREGA, rechristened the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) in 2009, which allow its poor intended beneficiaries to participate in social audits of local public officials. These new governance mechanisms furnish poorer citizens with an opportunity to challenge the practices of corruption and patronage that have enabled benefits to be targeted towards or captured by particular social groups in the past. Arguably, the move to provide socioeconomic entitlements through novel civic rights and governance reforms is an innovative state-building project that aims to curb the danger of authoritarian high modernism by allowing India’s citizenry to “see the state.”⁸

⁶ Mary Katzenstein, Smitu Kothari and Uday Mehta, “Social movement politics in India: institutions, interests, and identities,” in *The Success of India's Democracy*, ed. Atul Kohli (Cambridge: Cambridge University Press, 2001), 244-246.

⁷ See *The Economist*, “Asia’s next revolution,” 8 September 2012.

⁸ See James C. Scott, *Seeing like a State: how certain schemes to improve the human condition have failed* (New Haven: Yale University Press, 1998), and Corbridge et al, *Seeing the State*.

What explains the emergence of India's new rights-based welfare paradigm? How are the rights enshrined in these laws generally conceptualized, operationalized and pursued? What are the promises, risks and challenges—legal, political and economic—of enshrining various civic entitlements as formal statutory rights? Can such an approach serve to address the deep structural determinants of inequality in a postcolonial society such as India? Or does it merely represent a new palliative response, the latest manifestation of neoliberal governmentality, to the evolving power asymmetries in the global South?

This paper addresses these questions. It largely draws upon my previous research, and existing scholarship across several topics, to provide a new critical interpretation. In the first section, I analyze three slow-burning processes since the 1980s, distinct yet connected, that catalyzed India's new welfare paradigm: high socio-legal activism, rapid uneven development and the expanding popular foundations of its federal parliamentary democracy. Significantly, all three processes exposed the growing nexus between political corruption and socioeconomic inequalities. Equally, however, each raised popular expectations for greater social justice that were only partly met. In section 2, I evaluate the promises and risks of India's new rights agenda. The introduction of a range of new civic rights in recent years, and elaboration of innovative accountability mechanisms to realize them, has generated fresh political incentives to mobilize progressive coalitions in electoral contestation and across the state-and-society divide. Risks abound, however. Official political resistance from above and below, the limited capacities of judicial actors, state bureaucracies and social forces, and the relatively narrow base of many of these rights movements threaten to undermine the potential of these reforms. The paper concludes by highlighting several imperatives that India's evolving rights movement must confront to realize its ambition.

The Genesis of India's New Rights Agenda

The architect of India's new rights agenda was the United Progressive Alliance (UPA), led by the Indian National Congress, which captured national office following the Fourteenth General Election in April-May 2004. Programmatically, the UPA campaigned on behalf of the *aam aadmi* (common man). Its Common Minimum Programme (CMP) promised, amongst other things, to achieve "growth with a human face" by pledging to introduce the right to information, a national rural employment scheme and other such initiatives. Strategically, the Congress had belatedly embraced the need to construct a national multi-party coalition after nearly a decade in the Opposition. It also created the National Advisory Council (NAC) under the leadership of Sonia Gandhi, following her decision not to claim the prime ministership on behalf of the Nehruvian dynasty, charged with executing the social agenda of the CMP. Comprising a number of eminent

scholars, activists and bureaucrats, and receiving the external parliamentary support of the communist Left Front for the majority of the UPA's first tenure (2004-2009), the NAC pushed these various initiatives, often against counter-pressures from the Council of Ministers.

In order to grasp their timing and rights-based emphasis, however, we need to trace their longer causal genesis from the 1980s. The most important catalyst was the Supreme Court. The Constitution distinguished political liberties and civic freedoms—regarding the freedom of speech and expression, of assembly, movement and association, and the right to hold property—ensconced in Part III from the social and economic goods—covering livelihood, pay, work, education and health—listed under the Directive Principles of State Policy in Part IV. Crucially, it recognized the former as fundamental rights enforceable by the courts, whereas the latter comprised the goals and aspirations of the new postcolonial state. For the first three decades after Independence, the apex judiciary had largely defended this basic distinction in a conservative manner. Following the Emergency, however, it began to change. Substantively, the Court expanded its remit by interpreting various socioeconomic needs as integral to Article 21 of the Constitution, which recognized the fundamental right to life. The following extracts from a well-known legal decision reflects the spirit of jurisprudence that gradually evolved:

The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.⁹

The Supreme Court also encouraged vital procedural changes by introducing public interest litigation (PIL). The latter involved three crucial innovations.¹⁰ PIL relaxed the norms of “standing” and “pleading” and the notion of “aggrieved persons” by permitting concerned individuals who had not directly suffered harm to present suits on behalf of the poor.¹¹ In addition, the Court began to appoint fact-finding and monitoring commissions to assist with such litigation. And in many cases its justices used such commissions to perform executive tasks. These substantive reinterpretations and procedural innovations created new avenues for progressive legal change on the part of justices as well as citizens.

⁹ Francis Coralie Mullin v. Administrator, Union Territory of Delhi [1981] 2 SCR 516. Quoted in Justice Richard J. Goldstone, “Foreword,” in *Courting Social Justice: judicial enforcement of social and economic rights in the developing world*, eds. Varun Gauri and Daniel M. Brinks, (New York: Cambridge University Press, 2008), viii.

¹⁰ Pratap Bhanu Mehta, “The rise of judicial sovereignty,” *Journal of Democracy* 18, no. 2 (April 2007), 71.

¹¹ Susanne Hoeber Rudolph and Lloyd I. Rudolph, “Redoing the constitutional design: from an interventionist to a regulatory state,” in *The Success of India's Democracy*, 137.

