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Rights, Accountability and Citizenship: Examining India's Emerging Welfare State

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Rights, Accountability and Citizenship: Examining India's Emerging Welfare State

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Abstract

Public sector service delivery in India is notorious for its low coverage, poor quality and high corruption. This is in striking contrast to the political commitment to inclusive development, and the aspirations of the Indian Constitution. The last decade has seen extensive efforts to change the relationship between citizens and the state, through the granting of substantive rights to social and economic goods and building the foundations of a welfare state in India. The emphasis has been both on expanding provisioning and transforming the every day workings of the state by shifting the dynamics of interaction between state and citizens. This paper seeks to place the emergence of India's welfare state within a conceptual framework, and evaluate early experiences, focusing especially on implementation. Our assessment undertakes a diagnosis of the specific mechanisms that the rights and accompanying accountability instruments are seeking to influence, through an analysis of how "the state" works. In particular, we focus on understanding how the specific reform instruments promoted through the rights-based approach have been articulated and absorbed into the everyday practices of the state. Such an analysis is important because the ultimate outcomes of this transition will depend, to a great degree, on the interplay between the new transparency and accountability instruments, bureaucratic structures and incentive systems, and local patterns of political and civil society behavior. Our central thesis is that while the rights-based approach and measures to institutional social accountability have brought some gains, these remain limited. In many cases, they have led to distortions in the political and bureaucratic system rather than deeper change. It is suggested that a fundamental shift will require more extensive administrative reforms, and that this will only occur when aligned with political processes.

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CONTENTS

ABSTRACT	1
INTRODUCTION	3
ACCOUNTABILITY, RIGHTS AND CITIZEN-STATE RELATIONS: CONCEPTS AND FRAMEWORKS	7
Accountability	7
Socio-economic Rights: Concepts and Evolution	10
Citizens, politicians and state organizations.	16
Understanding the rights-based project: change, resistance and distortion	22
CASE STUDIES OF INDIA'S TRANSFORMATION TO A RIGHTS-BASED APPROACH	23
Institutionalizing Accountability Instruments	
The Right to Information (RTI)	23
Right to Service Acts	26
Social Audits – MGNREGA and the case of Andhra Pradesh	28
Sector-wide service delivery reforms	35
Innovations to improve the Public Distribution System and the Right to Food	36
Basic education: rights, quality and state functioning	41
Interpreting the case studies	45
LESSONS FROM BRAZIL?	50
CONCLUSION	56
REFERENCES	61

Introduction

In May 2014, The United Progress Alliance (UPA) led by the Indian National Congress Party, suffered a crushing electoral defeat after ten years in power. Issues of weak governance and corruption were an important part of the narrative around this defeat. The winning BJP party—and especially its leader Narendra Modi—placed governance at the center stage of the campaign. Modi coined the slogan “Minimum Government, Maximum Governance”, and this soon became a recurrent theme in the election campaign.

There is a significant irony in this. The most systematic, and emblematic, government strategy of the Congress-led coalition during its tenure in office was the pursuit of a rights-based architecture for social welfare. At the heart of this was a project of state transformation, with a central goal of shifting the governance paradigm, away from a clientelistic, predatory, exclusionary and corrupt state to one based on citizen’s rights to make claims over state actors. Increased transparency, participation and accountability were the key instruments through which this transformation was to be enabled.

So what went wrong? Was this strategy intrinsically flawed, especially for a country at India’s level of economic and institutional development? Was it subverted by more powerful forces in the political and bureaucratic system? Or was it essentially right but needed more time? And, of particular interest to current policy, did this strategy become history with the dramatic change in electoral fortunes in May of 2014?

This paper reviews the experience in the design, and especially the implementation, of the rights-based welfare approach. The main focus of this review is not on the schemes related to these rights, but on the instruments of state transformation embedded within them. We do not engage in an overall assessment of Congress’ electoral defeat and the BJP’s win—many additional factors were at play around this. But we do believe that the rights-based approach remains very relevant. While the discourse of government shifted with the election, it is highly unlikely that the nationally legislated rights will be reversed—and indeed all had cross-party support when they were passed in parliament. Moreover, some BJP governments in the (subnational) states have been at the forefront of introducing new rights legislation and leading the way in implementing GoI legislation. Finally, the rhetoric of transparency and accountability remains critical to the discourse on governance. One of the first public messages sent out by Narendra Modi after he took over as Prime Minister was that transparency and accountability would be the two cornerstones of his government. In his message he committed to ushering an era of “open, transparent and people-centric government for the people of India”.²

² PMO website <http://pmindia.nic.in/transparency.php>

There is also a more fundamental reason why the past experience remains of relevance. Our principal interpretative conclusion is that creating the rights alone was generally insufficient to transform the behavior of state actors, absent complementary changes in public administration and political processes. But that doesn't mean that an alternative strategy that exclusively emphasizes bureaucratic efficiency, with stronger top-down incentives for performance, would work better. We see complementary changes around citizen-based rights and accountability, administrative processes and politics as necessary to the process of transforming the state now as in the past.

While the focus is on India, the paper engages with two policy debates that have dominated the broader social policy landscape in recent times. First, it speaks to debates on the "rights and wrongs" of adopting a rights-based approach to social welfare in the context of weak state capacity. Second, it relates to the recent preoccupation in both policy and academia with citizen-led, or "social", accountability reforms and their impact on the broader project of improving public service delivery outcomes.

India's move towards a rights-based welfare approach traces its origins to three inter-related socio-political shifts of the recent period. First, there is the narrative that the growth surge and turn to markets of the 1990s and 2000s was associated with a failure of inclusion of the bulk of India's population. Many perceived the Congress-led United Progressive Alliance's unexpected electoral victory in 2004, and re-election in 2009, as linked to this narrative. Second, the expanding role of the judiciary has been an important actor in shaping social policy in what Ruparelia (2012) describes as the emergence of a "progressive juristocracy". Third, new spaces have opened for civil society movements to directly engage with government and craft social policy, either in response to civil society pressures or to initiatives on community participation from parts of the state.

Rights based legislation evolved against the backdrop of the state's failure to provide quality services to citizens. For right proponents, legalizing basic entitlements through rights-based legislation was a means of empowering citizens to place claims on the state and demand accountability for implementation. Most of the rights-based laws have built into them procedural requirements to ensure greater transparency and create spaces for citizen involvement. This has involved various instruments, including the cross-cutting "right to information", social audits, and participatory planning for citizens to engage, participate and confront the state. It is for this reason that many observers have argued that the move to fashion a rights-based approach is in fact an "innovative state-building project" with a distinct "social contract" designed to shift citizen-state relations by "mobilizing popular discontent."³ In other words, the project of building a rights based welfare state was embedded in larger vision of a radical transformation of the everyday workings of the state.

³ Sanjay Ruparelia (2013), Mehta (2013)

This positioning of the rights-based move is evident in the following quotation from Sonia Gandhi, leader of the Congress Party:

“....our rights-based approach..... provides labour entitlements to people, puts pressure on the executives to be more responsive and accountable, and also puts in place a credible mechanism to redress grievances. This approach I believe is bringing about an empowerment revolution in our country” Sonia Gandhi, August 2013

Our paper offers a preliminary assessment of India’s experience with building a rights-based welfare state under the Congress-led UPA government. Our assessment is preliminary both because careful empirical evidence is still sparse, and because the underlying processes are intrinsically long term. We focus on emerging evidence on the micro-dynamics of citizen-state interactions, and the behaviour of state actors, in the context of these new rights. This involves examining how everyday practices of the state responded to the new rights and accompanying accountability instruments. We explore both how reforms were adopted and the nature of resistance, subversion and distortion in implementation. Through this analysis we hope to capture some of the nuances of the transition, the conflicts that have arisen, and the potential resolutions that may result. We see this analysis as important because the ultimate outcomes will depend, to a great degree, on the interplay between the new transparency and accountability instruments, bureaucratic structures and incentive systems, and local patterns of political and civil society behavior.

Comprehensive statistical data on the issues are mostly absent at this stage. We rather draw on an interpretation of case study evidence in three areas where rights and accountability have been explicitly introduced—the Right to Information, Right to Service laws and social audits in the MGNREGA. We then assess examples of at least partially successful change in two domains where rights are salient—food distribution and education—in (subnational) states, where these emerged from political or other pressures within these states, as opposed to being imposed from above.

We argue that the potential for a rights-based approach depends both on the domain of state action, and on complementary action to change the way in which the state works, in both its political and bureaucratic dimensions. Some areas of state action are intrinsically more conducive to a justiciable approach than others. This depends on whether they can be potentially supported by an implementation architecture in which specific, justiciable rights make sense. This is potentially the case in areas with specific, verifiable outcomes, that can be delivered by non-discretionary state action—for example responding to a specific information request, or providing a pension to an eligible old person. In many domains this is not the case; the desired outcome is complex, and requires discretionary, multiple, human interactions to achieve success—for example achieving genuine learning of children.

The rights-laws and accompanying accountability instruments do indeed place a completely different set of pressures on state actors from the opaque, hierarchical state has confronted in the past. But state actors are embedded in local political and bureaucratic processes that often have a different logic to that of the rights-based approach. This has led to distortions and resistance to change, rendering the state only weakly responsive. In the absence of a serious effort to restructure how state organisations function, this resistance and distortion can undermine the transformatory potential of these new governance processes. The contrast with the (relatively successful) cases where change occurred from political or social pressures from within the system only underscores this assessment. Both of the cases involve domains in which rights have been passed—on food and education—but in neither were rights the key drivers in change.

We have two general conclusions. First, the rights-based movement has paid insufficient attention to the issue of where a justiciable approach makes sense. This has led to distortions in design in areas of complex accountability, toward measurable actions, such as education inputs and the behaviour of front-line government workers, as opposed to the real goals, or the broader drivers of state behavior. And second, what has been missing, even in areas where a justiciable approach could make sense, is complementary action to transform the workings of state itself—especially in the political and bureaucratic dimensions of the executive, at the levels of the centre, state and local administrations.

India is by no means alone in its quest to make a recalcitrant state more accountable to its citizens through the use of rights-based approaches. A case that is of particular interest is that of Brazil, that has some structural similarities to India, but has, in some areas, moved further since its return to democracy. Under the administrations of Presidents Cardoso, Lula and Rouseff there were significant gains in a number of areas of public service provision—and these were associated with *both* a range of areas of citizen rights, to both services and participatory process, *and* reforms of public governance to improve accountability measures within the administration. The significant improvement in education quality is one example of the gains. The underlying drivers of this can be seen in the confluence of political and civil society developments, including at local levels. But there are also salutary lessons on the potentially distorting and inequitable effects of specific rights—at least in the case health—that have been driven by active use of the legal “right to health” in the courts, and the interpretations judges have given to this in their rulings. The fact that there remains widespread discontent over the quality of services, evident in street protests in 2013 and 2014, only makes the parallel more interesting for India.

The remainder of the paper is organized as follows. We first discuss concepts and their application to India, including of accountability and social rights, as well as the role of politics, bureaucracy and civil society. The core of the paper comprises the two sets of case studies. The first set examine the rights-based transparency and accountability instruments. The objective of these case studies is to unpack the

effects these instruments have had on the dynamics of the everyday workings of the local administration.

The second set, studies two state-level examples of changes in service provisioning. The analytical focus of this latter set of case studies is on understanding the drivers of lasting reforms. This is followed by a discussion on Brazil's experience. A final section concludes and presents some initial ideas on potential future changes.

Accountability, rights and citizen-state relations: concepts and frameworks

In this section we present the key concepts for assessing the rights-based project, and how they apply to India. The central issue concerns how "accountability" works in practice, and how this relates to legislated socio-economic rights.

To unpack India's experience we also need an analytical framework through which to interpret how state-citizen relations function and how these dynamics have been influenced through the rights agenda. This is presented here with three building blocks: first, we discuss the meaning of accountability, as it has developed in the literature and has been applied in India; Second, we turn to conceptual concerns related to socio-economic rights; and third we outline a framework for interpreting citizen-state relations through interactions between state organizations, politics, civil society and the judiciary.

Accountability

The quest for greater accountability lies at the heart of the rights-based movement. Accountability has been defined as the ability of one actor to demand an explanation or justification of another, and to reward and punish that second actor on the basis of his or her performance or explanation (Rubin 2005). Accountability definitions make a distinction between *answerability*—for example, in the obligation of public officials to inform and justify their actions—and *enforcement*—along with the sanctions that could be imposed if actions or the justifications for actions are found to be unsatisfactory (Schedler, 1999). An accountable public system closes the loop between answerability and enforcement. The key institutional challenge is that of developing patterns of behaviour that are based on equally applied rules with respect to all citizens, as opposed to considerations of personal connections, group-based identity, power or money. It is, however, an open question how far this is achievable via sanctions-based mechanisms (involving high-powered incentives, in economic parlance), as opposed to other ways of developing the bureaucratic and political norms that underpin these behaviours.

The traditional approach to accountability of state actors, in "Weberian" treatments of state behavior, involved three types of mechanisms or accountability "regimes" (Robinson, 2013).

- First, in democracies, citizens hold the government accountable through the power of the vote. This incentivizes the government to set policies in line

with the aggregated preferences of citizens. This “regime” is referred to as political accountability.

- Second, in a hierarchical bureaucracy, typical of implementing agencies, public sector workers from the front-line up are subject to controls by their superiors, with various forms of rules of behaviour. This is referred to as “administrative accountability”.
- Third, “legal accountability” involves the legal recourse of affected parties to judicial bodies where the public sector’s behavior is specified in the law.

The last two accountability mechanisms are also referred to as “horizontal accountability” in contrast to the “vertical” accountability to citizens. Horizontal accountability refers to the internal checks and balances within the state. These include mechanisms such as the government auditor-general which is expected to ensure accountability within the administrative hierarchy. Vertical accountability is exercised directly by citizens. Voting is an instrument through which vertical accountability is enforced.

From the mid-1990s, there was a wave of writings and activism that emphasized the limitations of this approach to accountability. Voting was increasingly seen as a blunt instrument of accountability, and horizontal systems of accountability had largely failed to institute checks and balances in many parts of the world. This led to an expansion, in practice and in concept, in the role of citizens in making direct claims on the state. These new forms of citizen demand echoed Hirschman’s famous formulation of “voice” as an alternative to “exit” in holding organisations, whether public or private, to account in relation to agreed goals (Hirschman, 1970).

Goetz and Jenkins (2001) refer to this new form of citizen engagement as a “hybrid” accountability. It has also been described as “co-governance” (Ackerman 2004), where citizens’ quite literally inserted themselves into the daily workings of the state. A seminal example is Brazil’s famous experiment in participatory budgeting in Porto Alegre, in which citizens become directly involved in government decision-making processes through public deliberation that then lead to binding proposals on budget priorities within the city, thus entering a core area of governmental functioning (Baiocchi, Heller and Silva, 2011). India’s experiment with social audits, in which citizens become auditors and scrutinize government records, and community user groups around schooling and health services, where citizens plan or monitor service delivery, are also cases of co-governance or hybrid accountability. Co-governance may be an ideal rather than a reality, but it does capture the essentially relational feature of accountability: it is a product of an interaction between social groups and state actors.

This tradition of proactive citizen participation is also referred to as “social accountability”. The concept of social accountability has now become the overarching analytical framework through which “voice”-led accountability efforts have been understood. However, the definitions of social accountability have been widely contested. Malena, Foster and Singh’s (2004) definition of social accountability encompasses the different threads emerging in the literature. “Social

accountability can be defined as an approach towards building accountability that relies on civic engagement, i.e. in which individual citizens and/or civil society organizations participate directly or indirectly in the accountability process. Mechanisms of social accountability can be initiated and supported by the state, citizens or both.” (p.3)

Houtzager and Joshi (2008) expand the notion of social accountability further. In their definition, social accountability moves beyond tools and instruments of participation to an “ongoing and collective effort to hold public officials to account for the provision of public goods, which are existing state obligations”. Their definition identifies the long-term, continued interaction between social actors and the state as the key defining factor of social accountability. Understanding social accountability through this prism places a focus on the dynamics of interaction between citizens and the state and the specific conditions under which social accountability instruments are used and institutionalized. Our conceptualization of social accountability is closest to this definition. Through a case study approach we study the evolution and institutionalization of state- citizen engagement around social accountability instruments. We focus our analysis on understanding the conditions under which this institutionalization is likely to be more successful. We also examine the effectiveness of implementation through the prism of the dynamics of the interaction between social accountability instruments and the state.

The concept of social accountability is related to that of empowerment and citizenship. “Empowerment” has multiple uses, and is relevant to many fields of human behavior. One field is relevant here: empowerment as the capacity of citizens to hold the state accountable for agreed political, civic and social rights. This again embodies two sides to a reciprocal relation: the capacities of citizens to act—in terms of aspirations, collective action, and human and economic resources—and the formal and *de facto* drivers of the behavior of state actors to respond to the associated claims.

With respect to citizenship, we draw on a definition provided by Baiocchi, Heller and Silva (2011), who cite Tilly:

“Citizenship consists, in this context, of mutual rights and obligations binding governmental agents to whole categories of people who are subject to the government’s authority, those categories being defined chiefly or exclusively by relations to the government rather than by reference to particular connections with rulers or to membership in categories based on imputed durable traits such as race, ethnicity, gender or religion. It institutionalizes regular, categorical relations between subjects and their governments”. (Tilly, 2004, p. 128)

This definition again encompasses the essentially relational feature of citizenship, and also emphasizes that this is institutionalized in ways that are unrelated to an individual’s social category or connectivity, and is thus, fundamentally different from a clientelistic relationship, or one based on group identity. This conception of citizenship is clearly linked to that of empowerment in the specific field of

interactions with the state, and to the *de jure* and *de facto* nature of the rights citizens have vis-à-vis the state. We turn to this now.

