



“Legislating Socioeconomic Rights in India: Origins, Promises, Risks”

Sanjay Ruparelia
Politics Department
New School for Social Research

Prepared for *Prosperity amidst Poverty and Inequality:
A Symposium on India and China*

India China Institute, New School, 28 April 2012



India's New Rights-Based Acts

- The Right to Information Act (RTI), 2005
- National Rural Employment Guarantee Act (NREGA), 2005
- Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- Right of Children to Free and Compulsory Education Act (RTE), 2009
- Public Interest Disclosure and Protection of Persons Making Disclosures Bill, 2010
- The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of Their Grievances Bill, 2011
- National Food Security Bill, 2011



Significance?

- Undermine the distinction, in principle, between civil and political rights (FR in Part III) and socioeconomic entitlements (DPSP in Part IV) in the Constitution
 - Result of progressive socio-judicial activism and state-based policy experiments -> national legislative change
 - Seek to promote greater political transparency, responsiveness and accountability (e.g. RTI, NREGA, RTPS); part of broader state-building project (UID, Lokpal, SARC)
- 



Questions

- Why now, given that post-1947 India was committed to eradicating absolute poverty, lessening economic inequalities and transforming its society through a historically radical experiment of modern representative democracy?
 - How are these new rights conceptualized and operationalized?
 - What are the promises and risks of enshrining socioeconomic entitlements as formal statutory rights?
- 

Explanation in General

Nexus of three slow-burning transformations post-1980: rising expectations yet inherent limitations

- A progressive ‘juristocracy’: PIL, social activists and activist judges
- Peculiarities of India’s ‘great transformation’ -> partial ‘double-movement’
- The politics of the ‘third electoral system’: gains in recognition and representation eclipsed redistribution

A Progressive 'Juristocracy' (I)

Substantive reinterpretation of FRs vis-à-vis DPSP via Art 21.

Procedural innovation – public interest litigation:

- Relaxed norms of 'standing' and 'pleading' and notion of 'aggrieved persons' (e.g. 'epistolary jurisdiction' – postcards from prison - as writ petitions)
- Appointed fact-finding and monitoring commissions and delivered interim orders
- Assumed executive powers in certain instances

A Progressive 'Juristocracy' (II)

1. Inconsistent pro-poor stance or failure to address real issues:
 - 'Structural bias of the constitution'
 - Organization and character of judiciary
2. Character of jurisprudence:
 - 'Conditional social rights'; localized judgments
 - Rights often unspecified
3. Accountability and capacity of the judicial system – risks:
 - 'Judicialization of politics = politicization of judiciary'
 - "Due process is the punishment"

India's 'great transformation' (I)

Rising economic growth:

- Aggregate economic prosperity and size of economy
- Liberalization of trade, investment and finance
- Service-sector led: IT, business processing, etc

Ramifications:

- Material: decline in absolute poverty figures (caveat)
- Psychological: faith in progress and technology
- Practical: rising tax revenues -> possibility of greater social expenditure

India's 'great transformation' (II)

Persistent mass deprivations:

- Little employment growth; deficits in education and health; hunger, desperation and starvation

Growing social inequalities:

- Urban-rural disparities; regional and inter-state; intra-urban

Liberalization with corruption, high and low

-> 'Counter-movements from above and below': judicial censure; civic activism; Maoist insurgency

The Politics of the 'Third Electoral System' (I)

Key causal factors:

- Increasing electoral participation of subaltern classes
- Rise of (new) state parties: socialist, communist, regional
- Party system fragmentation + high electoral volatility -> decline of single-party majority governments in New Delhi

The Politics of the 'Third Electoral System' (II)

Achievements and shortcomings:

- Greater political self-representation -> 'silent revolution'
- Struggles for recognition based on lower-caste identities -> personal dignity, collective self-esteem, reordering status order
- Representation and recognition > redistribution: of basic material assets and expansion of socioeconomic opportunities

Promise of India's new rights agenda?

- Innovation of rights per se
- Specifications of institutions and mechanisms to realize them
- Law incentivizes progressive coalitions across state, political society and civil society
- Impetus to explore systemic institutional reform: UIDAI, SARC, Lokpal
- Ideally reforms allow citizens to 'see the state' and state to 'see like a state' vs high modernist authoritarianism

Risks of India's new rights agenda?

- Excessive legislation, poor execution, resistance and corruption in implementation
- Overloading the judiciary and bureaucracy
- Failing to bolster administrative resources of the state and shifting public spending → 'poverty management'
- 'Yesterday's battles' vs necessary social protection
- 'Counter-movement from above'? varying popular awareness, narrow social base