Crucially, high judicial activism coincided with an upsurge of “non-party political movements”—grassroots social campaigns and non-governmental organizations—that emerged in the wake of the Emergency.¹² The call for greater participatory governance and moral probity by the Movement for Total Revolution (*sampoorna kranti*), led by the eminent socialist Jayaprakash Narayan, was arguably the most important mobilization in the 1970s.¹³ The following two decades saw a greater proliferation of such activism: civil rights organizations such as the People’s Union for Civil Liberties and People’s Union for Democratic Rights;¹⁴ popular environmental movements such as the Narmada Bachao Andolan, Kerala Sastra Sahitya Parishad¹⁵ and Chipko movement as well as urban-based NGOs such as the Centre for Science and Environment;¹⁶ and hybrid grassroots organizations demanding greater political accountability such of the Mazdoor Kisan Samiti Sanghathan (MKSS). Indeed, the 1980s alone witnessed a massive increase in the number of NGOs in India, ranging between 50,000 and 100,000.¹⁷ These diverse social organizations served as “midwives to judicial activism.”¹⁸

The early wave of judicial activism saw the Supreme Court attempt to safeguard “human rights against state abuses: police brutality and torture, custodial rape, inhuman treatment in jails and ‘protective’ homes.”¹⁹ Yet it also began to defend the socioeconomic entitlements of “pavement dwellers, rickshaw pullers, construction workers, Adivasis and Dalits,”²⁰ linking the alleged violation of such claims to their fundamental rights as citizens. The Court subsequently addressed environmental issues, such as the injunction in 1992 to protect the Taj Mahal from local environmental pollution in light of the Environmental Protection Act, 1986, and the establishment of a monitoring committee to improve drinking water and sewage facilities in Agra in 1999.²¹ Perhaps most famously, it declared in 1992 that “[e]very child of this country has the right to free education until he [sic] completes the age of 14 years ... implicit in the right to life.”²² Indeed, in 2001, citing the

¹² Rajni Kothari, “The non-party political process,” *Economic and Political Weekly* 19, no. 5 (4 February 1984): 216-224.

¹³ Upendra Baxi, “The (im)possibility of constitutional justice: seismographic notes on Indian constitutionalism,” in *India’s Living Constitution: ideas, practices, controversies*, eds. Zoya Hasan, E. Sridharan and R. Sudarshan (New Delhi: Permanent Black, 2006), 48.

¹⁴ Katzenstein et al., “Social movement politics in India,” 249.

¹⁵ Amita Baviskar, “Social movements,” in *The Oxford Companion to Politics in India*, eds. Niraja Gopal Jayal and Pratap Bhanu Mehta (New Delhi: Oxford University Press, 2010), 384.

¹⁶ Amit Sibal, “From ‘niti’ to ‘nyaya,’” *Seminar* 615 (November 2010), 32, fn 30; Rob Jenkins, “Non-governmental organizations,” in *The Oxford Companion to Politics in India*, 426.

¹⁷ Rudolph and Rudolph, “Redoing the constitutional design,” 137.

¹⁸ Baxi, “The (im)possibility of constitutional justice,” 48.

¹⁹ Rudolph and Rudolph, “Redoing the constitutional design,” 134.

²⁰ Katzenstein et al., “Social movement politics in India,” 257.

²¹ Rudolph and Rudolph, “Redoing the constitutional design,” 138.

²² Shylashri Shankar and Pratap Bhanu Mehta, “Courts and socioeconomic rights in India,” in *Courting Social Justice*, 151.

phenomenon of malnutrition and starvation, the Court linked the basic health status of school-age children to the right to education by requiring every state government to introduce cooked mid-day meals in all government and government-assisted primary schools within six months.²³

Significantly, in the 1990s the apex judiciary also turned its attention to political society and the state apparatus, seemingly “riddled with corruption and human rights atrocities on a disturbingly excessive scale,” which jeopardized the rule of law and threatened to weaken “India’s infrastructure of national, ecological, human, and administrative resources to [irreparable] levels.”²⁴ It pressed the Central Bureau of Investigation (CBI) to book politicians suspected of illegal financial activities,²⁵ and sought to strengthen its independence by removing the “single directive” principle that had subjected the agency to the prime minister’s office.²⁶ Similarly, the apex judiciary conferred statutory power to the Central Vigilance Commissioner, issuing directions regarding the selection, transfer and tenure of the post. In short, the Supreme Court began “forcing other institutions of governance to do what they are supposed to do by using new and powerful methods of investigation and monitoring [of official action] ... for illegality, unreasonableness and procedural lapses,” even claiming the power to correct the omissions of the legislative branch.²⁷

High judicial activism had inherent limitations, however. First, the apex judiciary failed to adopt a consistently pro-poor stance or tackle the most significant obstacles to human well-being. Numerous rulings of the apex judiciary in the 1990s weakened the thrust of the 73rd and 74th amendments, which sought to empower local elected representatives over state bureaucrats.²⁸ Despite its generally progressive stance on environmental matters, the Supreme Court also responded to the Narmada Bachao Andolan that “the displacement [by the Sardar Sarovar dam] 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.”²⁹ Similarly, the Court issued a series of verdicts against labour, even arguing in one case that public sector employees had

²³ Neera Chandhoke, “Democracy and well-being in India,” UNRISD (May 2005), 10, [http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/AFA456B71A0BD335C1256FFF0052FE69/\\$file/dchandho2.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/AFA456B71A0BD335C1256FFF0052FE69/$file/dchandho2.pdf), accessed 1 May 2011.

²⁴ Rajeev Dhawan, “Judges and Indian democracy,” in *Transforming India: social and political dynamics of democracy*, eds. Francine R. Frankel, Zoya Hasan, Rajeev Bhargava and Balveer Arora (New Delhi: Oxford University Press, 2000), 333.

²⁵ Rudolph and Rudolph, “Redoing the constitutional design,” 130-131.

²⁶ Lavanya Rajamani and Arghya Sengupta, “The Supreme Court,” in *The Oxford Companion to Politics in India*, 88.

²⁷ Dhawan, “Judges and Indian democracy,” 326, 333 and 340, fn 1.

²⁸ Mehta, “The rise of judicial sovereignty,” 80.