Socio-economic Rights: Concepts and Evolution

The push toward a rights-based approach to welfare gained ground in India against the backdrop of deep and widespread state failure to provide basic services. By engaging the state on equal terms as rights bearing citizens, rights legislation were viewed as an instrument to shift the underlying power dynamic between citizens and the state. This idea is embodied in in rights activist Nikhil Dey's conceptualization:

"Accountability from a citizens' point of view is inextricably tied to basic entitlements. Who can I hold accountable if I don't have entitlement?" (Dey, 2010.)

In this sense the pursuit of rights as the foundation of a welfare state embodies both the aspiration of substantive provisioning as well the deepening of citizenship. It is for this reason that rights approaches have built into their design spaces for greater direct engagement between citizens and the state through mechanisms like social audits, participatory planning and grievance redressal. The effective use of these spaces to enhance accountability to citizens is integral to the architecture of the rights based welfare state.

The idea of socio-economic rights is not, however, unique to the last decade. Scholars trace the historical origins of the debate on socio-economic rights in India to the nationalist movement. Jayal (2013), finds the first mentions of the right to free primary education and to gender equality in the 1925 Annie Besant Committee's Commonwealth of India Bill, that was subsequently endorsed by the Indian National Congress (INC). The commitment to social rights resurfaced in the 1931 Karachi session of the Congress during which the INC's Resolution on Fundamental Rights and Economic Changes listed both civil and political rights and a range of social rights, including free primary education, the elimination of child labour and the protection of women workers, amongst others.

However, the list of rights were split into two distinct parts in the Constituent Assembly. The Constituent Assembly drew a distinction between civil and political fundamental rights, that were backed by legal sanction, and socio-economic rights that were referred to as Directive Principles of State Policy. Directive Principles were, in effect, guidelines for legislatures and governments. The primary reason for making this conceptual distinction was the Indian Constituent Assembly's view of social and economic rights as positive rights requiring state action, but which in the absence of resources, would be impossible for the state to provide (Jayal (2012) and Ruparelia (2013)). The Constituent Assembly also argued that these domains of state action would be best left to the political and legislative process. The underlying assumption was that the Directive Principles would be met through political processes rather than through the courts. Ruparelia quotes B. R. Ambedkar, who argued:

“But whoever captures power will not be free to do whatever he likes with it. In the exercise of it, he will have to respect these instruments or instructions, which are called Directive Principles”. (Ruparelia, 2013, p. 10).

In essence, the people rather than the courts were supposed to pressure the state to provide these goods.⁴

This distinction between Fundamental Rights and Directive Principles of social policy had an important impact on citizenship. In the political realm, Jayal (2013) argues, citizenship was very clearly defined in the framework of rights and responsibilities. By contrast, in the economic and social realms, the absence of justiciable rights implied that citizen’s were recipients of state patronage or charity, rather than rights-bearing citizens. This tension lies at the heart of the more recent rights-based project.

The re-emergence of the discourse on socio-economic rights as central to welfare and citizenship in the late 1990’s onward can be traced to three socio-political shifts.

First, civil society emerged as an important arena for mobilization of public opinion and action for accountability and access to public goods. This needs to be understood in the context of India’s unique experience with democracy where politics emerged as a site for negotiating group identity rather than a space for making the state accountability. This is best described by Pratap Bhanu Mehta who argues:

“Democracy in India has advanced through the competitive negotiations between groups, each competing for their interests, rather than the diffusion of democratic norms. It is, in some senses, a contingent outcome of social conflicts, not necessarily a deep-seated norm. The purpose of political mobilization has not been to make the state more accountable but to get access to or share in its power.” (Mehta, 2009)

In other words, despite the remarkable consolidation of democracy in India and the emergence of historically subordinate groups as a major political force, India’s political space has, particularly till the early 2000’s, been relatively unresponsive to popular demands for improved social and economic welfare and accountability for improved delivery. In the mid 1990s on, civil society came to fill this space. To a large extent the momentum for this activism was generated through the Right to Information (RTI) movement led by the Mazdoor Kisan Shakti Sangathan (MKSS) that gained ground in the mid-1990s. The movement pushed for a radical interpretation of the right to information within the state as a fundamental element of citizens’ right to participate in governance processes (Jenkins and Goetz, 1999). By invoking the language of “rights”, the movement also sought to pursue a larger agenda—that of redressing the power asymmetries between citizens and the state and re-imagining citizenship as bound by rights and duties rather than patronage. The activism for the RTI also laid the foundations for a larger movement that framed

⁴ This approach was actually borrowed from the Irish Constitution.

the state's obligation to provide basic services to citizens as rights. The two most powerful substantive "rights" movements in India—the right to work and the right to food—have their roots firmly in the RTI movement.

Second, civic activism coincided with the emergence of a shift in the nature of judicial intervention in India. In the early 1980s, the Supreme Court opened its doors to a new form of legal action, of public interest litigation (PIL), by relaxing the traditional rule of *locus standi*, which permitted only aggrieved persons to bring action for judicial redress. This enabled citizens, NGOs or the court itself to bring issues to the judiciary, even if they were not directly affected. Commentators have argued that through the PILs the courts in India acquired a new character, that of an "activist court" (Rajamani and Sengupta, 2010). Civil society activists began increasingly to draw on PILs to engage the courts in holding the executive accountable for the delivery of public goods. Through these PILs, the courts began expanding the substantive rights protected under the constitution to include, amongst others, the right to food, the right to work and the right to education. What is particularly striking about this relationship between the activist court and civil society is, as pointed out by political scientist Neera Chandoke, the executive often only responded to civil society pressures when the courts stepped in and instructed the state to act (Chandoke, 2007). This is an example of a broader theme of this paper—of the complementarity between external, societal pressures and accountability measures within the formal structures of the state.

Third, political narratives were evolving in party platforms in both national and state elections. At the national level, the BJP came to power in 1998 as the leading party of a coalition. They adapted their political narrative to that of India as a rising economic power, and adopted the "India Shining" slogan. The Congress-led coalition won back power in the 2004 elections, on a narrative of "inclusive development" that was for the "common man" or *aam aadmi*. This, coupled with the alliance with left parties in the Centre, led the government to develop policy focused on greater investments in social sector provisioning, and provided the political context for the enactment of legislation around the right to information, the right to work, the right to education and (in 2013) the right to food. The re-election of the Congress-led alliance in 2009 only reinforced this view—and many attributed this win to the MGNREGA and related programmes. The actual reasons for the 2004 and 2009 election victories were undoubtedly more complex, and linked to a variety of developments in the states. But what is relevant here is the political narrative. Then at least one element of the dramatic electoral turnaround in the 2014 elections concerns the success with which Narendra Modi and the BJP appropriated the governance agenda, in the wake of the collective frustration with both high-level and daily corruption under the Congress-led alliance.

Alongside this shifting political narrative, there is evidence of greater electoral discrimination between better and worse performance, in what has been described as a third phase of electoral democracy in India, following a period of hegemony by the Congress party till the 1970s, and then a systematic anti-incumbency bias from around the 1980s through the 1990s. This is particularly evident in state elections,

with the electorate rewarding relatively better performance of incumbents in, for example, Bihar, Chhattisgarh and Madhya Pradesh. Administrations seen as highly corrupt have, by contrast, lost elections, notably in Tamil Nadu and Uttar Pradesh (though not necessarily replacing these with less corrupt parties.) Delhi illustrates both patterns—with the Sheila Dikshit-led Congress Party winning three elections in a row—and this generally attributed to perceived good performance—followed by a dramatic reversal in the 2013 elections, in response to the rising salience of issues of corruption, and effective mobilization around this issue by the insurgent new Aam Aadmi Party.

Conceptual concerns. This articulation of the welfare state in the language of rights also raises an important conceptual issue vis-à-vis rights and social provisioning. At one level, the push toward rights needs to be understood (as emphasized in the discussion above) as an important expression of a moral claim by the state toward its citizens. For a country as deeply inequitable as India, where the state has been sporadic, at best, in its commitment to fulfilling the Directive Principles, this moral commitment is extremely significant. As Jean Drèze has argued, rights-based legislation is a “a victory of sorts” for Indian democracy, showing that “the underprivileged majority is not completely marginalized in this elitist political system.” (Dreze, 2010: 511).

Rights, backed by legal sanction were seen as a critical tool through which citizens can mobilize and place claims on the state, to check against the excesses of the state. This is best articulated in the quote by Nikhil Dey mentioned above. To enhance the mobilization potential of rights laws, the architects of India’s laws built into their design specific entitlements for transparency and accountability of the state to citizens. These laws were designed, as James Manor argues, to mobilize popular discontent thus altering the power structure between the state and citizens (cited in Ruparelia 2013).

Later in the paper, we assess India’s implementation experience with realizing these rights and associated accountability entitlements. But first, we turn to a conceptual question that has received relatively less attention in scholarship on rights-based laws in India. Debate on the effectiveness of socio-economic rights as a strategy to expand state provisioning has tended to focus on issues related to judicial overreach, the limited capacity of India’s overburdened courts and its impact on the expansion of rights and the quality of jurisprudence. Missing in this debate is any analysis of the implications of the language of rights on the delivery architecture for the provision of social goods and whether a rights approach is intrinsically appropriate for ensuring effective delivery.

The central question when analyzing rights from the perspective of social goods is whether a legalistic approach is the effective instrument to redress the failings of the state. In other words, does legalization of the provision of social and economic services through rights-based laws place appropriate demands on institutions and agents of delivery? Under what conditions can these demands be met? And are these sufficient to ensure effective availability and substantive quality of social goods to citizens?

At the risk of over-simplification, the rights approach to the provision of social goods identifies lack of compliance and resistance to following rules and procedures as the binding constraint on effective delivery. Accountability, on this view, is about defining rules and creating an institutional architecture, in this instance, through the threat of judicial enforcement that can enforce these rules. Thus entitlements need to be clearly defined, rules and processes of delivery need to be identified, and institutional structures for monitoring and enforcing sanctions need to be clearly articulated. Rights laws are firmly embedded in the view that a hierarchical, rule-based, process-driven administrative approach can, if effectively incentivized with sanctions for failure, deliver social goods efficiently and effectively.

The language of rights thus serves to re-enforce a rules-based approach by virtue of its own internal logic. Rights, when guaranteed by the state, are judicially enforceable claims on the delivery of goods and services or protections by specified state actors (or potentially regulated other actors). But to create the conditions for enforceability the nature of the required duty, obligations and liberties of the state vis-à-vis citizens must be clearly defined and amenable to judicial review. This necessitates a clear and specific articulation of the agents, mechanisms and institutional structures through which the obligations of the state will be delivered to citizens. This logic is clearly visible in India's rights laws, which are extremely detailed in terms of the delivery architecture prescribed and, on our reading, leave little room for discretion in the norms and expectations it sets on different levels of the administrative architecture. But in following this logic, do rights laws run the risk of overdoing the delivery architecture? Does this emphasis on rules and processes serve to facilitate or constrain delivery?

To unpack these questions, we draw on Lant Pritchett's (2014) categorization of the process of social good provisioning into "thin" and "thick" accountability activities. "Thin" accountability activities involve specific, verifiable outcome measures *and* can be delivered by non-discretionary state action e.g. giving a pension to a person who qualifies. Performance standards in this instance are clear—if you qualify, you get a pension and this can be measured through objective "thin" information (e.g. the number of pensions delivered to eligible citizens) that can be enforced through a hierarchical, rules-based process. The provider, doesn't need to know why a person qualifies for a pension, his/her job is simply to deliver the pension and his job performance can be verified on the basis of the extent to which all eligible citizens receive pensions (and ineligible ones don't). Failure to deliver thin activities can be primarily attributed to compliance failures i.e. deviation from rules and procedures which can be resolved through better enforcement.

"Thick" accountability activities, on the other hand, require a far more complex set of interactions. These are usually transaction-intensive tasks, in the sense that providers have to tailor their actions to the specific conditions in which the task is being implemented. Thick accountability activities thus require actors to exercise high levels of discretion as they deliver their tasks. Such activities cannot be measured through observable, thin information. Teaching is a classic example of a thick activity. The task of teaching well necessitates teachers to interact with their

students on a day to day basis and tailor their methodologies to the specific learning capabilities of students in the classroom. Given the complexity of this process, teaching cannot be effectively monitored using thin information, such as teacher qualifications, number of hours spent teaching, and so on. It necessitates an approach that accounts for the “thickness” of the process of teaching and enables long-term observations in the specific context of the classroom. Failure to deliver thick accountability activities is not necessarily, or typically, a consequence of lack of compliance to rules (e.g. teachers not having appropriate qualifications) but relate to gaps in the process of teaching (e.g. lack of effort in the classroom, pedagogical strategy employed) that cannot be easily observed or enforced through rules and procedures.

This classification of delivery of social goods into thin and thick accountability activities allows us to assess the conditions under which a legalistic approach is likely to be more successful. For thin activities, where accountability can clearly be established on the basis of compliance to rules and procedures, a legalistic approach can, potentially, be effective. The Right to Information and the Right to Services fall neatly within this category. Here, actual “provision” can be monitored on the basis of thin information—responding to applications for information within 30 days—and compliance for these thin activities furthers the broad goal of transparency. As we will see, there remain issues of whether the rules are actually followed, or if new distortions emerge, even with thin activities.

For thick activities, a legalistic approach is intrinsically sub-optimal. For activities such as teaching, where the core function is thick, a legalistic approach runs the risk of drawing on thin information such as teacher qualifications and completion of the curriculum to manage and monitor the delivery process. Thus the delivery architecture ends up prioritizing activities that may not be the ideal vehicle for achieving goals. India’s Right to Education Act, which has been widely criticized for its focus on regulating inputs rather than pursuing outcomes, is a classic example of this misalignment between a legalistic approach and the actual mechanisms of delivery. In fact, the complexity of using the courts as a vehicle to address deficits in learning quality is evident in the nature of litigation surrounding the right to education. Shankar and Mehta (2007) study the impact of litigation patterns in education (the study predates the RTE but traces the spate of PILs around education following the Supreme Court’s 1992 decision that all citizens had a right to education) and found that much of the litigation related to primary education focused on issues related to teacher salaries and tenure. According to this study, there were almost no cases related to teacher absence and the quality of teaching. Since the RTE, the key litigation surrounding the Act has focused on the section of the Act relating to regulation of private schools. The issue of learning quality has not entered the legal debate around the Act.

The Right to Work (articulated through the MGNREGA) and the Right to Food straddle thin and thick accountability activities. The key objective of the MGNREGA—the provision of 100 days employment to a rural household—falls within the category of thin, verifiable information, which is tightly aligned with the

goal of providing work. However, there are important aspects of the process of delivering MGNREGA that are thick activities. An example is the function of identifying assets to be created through the program by the Gram Panchayat. This process requires Panchayat members to implement a complex participatory planning exercise through the *gram sabha* and, through a process of consensus-building, develop a shelf of works to be implemented through the MGNREGA. Planning of this nature is a thick activity.

Similarly, in the case of the Right to Food, the focus of the Act (and the public debate surrounding the enactment of the RTF) was on two issues: the public distribution system and the identification of the poor. The debate related to the public distribution system was essentially about the architecture of delivering food grains to beneficiaries and, in this sense, is a thin activity. At its core, it is a logistical function that can be monitored through a set of centrally designed processes. However, the mechanisms for identifying the poor are far more complex. It is a highly technical process that requires a complex set of information to determine whether the agreed criteria apply. There is then further scope for discretion by local officials. And the real, broader issue of food and income security is clearly a complex, thick accountability, domain.

The categorization of rights into thick and thin functions has important implications for the design and assessment. Rights laws can potentially be effective instruments for social provisioning in contexts where the provision function is dominated by thin activities—provided rules-based processes actually work, whether through bureaucratic hierarchy or the courts. However, for more complex tasks, requiring discretion and judgment, rights might in fact serve to distract attention from the real problem of fostering the norms and incentives for public sector workers to find solutions to achieving goals.

Now, it is possible that a rights law can still make a bad level of service delivery better if it induces greater effort, or changes claim-making by citizens: the moral obligation that rights place on the state to provide welfare to its citizens can be very significant. However, rights run the risk of distorting the delivery architecture in a manner that could be detrimental, taking attention away from the more complex questions of delivering quality. The challenge for a rights-based welfare state is to strike what is undoubtedly a delicate balance between the imperatives of rights and the complex processes through which services are actually delivered.

