

**Democracy and the Political Durability of Social and Economic Rights in India:  
Electoral Outcomes and the Fate of Recently Adopted Legislation**

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*Abstract: Government initiatives to deepen democracy by addressing gaps in the fulfillment of social and economic rights – to health, to education, etc. – are often lacking in political durability. They are vulnerable to changes in the political or economic climate, particularly in developing country contexts, where policy stability is often lacking. Even when a government passes laws recognizing social and economic rights, a party that defeats it in an election can often repeal them or significantly curtail their scope. While far from conclusive, the recent experience of India suggests that embedding social and economic rights in legislation that specifies both state commitments and mechanisms for engaging people and civic organizations in the process of ensuring their fulfillment may provide some short-term protection for these still-fragile legal frameworks.*

Since the turn of the millennium, perhaps in response to the challenge of meeting the internationally agreed Millennium Development Goals (MDGs), developing country governments have increasingly turned to rights-based approaches to improving human development. Indonesia has worked to advance access to healthcare as a basic right, while Brazil, Mexico and other Latin American countries have used ‘conditional cash transfer’ programmes to both lift household incomes and ensure greater fulfilment of such rights as primary and secondary education. The trend towards rights-oriented social protection measures was driven at least in part by the continued deepening of democracy in many countries. Electoral competition and civil society engagement have continued to drive efforts to promote a broader conception of rights and new methods for ensuring their realization.

The degree to which economic and social rights are legally and institutionally embedded, or linked to specific programmatic measures, varies considerably between countries, over time, and across categories of rights. India stands out as among the countries where legal frameworks have been very substantially altered to reflect an increased commitment to realizing social and economic rights. Rather than institute new discretionary welfare programmes or issue bureaucratic guidelines, the centre-left United Progressive Alliance (UPA) government under Prime Minister Manmohan Singh of the Congress Party passed a series of rights-based development and welfare laws during its decade in power, from 2004-2014. Each of these laws included a detailed definition of the rights concerned and precisely specified procedures for fulfilling them, including (crucially) opportunities for ordinary people to participate in holding officials accountable for the performance of specific duties.

The six main laws were: (1) The Right to Information Act 2005 (RTIA), which provides citizens access to government-held documentation (with some exceptions for national security, etc.); (2) The National Rural Employment Guarantee Act 2005 (NREGA), under which each rural household can obtain 100 days of minimum-wage work on a government construction project in their immediate locality; (3) The Forest Rights Act 2006 (FRA), which protects access to and control over forest land and produce to Adivasi communities; (4) The Right to Education Act 2009 (RTEA), which guarantees free education (which is also made compulsory) to children through age 14; (5) The National Food Security Act 2013 (NFSA), which specifies food entitlements for different categories of people, to be provided through a public distribution network; and (6) The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (LARRA), which provides procedural protections for land owners and local communities faced with compulsory land acquisition by the state for such “public purposes” as the construction of dams and the creation of industrial estates, including those earmarked for transfer to private-sector firms.

During the UPA government’s decade in power, these laws were implemented with varying degrees of vigor and effectiveness. In a number of India’s states, for much of the time since it was passed in 2005, NREGA performed extremely well, providing much needed income for extremely poor and vulnerable people, bringing large numbers of women into the workforce, raising prevailing agricultural wages, and enhancing the political engagement of workers through NREGA’s information-access mechanisms and the public meetings the law requires all local village councils to convene so that works-project records, including wage payment registers, can be collectively scrutinized and verified. Other laws, such as FRA, were implemented with much less consistency – indeed, sometimes bypassed when convenient. NFSA and LARRA came legally into force only just as the UPA government was leaving office, so there was no real chance to gauge its implementation.

When a new government led by the conservative Bharatiya Janata Party (BJP) took power following the 2014 general election there was speculation that these rights-based laws – the fruit of sustained engagement by civil society groups with India’s complex network of democratic institutions – would be reversed. The new prime minister, Narendra Modi, and his economic team were known to be hostile to what they called the “entitlement” culture promoted by the previous government. The social welfare programs created under some of these rights-based laws (RTEA, NREGA) were frequently derided as too expensive, unrealistic in scope, and prone to corruption to be effective. The procedural rights granted were regarded as too burdensome to be implemented by an already overburdened state.