²⁹ See Balakrishnan Rajagopal, “Pro-human rights but anti-poor? a critical evaluation of the Indian Supreme Court from a social movement perspective,” *Human Rights Review* 8, no. 3 (2007): 157-186.

no “fundamental, legal, moral or equitable rights to strike.”³⁰ Perhaps most disconcerting was the “limited” and “indirect” impact of high judicial activism in public health and primary education: only 382 of a total of 1,158,303 cases heard by the apex judiciary and high courts in India between 1950 and 2006 concerned these subjects. Despite expanding access to certain health services, “few cases dealt with poor access to medicines by vulnerable groups” or the quality of services provided. Indeed, PIL only featured in one-fifth of the health-related cases, concentrated in urban areas and richer states. Although somewhat better, the record of high judicial activism regarding educational matters suffered from similar biases. The quality of teaching in primary schools was rarely the focus of jurisprudence.³¹

Second, the Supreme Court essentially highlighted the failure of the executive to implement its self-declared obligations to individual citizens who had suffered harm. Specifically, it advocated a model of “conditional social rights,” enjoining the state to remedy a particular grievance, injury or dereliction of duty in a specific case because the “existence of a violation is conditional upon state action ... [and] can only occur when the state undertakes an obligation but does not fulfill it.”³² Put differently, India’s Supreme Court never extended a doctrine of “systemic social rights” with a “minimum core” or “reasonable standard” of basic entitlements to all citizens.³³ Thus even sympathetic observers bemoaned that its “jurisprudence of exasperation” failed to define the content of a right, leaving much discretion and unpredictability. In the end, “the effective delivery of these rights depends on the government.”³⁴

Lastly, persistent judicial activism raised questions about its legitimacy. On the one hand, high judicial activism could neither guarantee the extension of basic socioeconomic entitlements nor independently revitalize public institutions that suffer from poor bureaucratic governance, limited material resources or malign political interference. On the other, by assuming legislative and executive functions, the Supreme Court inevitably raised concerns over the separation of powers. Indeed, its record suggests a self-conscious attempt to develop a “modus vivendi” and strike political accommodations. The judicialization of politics gradually politicized the judiciary.³⁵

³⁰ Harriss, “How far have India’s economic reforms been guided by ‘compassion and justice?’” in *Understanding India’s New Political Economy: a great transformation?* eds. Sanjay Ruparelia, Sanjay Reddy, John Harriss and Stuart Corbridge, (London: Routledge, 2011), 137.

³¹ See Shankar and Mehta, “Courts and socioeconomic justice in India,” 152-163.

³² Madhav Khosla, “Making social rights conditional: lessons from India,” *International Journal of Constitutional Law* (forthcoming), 5, 16 and 19, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1742746, retrieved 1 May 2011.

³³ Khosla, “Making social rights conditional,” 4.

³⁴ Shankar and Mehta, “Courts and socioeconomic rights in India,” 178.

³⁵ Mehta, “The rise of judicial sovereignty,” 76.

The second major change that spurred India's new rights agenda was, following Polanyi, the partialities of its own "great transformation."³⁶ The introduction of a "pro-business tilt" in economic policy in the 1980s, followed by structural adjustment in the 1990s, stimulated faster aggregate growth, sectoral diversification and technological change. The deregulation of trade, industry and investment—from commerce, banking and insurance to mining, transportation and telecommunications—has expanded the membership and size of the corporate capitalist class.³⁷ Booming property markets and real estate developments have reconfigured the landscape in major urban centres as well as smaller regional cities.³⁸ The cumulative impact of these reforms has been striking.³⁹ On average, aggregate economic growth per annum grew 5 percent in the 1980s, 6 percent in the 1990s and over 7 percent since 2000. Moreover, the state took advantage of general economic prosperity to capture greater public revenues. Between 1990-1991, 2000-2001 and 2007-2008, gross domestic savings as a percentage of gross domestic product (GDP) increased from 22.8 percent to 23.7 percent to 37.7 percent. Correspondingly, gross tax receipts fell from 15.4 percent to 14.5 percent between 1990-1 and 2000-1, but subsequently increased to 18.9 percent by 2007-8. The steady improvement in the country's fiscal position made it possible to expand basic social programs, undercutting the traditional argument versus socioeconomic rights, namely their affordability.

Yet India's social majorities continued to endure deep human deprivations.⁴⁰ According to official government statistics, the proportion of the rural population below the absolute poverty line declined from 46.5 percent in 1983 to 28.7 percent in 2004-2005. The corresponding urban figures declined from 43.6 percent to 25.9 percent.⁴¹ Despite these gains, over two hundred million individuals remained in extreme poverty a decade ago, a staggering figure that underscores the relatively low poverty elasticity of India's aggregate economic growth. Indeed, the pace of national poverty reduction declined following economic liberalization.⁴² Similarly, total public spending on primary education and basic healthcare as a percentage of GDP increased absolutely in the 1990s. However, it was lower in relative terms

³⁶ Karl Polanyi, *The Great Transformation: the political and economic origins of our time* (Boston: Beacon Press, 1957).

³⁷ Partha Chatterjee, "Democracy and economic transformation in India," in *Understanding India's New Political Economy*, 23.

³⁸ See Nandini Gooptu, "Economic liberalization, urban politics and the poor," in *Understanding India's New Political Economy*, 35-49.

³⁹ Devesh Kapur, "The political economy of the state," in *The Oxford Companion to Politics in India*, 446.

⁴⁰ The following draws on Harriss, "How far have India's economic reforms been guided by 'compassion and justice'?"

⁴¹ Himanshu, "Recent trends in poverty and inequality: some preliminary results," *Economic & Political Weekly* 42, no. 6 (10 February 2007), 498.

⁴² Himanshu, "Recent trends in poverty and inequality," 499.

than the 1980s, and remained significantly below comparable international standards. Thus human development lagged as well. Malnutrition continued to haunt more than 40 percent of children in the country after three decades of rapid economic growth. And although the latter created more urban employment, informalization had increased as well, leading to insecure contracts, part-time work and stagnant wages. The greater capital intensity and technology dependency of recent economic growth in India, symbolized by the heady dynamism of its information technology and global service companies, produced too few jobs domestically.⁴³

These new patterns of accumulation simultaneously exacerbated social, sectoral and spatial inequalities. They also intertwined to create new exclusions. The growing disparities of income, status and life-chances between the cities of the new India and the rural hinterlands were the most obvious manifestation. The desires, habits and patterns of consumption of the country's urban middle classes, increasingly under the "moral political sway of the corporate capitalist class," spurred the drive to build "entrepreneurial cities" as zones of technological innovation, commerce and finance, and modernist residential enclaves.⁴⁴ Yet economic liberalization also enabled rural elites to expand their investments into new commercial activities, deepening their dominance in the countryside vis-à-vis small peasants, sharecroppers and landless labourers confronting decelerating agricultural growth and a situation of "hunger amidst plenty."⁴⁵ And the devolution of power to the regions in the wake of reform simultaneously encouraged dynamic inter-state competition for scarce private investment and foreign capital as well as "countermending spaces of absent infrastructure and uneven [socioeconomic] development."⁴⁶ In short, the unevenness of dynamic capitalist development in India since the early 1990s created new patterns of prosperity, deprivation and inequality.