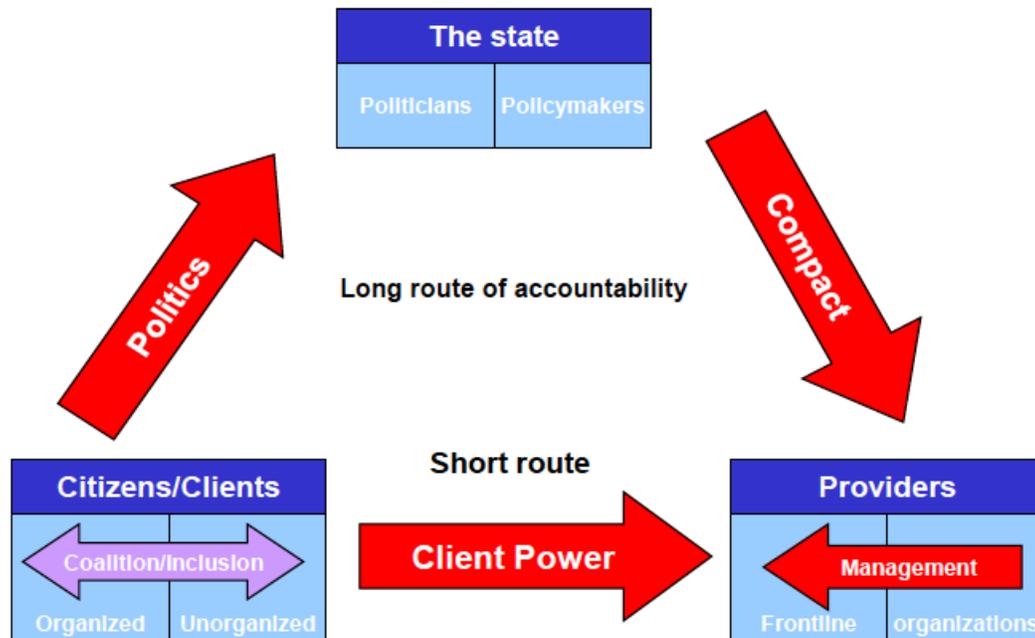
So far we have described the core concepts of accountability and rights as they apply to India. We now need to embed these in an account of the dynamics of citizen-state interactions, in terms of institutionalization and implementation of this approach. For this we need a conceptualization of **citizen-state relations, in terms of political and bureaucratic behaviour in relation to civil society.** We turn to this now.

Citizens, politicians and state organizations.

The starting point for our framework is the World Bank's 2004 World Development Report, *Making services work for poor people*, that sought to conceptualize

accountability through the ways in which citizens and state actors interact. This is summarized in Figure 1.

Figure 1. The accountability framework for service delivery



Source: World Bank (2004)

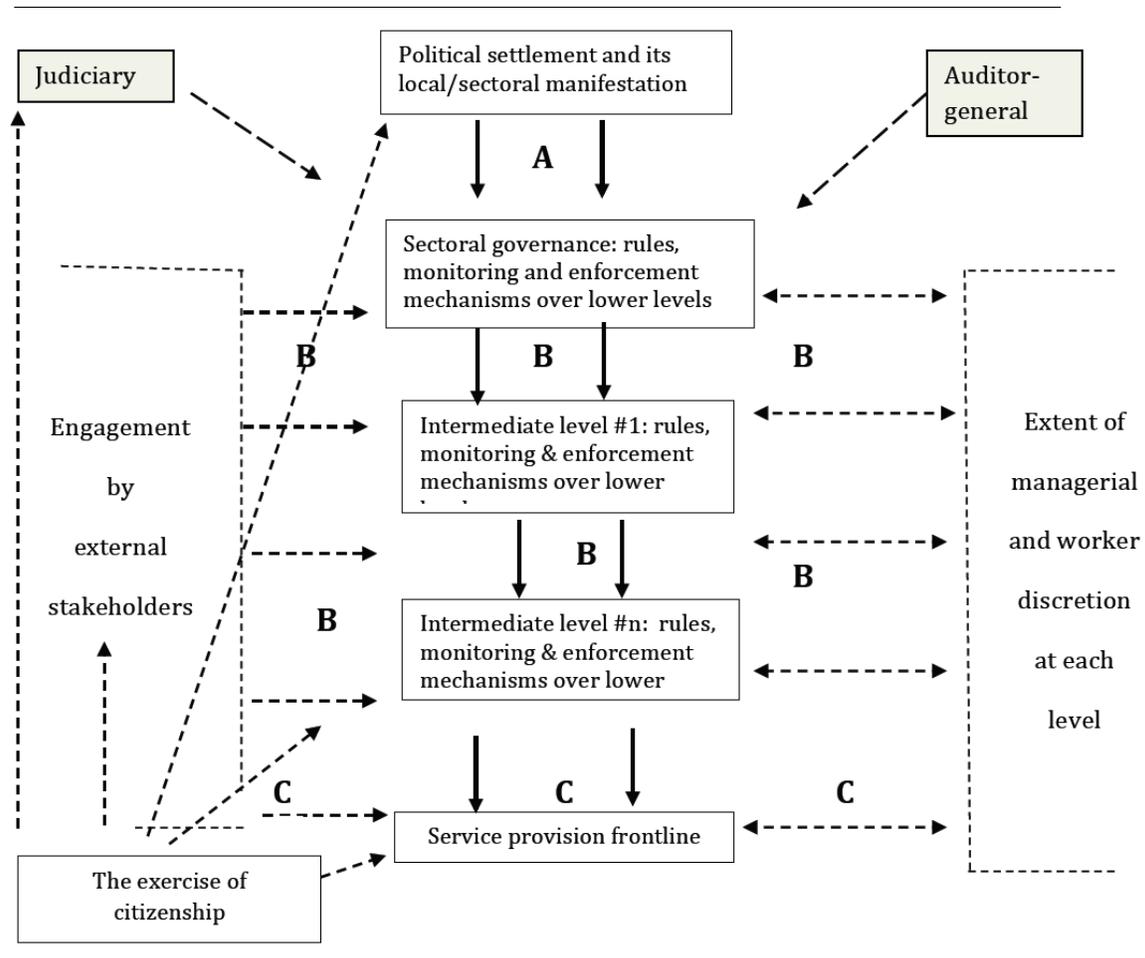
This is a stylized way of showing several relationships that cover the range of citizen-state interactions and the means through which these influence service delivery. Citizens influence politicians (the route of “politics” in the diagram, originally termed “voice” in World Bank 2004). Politicians in turn set the frame for policy design. Implementation is by a variety of state (or regulated private) organizations on the basis of official policies, rules and resources (the relationship of “compact”). Within providers there are relations of “management”, with actual service delivery undertaken by frontline workers—teachers, nurses, police officers and so on. The report also emphasized the potential direct influence of citizens on service-providers—through making claims on state organisational behavior (this is termed “client power”, a little confusingly, as it is close to Hirschman’s notion of “voice”—but that doesn’t matter for our purposes).

This framework usefully places accountability within the larger context of state functioning, and highlights the potential complementarity between the “indirect” route of citizen influence over politicians and direct claim-making. To understand how rights fit into this, how demands for accountability emerge, become (or fails to become) institutionalized, and influence state-citizen interaction we also need a

more explicit treatment of how organisations work, and how this relates to the political context, civil society and accountability institutions of the state, including the judiciary.

As a first step we extend the framework to make more explicit the range of political and stakeholder interactions. This takes as the unit of analysis a state organization, but embeds this in both political and internal and external stakeholder influences—see Figure 2.⁵

Figure 2. Influences on the behavior of a public organisation



Source: adapted from Levy and Walton, 2013

Figure 2 maps the structure of the potential interactions across the multiple levels at which the state operates. Citizens may influence state behavior through the political route, through influences on state organisations—whether at the front-line

⁵This approach can also be seen as an extension of recent work by Houtzager and Joshi (2011) who argue that some of the current conceptualizations of social accountability over-emphasize “widgets” or instruments at the expense of the political realities and contexts in which these emerge.

or at higher levels—or through the judiciary, when there are justiciable claims. The auditor-general (that is the Comptroller and Auditor-General, in the case of India) also has a role, but without any direct line of influence from the citizenry. State organisations are also subject to the influence of other stakeholders—from inside and outside—and most fundamentally from the political context. We briefly review each part of the system.

Political settlements. Politics is the fundamental driver of civil society action and state organisational behavior (see also Devarajan, Khemani and Walton, 2013). A useful way of framing this is in terms of what in Figure 2 we refer to as the “political settlement, and its local or sectoral manifestation.”

By “political settlement” we mean the arrangements and resolutions between the various socio-economic groups in a society—especially between political and business elites, and between elites and middle and lower social groups—when these are stable and resilient to systemic threats. As Mushtaq Khan emphasizes, resilience is associated with a situation in which the distribution of benefits from the institutional arrangements is consistent with the underlying distribution of power. (Khan, 2010).⁶ The capacity to challenge arrangements will be a function of the distribution of wealth, of the capacity for collective action, and patterns of aspirations. There can be plenty of conflict, distributive and otherwise, within the arrangements, but if there is no systemic threat to the status quo then we can say that there is a political settlement (some economists or political scientists may like the term “equilibrium” here). There can be various types of political settlements. At one extreme are “neo-patrimonial” political societies and at the other is the ideal of competitive democracy with limited government, in which the opportunistic, exploitative or predatory behavior of political elites is constrained by formal structures. The creation and sharing of economic rents (via preferential regulation, contracts, bribes or government position) often underpins the stable functioning of a settlement.⁷

The actual nature of the political settlement depends then on the underlying structure of interests and the distribution of the capacity for collective action across groups. At the aggregate level, two relationships are central to the system: between politicians and business; and, of particular interest here, between politicians and poorer and middle groups. These groups, particularly the poor, typically face major difficulties of collective action—because they have fewer resources and are often embedded within hierarchical social relations. This is shaped by the nature and organization of civil society.

Finally, as suggested in Figure 2, a country may have diverse political settlements across geographic units or layers—including decentralized layers of government or different state organisations.

⁶ This is also broadly consistent with the historical and game theoretic-inspired approaches of Bates et al (1998), Acemoglu and Robinson (2006) North et al, (2009) amongst others.

⁷ See Haber, Maurer and Razo (2003), Khan and Jomo (2000), Levy (2013).

State organisations. As highlighted in Figure 2, state (or regulated private) organizations are the basic unit of focus for the daily lives of citizens. There will be particular moments in which system-wide issues are being pursued or contested—as in elections, or the anti-corruption movement in recent years in India. But more often it is the functioning of the school, police force, irrigation system, local road, water supply, sanitation system, garbage removal service and so on, that are both the immediate concerns of citizens, and the domains in which the behaviour of state actors really matters, and accountability succeeds or fails.

The behavior of actors in a state organization will be influenced by the overall political settlement and societal functioning. In a “neo-patrimonial” polity, in which patronage is the primary political strategy, bureaucrats and organization workers are more likely to be driven by loyalty to their political patron than ideals of service to the population they ostensibly serve. In the extreme, the organisational apparatus may “look like a state” but operate under quite different principles of personalized engagement and rent extraction.⁸ While the general political context is important, there is likely to be substantial heterogeneity across organisations, with potential islands of effectiveness.⁹ This may be linked to variations across local political settlements, to the varied political function of different sectoral organizations, to different patterns of internal and external stakeholder pressure, and to features of organisational history.

Most organisations are *formally* “simple” hierarchical structures, in the sense that there are layers of authority from the top down. Even when this accurately reflects reality there are important “principal-agent” questions: the interests of an “agent”—say a middle level or street-level bureaucrat—may not be aligned with that of their boss, who will generally have incomplete information on what the worker is doing. But things are typically more complicated than this, with multiple stakeholders with an interest in, and influence over, the behavior of the organization (see Figure 2). This includes the beneficiaries, but also special interest groups concerned with supporting the goals of the organisation, from civil society or professional associations, as well as others interested in extracting spoils or other advantages from it. Equally important are the bureaucratic norms of behavior that evolve over time, that affect how state organization workers respond to internal and external pressures, demands and opportunities. *Civil society.* The nature of civil society plays a critical complementary role in the dynamics of the political settlement and the behaviour of state organisations. Figure 2 refers to the “exercise of citizenship”, both directly to politicians and through action vis-à-vis organisations. However, both the nature of the overall political settlement and the capacity and form of citizen action is mediated by civil society.

⁸ The term “looking like a state” was used by the anthropologist Steven Pierce (2007) in describing a highly corrupt, patronage-driven state of Northern Nigeria; it has subsequently been taken up by Andrews, Pritchett and Woolcock (2012). This is, of course, in contrast to Scott’s high modernist interpretation in “Seeing like a state” (Scott, 1999).

⁹ See also Levy (2011) and Levy and Walton (2013) for discussion of this.

Civil society comes in many forms. Here we follow the conceptual approach in Baiocchi, Heller and Silva (2011) who develop a general treatment and then apply this to the particular context of Participatory Budgeting in Brazil, along with comparisons with Kerala and South Africa. Baiocchi, Heller and Silva argue for an interpretation of civil society that involves “associational freedom, communicative power, and publicness” and define civil society as “the institutions, practices and networks of voluntary life that are oriented toward and legitimate themselves in terms of publicness” (ibid, 2011, p. 26). This definition distinguishes civil society organisations from purely social groups and involuntary or exclusionary groups.

How individual civil society organisations evolve and engage depends on the overall context of relationships between the state and civil society. This varies substantially across societies, countries, and spatial domains within countries. Baiocchi et al develop a useful categorization of different types of state-civil society relations (see Table 1). There are two dimensions of this categorization: first, the extent to which civil society is autonomous, as opposed to dependent on the state; and second, the extent to which demand-making is institutionalized, as opposed to discretionary—that is linked to particular or contingent connections with state actors.

Table 1 presents the different categories. Most interesting here—given our focus on India—are the four cases under democracies. In a “prostrate democracy” civil society is completely dependent on the state and incapable of mounting a challenge—typified, for example, by “corporatist” unions created by the state and political parties in Latin America. At the other extreme is a “mobilized democracy” in which autonomous civil society organisations engage with the state through an institutionalized structure of claim-making—underpinned by formal rights, norms of behavior and associated sanctions.

In between these are two other categories that are most typical of democratic developing societies. “Affirmative democracy” refers to societies dominated by state-initiated participatory structures, in which state actors open spaces for civil society organizations to engage in an institutionalized structure. However, this form of engagement is “affirmed” from above, as opposed to an organic engagement emerging from an interaction with autonomous civil society (see also Mansuri and Rao, 2012 on “induced participation”). By contrast “bifurcated democracy” involves autonomous civil society organisations, but ones that are unable to operate in an institutionalized structure of claim-making, owing to the absence of agreed rights, complemented by norms, practices and sanctions for state actors. India has mostly a mixture of elements of “affirmative democracy”, for example in participatory institutions mandated by government, and of “bifurcated democracy in which autonomous civil society make claims on the state, but this is not institutionalized.

Table 1. Civil society—state relations

<i>Self-organisation:</i>	<i>Dependent</i>	<i>Autonomous</i>
<i>Nature of demand-making:</i>		
<i>Institutionalised</i>	Affirmative democracy	Mobilized democracy
<i>Discretionary</i>	Prostrate democracy	Bifurcated democracy
<i>Exclusionary</i>	Totalitarianism	Authoritarianism

Source: Baiocchi, Heller and Silva, 2011

Understanding the rights-based state building project: change, resistance and distortion

The key diagnostic challenge lies in interpreting how the existing “system” functions and how the system responds to pressures for change or reform. Of particular interest are questions related to the mechanisms of change. How does this occur? And when and how will change be resisted, subverted or distorted? These questions are the primary concern of this paper.

In the stylized framework presented here, change may be initiated from politicians, civil society, bureaucrats or the judiciary. Within this, the political context is fundamental. Politics can be the immediate source of change, where shifting influences from core interests, electoral pressures, crises, or changing cognitive maps of political elites lead to political pressures for change in the activities of the state and state-society relations

Changes at the sector and organization level can also be driven by political considerations. Alternatively, change may be politically driven for the worse, for example when rent-extracting and rent-sharing systems become increasingly entrenched—as appears to have been occurring in Karnataka and Andhra Pradesh during the boom period.

Change can also come from pressures outside politics: and indeed, in the Indian case, both the narrative and specific policy proposals around rights and accountability came to a large extent from civil society movements. But this became salient, and acquired real reach, only through engagement with the political process. In particular, there was resonance with the re-emergence of a political narrative of inclusion amongst political elites—at the level of the central and some state government. This has been variously linked to populist “welfarist” political strategy and to aspirations to become a social democracy (Khilnani and Malhoutra, 2013). The point here is not to assess this broader shift, rather to note the connectivity

between the civil society movements and both the cognitive maps and electoral strategy of the political elites—and especially the leadership of the Congress party.

Change can also be introduced by bureaucrats, by administrative innovation. However, this too cannot go against the political flow: it occurs where it is aligned with the creation of space for activist bureaucrats (and the contingent presence of committed, innovative individuals with leverage in the administration.)

In this paper we are concerned with two phases of change: first, the actual institutionalization of reform, including the passage of specific legislation and associated creation of bureaucratic space for accountability provisions; and second, the implementation of these reforms. Much of the emerging literature on rights and accountability is focused on the first question. There is relatively little analytical and empirical work on implementation, particularly from the perspective of how change interacts with bureaucratic organizations, the political dynamics at the local level and the successes, resistance and distortions that these interactions result in. In the remainder of this paper, we draw on the framework outlined above to understand the institutionalization and implementation of the rights-based state-building project from this perspective.

Case studies in India's rights-based approach

We use case studies to examine two ways in which the rights-based approach has unfolded. In the first set of cases we focus on specific reform instruments introduced through the rights-based laws. These include substantive rights—the Right to Information and the Right to Services—and an example of procedural entitlements—social audits, that are embedded within the Right to Work. The specific domains of action involved fall within the broad category of “thin” accountability, in terms of required processes.

In the second set, we explore cases in which reforms in service delivery emerged out of a long-term process of interaction between politics, bureaucracy and civil society. This involves the public distribution system and elementary education in subnational states. In both sectors, rights have been legislated—the Right to Food and the Right to Education—but were not the key drivers of the process of change in these states, and that is an important part of their interest to the discussion. In all the case studies, we explore the links between political changes, civil society and bureaucracy in both design and implementation.

The experience of accountability instruments in rights-based laws

The Right to Information (RTI)

In, 2005, the Indian Parliament passed the Right to Information Act. The context and historical evolution of the RTI from a grass-roots movement that first articulated

citizens access to information as a fundamental “right” to a national law has been well-documented (Singh 2010, Roberts 2010).