That these legislated rights were enshrined in acts of parliament, as opposed to programmes created and funded at the discretion of the government of the day, provided some measure of protection from future administrations that might wish to abolish them through executive orders or similar (non-legislative) means. But in a parliamentary democracy such as India's, there is little to prevent a duly elected government from passing new legislation that supersedes the laws passed by its predecessor.

And, indeed, the Modi government, spurred on by powerful interest groups that had aligned themselves with the BJP prior to the election, quickly formulated reform proposals across a range of policy domains. These included proposed changes to the structure and content of much of the rights-based development legislation that Manmohan Singh's government had put in place. The proposals that emerged from various policy review processes initiated by the new government involved a mix of legislative amendments, regulatory changes, and shifts in administrative practices.

What were these proposed changes? And three years into the government's five-year term, how much of the agenda for abolishing or altering the rights-based development legislation bequeathed by Manmohan Singh's government were Modi and his economic team able to accomplish?

With respect to RTEA, reformers in the Modi government wanted to abolish the requirement that schools automatically promote all students to the next grade level at the end of each academic year, and to exempt private schools from many of the other rules imposed by RTEA. Some cabinet ministers were eager to do away with the admission quotas for historically discriminated against communities that RTEA required private schools to institute. Yet, in practice, little government action has been taken on these or any other significant education-related proposals. High-powered commissions were formed, but no serious reforms have been enacted.

The government's performance on abolishing (or even substantially undercutting) NREGA was equally underwhelming. The disdain with which this law has been treated by government-associated economists over the years makes the lack of action by the BJP government all the more surprising. That Prime Minister Modi's preference would be to dismantle the law, and the works programs created pursuant to the Act, was revealed in a speech he gave soon after taking office. From the ramparts of Delhi's Red Fort, no less, Modi announced that his government would continue operating the scheme, but primarily as

a “monument” to the “failure” of the Congress Party-dominated public sector over nearly seven decades to provide more to India’s citizens besides opportunities to dig ditches and break rocks on works projects.

Given this antipathy, it is unclear why Modi’s government has not only not repealed NREGA, but has not advanced any of the reforms offered as second-best solutions: replacing the job-guarantee with promises of cash transfers; moving from a universal-eligibility program (which assumed that only the truly needy would opt for back-breaking work at the minimum wage) to a programme administratively targeted at certain groups or locations (such as the country’s “most backward” districts); ending NREGA’s demand-driven character (in which local authorities must supply work within 15 days of a resident’s request) and replacing it with one in which government officials use their discretion to determine when “relief works”, as they have been known since colonial times, were necessary; and allowing the use of private-sector contractors (and machinery) to undertake works projects.

In terms of action taken, the Modi government did engage in certain financial maneuvers – notably the chronically delayed release of funds to state governments – that dampened demand for NREGA work as well as the ability of local bodies to plan projects. Despite this and other forms of quiet sabotage, none of the major NREGA overhaul items was pursued, legislatively or otherwise. In fact, the budget allocation for NREGA for 2017-18 was the highest in several years. (This was partly to make up for arrears to state governments from the previous year, but the trend was nevertheless notable.) The government’s continuing willingness to invest in implementation is at least partly attributable to the realization within highest levels of the ruling party that NREGA wages could help to counteract two difficulties: (1) the economic effects of a widespread and protracted drought, and (2) the man-made hardships created by the Modi government’s demonetization initiative.

The Modi government’s preferred reform agenda for NFSA, which took effect just months before the new administration took office, involved two main elements: (1) substituting cash subsidies (to be used in private markets) for the specific food entitlements (to be supplied through publicly regulated food shops) that were indicated in the Act itself, and (2) further restricting access to subsidized foodgrains by households not officially designated as Below Poverty Line (BPL). However, as with the other rights-based laws, the new government has effected no significant legislative or regulatory changes. In fact, the cabinet minister responsible for overseeing NFSA, far from stressing a commitment to dismantling the law, instead claimed credit for having rolled out the administrative structures for implementing NFSA across all 30 of India’s states.