Finally, contrary to the standard neoclassical argument that excessive state regulation and public sector dominance foster systemic political corruption, economic liberalization failed to eradicate sources of profiteering in India's political economy.⁴⁷ To some extent, the deregulation of industry, trade and foreign exchange abolished various institutional sites of bureaucratic manipulation. Nonetheless, the exchange of favours and bribes persisted, given the various continuing roles played by politicians: as fixers of local development services, controllers of public sector employment, or purveyors

⁴³ Chatterjee, "Democracy and economic transformation in India," 20.

⁴⁴ Chatterjee, "Democracy," 20; and Gooptu, "Economic liberalization, urban politics and the poor."

⁴⁵ Vamsi Vakulabharanam and Sripad Motiram, "Political economy of agrarian distress in India since the 1990s," in *Understanding India's New Political Economy*, 101-127.

⁴⁶ Corbridge, "The contested geographies of federalism in post-reform India," in *Understanding India's New Political Economy*, 78.

⁴⁷ See Rob Jenkins, *Democratic Politics and Economic Reform in India* (Cambridge: Cambridge University Press, 1999), 86-106.

of national defense contracts. Perhaps more importantly, because the reforms were characterized by stealth and ambiguity, they fashioned new opportunities for rent seeking, graft and theft. These included kickbacks from the privatization of public sector enterprises, de-reservation of core economic sectors and subcontracting of old activities. Indeed, the rise of new business houses and professional lobbying firms in recent years entrenched the nexus between conniving elected politicians, industrial titans and state bureaucrats. In short, the scale of corruption has increased in India's political economy in line with the deepening state-business alliance in India over the last three decades.⁴⁸

As a result, fierce social reactions against widening socioeconomic disparities began to erupt across the country. The 1990s witnessed a disturbing relative increase in suicides by desperate small farmers, suffering from over-indebtedness and diminishing economic opportunities.⁴⁹ Impoverished peasants demonstrated against compulsory land acquisition for industrial factories and real estate development with increasing frequency. The most serious backlash was the renewal of violent Maoist insurgency, which affected 170 of 602 districts across the country by 2006.⁵⁰ Suffice to say, the establishment of red bases and liberation zones reflected as much a reaction against the absence of essential public services and productive market activities as the extraction of minerals and commodities in the tribal-dominated hinterland.⁵¹ Nevertheless, the mounting disequilibrium of rapid capitalist development in India over the last two decades stimulated rising popular expectations for greater social opportunity and economic protection.

The third major catalyst of India's new rights agenda was the dawn of a "post-Congress" polity in 1989.⁵² Strikingly, the electoral participation of women, Adivasis and Dalits, as well as members of other lower caste groups, began to surpass more privileged sections in national, state and local elections. In addition, the slow-burning regionalization of India's federal polity had gradually led to the emergence of distinct party systems across the Union, encouraging the rise of old and new state parties. The proliferation of these regional political formations, accompanied by the rise of the Hindu nationalist Bharatiya Janata Party (BJP), decline of the Congress and implementation of liberal economic reform, stymied the possibility of single-party majority governments in New Delhi after 1989.

⁴⁸ Atul Kohli, *Poverty amid Plenty in the New India* (New York: Cambridge University Press, 2012), 55-56.

⁴⁹ See the special issue of *Economic & Political Weekly*, "Farmers' Suicides and the Response of Public Policy," 41, no. 26 (30 June 2006).

⁵⁰ Corbridge, "The contested geographies of federalism in post-reform India," 77.

⁵¹ Corbridge, "The contested geographies of federalism in post-reform India," 68.

⁵² Yogendra Yadav, "Electoral politics in a time of change: India's third electoral system, 1989-99," *Economic & Political Weekly* (21-28 August 1999): 2393-2399.

The fragmentation of power in India's "third electoral system" raised many hopes that a progressive "third force" might emerge vis-à-vis the Congress and the BJP in order to fulfill the rising democratic aspirations of its most disadvantaged citizens. The socialist Janata Dal and communist Left Front, the two pillars of the broader Indian left, constituted its core. On the one hand, the leaders of India's socialist tradition had historically stressed the primacy of caste in understanding the inequalities of power, status and wealth. Since the late 1980s, their successors increasingly captured power directly, seeking to extend the policy of reservations in the public sector as a "right" of the Other Backward Classes (OBCs).⁵³ The greater self-representation of lower castes in government offices, state assemblies and the national parliament undermined old hierarchies of rule. India experienced a "silent revolution."⁵⁴ Moreover, the capture of power by lower-caste politicians allowed them to infuse vernacular idioms of social justice into national political discourse and redefine the public sphere by renaming streets, erecting statues of lower-caste leaders and other symbolic acts. The high politics of recognition engendered a broader social movement for dignity, respect and self-esteem. On the other, the communist Left Front deployed a classic Marxist idiom of class struggle. Its parties had made great strides in alleviating absolute poverty in West Bengal, Kerala and Tripura since the 1970s through land reform, greater public spending on agricultural wages and empowered local self-government. Most extraordinary were the achievements of the Left in fostering universal literacy and high life expectancy in the relatively poor state of Kerala. In addition, the advent of structural economic reforms in 1991 saw it oppose greater deregulation, privatization and foreign direct investment in New Delhi, while experimenting with a radically innovative form of participatory development planning in Kerala. These state-level experiments by the Left Front heralded the possibility of a more egalitarian pattern of national economic development.

The prospect of a stable Third Front never materialized, however.⁵⁵ The reasons for its failure were many: personal ambition, partisan competition, the centrifugal tendencies unleashed by India's federal market polity. The proliferation of voices, interests and demands that animated its state-based parties made it harder for them to strike a durable national alliance. Hence the National Front (1989-1990) and United Front (1996-1998), both minority Union governments that represented attempts to forge a national third force, failed to capture a majority of seats in parliament.

⁵³ For example, see Francine R. Frankel, *India's Political Economy 1947-2004: The gradual revolution*, 2nd edition (New Delhi: Oxford University Press, 2006), 689.

⁵⁴ Christophe Jaffrelot, *India's Silent Revolution: The rise of the lower castes in north Indian politics* (New Delhi: Permanent Black, 2003).