From the perspective of the concerns of this paper, the enactment of the RTI is an instance of alignment between civil society and a shifting political settlement in institutionalizing change. What is striking about the experience is that a movement in one part of India was able to bridge to high levels of policy-making and build on a specific political moment—the unexpected electoral mandate given to the Congress party in 2004 and the formation of the National Advisory Council led by the Congress President. This provided the political space and organizational context for the design and enactment of the RTI. Also important was the shifting role of the bureaucracy. Recent research by Sharma (2012) highlights how the post-liberalization political economy created shifts in the socio-economic structure of the bureaucracy, as elite bureaucrats moved out of government to join the private sector. This shift served to weaken the bureaucracy’s ability to resist the RTI. Sharma also argues that the combination of the international expansion of freedom of information acts with India’s global aspirations created a context in which the idea of transparency became attractive to India’s political and bureaucratic elites.

Citizens’ have responded enthusiastically to the Act, filing information requests regularly. According to the estimates by the Commonwealth Human Rights Initiative, as many as four million information requests had been filed in 2012 alone. However, there have also been both limitations and distortions, bred of systemic resistance to the changes in government practice implied by the Act.

To unpack India’s experience with implementing the RTI, it is important to examine how the RTI defines and articulates the practice of transparency in government. Mathur (2013) argues that the ideological roots of the RTI are anchored in the recognition of the importance of papers, documents and files in bureaucratic practice in India. Meticulous paper work is the hallmark and files are the *modus operandi* of India’s bureaucracy. Sociologist Amita Baviskar refers to this characteristic as the Indian bureaucracy’s “passion for paper” (Baviskar 2007). It was the recognition of this passion for paper that underpins RTI’s conception: on this view, transparency is about the control over government documents. This is what makes this part of the RTI a thin accountability domain.

The RTI draws on the very passion for paper in defining the practice of transparency for citizens. It is designed so that citizens actively engage with the governmental instrument of paperwork and files. All RTI applications are made in writing and the government is obligated to provide receipts and responses to applications on paper. Thus every RTI application requires the system to open a file. And once a file has been opened the system simply has to respond thus triggering a cycle of action.

The power of this approach is evidenced in the work of economists Pesisakhin and Pinto (2010). To test the effectiveness of the RTI, Pesisakhin and Pinto ran an experimental trial in Delhi with four different ways of seeking access to a ration card. Their experiment found that the RTI was almost as effective as paying a bribe

to access a ration card! Applicants who paid a bribe received their cards within two and a half months of submitting their applications, while those who filed an RTI received their cards within a median time of four months. By contrast, for those who didn't pay a bribe or file an RTI, very few received their cards during the period that the experiment was run.

Bribery and corruption apart, the RTI has also played a critical role in enabling citizens to understand how the government functions on a day-to-day basis. There is some evidence suggesting that this can have far reaching consequences. In 2008, Satark Nagrik Sangathan, a Delhi-based NGO, began using the Act to access information on the performance of members of the legislative assembly for the State of Delhi across a range of indicators, including legislative performance, use of their budgets and attendance at committee meetings. This information was widely disseminated in the run up to the 2008 State government elections. Banerjee et al. (2011) undertook a randomized control trial to examine the effects of the campaign on voter behavior in ten electoral constituencies; they found that the information campaign improved voter turnout by 3.5% and increased the vote share of high-performing members of the legislative assembly: incumbent politicians attending ration and police committee meetings improved their vote share by over seven percentage points.

While this emphasis on transparency as control over documents has successfully imposed pressures on the government to open its paperwork, the government has responded to the law in ways that limit its responsiveness to the Act. The emphasis has been on specific responses to RTI requests. By contrast, there has been little effort by the government to implement substantive reforms—reviewing internal rules and procedures, building official capacity to record information, reorganizing data collection and filing systems. As former Central Information Commissioner, Shailesh Gandhi, has argued, the Government of India still follows archaic filing practice (a cardboard file with threads that bind paper together) which make it nearly impossible for government officers themselves to find paper!¹⁰ This failure to build systems that facilitate transparent governance and decision-making has meant that almost no government department has willingly complied with Section 4 of the RTI which mandates that governments proactively disclose information on their websites and in other public spaces. So, in practice, the RTI has become a reactive law, that responds to citizen requests for information rather than leading to policies to build the foundations of transparent government.

From the perspective of the concerns of this paper, the key question in implementation of the RTI is its effect on the everyday decision making systems in the government. In other words, has the expectation of scrutiny, through transparency, shifted the dynamic of decision-making away from the traditional culture of deals towards a more rule-based system? Interviews with bureaucrats

¹⁰In conversations with one of the authors.

conducted by RAAG suggest that the jury is still out.¹¹ While all agree that decision-making processes have changed, this change may not necessarily be in the direction that one would expect. Some senior bureaucrats say that the threat of transparency and expectation of scrutiny through the RTI is often used deliberately as a tool to check against political deal making. But for the most part, bureaucrats argued that the RTI has served to foster new and innovative practices for taking decisions that circumvent public scrutiny. One interviewee referred to the “post-it” phenomenon—where post-its have replaced “file notings” when frank views have to be expressed.¹² Others say that tough decisions are now being taken verbally rather than through written notes. And still others say that the fear of transparency has meant that decisions are simply not being taken! In fact in the aftermath of the scams at the national level, the latter view became increasingly commonplace in the last few years of the UPA government.

This discussion indicates that the RTI’s influence is still ambiguous. There is potential for transformation. Decision-makers are clearly more cautious given the expectation of scrutiny. But this is yet to translate into building the foundations of a system where decisions are based on rational judgments and the rule of law. In fact rather than explore how to change decision-making practices, to draw an argument made by Pratap Bhanu Mehta, the government’s response to increased transparency has often been to close ranks and further entrench practices of secrecy, thereby bringing the system to a stand still.¹³ There is adherence to the law in areas of thin accountability, but not a transformation in the transparency of overall government functioning. There have been clear, specific benefits, but also costs in new distortions. We believe that for decision-making systems to change, the RTI will need to be anchored in a larger project of administrative reform. We return to this argument later in the paper.

Right to Service Acts

In August 2010, the state government of Madhya Pradesh (MP) passed the Public Service Guarantee Act. The Act covers 52 basic services, ranging from ration cards to income certificates and obligates the state government to ensure their provision within a stipulated time frame. If the government fails to comply, citizens have the right to an appeals mechanism that empowers the appellate authority to penalize errant officials.

The MP Act marked the beginnings of a new right for India’s citizens—the right to time-bound public services. By 2013, 15 more States had passed their versions of

¹¹Interviews conducted by the Accountability Initiative and other researchers as part of the RAAG study in 2009. These interviews were undertaken with select department secretaries in Rajasthan, Jharkhand, Andhra Pradesh and the Government of India.

¹²Traditional government filing and record keeping systems require that all decisions be written in what in bureaucratic parlance is referred to as “file notings”.

¹³ Interview with Mint newspaper, September 2013

Right to Public Service Acts and in 2012, a national level “Citizens’ Right to Grievance Redressal Bill” (GR Bill) was tabled for debate in Parliament.¹⁴

The Right to Service Laws (RTS) are an important addition to the current basket of rights available to India’s citizens. However, they are markedly different from the other socio-economic rights in terms of their evolution. The most striking difference of the RTS is that these state-level laws were not rooted in civil society activism. Rather, they emerged out of an alliance between Chief Ministers keen to project themselves as champions of the “good governance” agenda and top-level bureaucrats. That politicians and bureaucrats chose to adopt the “rights” rhetoric to frame their efforts to strengthen governance is indicative of just how deeply the language of rights has been internalized within the state system. Good governance became associated with “rights” laws—at least in this period. This also illustrates how, at both the national and state government levels, the narrative of “development” and “governance” was slowly emerging as an electoral strategy (as very effectively used in Narendra Modi’s campaign for the BJP in the 2014 national election).

As state governments began rolling out right to service laws, at the national level civil society activists began to articulate the demand for a national level Grievance Redressal bill. In many ways activism for a GR bill is an important analytical leap forward in the movement for building accountability, as the focus shifts from transparency to sanctions and enforcement. This is evident in the arguments of National Campaign for the Right to Information (NCPRI). In a newspaper editorial, activists Dey and Bharadwaj (2013), make the following case for grievance redressal: “An effective grievance redressal....builds on the transparency regime of the RTI by encouraging citizens to use information to enforce accountability”. Activism for this bill gained ground during the anti-corruption movement of 2011 that focused on institutional measures to address corruption. The India Against Corruption (IAC) group that led the movement proposed that a grievance redressal structure be built into the institutional framework of the LokPal (Ombudsman). Others, notably the NCPRI, drew on the momentum gained for the idea of a GR structure through the anti-corruption movement to push for the creation of an independent grievance redressal system. This resulted in the preparation of the GR Bill that was under debate in a Parliamentary Standing Committee at the time of writing.

The second feature that differentiates the RTS from other rights are the tools employed to strengthen accountability to citizens. Like the RTI, the RTS Acts and the national GR bill employ the instruments of the bureaucracy to engage the state and demand accountability. Paper work is again central. Accountability tools include an acknowledgment slip, a time-bound reasoned reply akin to a “speaking order” and

¹⁴ For a detailed summary of the provisions of these laws see:

<http://accountabilityindia.in/article/policy-brief/2396-state-legislation-right-time-bound-delivery-service> and <http://accountabilityindia.in/article/policy-brief/2516-analysis-right-citizens-time-bound-delivery-goods-and-services-and-redress>

so on. However, unlike the RTI, accountability through the RTS is primarily sought through the use of technology and penalty mechanisms that trigger internal governmental action. For instance, the state of Karnataka is implementing its Right to Service Act through a computerized system to generate data related to process flows on transactions, registered complaints, pendency and so on. These reports also allow citizens to track the status of their applications. The states of Madhya Pradesh, Bihar and Jharkhand have also created computerized databases to generate receipts when applications are submitted and enable senior officials to monitor progress, and impose penalties.

This emphasis on penalties and computerization has led observers to argue that the RTS are primarily laws aimed at strengthening internal administrative processes rather than empowering citizens (Robinson 2012). Furthermore, it has been argued that penalties for front-line workers as a route to accountability can divert attention from the administrative failures that caused the problem in the first place. This can result in building an accountability regime that is based on what Gauri (2013) describes as “retrospective accountability” rather than “indirect policy-level, forward-looking accountability”.

Studies on the right to service also point to the distortionary effect of penalties on the lower bureaucracy, especially if they are not accompanied by other reforms related to workflow and day-to-day administrative management. Robinson (2012) reports that widespread fear of penalties caused bureaucrats to prioritize processing applications at the expense of their other work. Hassan and Narayana (2013), in their study of bureaucracy in Karnataka, argue that the pressure to follow time limits caused officials to tweak rules to avoid being held accountable. For instance, the “delivery” of income and caste certificates under Karnataka’s Right to Service Act has been restricted to the preparation of the certificate by the bureaucracy rather than the actual handover of the certificate to the beneficiary, which is where the bottleneck lies. This enables the government department to show high levels of achievement without actually influencing the quality of delivery.

In the final analysis, the effects of RTS Acts on strengthening accountability are again ambiguous. On the one hand, these laws could be interpreted as the beginnings of an administrative transformation. It is increasingly becoming a political necessity for state governments to have an RTS. This is a significant achievement of the accountability movement. However, these laws interpret accountability as a value that can be achieved through specific incentives (and penalties) for front-line workers, again focusing on thin accountability domains. This comes at a cost: it serves to obfuscate the task of re-organizing how the state “works” and institutionalizing norms of behavior that make showing up to work and meeting performance goals the rule rather than the exception. We note below a contrast with at least some features of bureaucratic change in the Brazilian state.

Social Audits – MGNREGA and the case of Andhra Pradesh

The idea of social auditing traces its roots to the RTI movement when the MKSS began experimenting with *jansunwais*, or public hearings, in Rajasthan, aimed at creating public platforms for citizens to directly place claims on the state. Conceptually, the social audit is a tangible articulation of the idea of citizenship and democratic deepening embedded in the rights approach. Chandoke (2007), for instance, argues that the public hearings perform three functions that are intrinsic to democracy: first, they produce informed citizens aware of their rights; second, they encourage participation through the provision of information and social auditing; and third, they create a sense of civic responsibility by bringing people together to address issues of collective concern. In other words, the social audit and *jansunwai* process were conceptualized quite literally be described as “training grounds for citizenship” (we borrow this phrase from Mansuri and Rao, 2013).

In 2006, the Indian Parliament enacted the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), which legally enshrined the Right to Work. The Act incorporated a number of transparency and accountability provisions. Crucial amongst these was a mandate to undertake social audits on MGNREGA work sites. The social audits in the MGNREGA are conceptualized as a process undertaken jointly by the citizens and the government “... in which people work with the government to monitor and evaluate the planning and implementation of schemes.”¹⁵ According to the act, all *gram panchayats* (elected village councils) are expected to conduct social audits of schemes in their domain at least twice a year.

Despite the legal mandate, most parts of the country are still to seriously implement social audits.¹⁶ The state of Andhra Pradesh (AP) is the only exception. Between 2006, when the MGNREGA was launched, and 2012, the state conducted six rounds of social audits across every *gram panchayat* in the state. The audit process has been institutionalized through the creation of a state-sponsored body called the Society for Social Audit, Accountability and Transparency (SSAAT) specifically tasked with conducting audits in the state. Understanding why social audits were successfully institutionalized in Andhra Pradesh is particularly relevant to this paper’s concern with how accountability reforms evolve, and how this relates to the drivers of state behavior.

The primary factor that contributed to the institutionalization of the social audit in AP was a shift in the political settlement driven by the unexpected electoral victory of the Congress party led by YS Rajashekhar Reddy (YSR) in 2004, after several years in opposition. The Congress victory came against the backdrop of a severe agrarian crisis in the state. Congress’ electoral strategy linked the resolution of the agrarian crisis to the provision of expanded social welfare schemes that addressed

¹⁵ See NREGA guidelines, www.nrega.nic.in

¹⁶ See Pande and Mann (2012)

the specific concerns of distressed farmers and other affected households.¹⁷ The AP electoral narrative resonated with the Congress party's campaign for the national 2004 general elections. When the Congress party came to power both at the national and AP state government, the MGNREGA provided a policy vehicle aligned with their strategy. To build on its electoral gains, the Congress strategically chose to hold the national launch of the MGNREGA in Anantapur, Andhra Pradesh, thus putting the spotlight on the State. AP, however, had a dismal record when it came to implementing rural employment programs. Given the spotlight on MGNREGA, addressing corruption became a political necessity. This paved the way for anti-corruption innovation.

This political moment was complemented by the presence of an activist bureaucrat in a strategic position. The bureaucrat sought support from civil society activists who undertook to implement pilot social audits in the state and assess their feasibility. This experience facilitated the successful roll-out across the state.

The AP experience contrasts sharply with the experiences of institutionalizing social audits in other states, most notably Rajasthan, the original home of the social audit experiment. In the early days of the MGNREGA several attempts were made to set up an administrative approach modeled on Andhra Pradesh. In 2009, the Government of Rajasthan issued orders for a social audit directorate. To kick-start the process, an audit was organized by the MKSS and its associated NGOs. However, in the aftermath of this audit, local politicians, particularly *panchayat* presidents, rallied together to oppose the process. The agitation made its way to the Rajasthan High Court, which ultimately issued a stay order against conducting social audits in these villages. Unable to resist this pressure, state-level political support for setting up an audit society dissipated and the effort to set up the directorate lost momentum.¹⁸

Ironically, one of the incentives behind this resistance was the democratizing design of the Act, that specified that 50% of funds be actually managed by the *gram panchayat*. But this financial devolution was not accompanied by a complementary devolution of roles and responsibilities for implementing the program. Consequently, *panchayats* became managers of large sums of money with little authority and responsibility for their spending. Unsurprisingly, MGNREGA money is now an important source of rent extraction, and has been cited as one of the reasons for growing competition and political finance in *panchayat* elections. It also constitutes a reason to resist social audits and, given the nature of state-level politics, the pressure from *panchayats* proved hard to resist. In AP, by contrast, YSR was keen to consolidate the political gains made in the 2004 elections and deepen his popularity. He saw in the social audits an opportunity to break the local

¹⁷ For a detailed analysis on the A.P. 2004 elections see Srinivasulu, K. (2004)

¹⁸ In 2011 the Government of India issued orders mandating that all state governments set up a social audit directorate to undertake regular social audits in all states. However despite this order, many states, including Rajasthan, have been slow to move forward.

contractor-politican-bureaucrat nexus and disempower local politicians. He thus took active steps to support audits and increase state-level control (Aiyar et al 2011, Mariano 2014).

This difference between the Andhra Pradesh and Rajasthan experiences highlights the critical role of the overall political context and its interaction with the bureaucracy and civil society in both driving change and resistances to change. In Rajasthan, in the absence of a concerted state-level political push to implement social audits, efforts to resist change proved successful. By contrast, in Andhra Pradesh, state-level political elites played a critical role in giving space to activist bureaucrats and civil society actors to innovate and experiment—doing so because this was aligned with the narrative of political legitimacy of the party in power. At the same time—and undoubtedly to maintain greater control over the MGNREGA, AP did not actually devolve MGNREGA funds to *panchayats*, and in this area failed to abide by the nationally legislated requirement. It rather chose to retain bureaucratic control over the funds. We believe that this resulted in weaker resistance to the audit process compared with Rajasthan. This contrasting experience in local government behavior also highlights the inherent tension between stronger local democracy in neo-patrimonial democratic systems and greater local accountability.

Implementation of social audits in Andhra Pradesh. Since Andhra Pradesh was exceptional in seriously running social audits, it is of great interest to explore the actual experience in implementation—to explore the extent to which they have indeed become “training grounds for citizenship.”