The one UPA-era rights-based development law on which the Modi government actively sought legislative changes was LARRA. A legislative amendment Bill introduced in early 2015 sought to exempt many types of industrial and infrastructure projects from two key provisions in LARRA: (1) the requirement that state authorities conduct (in collaboration with civil society organizations) a Social Impact Assessment on any large-scale projects for which land will be compulsorily acquired by the state; and (2) the requirement that a super-majority of local residents would need to consent before certain types of land acquisition could take place. Modi's government could not get these and other amendments passed in parliament. This partly reflected the institutional circumstances of India's parliamentary system – the BJP did not have a majority in the upper house of parliament, the Rajya Sabha, though it had one in the lower house, the Lok Sabha. Even so, had the ruling party been able to win over some of the unaffiliated regional parties in the Rajya Sabha – issued-based voting is a regular feature of India's fluid parliamentary process – it could have built the support necessary to pass these amendments to the UPA's land act, whose provisions it frequently derided as thwarting business investment and thus undermining India's growth potential. That the Modi government could not win, or somehow induce, enough support speaks to the broad and surprisingly deep political consensus that had emerged in favor of curbing the state's power to dispossess people of their land without much stronger legal protections. Fear of an irate electorate, for which land alienation had become a contentious and high-profile issue, kept legislators from smaller parties from defecting from the Congress-led opposition to what was portrayed as the Modi government's "backdoor backtracking" on state commitments regarding an essential class of human rights.

A similar situation prevailed with respect to FRA. Members of the Modi government wanted to do away with the power of village councils (and the village assemblies the law requires them to convene) to withhold their consent to land acquisitions in the so-called "Scheduled Areas", where Adivasi communities predominate. Reformers also wanted to expand the discretion of state governments to issue waivers to exempt specific projects from certain FRA provisions, and to replace the "prior informed consent hearings" found in the Act with the less stringent procedures contained in the 1986 Environment Protection Act. But, again, the government took almost no concrete action on these or other reforms. Draft revisions to existing regulations framed under FRA were circulated within the bureaucracy, but unlike with LARRA, no legislative amendments were put forward.

Last, but not least, is RTIA. Here, the Modi government's priorities for reform were to limit the scope of the Act's applicability (to prevent the release of internal government communications on policymaking, for instance); to curb the powers and independence of the Chief Information Commissioner (the highest appellate authority on information requests under RTIA); and to remove provisions that called for fines and other forms of disciplinary actions against government officials found to be not fully in compliance with the Act. No structural reforms have been initiated by the Modi government to date. Its actions on RTIA have been limited to various manifestations of "quiet sabotage", such as not appointing a Chief Information Commissioner for nine months after the prior office-holder retired.

So, to what extent has the BJP government under Narendra Modi dismantled or altered the rights-based legislation bequeathed by its predecessor? Surprisingly little, especially given what would have seemed a propitious environment for effecting the new government's policy preferences. Modi entered office with a considerable political mandate. Prior to the 2014 election, no party had been expected to be able to form a government without drawing other parties into a post-poll coalition, and yet the BJP defied the odds by winning a parliamentary majority on its own. The election result, moreover, produced not just alternation of the party in power; it signaled, by all accounts, a major ideological shift, one in which a recurring theme was alleged public disgust with government-provided sops, which were cast as a poor substitute for jobs that offered genuine economic mobility to the vast number of Indians entering the labor force every year.

Perhaps most importantly, the UPA's rights-based legislative framework would have seemed seriously vulnerable because of how new these laws were. The comparative and theoretical literature on the political durability of welfare regimes emphasizes the advantages conferred by age: the longer a law or programme has been around, the harder it is for any government to dismantle its legislative or programmatic basis. Social Security in the United States is now more than eight decades old, deeply entrenched, and considered politically untouchable. Because none of the laws passed by the UPA government was more than nine years old when Modi took office in 2014 – and some had come into force just months earlier – the political obstacles to dismantling them should have seemed less formidable than in many typical cases.

What, then, has accounted for the surprising political durability of India's rights-based development legislation? Thus far these laws have evaded abolition (or even serious scaling back) for only a few years, and a future assault on their key provisions cannot be ruled out in this parliament or later. Still, certain

structural elements of these programmes combined with key contextual features of India's constantly evolving democracy may act as a protective force.

First, some of these laws (NREGA, NFSA, RTEA) were built around pre-existing, though subsequently modified, service-delivery programs, so that even if the formulation of citizen entitlements in the legislation was new, and the procedures devised for fulfilling these commitments were unconventional, many of the bureaucratic structures and funding streams at the heart of the delivery mechanisms were deeply entrenched (which is also one of the reasons why it has been so difficult to implement the laws effectively). Building atop an existing set of programmatic structures promoted a kind of stability for these laws that might otherwise have invited more active engagement by reformers in the Modi government.