⁵⁵ The following summarizes the conclusions of Sanjay Ruparelia, *Divided We Govern: the paradoxes of India's coalition politics* (London: Hurst, forthcoming).

At its root, however, the presumptive leaders of the third force could not develop “an ideological chain of equivalence”⁵⁶ capable of synthesizing their respective strengths into a transcendent emancipatory politics. On the one hand, India’s socialists failed to develop a politics of redistribution that could address the deeper structural inequalities suffered by their most disadvantaged constituents. Moreover, its leading politicians used the politics of recognition to mobilize increasingly narrow segments, man the state apparatus with their own supporters and brazenly perpetrate new forms of corruption.⁵⁷ The attempt to realize social empowerment disproportionately through reservations and largely symbolic acts of pride, resistance and insubordination failed to equalize social access to primary education, basic healthcare and productive employment opportunities.⁵⁸ Indeed, basic class antagonisms began to undermine the wider socialist cause, splitting many parties and the wider alliance.

On the other, the communist Left Front failed to appreciate fully that ritual humiliation and political under-representation comprised distinct manifestations of social injustice.⁵⁹ Historically, political repression by successive Congress administrations in New Delhi had constrained its regional presence. Tellingly, however, despite periodic attempts to address caste-specific grievances in local campaigns, the high ranks of the Left Front severely over-represented upper caste groups.⁶⁰ Hence its constituent parties, facing an upsurge of lower-caste political assertion across northern India since the late 1980s, found it hard to capture new political aspirations. In addition, the Left played a two-level game regarding economic reform. In New Delhi, the Politburo of the Communist Party of India (Marxist) championed the need for greater government spending in physical infrastructure and social services while opposing the public-sector disinvestment and the liberalization of agriculture, retail and banking on grounds that it would harm workers and the poor. In Kerala, despite adverse conditions, Left Front administrations secured rising per capita incomes and declining poverty ratios.⁶¹ In West Bengal, however, its counterpart slowly embraced structural economic adjustment. The introduction of a new industrial policy in the mid-1990s gradually led to “lockouts, retrenchments and closures” of failing

⁵⁶ Yogendra Yadav, “Reconfiguration in Indian politics: state assembly elections, 1993-1995,” in *State and Politics in India*, ed. Partha Chatterjee (New Delhi: Oxford University Press, 1997), 203.

⁵⁷ See Corbridge et al, *Seeing the State*, 231-237.

⁵⁸ See Zoya Hasan, “Representation and redistribution,” and Sudipta Kaviraj, “Democracy and social inequality,” in *Transforming India*, 146-176 and 89-120, respectively.

⁵⁹ Kaviraj, “Democracy and social inequality.”

⁶⁰ See Christophe Jaffrelot and Sanjay Kumar, eds., *Rise of the Plebeians? The changing face of Indian legislative assemblies* (New Delhi: Routledge, 2009).

⁶¹ Richard Sandbrook, Marc Edelman, Patrick Heller and Judith Teichman, *Social Democracy in the Global Periphery: origins, challenges, prospects* (Cambridge: Cambridge University Press, 2007), 65-92.

public-sector enterprises and stagnation in social-sector spending.⁶² The concomitant drive to woo foreign capital for public-private-partnerships in manufacturing, software and urban industrial development intensified in subsequent years. The process of accumulation by dispossession—a development that exacerbated the relative general neglect of informal sector workers by the Left⁶³—eventually ignited violent conflicts between the Left and its electoral rivals, Naxalites and rural inhabitants across the state. In sum, the failure to create a durable third force eventually created an opening for the Congress to court the rising popular expectations unleashed by twenty-five years of innovative judicial activism, rapid uneven growth and lower-caste democratic mobilization.

Promises and Risks

What are the promises and risks of India's new rights agenda? The varying provisions of its distinct laws, introduction of new welfare acts and their complex interrelationships vis-à-vis each other and older social programs require careful analysis. Nevertheless, several features already mark India's evolving welfare paradigm. Three merit attention.

First, it has introduced a range of new civic rights. Many are innovative in themselves. But they are significant as a pattern because they challenge, in principle, the distinction made between civic and political rights versus social and economic entitlements in the Constitution. According to Chatterjee, the formal bifurcation of rights and entitlements was institutionalized in postcolonial India between a bourgeois “civil society” and a subaltern “political society.”⁶⁴ In the former, urban middle classes appealed to universal individual rights as equal democratic citizens, protected by law. In the latter, however, a domain that transgressed the law, the urban and rural poor negotiated strategic claims to welfare according to the logic of governmentality, as members of distinct population groups defined by official state policy. These entitlements to livelihood were culturally determined, a “socially produced sense of what is necessary to lead a decent life of some worth and self-respect.”⁶⁵ Secured as exceptions, however, they were inherently provisional, limited and unstable. The local state also tended to fragment “benefit seekers” into smaller target populations. Hence the formal equal standing given to all citizens by the Constitution rarely worked smoothly.

⁶² Dwaipayan Bhattacharyya, “Election 1999: ominous outcome for Left in West Bengal,” *Economic & Political Weekly*, 34, 46/47 (20 November 1999): 3267-3270.

⁶³ Pranab Bardhan, “Our self-righteous civil society,” *Economic & Political Weekly* 46, no. 29 (16 July 2011): 16-18.

⁶⁴ Partha Chatterjee, *The Politics of the Governed: reflections on popular politics in most of the world* (New York: Columbia University Press, 2004).

⁶⁵ Chatterjee, “Democracy and economic transformation in India,” 22.

The entitlements of the historically disadvantaged in political society, “even when recognized, never quite became *rights*.”⁶⁶ Indeed, according to Chatterjee, the increasing expropriation of land and other means of production in India’s post-liberalized economy has created even greater pressure to “reverse the effects of primitive accumulation.” Yet it is largely done via “globally circulating technologies of poverty management” such as micro-credit schemes, direct benefits like subsidized food and work, and restrictions placed on certain economic sectors.⁶⁷

Chatterjee’s thesis has provoked rich critical reflection. Some interrogate its neat binary division between civil society and political society, which arguably obscures dynamic interactions between their presumptive actors, logics and spheres. Corbridge and his coauthors show how the governmental sponsors, political fixers and intended beneficiaries of local development initiatives sometimes use the latter successfully to fashion new claims of citizenship. Equally, they show how even disempowered individuals may sometimes invoke their formal rights as citizens to make claims upon the state.⁶⁸ Similarly, the construction of many of India’s recent national acts demonstrates how progressive party politicians, metropolitan civic activists and grassroots social organizations creatively trespass these boundaries in practice, as Chopra demonstrates with regard to the MGNREGA.⁶⁹ Conversely, the massive corrupt nexus between corporate capitalists, elected politicians and state bureaucrats in recent years has exposed a variety of strategic ad hoc accommodations that violate the law. Indeed, Baviskar and Sundar claim that “generally, it is members of the so-called civil society who break laws with impunity and who demand that rules be waived for them, whereas members of political society strive to become legal, to gain recognition and entitlements from the state.”⁷⁰ Hence Menon advocates reconceptualizing the civil and political in postcolonial India as “modes of engagement” rather than separate societal spheres.⁷¹ These recent engagements with Chatterjee suggest new intellectual paths.