Studies on the effects of social audits in Andhra Pradesh systematically find that audits have served to enhance awareness levels regarding the MGNREGA (Aiyar et al 2009, Shankar 2010). One of the earliest studies (Aiyar and Samji, 2009), based on a random sample of over 800 MGNREGA beneficiaries found that awareness levels about the Act increased significantly after the audit. For instance, only 31% respondents were aware that the Act offers 100 days of guaranteed work per household before the social audit. This shot up to 88% one month later and 99% six months later. In another instance, 30% were aware that machines were forbidden in the program before the audit. This too increased to 88% and 99% after the audit.

Awareness apart, the social audits also served to significantly alter the dynamic of citizen-state interactions. Aiyar and Mehta (2013) draw on a detailed study of eight villages in AP to argue that the audits change the way government officials respond to citizens by forcing them to justify their decisions. A Field Assistant (the local official managing MGNREGA)’s description of the social audit best articulates this: “*The villagers complained that they did not get job cards and that muster rolls [the attendance registers] were not properly updated...because of which wages were not paid completely. The MPDO [the senior administrator].....ordered an enquiry to verify the muster rolls. After verification, the complaint was proved to be genuine and complete wages were paid.*” (Aiyar and Mehta, 2013)

This kind of answerability is a striking response to the social audits. For the most part, when citizens interact with the state, they are positioned as passive recipients of

government patronage, or a potential sources of bribes. In the AP social audits studied, this dynamic shifted, with the government not doling out benefits but rather being pushed to justify its actions. Additional anecdotal evidence suggests that this public justification also serves to pressurize officers to take immediate action, including physically returning money to aggrieved citizens and firing officials during the audit (Akella and Kidambi 2007). While the long-term effects of this shift are a subject for further research, Aiyar and Mehta's study suggests that the audits have resulted in a positive shift. When asked whether social audits were an effective means to interact with local officials, 92% of survey respondents agreed and 85% respondents said that the audit had served to increase their confidence to seek information from officials about the MGRNEGA.

State responsiveness and corruption. Although social audits have been successful in raising awareness and temporarily empowering citizens vis-a-vis the state, the state's capacity to respond to the audit has been limited.

To ensure effective redressal, the Rural Development department in AP took many concrete steps, including appointing vigilance officers at the state and district level, instituting a system of reporting around "action taken" and even setting up fast track courts. However, data on redressal suggests that these measures have had limited impact. In their study, Aiyar and Mehta traced the experiences of 125 complainants: 112 said that their complaint had not been resolved. More extensive data on the social audit grievance redressal process supports this perception. According to data from AP's Society for Social Audit, Accountability and Transparency, shows that after six rounds of social audit nearly Rs. 1.4 billion worth of fraud had been identified, but only Rs. 230 million had been recovered. Of the 49,194 officials implicated action had been taken against about 40%.¹⁹ These numbers, while staggering in their own right, highlight that significant numbers of complaints remain unresolved.

What explains this limited grievance redressal? Aiyar and Mehta's analysis suggests that the current reporting and management structure for implementing MGNREGA makes it difficult for the enforcement authorities to impose sanctions. Key officers (many of whom are regularly implicated in the audits) like the Branch Post Master and the (MPDO) report to authorities outside of the rural development line agency. Government service rules are structured such that all the Rural Development officers (and this includes the vigilance officer) can do is to recommend that action be taken, without any powers to follow up on the recommendation. Thus in the absence of a parallel effort to reform basic administrative systems, even an institutionalized system of grievance redressal can fail to deliver on its promise.

These phenomena have a counterpart in the corruption market. To understand the relationship between social audits and corruption, it is important to understand how the market of corruption operates in MGRNEGA. Box 1 traces the different types of corruption in MGNREGA identified by Aiyar and Mehta (2013) in their study. They find that corruption in MGNREGA functions like a syndicate. By design, the scheme requires paper work at every step of the way, thus necessitating multiple actors to cooperate for corruption in MGRNEGA to "work".

¹⁹Power point presentation by SSAAT Direct, Ms. Kidambi in Hyderabad, May 2013

Box 1: Unpacking the Corruption Market in the Mahatma Gandhi National Rural Employment Guarantee Act, Andhra Pradesh

The fieldwork found a range of mechanisms for the corrupt extraction of resources from the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) schemes, with a hierarchy of collaboration.

When the field assistant acts alone: For small monies, the field assistant acts alone. First, he/she forges an alliance with a compliant job-card holder and “borrows” the passbook for a small price. The job-card holder’s name is then added to the muster roll and the field assistant pockets the wages.

When the field assistant and the branch postmaster join hands: The field assistant adds fake names to the muster roll. The field assistant then joins hands with the branch post master and forges signatures/thumb impression to pocket the money. The branch postmaster gets a 5%–10% cut on the total amount appropriated.

When the network grows – the field assistant, technical assistant and branch postmaster join hands: As the quantum of money to be stolen increases, so do the range of actors. To make more than Rs10,000, the field assistant has to work together with the technical assistant, who measures worksites, and the branch postmaster, who manages payments. First, the field assistant and technical assistant collaborate to inflate measurement of the work completed in the measurement book. Since MGNREGA workers are paid on a piece-rate basis, inflated measurements mean inflated wages on the muster roll. The branch postmaster is then informed of the extra measurement and when wages are paid, he/she makes the appropriate entry in the passbook (so that the passbook and muster-roll add up) and hands over the extra cash to the field assistant and technical assistant after, of course, taking a cut for him/herself.

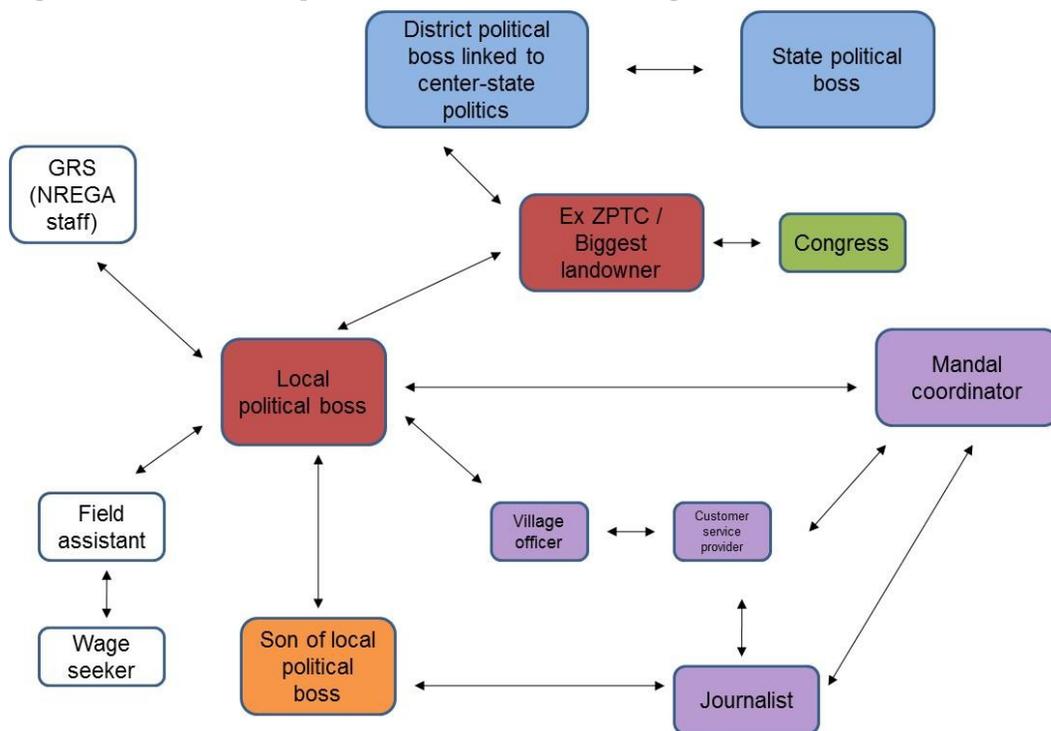
When local elites get involved – ghost works: With ghost works someone pockets the entire cost of a worksite without doing any work. To pull this off, the entire network of MGNREGA staff has to work in tandem. During fieldwork, we traced the story of how local elites get together to create ghost works. First, the perpetrators collect an empty muster roll from the Mandal Parishad Development Officer (MPDO) in charge of MGNREGA implementation in the area. To prevent fake lists of workers, the muster rolls in Andhra Pradesh are generated through a centralized management information system, in which each worker has a unique identity number. The MPDO issues these, is the final authority to verify that work is completed, and signs off on the rolls for payments. Thus, to ensure that the paperwork is in order, the MPDO needs to be involved. Next, the *panchayat* secretary is roped in to provide job card details for a random set of villagers. Signatures are forged to create the appearance of work done and the field assistant and technical assistant sign off on the fake muster roll. The perpetrators then go back to the MPDO and have him sign off, authorizing work completion and payment. Finally, the branch postmaster is brought in as a collaborator so that payments can be withdrawn from the post office without individual passbooks.

When local elites get involved – tampering with documents (materials): One of the most popular public works in MGNREGA is land leveling. Land leveling requires that tractors be hired to transport soil to the worksite. Tractor owners are paid on the basis of the number of trips they make and the quantum of soil transported. MGNREGA officials have devised innovative ways of making money off the tractor trips, including getting the tractor owners to under-report the soil load they carry per trip, fiddling with the measurement book to over-report the number of trips needed for the particular work, and extracting bribes from tractor owners to receive contracts in the first place.

Source: Aiyar and Mehta (2013)

A syndicate derives its power from its political connectedness. This is the second characteristic of corruption in MGNREGA. Political connectedness operates from the bottom upwards to political elites. Figure 3 illustrates how these different networks operate and aggregate upwards to the state level.

Figure 3 Networks and political connectedness amongst MGNREGA actors



Notes: GRS = Grameen Rozgar Sahayak, (village level officer); ZPTC = Zilla Parsihad Territorial Constituency (from the district government); a mandal coordinator is an implementing official in charge of making MGNREGA scheme payments at the local level.

Source: Aiyar and Mehta (2013)

To what extent have social audits influenced this market for corruption? The emerging assessment in recent empirical work on the MGNREGA in the state is that there has been a perceptible shift in the nature of corruption reported through the audit in recent years. Afridi and Iverson (forthcoming) analyzed social audit reports from 300 *gram panchayats* across three rounds of social audits between 2007 and 2010. They find a disproportionate increase in corruption related to material procurement for constructing works, while wage-related complaints saw an insignificant increase. They draw two conclusions from this data. First, that overall the social audits have not been able to deter malpractice and second, that the nature of corruption is shifting, perhaps because transgressors are adapting to the new monitoring regime by looking for new avenues of rent extraction. That the

corruption market is consolidating around material procurement is also evident in social audit reports compiled by the society (see Aiyar and Mehta, 2013 for details).

There is some anecdotal evidence to suggest that the social audit has played some role to contain labour-related corruption. As Shankar's (2010) study on social audits highlights, this is not surprising: wages directly affect people and they are thus more likely to have the information and incentives to pressure the system to ensure that wages are delivered. Aiyar and Mehta also report bureaucrats arguing that public pressure around wage-related theft in the audit is impossible to resist.

But what of the material procurement and non-wage related forms of theft? Aiyar and Mehta (2013) offer a pessimistic assessment of the social audits' ability to influence these newer forms of corruption. The sanctioning capability of the state remains weak, limiting its capacity to change incentives and break the local politician-bureaucrat nexus. This is partly an issue of administrative organization, but the initial evidence on the operation of the corruption market suggests the issue is more fundamental and lies in the essentially rent-extracting and rent-sharing system at local levels (that may, indeed, have links to higher level rent-sharing in the political hierarchy) which the social audit has, as yet, been unable to break. One possible reason for this, they argue, is that the top-down nature of the social audit, coupled with its focus on bureaucratic accountability, did not require state-level political elites to invest any real political capital in realigning incentives at the local level. As a consequence, the underlying structures of rent extraction remain unaltered, allowing corruption to continue. Breaking these structures requires a stronger political commitment; this is only likely to emerge if there is a link between the implementation of the MGNREGA and electoral performance. The bureaucratic nature of the MGNREGA in the state makes this hard to achieve.

The very fact that Andhra Pradesh successfully institutionalized the social audit process and that these have both raised awareness and reduced wage corruption is in some ways impressive. However, the experience with implementing the audits supports the thesis that in the absence of an effort to transform the state's modes of doing business, top-down social accountability instruments will only have a limited effect.

Sector-wide service delivery reforms

We now turn to two sectors—public food distribution and basic education—in which reform of service delivery emerged from state-level interactions between politics, bureaucracy and civil society. Rights—to food and education—have also been legislated but were not the drivers of change. Our focus in these case studies is to understand the primary drivers of change and interpret the implications for a rights based welfare system.

Innovations to improve the Public Distribution System and the Right to Food

India's Public Distribution System (PDS), the institutional architecture for providing subsidized food for the poor, is infamous for high levels of corruption and inefficiency. Efforts to reform the PDS and secure a right to food were propelled, like most of the cases reviewed here, by an alliance between civil society and the judiciary. Public interest litigation by the People's Union for Civil Liberties led to the Supreme Court's 2001 recognition of the right to food as a legally enforceable right under Article 21 of the Constitution's "Right to Life." This was followed by a series of "interim orders," around reopening closed PDS shops, identification of eligible (below poverty line or BPL) families, assuring the regular supply of food, and so on. The Supreme Court appointed two commissioners to monitor implementation. The culmination of this process was the passage in August 2013 of the Right to Food Security, the last of the UPA's rights.

Parallel to the national-level push to enact a right to food, various state governments have undertaken efforts to reform the PDS and improve delivery. These state-level experiences serve to illustrate our primary interest in this paper—the underlying conditions for state transformation in public services. We focus in this case study on the now widely acknowledged successful reform experiment in the state of Chhattisgarh. The Chhattisgarh case is interesting because there appears to have been an effective alignment between politics, bureaucracy, and civil society—that led eventually to the passage of the first state-level law on the "right to food." Before this, we look more briefly at an earlier episode in Mumbai (then Bombay), where this alignment was much more partial, and implementation successes were short-lived. Then, we contrast Chhattisgarh with the experience in Madhya Pradesh that has some similar starting conditions but made very different design choices.²⁰

The experience in Bombay in the 1990s, like the social audit in Andhra Pradesh, illustrates how a civil society movement can work with an activist bureaucrat, using social accountability mechanisms to improve the workings of the delivery system. In Goetz and Jenkins' telling, the existing PDS in Bombay had all the features of a corrupt, rent-sharing local system. PDS ration-shop owners, working in concert with local politicians and the food supply system, used a variety of mechanisms to divert food away from intended beneficiaries to the open market. This was common knowledge: ration-card holders were aware they were being short-changed in quantity and quality, and indeed often had to collude in this—overstating what they received—because of the power of the shop-owners over them. A formal mechanism of social monitoring actually existed, in the form of local "vigilance committees," but these were often captured by the local political system. (Goetz and Jenkins 2011).

²⁰ The comparative analysis of Chhattisgarh with Madhya Pradesh draws heavily on Tillin, Saxena, and Sisodia (2013) as well as other sources cited; that of Mumbai draws on Goetz and Jenkins (2010).

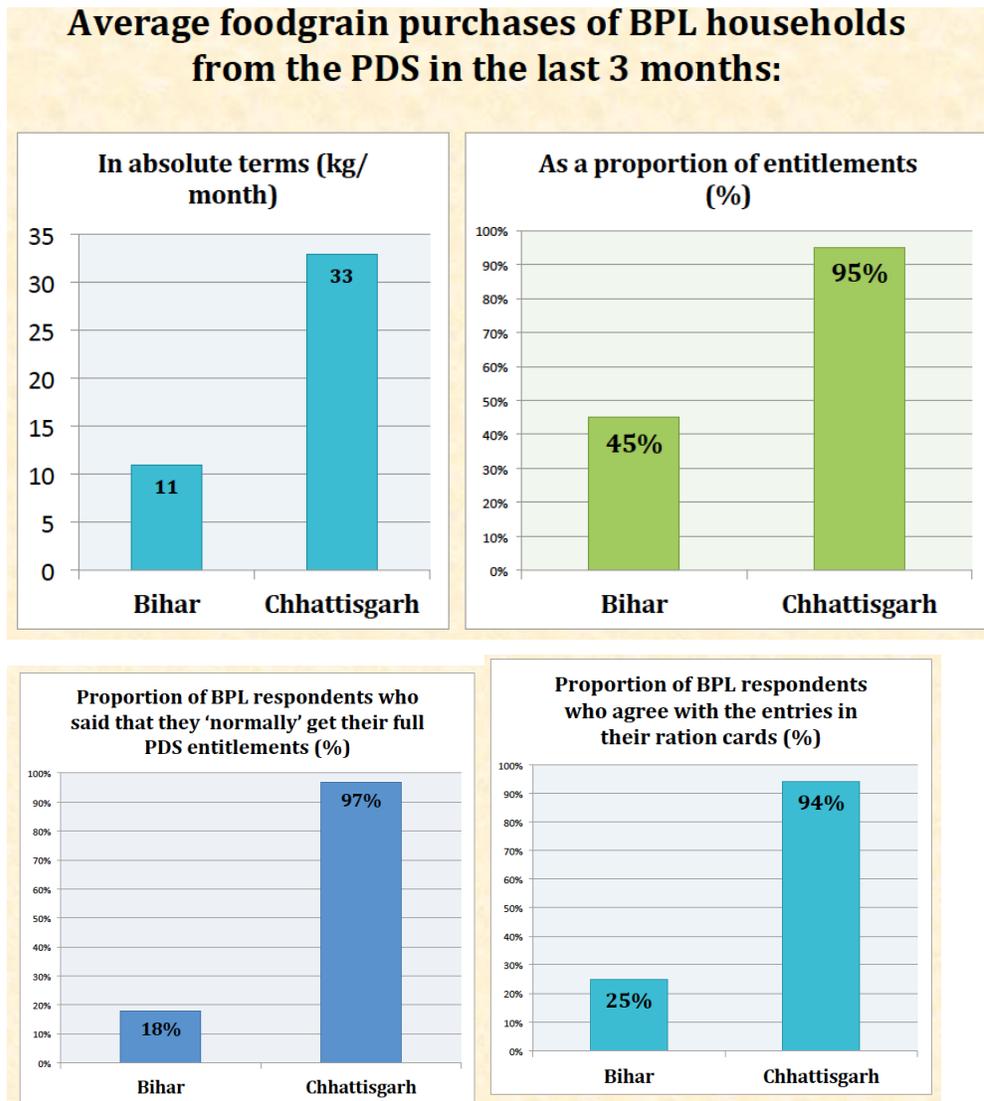
The issue of provisioning for the poor became more politically salient after the 1992 Hindu–Muslim riots. A coalition of NGOs formed a civil society movement, the Rationing Kruti Samiti (RKS), with the goal of pressuring the government to improve the PDS’s functioning. The RKS organized women recipients of PDS to form parallel, informal vigilance groups to undertake monitoring of movement and quality of food. This form of vigilance is similar in principle to the—initially informal—social audits pioneered by the MKSS in Rajasthan, discussed earlier. The mobilization reached its peak through a strategic alliance that the movement formed with a local bureaucrat: “Their success on this front peaked in an 18-month period between 1992 and 1994, during which an unusually reform-minded bureaucrat, Mr. Salvi, held the post of Regional Controller of Rationing” (Goetz and Jenkins 2011, p. 371). Mr. Salvi was in a position of power in the PDS bureaucracy, wanted to effect change, and recognized the role of the RKS, giving their informal committees semi-official status. They developed specific mechanisms for monitoring performance, including, for example, taking samples of food to allow for independent assessment of adulteration. If this was found, the official audit was activated.