Second, implementing the rights-based laws has triggered processes that, together, have constructed a formidable force resisting their repeal or radical defanging. The first are the opportunities found in these laws for citizen and civil society engagement – whether in auditing wage payments (NREGA), participating in school management committees (RTEA), or taking part in assessments of the likely effects of land transactions (FRA). In some cases, this kind of engagement in formal, legally stipulated procedures has spilled over into activism to demand official action to realise the rights concerned – for instance, workers not only collectively demanding that village-level officials pay their back wages, but also protesting outside sub-district offices about political favoritism in the distribution of work opportunities.

Further facilitating this tendency is the consistent focus in all of these laws on providing more funding and/or decision-making authority to local elected councils. Not only do local activists, and civil society groups with which they pursue issue-based campaigns, use local council meetings as a forum through which to advance their claims, but local councilors themselves are a sizable lobby, a group that largely regards the withdrawal of these rights as a threat to their continued political relevance, itself a relatively novel phenomenon.

Third, and perhaps most importantly, the party-political and grassroots-activist sources of resistance to watering-down these hard-won social and economic rights have been complemented by the legal strategies employed by public-interest lawyers when challenging government non-performance in the courts. Landmark litigation in 2001 on the right to food in India led to a system of court-appointed

‘commissioners’ (experts and former officials) to monitor government action on food related programmes and regulations.

This model has been refined in the Modi years by such civic groups as Swaraj Abhiyan in ways that have led to greater solidarity among social activist groups, while continuing to throw a spotlight on government failures. While even judicial action need not, in theory, prevent a government from passing parliamentary amendments to scale back its obligations, politically speaking the costs of rolling back earlier rights commitments is risky. It is fair to say that the backlash against any legislative actions to scale back the scope of social and economic rights would be far less immediate and voluble if social movement-backed litigation were not providing an ongoing platform for media attention and political mobilization.

This case has highlighted the complexities of creating and preserving legislatively recognized social and economic rights in a competitive democracy such as India’s. These rights covered a wide range of crucial issues: access to food, employment, land, schooling. Yet, recently adopted policy reforms such as these are always vulnerable to the vagaries of politics in a liberal democracy. Elections can bring to power new parties, with new policy priorities.

The ability of the UPA government’s raft of rights-based laws to survive the first three years of Prime Minister Narendra Modi’s term in office is a reflection of the variety of ways in which India’s political actors, including both parties and formal institutions of state, respond to new circumstances. Party leaders that might have been expected to support a roll-back of regulations (because they limited politicians’ capacity to profit illicitly from state-assisted land transactions) ended up joining forces to deny the Modi government the national legislative amendments it wanted. The judiciary, likewise, responded by recognizing the claims advanced by many groups that both the old and the new land acquisition laws were being violated by government entities at various levels.

But in part the staying power of the rights-based legislation passed by Modi’s predecessor has been due to the short-term effects of the laws themselves. They provided new opportunities for movements to use the advocacy space provided by long-established civil and political rights to protect the newer, and therefore more vulnerable, social and economic rights. And perhaps most importantly, the rights-based laws themselves included more than just specifications regarding entitlements, but also procedures for citizen



and civil society participation in holding accountable those officials most directly responsible for ensuring their fulfillment.

It is not at all clear, however, that these channels of popular empowerment can continue to provide adequate protection for a still-young legislative framework that appears increasingly at odds with prevailing ideological sentiment. Recently passed amendments to LARRA in three states represent a chipping away – one provincial jurisdiction at a time – at the law’s ability to protect landowners and local communities threatened with either unwarranted or undercompensated dispossession and the widespread social and economic dislocation it inevitably causes. These and other subtly effected changes, including informal practices adopted inside India’s vast and multi-tiered bureaucracy, may yet allow India’s rights-based framework to be hollowed-out gradually, rather than dismantled directly, by the current governments or those that succeed it. Prompting policy change indirectly would in fact be consistent with India’s reputation over the past quarter century for undertaking “reform by stealth.” If the India case is any indication, the ability to divide political opponents, exploit institutional loopholes, use illicit resources to build coalitions, and artfully frame policy decisions are skills with which politicians in democratic systems are richly endowed.

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