That said, India’s landmark social acts entail several immediate ramifications. In principle, most of these laws undermine the disjuncture between the universal rights available to members of civil society and the targeted entitlements conditionally won by inhabitants of political society. The most important exception is the National Food Security Bill, currently

⁶⁶ Chatterjee, “Democracy and economic transformation in India,” 27; my emphasis.

⁶⁷ Chatterjee, “Democracy and economic transformation in India,” 21.

⁶⁸ Corbridge et al., *Seeing the State*, 255-262 and 20.

⁶⁹ Deeptha Chopra, “Policymaking in India: a dynamic process of statecraft,” *Pacific Affairs* 84, no. 1 (March 2011): 89-107.

⁷⁰ Amita Baviskar and Nandini Sundar, “Democracy versus economic transformation?” *Economic & Political Weekly* 43, no. 46 (November 18, 2008), 88.

⁷¹ Aditya Nigam, “Politics, ‘political society’ and ‘the everyday,’” *Kafila*, 31 March 2012, <http://kafila.org/2012/03/31/politics-political-society-and-the-everyday/>, last accessed 7 January 2013.

under review by a parliamentary select committee, which differentially guarantees the provisioning of food to families according to their designation as “priority,” “general” or “excluded” households. Moreover, given their low absolute base of provisioning, some of these laws indeed seek only to “manage poverty.” A case in point is the MGNREGA, which offers a right to subsistence for poor rural households. Nonetheless, the fact that it guarantees such work is a lifeline in the context of “starvation amidst plenty” that has blighted India’s political economy in recent years. Indeed, its provisioning has served to increase rural wages. Acts such as the MGNREGA also raise the bar of what a “socially produced sense of what is necessary to lead a decent life of some worth and self-respect” requires, even if insufficiently, giving the courts in India greater judicial leverage in their application of “conditional social rights.” Lastly, some of these new laws are not attempts to “reverse primitive accumulation,” but offer new entitlements. The rights granted to citizens to obtain information, education and basic public services previously did not exist.

The second achievement of India’s new rights agenda is that many of its landmark acts specify agents, mechanisms and institutions to realize them. Critics of the growing rights-based discourse on the Left argue that its ascendance represents a post-utopian moment bereft of any larger project for radical social emancipation.⁷² At best, they see rights as “formalist abstractions” that simply enunciate normative aspirations, “part of a grand political mission [to provide] a global framework for the achievement of freedom, identity and property,” unable to guarantee either the resources or the compliance of their stipulated duty-bearers necessary for their realization. At worst, “rights-talk” depoliticizes social conflicts by leveling the needs of different social groups, masking their relations of domination and militating against genuine structural change.⁷³

These wide-ranging criticisms, although well taken, enjoy less traction vis-à-vis India’s new rights agenda. The fact that it began with the Right to Information Act was perhaps contingent. Nevertheless, the law is a significant attempt to enhance civic rights by opening the state to scrutiny, rather than simply restraining the latter and upholding negative liberties. A recent national survey indicated that a strong majority of citizens, urban and rural, supported the law. In the most positive instances, the act of lodging a petition helped forge larger support groups and collective solidarities.⁷⁴ Similarly, rights-based claims and new governance mechanisms to promote transparency,

⁷² See Samuel Moyn, *The Last Utopia: human rights in history* (Harvard University Press, 2010).

⁷³ Claims by Moyn, quoted by Robin Blackburn, “Reclaiming human rights,” *New Left Review*, 69 (May-June 2011), 128.

⁷⁴ RTI Assessment and Analysis Group (Raag) and National Campaign for People’s Right to Information (NCPRI), *Safeguarding the Right to Information: report of the people’s RTI assessment 2008*, http://www.rti.gateway.org.in/Documents/References/English/Reports/8.%20RaaG%20study_exe_summary%20-%20revised.pdf, last accessed 7 January 2013.

responsiveness and accountability are critical design features of the MGNREGA.⁷⁵ The law grants citizens a right to demand 100 days of paid manual work from the state. Crucially, it also entitles them to conduct social audits (*jan sunwais*) to ensure that it is provided in a proper manner. To do so, the law sanctions trained volunteer auditors from local organizations to examine the administrative forms for and financial records of local development projects for irregularities and inconsistencies. They subsequently may call public meetings with the local community, including MGNREGA claimants and local bureaucrats, to scrutinize the official accounts vis-à-vis oral testimonies. By performing these tasks, poorer citizens may well increase their political awareness, connections and skills. Put differently, the governance mechanisms of the MGNREGA were designed to mobilize popular discontent.⁷⁶ The fact that parliament has recently passed the Judicial Accountability and Standards Bill, 2010, and so-called Public Interest Disclosure and Citizens Grievances bills underscores the intimate nexus perceived between new civic rights and political freedoms on the one hand and greater state accountability and progressive socioeconomic outcomes on the other. Whether and how these pieces of legislation work on the ground remains to be seen. Yet it is still worth underlining the fact—given the proclaimed tendency of “rights-talk” to issue moral declarations while avoiding hard institutional questions—that such initiatives were conceived at all.

Third, enacting civic rights through national legislation creates fresh political incentives to mobilize progressive coalitions in electoral contestation and across the state-and-society divide. Equalizing the provision and enjoyment of socioeconomic entitlements does not require the extension of formal statutory rights. Historically, the superior provision of primary education, public healthcare and income support and the relatively effective delivery of public services in Kerala and Tamil Nadu, and to a lesser extent in West Bengal and Andhra Pradesh, reflected a genuine political commitment by local collective actors to greater social egalitarianism and effective public institutions.⁷⁷

Nevertheless, the road toward greater human well-being has diverse causal pathways. Arguably, enacting formal statutory rights protects such entitlements from the predilections of changing ruling dispensations to a greater extent than afforded to government programs, policies and schemes.⁷⁸ The fierce

⁷⁵ The following draws on Rob Jenkins, “Realising the right to work,” *Economic & Political Weekly*, 47, 10 (10 March 2012), 29.