This provides a vivid illustration of a set of conditions in which a “hybrid” form of accountability—social accountability working in concert with horizontal, governmental mechanisms—seemed to work. It was feasible because of the alliance between a mobilized movement and part of the bureaucracy.

However, the experience was short-lived. The established rent-sharing system, around local politicians and ration shop owners, soon managed to organize to pressure for change, working with the higher political authorities of Bombay. Mr. Salvi received a “punishment posting” and the collaboration between the bureaucracy, the RKS, and the formal audit system effectively stopped. The RKS had to revert to alternative tactics of protest. This now illustrates a critical other part of our interpretation: politics has to be aligned if both design and implementation of reforms are to be sustained.

Chhattisgarh presents a contrasting case. Chhattisgarh has become a frequently cited case for the reported substantial success of the PDS in one of India’s poorest states—and one otherwise more often known for problematic governance issues. To motivate the argument, we use the contrast with Bihar, drawn in a presentation by Drèze (2011) from a survey of selected districts in nine states. Bihar was the worst of all states surveyed. This shows the striking difference in performance between these two states. Of even greater interest is the contrast in political dynamics with Chhattisgarh’s neighboring state of Madhya Pradesh (Tillin, Saxena, and Sisodia 2013). This unfortunately was not included in the survey, so we do not have the kind of survey-based comparison in Figure 4.

Figure 4 Indicators of comparative performance of the PDS in Chhattisgarh and Bihar



Source: Dreze (2013), Khera (2011)

The good performance illustrated in Figure 4 was a product of many years of reform. In the early 2000s, the PDS in the state had all the characteristics of a corrupt, rent-extracting system. A survey by Right To Food (RTF) activists in Korea district within the state found that 80-90 percent of the population did not receive the rice for which they were eligible from ration shops. Ration shop owners used various tactics, including taking ration cards, closing shops, and diverting to market sales (reported in Tillin et al.). In an attempt to reform the system in the early 2000's, the first Chief Minister of Chhattisgarh, Ajit Jogi, of the Congress Party, had privatized ration shops. However, activists and researchers alike argue that this merely led to further entrenchment of the system of private extraction and political connections.

Major changes occurred under the administrations of Chief Minister Raman Singh, of the BJP (elected in 2003; re-elected in 2008 and again in 2013). Reforms broadly fell into two categories.

The first set of reforms was designed to initiate changes in the administration of the PDS. These included “de-privatisation” of ration shops and placing them under the control of *panchayats* or other collective bodies, increasing the commission paid and introducing competition by offering only one-year, renewable contracts. These administrative reforms were accompanied by efforts at using technology to enhance accountability. Records were computerized, smart card technology was used for ration cards and delivery trucks were brightly painted so that citizen’s could send in SMS alerts if they saw a truck being diverted. In addition, vigilance committees and formal grievance redressal mechanisms were institutionalized to create effective sites for citizens to make accountability claims.

Second, the state substantially expanded the scope of the PDS. The subsidy was increased—with rice at Rs. 2 per kg for BPL families and Rs. 1 per kg for the very poor. Furthermore, the range of beneficiaries was expanded so that nearly two-thirds of the population came to be covered under the scheme, making it near-universal.

What led to such far-reaching reforms? Tillin et al (2013), interpret the specific drivers of reform in terms of the following three factors.

- *The judiciary*: The Supreme Court rulings and interim orders, themselves products of the PIL from a civil society group, as noted above, provided a legal basis for action and a source of formal pressure. This included appointment of Commissioners to the Supreme Court to monitor implementation.
- *Reformist bureaucrats and civil society allies*: Alliances were formed between “reformist” bureaucrats and civil society groups within the state. One part of this grew out of an alliance that emerged under the Ajit Jogi government around the development of “barefoot” health workers (the *Mitanin* scheme). This group became concerned with food and nutrition and the working of the PDS and acted as an effective pressure group on the state. In 2004, in response to a starvation death, an expert committee was set up which included key civil society activists and bureaucrats. It was this group that recommended the de-privatisation and set in train the efficiency reforms.²¹
- *A shifting political settlement*: In the mid 2000’s, PDS emerged as a central political concern. The catalyst was a BJP politician losing a by-election to the former Congress Chief Minister’s wife in 2006. The electoral defeat was partially attributed to poor delivery of the PDS and this led the BJP Chief Minister to make PDS reform a political priority. He was indeed re-elected in 2008 and 2013.

²¹ We can speculate that placing the PDS under the *panchayats*’ responsibility may also have served to discipline *panchayats*. If everyone knows that the *panchayat* is responsible for running the PDS store than it will affect the electoral prospects of the *panchayat* member if he/she doesn’t deliver. This is worth further investigation.

The emergence of PDS reform as a politically salient issue underpinned the changes in both of the two domains noted above.²² It led to direct support for the expansion of the PDS under the MKSY, with additional finance from state revenues. Crucially, it also provided support to the efficiency and leakage-reducing reforms. MLAs and bureaucrats knew that PDS shouldn't be misused—even while other aspects of governance in Chhattisgarh continued to suffer controversy, notably in the mining sector and in the state's action against the Maoist insurgency. In effect an organisational island was created, in which political alignment, bureaucratic incentives, and cooperation with civil society was enabled. This allowed key “reformist” bureaucrats, to pursue a coherent strategy that both brought together the various parties, and used this space to develop the range of innovations outlined above. Other parts of the state in Chhattisgarh undoubtedly remained entrenched in rent-extracting and clientelistic practices.

Chhattisgarh's experience can be seen in sharper relief in contrast with Madhya Pradesh. We again draw on Tillin et al. for the interpretation. The states had much in common, making the comparison of particular relevance. They had been one state till 2000.²³ Both are poor, and predominantly rural. Both have successful BJP Chief Ministers that have twice enjoyed re-election (Shivraj Singh Chauhan in Madhya Pradesh). Both have decentralized procurement of grain, that allows more flexibility in any reform efforts. However, the specifics of reform were different. In Madhya Pradesh there was also a concern with reducing leakage, but the main focus was on the introduction of technological innovation, in the form of biometric ration cards and food coupons, along with some efforts to improve beneficiary identification. However, there was very little cooperation with civil society, or indeed between different parts of the bureaucracy.

Unfortunately, at the time of writing, there was no directly comparable survey data between the two states, but qualitative reports indicate slow progress. Tillin et al report: “At the time of our research in Madhya Pradesh, the survey for biometric ration cards was still ongoing with the survey complete in just ten of fifty districts. Yet it was clear that there was a good deal of confusion—and weak buy-in—among both bureaucrats and civil society activists about the scheme.” (p. 17)

There appear to be several factors behind the difference in experience. Chhattisgarh had actually had weaker poverty reduction, and much greater industrial growth, especially in the mining sector. Taking action on food provisioning was thus more important. Madhya Pradesh is a much better performing agricultural state, and Chief Minister Shivraj Singh positioned himself as a champion of the farmers (he is himself from an OBC caste, that is the core farming category.) Tillin et al. also argue that there was more scope for bureaucratic change and cooperation in the more recently formed state of Chhattisgarh; in Madhya Pradesh different sectoral bureaucracies had entrenched practices.

²² A vivid account of the experience can be seen in the documentary program in NDTV (2012)

²³ The original state of Madhya Pradesh was bifurcated to form Chhattisgarh and the current state of Madhya Pradesh in 2000.

It is useful to revisit the national policy debate on the right to food in light of this discussion. We are not concerned with specific issues of design (how much food, what price, etc.) so much as the underlying narrative and politics. There are two strikingly different interpretations. The government positioned the Food Security Bill as introducing specific rights both as a means of ensuring (and extending) entitlements to reduce deprivation *and* as part of a state reform effort, to change the relationship between state and citizens. Critics saw this as irresponsible populism, cynically aimed at winning forthcoming state and national elections (with, as has been seen, no success!).

We have a different angle here. The link with electoral concerns is a good thing (as also argued by political scientist Ashutosh Varshney, 2013). That provides the essential political underpinning for reform. Of course numbers have to add up in fiscal accounts—and there may be many design flaws, but the populist tag is not a bad one on its own terms. However, the larger question is whether a state reform effort can be driven by a rights-based approach from above—even when this includes accountability mechanisms. The cautionary lesson is that reform design and, especially, implementation depends critically on the alignment between politics, bureaucracy and civil society on the ground. It is an open question whether this can be pushed from above to reform the PDS throughout India.

Basic education: rights, quality and state functioning

Basic education is a fundamental domain of service delivery that vividly illustrates the themes of this paper. The quality of basic education is dismal throughout the vast majority of India's government schools (and not much better in most private schools). This is despite the fact that there has been, at least since the end of the 1990s, major government efforts to put more resources into the schooling system, with the launch of the Government of India's Sarva Shiksha Abhiyaan (SSA), that aimed at universalizing access to elementary education. This was complemented by mandated village-level social accountability mechanisms, via village education committees (VECs). A Right to Education Act was finally passed into law in April 2010 with a primary emphasis on inputs rather than learning outcomes.²⁴ Like all the rights reviewed in this paper, elementary education also saw a civil society-led movement for its enactment of a right to education. The Act saw a two-fold increase in the country's elementary education budget and a renewed emphasis on universalizing enrollment and improving schooling infrastructure (PAISA 2012).

While government emphasis on provisioning has ensured virtually universal access to schooling, recent debates on education in India have increasingly shifted to questions of quality. There is now a large and growing body of evidence, led by the annual Annual Status of Education Report (ASER), that has been reporting on learning levels in rural India since 2005. According to ASER, just about half of India's Standard 5 students can read a Standard 2 textbook in rural areas. Worryingly,

²⁴ See Mukerji and Walton (2012) for a discussion and critique of India's Right to Education.

these numbers have in recent years seen a marginal decline. Learning in urban areas is also dismal. And, with the exception of a small minority of elite schools, private schooling is only slightly better than in government schools. This evidence on learning outcomes has resulted in a belated shift in policy priorities away from schooling to learning. The country's 12th five year plan (an important policy document that articulates the country's social policy goals) launched in 2012, makes outcomes an explicit goal for elementary education: "*.....the approach of the Twelfth Plan for school education will be to define and measure outcomes, and allocate resources in ways that maximise progress towards achieving these outcomes*".

This explicit focus on outcomes throws open new challenges for education service delivery reforms: how to convert a rule-bound, guideline-driven, input-focused education bureaucracy to one addressing problems of learning quality. As discussed in the section on rights, a judicial approach has an intrinsic bias towards a rule-bound approach, and this is reflected in the rigid, input-oriented approach of the RTE. By contrast, achieving learning outcomes requires a more complex, discretionary and often multiple-stakeholder approach, or a system of "thick" accountability.

It is in the context of these debates that we examine two cases of successful or promising reform efforts at improving education access and quality. As with the other cases in this paper, we focus our analysis on understanding the drivers of change and particularly emphasizing the role of politics, bureaucratic systems and civil society in driving this change.

Himachal Pradesh. The northern Indian state of Himachal Pradesh is well known for having better educational performance than much of India. This is seen in school attendance, assessments of the functioning and motivation in the schooling system, and in measures of learning outcomes. According the ASER survey, rural children in Himachal Pradesh have lower educational deficits even than in Kerala.²⁵

To understand what differentiates Himachal Pradesh, we draw on in-depth research by Akshay Mangla (2013a,b), in which extensive interview-based and archival work is used to develop a comparison of bureaucratic behavior in the education sector between Himachal Pradesh, the adjacent hill state of Uttarakhand, and Uttar Pradesh, both of which have substantially worse outcomes. Mangla's central finding is that the difference lies not in formal structures but in contrasting norms of behavior in the different bureaucracies.

The central contrast lies between what Mangla terms as "deliberative" and "legalistic" norms. The former are "norms that encourage bureaucrats to work collectively to solve problems, bend official rules and promote civic participation".

²⁵ This, however, is relative to awful Indian standards: according to the OECD's international PISA study of 15 year old children in school, Himachal Pradesh and Tamil Nadu tied with Kyrgyzstan for last place amongst all places surveyed; no other state participated from India

These are characteristic of education bureaucrats in Himachal Pradesh. Legalistic norms, involving “adhering strictly to formal rules and procedures while discouraging citizen engagement”, were typical of their counterparts in Uttarakhand and Uttar Pradesh—and indeed are probably dominant in most of Indian bureaucracy—albeit often interlaced with norms of corruption both on the interface with citizens, and internally, in the “market for jobs” (Béteille, 2009).

There were several distinctive features of the behavior of Himachal Pradesh’s education bureaucrats. First, bureaucrats were found to focus on solving an educational problem in their domain, for example, in providing peripatetic teaching for the children of nomadic groups, or ensuring every village had a school, even when these involved breaking governmental norms.

Second, there was a striking contrast in the willingness of senior bureaucrats to engage with front-line workers in the system—both education bureaucrats at the block level (below district, with blocks typically covering around 100 schools) and through them to teachers.

Third, there was proactive engagement with societal groups. This involved both organized civil society movements, as well as more informal local organisations. Bureaucrats in particular worked with the Himachal Gyan Vigyan Samiti (HGVS), a 50,000 member-strong association of professionals promoting literacy in the state. The government, often worked with HGVS to mobilize local groups of women—typically of lower caste women—to form Mother Teacher Associations (MTAs) to engage directly with schools. Mangla argues that the deliberative, problem-solving norms in the bureaucracy led to greater openness to participation with civil society, and that this then led to reinforcing pressures to solve problems.

Fourth, politicians played an active role in facilitating this deliberative culture and promoting education. Mangla found that bureaucrats engaged regularly with MLAs, and were often involved in what would generally be characterised as clientelistic practices, around school-building or employment. However, these were seen as a means of connecting with social demands: this is a case in which there was alignment between local politics and getting things done on the ground.

Mangla also found evidence that the symbiotic relationship between bureaucracy and civil society was dependent on the existence of a cohesive local social movement. In one case of a relatively economically dynamic community (from the apple belt), this didn’t exist: wealthier parents, including teachers, were increasingly sending their children to private schooling, leaving relatively disadvantaged children in government schools. This was associated with much weaker interactions between schools and local civil society than in other cases—and reportedly weaker than in this village’s past history.

Where did these deliberative norms and associated participatory practices come from? This is less well-researched, but the origins seem to lie in the political origins

of the state, and in particular the role of the first Chief Minister, Y.S. Parma (Mangla, personal communication). Parma was CM both from 1952-56 (before Himachal Pradesh had the formal status of a state), and from 1963 to 1977 (that included the 1971 granting of formal statehood). He had a political vision of an economically sustainable hill-based economy, and worked with the local bureaucracy—from the IAS and the state cadres—to foster collective approaches to solving development problems, initially around the road network, and then in education. There remains a question of how such an initial formation was perpetuated—we can speculate that the bureaucratic, and associated participatory, norms became self-sustaining, and also supported by political processes.

Bihar. The state of Bihar is infamous for its historical educational deficit, extreme poverty, embedded corruption, caste-based divisions, violence, and weak administrative capacity.

However, Bihar's education story saw a significant turnaround in 2005 when a newly elected Chief Minister, Nitish Kumar rose to power on a largely "developmental" platform. Kumar made educational expansion and enrollment one of the major focuses of his first administration, and pushed the Bihar education service to implement this. These efforts included a number of innovative practices such as implementing incentive based programs like giving bicycles to girls to encourage them to go to school. These efforts resulted in substantial declines in out-of-school children, to around India-wide levels. However, learning quality remained a serious challenge.

The case of interest comes from the district of Jehanabad. In 2012, the district collector of Jehanabad, motivated in part by the large-scale political push for education, forged a partnership with Pratham (a national education-focused NGO that also coordinates the ASER survey) to implement a set of reforms aimed at improving education quality. This experiment was based on Pratham's experience with altering teaching methods away from age-grade systems to a system based on initial learning levels. This method has been rigorously evaluated by researchers and is one of the basket of strategies proposed in the 12th Five Year Plan. But what made the Jehanabad experiment unique was not just the choice of pedagogy (which is a break away from the government rules in the RTE which makes age-grade teaching mandatory) but its implementation architecture. In this experiment, the frontline officers—cluster resource centre coordinators (CRCCs) in charge of 10-15 schools—were placed at the center of the action. The CRCCs underwent a rigorous training and were then placed in charge of the pedagogical reform effort in schools. Over time, the coordinators gained confidence in implementing these alternative teaching approaches in their schools. The results are truly impressive. At the start of the intervention, 40 percent students in standard 3, 4 and 5 had basic reading skills. Six months later this improved to 60 percent.

This is interesting as a case of change flowing from within the bureaucracy, and then effectively empowering the lowest level of the educational bureaucracy to effect

change in schools—with no change in incentives. An NGO supported the process, but implementation was by the front-line government workers—bureaucrats and teachers.

Even more interesting is the follow up. Soon after this success Chief Minister Kumar pushed for a strategy to tackle the education *quality* issue. The Jehanabad apparent success emerged as a key example, and the CM asked his education bureaucracy to scale up—again in collaboration with the NGO Pratham. At the time of writing, guidelines have been written and the implementation is under way, but it remains an open question as to whether the innovation in Jehanabad can be replicated across the state, or whether it depended on the activism and commitment of the activist District Collector or other conditions specific to the district.

Interpreting the case studies

Our case studies offer insights into the drivers of both reform and effective implementation. The range of cases studied here examine two central concerns of the rights based welfare state—transforming modes of delivery through creation of entitlements with associated sites for local accountability and expanding social provisioning to all citizens. We thus examined both the specific accountability mechanisms introduced through rights as well as broader reforms related (although not directly a consequence of) to legislated rights. .

As highlighted in the discussion of the conceptual framework, change and resistance needs to be understood in relation to the overall political settlement and the nature of interactions between politics, bureaucracy, civil society and the judiciary. In this section we interpret the patterns through this prism.

It is useful to discuss separately the interpretation of reform design and its implementation. While these are linked, the behaviour of the system can differ in these two phases, and, as noted above, there has been relatively little documentation and analysis of implementation of the rights-based projects and its associated instruments. We discuss issues in reform design first. We start by assessing how far the cases exemplify a “rules-based” state system—clearly relevant for a rights-based project—and then discuss how the experiences relate to the interactions between the different parts of the system (politics, bureaucracy and civil society).

Reform design

India is a hybrid between the ideal type of political settlement and rule-based organisational functioning and informal variants. One dimension of this—much emphasized in the literature on institutional development—concerns the extent to which a country’s decision-making is predominantly “personalized or impersonal”, based on “deals or rules”, or, as some put it, the extent to which the ideal of a “limited government” applies, in which democratically agreed rules and procedures constrain the opportunistic use of influence and power by government and other actors.

With respect to reform design, the cases vividly indicate a commitment to a rules-based system. This is evident in the legislative focus and extensive parliamentary process in agreeing upon and passing a justiciable right—in the Right to Information, the Right to Work (including the social audit process as part of the legislation), the Right to Education and the Right to Food. It is also seen in the activist approach of the Supreme Court—as illustrated in the case above in decisions over the Right to Food. It is further seen in the central formal ethos of the Indian bureaucracy, with its “legalistic” norms and its “passion for paper”. In the same spirit, the design choice of Chief Ministers and senior bureaucrats to introduce Right to Service statutes reflects a belief that the best way to improve service is to make front-line government workers answerable and sanctionable in relation to their satisfying set rules of performance. This focus on changing rules is also seen in the strategic approach of key parts of civil society: activist civil society actors emphasize a legislative approach, and, in the case of the RTI, RTW and RTS, skillfully designed the administrative process to build on the rules-based aspects of bureaucratic norms.

Overall then, in the approach to change the various actors in India presents themselves as believing in—indeed being obsessed by—rules, backed by a belief system that the task is to make state organisations follow agreed rules, with a justiciable approach being a primary mechanism to ensure this..

Of course, it then matters which rules are chosen. And here we can see how substantive design choices were shaped by the nature of the political settlements prevailing in this period, as this was shaped by, and in turn influenced, the behaviour of the various actors. We suggest that this reflected the mental models, or “cognitive maps”, of elites of what is possible and desirable, and of claims to legitimacy by the different groups.

First, meeting “popular” demands, especially from rural India, has been a central part of the narrative around India’s political settlement, albeit often inefficiently delivered. This became electorally highly salient with the unexpected Congress-led win in the 2004 election, on the back of an election campaign that emphasized the idea of inclusive growth (and, indeed, in the win in the Andhra Pradesh state elections in the same year). Congress’ victory created the political space for concerted new action.

Second, civil society movements had been growing in profile, and there was a structural opening into national level design in the wake of the 2004 election and the formation of the National Advisory Council. Furthermore, the cognitive map of leading actors in civil society movements had increasingly been shaped by the perceived need to change the behaviour of a recalcitrant and often-corrupt state by fundamentally altering the distribution of power between citizens and states. Transparency and the expansion of sites for making direct claims on the state emerged as central tools for enabling this transformation. Equally critical to shaping the cognitive map of the civil society movements was the emergence of the “progressive juristocracy”, which adopted an activist approach to interpreting the Constitution. This judicial activism significantly influenced civil society movements

both in terms of their adoption of the language of rights in their activism as well as building trust in the role of the judiciary as an effective check and balance on the failures, or excesses, of the state in service provision. Thus civil society activists came to pursue legal, and so rights-based and justiciable, mechanisms to open up the functioning of the state and push the government to deliver social programmes to all. This is illustrated by the campaigns for the RTI, social audits and grievance redressal, as well as for substantive provisioning with respect to work, education and food.

Third, the bureaucracy was critical to design in two ways. With rapid private sector growth many top bureaucrats left government for private opportunities, reducing some of the potential resistance to change at the elite level. This helped allow large-scale efforts like the Right to Information to take shape. Then, when it came to actual policy design, in all the cases reviewed here there was an alliance with individual “reformist” bureaucrats in the design and passing of legislation. This reinforced the tendency to focus on strengthening internal rules and accountabilities—as opposed to more radical reform.

Now, actual design choices represent a blend—as might be expected in a period of shifting, and sometimes conflicting, cognitive maps of what made sense. At one end was a vision of social democracy in a middle-income society, both with respect to universal guarantees on social provisioning and in terms of citizens having these by right from the state. But even in design this was mixed up with more traditional, populist, views on what and how to deliver—for example in the focus on education inputs rather than education quality.

We would emphasize one other feature of the cognitive map over designs: the focus on specific, rule-based sanctions over the behavior of government workers, as opposed to developing the values, norms and spaces for deliberation over decision-making. This perspective is shared by most of the key actors, from political elites to civil society. It reflects the deep mistrust over the willingness and capacity of the bureaucracy to deliver—not only from civil society, but also from political and bureaucratic elites. While this is bred, of course, of deep experience from inside and outside the state, it is not at all clear that this is an effective way to transform state functioning. Developing responsive professional norms matters for all areas of government functioning, but is of particular importance in domains of “thick” accountability.

Implementation

So now let’s turn to implementation, that is really at the core of the case studies presented here. Here we have found a mixed picture. In many domains the new rights have made a real difference to the behaviour of state actors. We saw this vividly in the widespread use of the RTI, and governmental responsiveness to this. It is also evident in the tracking and reporting of the easily measurable aspects of provisioning under the Right to Work (MGNREGA) and the Right to Education, for example. And Supreme Court rulings around rights really do affect government

behaviour: this affected for example the dynamic of interactions in the Chhattisgarh PDS case (as well as in many other areas not reviewed here).

However, there have also been many instances of non-compliance—especially where the local political settlement is not aligned with the substance of new rules. This is well-illustrated by the case of social audits. Most states have not implemented social audits in any substantial way. Emblematically, Rajasthan, the birthplace of the movement, dropped social audits in response to resistance from local politicians and state-level bureaucrats. And Andhra Pradesh—the one state with a genuinely active social audit system—simply ignored one of the other, key rules of the MGNREGA, that half the money should flow through the Panchayat.

These cases illustrate the limitations of national rules, when much of the real action in state-citizen interactions is at the level of the subnational state and below. However, the more fundamental lesson from the case studies concerns the propensity of the governmental system—involving both politicians and bureaucracies—to resist and distort attempts to change the behaviour of the state through new rights and rules. This is directly related to the problems around a cognitive map that sees specific sanctions as the key mechanism for changing the state, as opposed to a more deeply transformative approach. This is particularly problematic for domains of action that intrinsically require thick accountability, but also apply to areas (such as the RTI and social audits) in which thin accountability processes can in principle work.

We can see this through the prism of both categories of case study reviewed here: indeed, the reason we included the second category was to illustrate the circumstances under which potentially lasting change in state behaviour can occur. While rights became legislated in both food and education, these were not the key drivers of effective change.

As schematically shown in Figure 2, actual outcomes for the behaviour of state actors is a product of both top-down management decisions and rules, and influences from a range of other actors, in what amounts to a multi-stakeholder setting. This includes politicians, government managers and workers, private contractors, civil society groups, citizens and the judiciary—some pressing for improved service delivery and others for different forms of resistance of rent extraction.

The main patterns are as follows.

Politicians, while often recognizing the centrality of a “popular” project for their electoral survival, are weak advocates for a transformative approach built on citizen rights: the dominant political culture and incentives still revolve around populist and personalistic practices. At the level of Chief Ministers and their close associates, this veers more toward populist policies and large-scale contracts, while for most MLAs, *panchayat* presidents, and Ward Councillors, it is predominantly around particularistic demands, arranging local contracts and so on. Concerted action on the ground *can* occur when there is a specific political alignment with a Chief Minister’s focus and vision. This we saw in the case of social audits in Andhra

Pradesh, in the action around the PDS in Chhattisgarh, and—potentially—in the push to scale up an education quality intervention in Bihar (with uncertainty over its continuance at the time of writing, with the resignation of Chief Minister in the wake of the 2014 national election).

Then the functioning of the bureaucracy is fundamental. The dominant norm is legalistic, mixed with petty corruption (sometimes extending to complicit behaviour with large-scale corruption involving politicians). This has led to a characteristic resolution in which the response to a new, centrally mandated, mix of rights and accountability practices, is to follow the most observable parts of the letter of the law, whilst resisting the spirit (and less observable parts of the letter of the law.) This is seen above in practices around the RTI, the RTS, and social audits in Andhra Pradesh. This not only constitutes a form of inertial resistance to change, but also can lead to new distortions. Bureaucrats in management and the front line focus on implementing specific requirements (especially the written ones), as opposed to working out how best to respond to the needs and requests of citizens. The Andhra Pradesh social audits case vividly illustrated the adaptability of bureaucratic behaviour in the coordinated design of new forms of rent extraction. These were seen to be linked with local politicians and brokers, in ways that were not detectable by the social audits.

Also relevant here is the current state of civil society and its relationship with the state. India's civil society is both very active and immensely heterogeneous. However, the activist civil society groups are best characterized as participants in “bifurcated” democratic processes (Table 1 above, from Baiocchi, Heller and Silva, 2011), by which we mean they have some genuine autonomy, but only a discretionary relationship with state actors in the implementation process. For all the activism, civil society has only spasmodically been able to work with state actors to institutionalize the new claim-making processes underwritten by the rights laws. User groups, such as Village Education Committees, *are* institutionalized, but these generally lack real autonomy and power (manifesting what in Table 1 was referred to as “affirmative democracy” or “induced” participation.)

The second category of cases—in the PDS and education—underscore these interpretations by their relative success. In all the specific cases reviewed, we saw real alignment between political drivers of change and bureaucratic behaviour, alongside pressures or support from civil society. A recurrent theme has been of the reformist bureaucrat, but he or she only emerges—only has space for action—when there is support from politics and the broader bureaucracy. The temporary success of the PDS reforms in Bombay illustrates: the reformist bureaucrat was removed, and the civil society movement shifted back from participatory to oppositional mode. By contrast the success of the Chhattisgarh PDS reforms involved high-level pressure from the Chief Minister, alliances between reformist bureaucrats and civil society actors, that were further underpinned by Supreme Court and State High Level Court action, and a recognition in the broader bureaucracy and local politicians not to subvert the reforms through rent extraction.

The case of Himachal Pradesh's education bureaucracy is particularly interesting as it exemplifies, in Mangla's interpretation, a "deliberative" bureaucracy, that is in sharp contrast to the cognitive maps of both traditional bureaucratic elites, and the main thrust of reform efforts in most states. This probably emerged from Himachal's longer-term political history. While this is consistent with our overall framework, and emblematic of a desirable end-point, it is less informative about how change can occur in the short to medium term. The case of basic education in Bihar may be more relevant to short run change, but we have to wait to see if and how it unfolds at scale.

In sum, we interpret the cases as exemplifying our broad theme. Design, and especially implementation, of reform, reflects the interaction between politics, bureaucracy, civil society and the judiciary. It is shaped by the interests and cognitive maps within the prevailing national and local political settlements. The resultant dynamic explains why the rights-based project has so far seemed to be half-baked—bringing specific changes, heralding potentially important shifts, but still reflecting the absence of broader reforms of state functioning. Resistance and distortion would be expected around any attempts to change an entrenched system. But the concern is that this very system will effectively subvert the overall project. Our cases studies also highlight some of the limitations of the legalistic approach embedded in the rights project. Rights approaches have been most effective in areas of "thin" accountability. However this comes at the cost of narrowing the definition of accountability to compliance to rules and procedures in ways that constrain effort to build alternative systems of accountability necessary for enabling accountability in "thick" domains of service delivery. This is best highlighted in the education case. We take up this theme in the conclusion.

Lessons from Brazil?

Which experiences from other countries are likely to be of particular interest for India? We suggest that Brazil is a particularly interesting comparator. While it has had a shorter continuous period of democracy than India, since the late 1980s it has been a democratic polity with deep inequalities, across lines of geography, identity (especially race) and class, a history of severe human development deficits and widespread problems in service provision. These ranged from dismal education and health-related services in the North East of the country to the extensive problems around urban services and violence in the informal settlements, or *favelas*, in the major urban areas of the South.

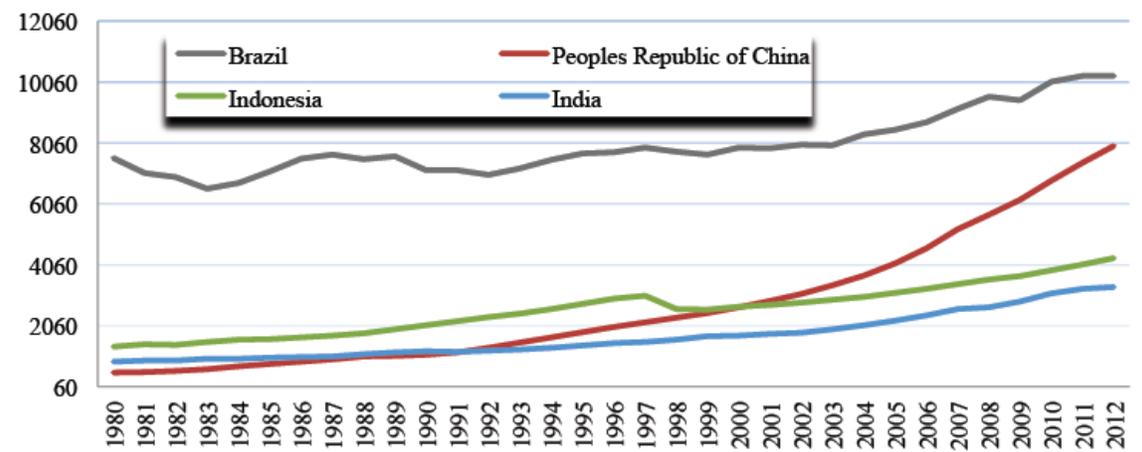
It may seem surprising to look to Brazil in the wake of the large-scale street protests of the summer of 2013. These started as a protest around fare rises for urban buses. They then spread to widespread protests around corruption and the poor quality of public services, sparked by the brutality of the police in suppressing the initial protests, and the stark contrast with the lavish spending on stadiums in preparation

for the 2014 football World Cup. A vivid demand was for “FIFA standard” education, health and transport services.²⁶

This doesn't, at first sight, look much like a model. But Brazil is actually of immense interest to India. And this is both because of its genuine accomplishments, and, *because* it is clearly, like India, a hybrid between an unequal, clientelistic, populist and corrupt polity and one with important traditions in civil society mobilization, bureaucratic engagement and legal action. It would make little sense to compare India with Denmark as it is today! Brazil, like India, has been purposively seeking to build a welfare state in a middle income country, with this to a significant extent based around citizen rights—in terms both of specific rights (for example to health or education) and participatory process. A further important parallel concerns the rising aspirations of the population. Many observers attributed the scale of the Brazilian protest in part to the very gains of an emerging lower middle class, with, by some estimates, some 40 million people moving from poverty—as measured by the national poverty line—into this group.²⁷

Let's position Brazil in relation to India, also in comparison with the two other large countries of China and Indonesia. Brazil is already much richer—it had its “miracle” growth in the 1960s and 1970s (Figure 5). It now has very much lower infant mortality, and effectively universal secondary enrollments (Figures 6 and 7).