⁷⁶ I owe both these points to Jim Manor (personal communication).

⁷⁷ Amongst others, see Jean Drèze and Amartya Sen, *India: development and participation* (Oxford University Press, 2002); John Harriss, “Do political regimes matter? poverty reduction and regime differences across India,” in *Changing Paths: internal development and the new politics of inclusion*, eds. Peter P. Houtzager and Mick Moore (University of Michigan Press, 2003), 204-232; and Prerna Singh, “We-ness and welfare,” *World Development* 39, no. 2 (2010): 282-293.

⁷⁸ See Jean Drèze, “Employment guarantee and the right to work,” in *The Oxford Companion to Politics in India*, 510-518.

contestation over such laws suggests it does. In addition, legislating socioeconomic rights helps to hold the state accountable for its newly embraced obligations. In fact, some observers speculate that a key reason why the architects of these acts explicitly used the language of *rights* was to ensure the continuing vigilance of the judiciary.⁷⁹ Lastly, the fact that many state-level governments in India have introduced other rights-based measures in the wake of these national acts, even in historically more progressive regions like Kerala, illustrates the possibility of positive diffusion effects and their perceived desirability. In other words, the enactment of new civic prerogatives and socioeconomic entitlements as formal statutory rights suggests an innovative state-building project that aims to enhance the capacity of citizens to “see the state.”⁸⁰

Needless to say, the question of how best to realize these potential synergies fuels much debate. Several risks exist. First, while these acts may guarantee rights in principle, in practice they may fail to disrupt the logic of bureaucratic resistance and political corruption that even its most ardent proponents document. The performance to date of the MGNREGA is a case in point.⁸¹ Although the program reaches thousands of severely poor citizens, many remain unaware of their full entitlements and the specific enabling guidelines of the law. In regions and districts where such knowledge is weak, local state officials have been able to get away with distorting muster rolls, failing to update job cards, devising ill-suited projects, undersupplying demanded work, paying less than stipulated wages or delaying their payment to individual claimants. Hence the collective political empowerment of the latter often turns on prior state accountability in particular regions, and on local social organizations mobilizing necessary popular awareness. Moreover, the MGNREGA lacks an operational framework to fully realize its various norms and entitlements and to ensure proper coordination between national ministries and state-level bureaucracies. Finally, despite the various legal entitlements and transparency mechanisms woven into the act, the program lacks adequate political accountability in the localities: of block-level bureaucrats to local councils, of chairpersons to other councilors and of the latter to *gram sabhas*.⁸² It also requires local grievance procedures to redress alleged violations of individual workers’ rights as well as an independent central monitoring system.⁸³ These power inequalities and institutional deficits are specific to and gleaned from a study of the MGNREGA.

⁷⁹ I thank Yamini Aiyar for emphasizing this point to me.

⁸⁰ Corbridge et al., *Seeing the State*.

⁸¹ The following summarizes Jenkins, “Realising the right to work,” 29-34, which reviews Reetika Khera, ed., *The Battle for Employment Guarantee* (New Delhi: Oxford University Press, 2011).

⁸² I thank Jim Manor for sharing these observations (personal communication).

⁸³ These last two points are made by Jean Drèze and Reetika Khera, “The battle for employment guarantee,” in *The Battle for Employment Guarantee*, 74-75.

Nonetheless, it is likely that similar problems afflict other such initiatives, even if not uniformly.

Second, despite highlighting the need for systematic institutional reform, India's new rights agenda may overload the capacities of high judges, state-level bureaucracies and local social organizations. It is well known that India's apex judiciary, for all its comparative achievements, requires institutional overhaul. Its outstanding caseload—in 2001, the number of pending cases facing the Supreme Court and high courts was 20,000 and 3.2 million, respectively—is nothing short of staggering.⁸⁴ Hence the depressing quip that, in many instances, “due process is the punishment.”⁸⁵ State administrative capacity, despite its overbureaucratization, is equally wanting.⁸⁶ Front-line public officials currently handle more than 200 central schemes, which include accessing and distributing funds, maintaining accounts and submitting reports. Yet they often lack adequate skills or even sufficient personnel to manage all this work. Strikingly, public-sector employment in India numbered 19.1 million in 1991, a low figure relative to population in comparative terms, falling to 18.2 million in 2006. Vacancies and problems of absenteeism afflict every sector of the state apparatus. The result is that India, as Pritchett puts it, is often a “flailing state.”⁸⁷ Lastly, previous studies of rights-based laws in the states, such as the pioneering Employment Guarantee Scheme in Maharashtra, demonstrate how litigation can often sap the time, focus and resources of small grassroots organizations.⁸⁸ Studies of public interest litigation in health and education draw similar conclusions.⁸⁹ In short, the realization of new civic rights presumes that state institutions and social actors possess adequate capacity in terms of personnel, financing and coordination, all of which may be lacking in the first place. This is a real quandary.

The third risk inherent in India's new rights agenda is the relatively narrow base of its leading social organizations. As Harriss notes, many are not popular mobilizations. Rather, they essentially resemble lobby groups, led by intellectual-activists who belong to the urban middle classes.⁹⁰ The personal sacrifices and political commitments of such activists are often exemplary.

⁸⁴ Shankar and Mehta, “Courts and socioeconomic rights in India,” 154, fn 32.

⁸⁵ Mehta, “The rise of judicial sovereignty,” 72.

⁸⁶ The following summarizes Kapur, “The political economy of the state,” in *The Oxford Companion to Politics in India*, 453. The inadequacy of personnel and funds afflicts gram panchayats chairpersons as well, leading to demoralization and corruption (Jim Manor, personal communication).

⁸⁷ Lant Pritchett, “Is India a flailing state? detours on the four lane highway to modernization,” Harvard Kennedy School Working Paper Series RWP09-013, May 2009, 4, <http://web.hks.harvard.edu/publications/citation.aspx?PubId=6599>; last accessed 7 January 2013.

⁸⁸ See Anuradha Joshi, “Do rights work? law, activism and the Employment Guarantee Scheme,” *World Development* 38, no. 4 (2009): 620-630.

⁸⁹ See Shankar and Mehta, “Courts and socioeconomic rights in India.”

⁹⁰ Harriss, “How far have India's economic reforms been guided by ‘compassion and justice?’” 129 and 137.

Moreover, the various gains made by these civic activists are extremely valuable. And prior university training, high bureaucratic experience and distinguished academic profiles clearly helped these actors make the case for expanding India's welfare regime vis-à-vis elected representatives, elite bureaucrats and sitting judges. Yet the concern over the predominantly middle-class leadership of many rights-based organizations, and their relatively narrow base, is deep and genuine. The contrast with the renewed Maoist insurgency in many parts of India, whose leadership reportedly includes many individuals from tribal communities, is perhaps instructive. To put it in Polanyi's terms, the mobilization of India's new rights agenda still largely represents a "counter-movement from above" rather than "below."⁹¹

Conclusion: Challenges to Meet

Writing more than forty years ago, Myrdal characterized post-independent India as a "soft" state. On the one hand, it "required extraordinarily little of [its] citizens." On the other, the obligations it took upon itself were "enforced inadequately, if at all."⁹² The deeply political character of India's new rights agenda constitutes an innovative response to the first deficit. Indeed, by obliging poor citizens to demand their rights, many of its landmark acts encourage the development of basic political capabilities. Whether such requirements are preferable to granting recipients their entitlements automatically through direct cash transfers, or whether the latter are even desirable, warrants critical deliberation. Nonetheless, the introduction of formal institutional mechanisms to make such demands represents a significant break in India's welfare-development paradigm. What is less clear at this stage is the willingness and capacity of the state to enforce these new obligations upon itself. Hence there are challenges to meet.

First, can the various proponents of India's new rights agenda enhance its popular reach? The language of rights implies moral obligations upon the state. It also creates legal sanctions.⁹³ Both are necessary and valuable. Yet the test facing India's new rights advocates is whether the social movements and political parties that support it can translate these moral claims and legal instruments into vernacular social imaginaries that arouse deeper popular attachments. Contra the notion that modern social welfare requires a political vocabulary that neatly separates material interests and issues of governance from claims of identity, as some advocate,⁹⁴ making rights meaningful requires translating concepts into a set of images and practices that tap into common

⁹¹ I thank John Harriss for emphasizing this point to me.

⁹² Cited by Kapur, "The political economy of the state," 444.

⁹³ Chandhoke, "Democracy and well-being in India," 26.

⁹⁴ For example, Pritchett, "Is India a flailing state?" 37.

everyday understandings of justice.⁹⁵ The poignant failure of socialists and communists in modern Indian democracy to find a “chain of equivalence” that simultaneously could address the humiliations of caste and exploitations of class remains instructive.

Second, can these proponents find ways to stimulate greater public spending, concomitant policy change and systematic institutional reform in a manner that meets the needs of its most vulnerable citizens? Recent analyses suggest that enhanced national spending for some of these flagship initiatives, such as the MGNREGA, have led to cuts elsewhere. In general, declining state-level contributions to these activities has offset increases in central Plan and non-Plan expenditure for rural development and the social sector. Thus the level of social-sector spending as a proportion of GDP, approximately 5.5 percent in 2009-2010, has largely remained constant over the last decade.⁹⁶ Additionally, how front-line bureaucrats interpret these various rights and implement them remains a vital question,⁹⁷ given the shifting conceptual meanings and repertoires of resistance that have characterized the implementation of policies in India historically as they travel from the commanding heights of the state to its peripheries. In the end, the scope for enhanced social expenditures and institutional reform will also depend on maintaining political focus in New Delhi and various state capitals. The startling administrative inertia that has gripped the second avatar of the UPA underscores its importance.

Finally, can the proponents of India's rights agenda realize its ambitions without jeopardizing the dynamic economic changes witnessed over the last two decades? The unevenness of rapid capitalist growth in India since the early 1990s exacerbated its underlying social disparities. Yet higher economic growth and structural diversification has also furnished the possibility of enhanced social expenditures and underscored the need for systematic institutional overhaul. Put differently, these cumulative transformations have dramatically reoriented India's developmental prospects compared to the early 1980s. Hence the fear amongst some early advocates that India's new welfare architecture represents “yesterday's battles,” and now risks overshadowing the need to create new “pathways out of poverty” through other urgent investments and reforms in agriculture, industry, finance, research and development, water and energy.⁹⁸ Suffice it to say, the demand to equalize social opportunities and avoid extreme dislocation in the transition to a more capitalist economy is absolutely critical. It also suggests political learning. The great transformation in Europe and the Americas

⁹⁵ See Charles Taylor, *Modern Social Imaginaries* (Durham: Duke University Press, 2004).

⁹⁶ Harriss, “How far have India's economic reforms been guided by ‘compassion and justice’?” 134.

⁹⁷ I thank Yamini Aiyar for emphasizing this point to me.

⁹⁸ Pratap Bhanu Mehta, “Tomorrow's battles,” *Indian Express*, 7 December 2011.

into capitalist market societies, as outlined in Polanyi's classic account, witnessed a *sequential* "double movement": the dispossession and commodification of land and labour preceded attempts by society to protect itself. In contrast, India's evolving great transformation might be understood as a *simultaneous* double movement, albeit partial and haphazard on both counts. It reflects both the absolute underdevelopment of state welfare policies in India historically as well as the relative wariness of successive national governments to fully embrace structural adjustment, due to the negative electoral costs perceived by many parties and the mounting social pressures to limit the worst depredations of the market. That said, even scholars espousing more radical visions fear the possibility of a "stalled transition" that eclipses the potential for wider societal transformation.⁹⁹

The promise of India's new rights agenda will turn on how these and other challenges are met. Ironically, its implementation to date suggests an older lesson. India's political economy has transformed immensely since the 1980s. Yet some of the fundamental imperatives that its original Nehruvian strategy encountered—of the need to mobilize progressive electoral coalitions and democratic social movements, introduce appropriate socioeconomic policies and construct effective state institutions—remain outstanding challenges for the new rights-based approach to greater socioeconomic welfare that is galvanizing India today.

New School for Social Research, New York, USA, March 2013

⁹⁹ Chatterjee, "Democracy and economic transformation in India," 33.