Figure 5. India remains substantially poorer than Brazil

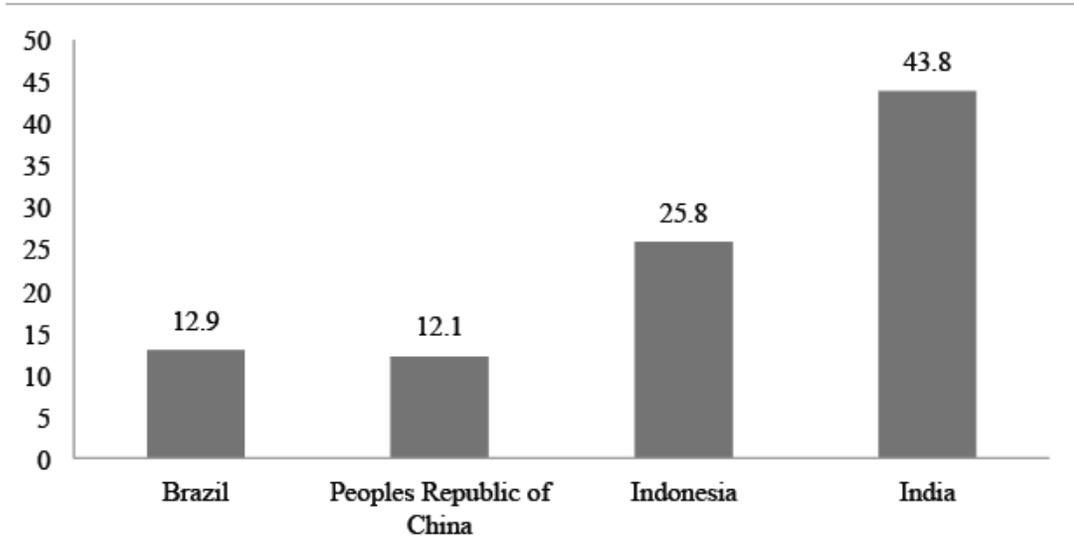


Source: World Bank, World Development Indicators (2013).

Figure 6: ...with dramatically higher infant mortality...

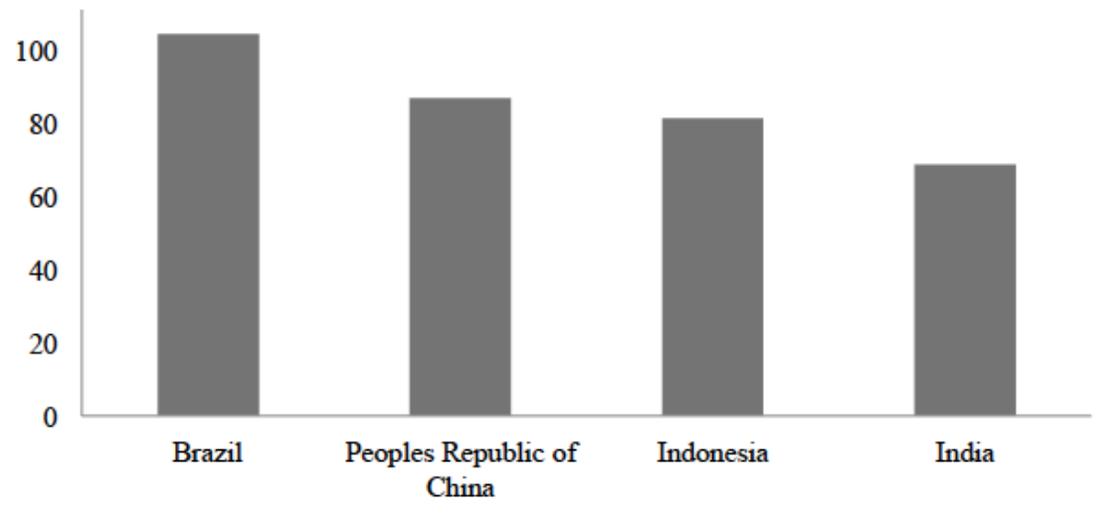
²⁶Another international tournament, the Confederation Cup was taking place at the time of the protests. FIFA is the Fédération Internationale de Football Association that is the governing body for international football and sets standards for stadia.

²⁷ See The Economist survey of September 28th, 2013



Source: World Bank, World Development Indicators (2013).

Figure 7: ...and much lower secondary school enrollment.



Source: World Bank, World Development Indicators (2013).

As in India, social provisioning in Brazil is linked to constitutional rights, and as in India, this was to a significant degree associated with major civil society movements. Brazil's critical juncture in this respect came with the return to democracy in the 1980s, that was associated with an unusually encompassing set of social movements. The 1988 Constitution sought to legally capture aspirations on social provisioning and associated social rights (to education, health, rural pensions, to the city, and so on), and in many domains linked these to a role of participatory societal processes.

However, these social aspirations and legal instruments had to be implemented in the context of a political-bureaucratic system with a mix of patronage, clientelistic

relations and vested interests, alongside relatively functional, rule-bound elements. It was also, as in India, alongside gradually liberalizing economic reforms with a mix of private capital and state enterprises.

The really interesting story unfolds from the 1990s on. This clearly illustrates the theme of the importance of alignment: Brazil (at national, and sometimes at state level), combined a political juncture favoring transformation and political entrepreneurship, a range of civil society movements working within variety of formal and informal arrangements with the state, and activists within the public sector. In both Brazil and India rights-based approaches were conceptualized as means of shifting citizen-state relations. A frequent *difference* was a more concerted project (or rather multiple projects) to make the state work better in Brazil, via a varying mix of internal reform, deeper engagement with society, and deeper decentralization. These were both facilitated and furthered by interaction with political processes.

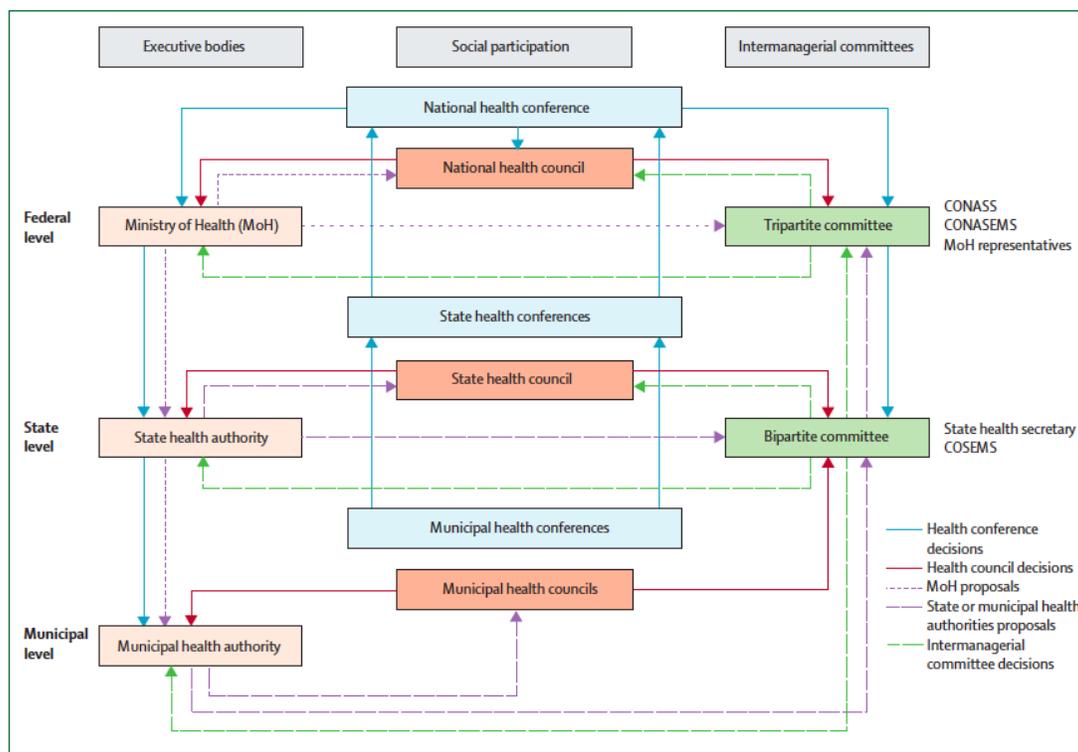
Actual reforms only started in earnest in the mid-1990s under the administrations of President Cardoso (1995-2002) that laid the basis for a shift toward a form of social democracy. This was extended and consolidated in the administration of President Luiz Inácio Lula da Silva (2002-2010) and that of Dilma Rousseff (2010-2014). Cardoso was from a centre left party, and Lula and Rousseff from the PT (Partido do Trabalhadores, or Workers Party). Both essentially pursued a social democratic path, albeit with different emphases.

In many areas this involved a dual shift: a set of legal participatory instruments—in health, education, urban councils—and within-government reforms. These had greater reach than the more famous, and indeed more profound, changes that occurred in the institution of participatory budgeting that emerged in Porto Alegre, with some spread to other municipalities (see Baiocchi, Heller and Silva, 2011).

The balance of influences on outcomes is hard to assess, as these developments were occurring in parallel. It is argued by Bresser-Pereira (a reform architect) that public sector reforms were intrinsic to the change (see Pereira-Bresser 2007). We can illustrate some of the issues in several areas.

The health sector provides a first example. A Right to Health is part of the Brazilian constitution. It is argued that the specification of this right, and the subsequent design, was heavily influenced by civil society movements, and activist health professionals, in the health sector (Paim et al, 2011). This involves a conception of a “Unified Health System” from primary to tertiary care, that is accessible to everyone in the population. This includes formal arrangements for social participation at various levels. The organisational structure is illustrated in Figure 8, that shows the multiple levels for the administration and the social participation. Of course any organogram can look good (as is well known from India), but the history of the health system in Brazil is generally of substantial advances, with a major and effective role for the public sector and substantial influence of these formal civil society structures, alongside private provision (ibid).

Figure 8. The Brazilian public health system's organisational structure explicitly incorporates social participation



Source: Paim et al (2011)

A beautifully documented case is that of reforms in the poor, unequal, traditionally clientelistic Northeastern state of Ceará early in the transition to democracy (see Tendler, 1997). This is a case in which an elected governor from part of the elite empowered health professional activists to innovate in the design, recruitment and implementation of an alternative strategy—based in the development of community health workers with substantial discretion over interactions with communities. It also involved active use of radio campaigns as a means of raising social awareness and putting political pressures on municipalities to move into the new system (despite the loss of patronage possibilities).

There remain many issues of finance, design and interactions with the private sector, as might be expected in a complex health system in transition (Paim et al, 2011). Of particular interest for this paper is apparent *inequities* related to the Right to Health. Ferraz (2009) argues that the interaction between the types of cases brought forward and interpretations of this Right in the courts has led to significant and inequitable biases. He summarizes the situation in terms of the “prevalence of individualised claims demanding curative medical treatment (most often drugs) and by a high success rate for the litigant. Both elements are largely a consequence of the way Brazilian judges have interpreted the scope of the right to health recognised in Article 6 and Article 196 of the Brazilian constitution, that is, as an entitlement of individuals to the satisfaction of all their health needs with the most advanced

treatment available, irrespective of its costs.” (p.1). Since only richer or better educated individuals have the connections and capacity to litigate, and health sector resources are scarce, there is a double pressure on the system to increase inequity.

Education provides another useful story. It again combined a mix of a Right to Education, political salience of the issue, substantial resource increases from the centre linked to a decentralized effort, and a concerted pressure on the public sector. This included both civil society pressure and a particular emphasis on information. Basic and secondary education is an important example. A combination of the additional resources (from the federal government), public information, including on quality, and associated incentives for school behaviour, together led to substantial quality gains (Bruns, Evans and Luque, 2012). This in sharp contrast to India’s experience, both in design (not least in India’s Right to Education focused on inputs and not outcomes) and performance.

Brazil is diverse, across sectors and geography, and there are many other examples of both success and weakness. The Bolsa Família programme, of transfers to the poor conditional on school attendance of children, is world famous. It also involves substantial decentralization to municipalities in implementation, and social controls in implementation. This warrants further exploration for specific lessons for India. However, for now, we would particularly highlight a different set of experiences in public sector behavior, supported by particularly innovative research. Coslovsky (2011) for public prosecutors and Pires (2011) for labour regulators, explore how particular groups of public sector workers break out of traditions of office and rule-bound procedures, or of “results-based” processes, inspired by new public management principles. In these (and other sectors) some develop what these authors call a form of “relational regulation” that involves diagnosing and solving problems in concert with private sector and civil society actors, deploying a mixture of discretion, incentives and collective engagement. It is hard to tell how extensive this is, but it is particularly valuable to find these islands of bureaucratic innovation, that could not be more distant from the principles of (distortionary) incentives for front-line workers in India’s right to service laws, that were discussed above.

We have highlighted a few examples from Brazil to illustrate the richness of potential lessons for India. As emphasized in the introduction, Brazil faces many problems in its service delivery. There are many cautionary tales—particularly so from a much richer country (as seen in Figure 5). Returning to the street protests, corruption and low quality of services remains a pervasive problem. Even if PISA results have improved substantially, levels are still low by OECD standards. We saw above the distortions associated with the ways in which citizens litigate the Right to Health and courts interpret this. More broadly, Brazil’s social democratic model has also become associated with a wide range of entrenched interests (as in India)—with many privileged groups disproportionately benefiting, for example in a highly generous pension system. Brazil’s public spending is over 38% of GDP, and the “custo Brasil” (the costs of doing business in Brazil) is a longstanding concern. But we believe these more problematic features only underscore the value of learning from Brazil for India—showing the possibilities of the kinds of changes in public

sector performance that can occur, and especially where there are complementarities between civil society action and shifts in norms within the public sector, even if these start in islands. It is also underscores the centrality of politics. Finally, it illustrates how neither the genuinely positive nor the negative lessons will unfold automatically with higher wealth, but are products of proactive change by state and civil society actors.

Conclusion

This paper has explored India's efforts at building a rights-based welfare state. Social rights have a long history in India, and were incorporated in the Directive Principles of the Indian Constitution. These were intended as guidance for the democratic process. Only in the last 15 years has there been a concerted effort to make social rights justiciable. This project was scripted largely by an alliance between civil society activists and a few influential members of the political and bureaucratic elites. The push toward a rights-based welfare state is, we argue, best seen as part of a more ambitious project of state transformation, that was very much a response to the dismal quality of social provisioning, and the predominance of clientelistic, corrupt and predatory practices by state actors.

We examined the design and implementation of rights through the specific instruments of accountability and empowerment embedded in the rights, focusing on the Right to Information, the right to time-bound services and social audits. In all these cases, explored both the drivers of reform and the response of state actors, with a particular focus on understanding how reform efforts interact with and influence the everyday workings of the state. We then compared these experiences in implementation of rights-based approaches with two specific sectoral cases (the Public Distribution System in Mumbai and Chhattisgarh, education in Himachal Pradesh and Bihar) where there appear to have been substantive, and potentially long-term, reforms in the nature of service delivery.

Overall we find that rights-based accountability instruments have opened up new spaces for citizens to place direct claims on the state, spaces which citizens have drawn upon enthusiastically. This is evident, for example, in the large numbers of RTI applications and the high levels of awareness and participation in social audit village meetings—at least where such social audits exist, as in the case of Andhra Pradesh. However, the case studies indicate that these increased claims have not, as yet, been met with a parallel transformation in the workings of the state. This has limited the potential of these instruments to create lasting change.

In interpreting the processes at work, we highlighted the centrality of the interaction between politics, civil society, bureaucracy and the judiciary. Our analysis suggests that the rights-based project will only be successful if it is able to catalyze shifts (and even disruptions) in the political settlement, which in turn can create the conditions for an enabling alignment between bureaucracy and civil society. So far, the project of state transformation through a rights-based approach

has had a limited impact precisely because it has failed to stimulate shifts in the political settlement. Specific changes can sometimes be effected by activist bureaucrats, for example, but will not be sustainable absent such a broader shift. Rights laws have often become victim to the patronage/rent extraction system in which prevailing political settlements are embedded. There is a significant irony in this. The rights approaches envisaged transformation through the exercise of citizenship and enhanced democratic action, which in turn would influence politics and drive reform. Yet, politics is precisely what they have failed to influence.

The recent electoral defeat of the Congress-led UPA has raised questions about the support for, and sustainability of, the rights project. Many commentators rushed to the conclusion that the Congress' defeat is a sign of the electorate's rejection of the welfarist approach. This is an overly simple analysis of a complex election and, we believe, an incorrect assessment. There is no evidence that the election was a rejection of the rights-based project, or, indeed, of populist subsidies. In fact, the BJP manifesto offered a basket of subsidies and rights similar to the Congress. On welfare policies, the Congress and BJP may well be closer than many acknowledge. More fundamentally, the underlying coalition supporting the new government has not essentially changed from the previous one; there was rather an almost 20 percentage point switch in allegiance from Congress to BJP, with support for regional parties remaining largely unchanged at around half the electorate.²⁸

The Congress' resounding defeat owed itself to a number of other factors, of which corruption and weak governance appear to have been central. An argument can be made that the increasing reach of the state (and even more the reach of promises by the state) fuelled aspirations for effective state action, which contrasted sharply with the everyday experience of inertia, corruption and resistance, so heightening dissatisfaction.

However, the limits of the rights project of the UPA do raise important questions that are of concern to future policy designs: Why hasn't an approach based on legal rights and social accountability ushered in transformation of the state? What could lead to structural shifts in the responsiveness of the state to citizen's legitimate claims for social provisioning? ?

So why has the rights-based approach been insufficient? .

First, the bureaucracy and service-delivery organizations have *both* remained embedded in local patterns of political behavior *and* have inertia in practices associated with the incentives and organisational culture of managers and workers. The rights laws, with their emphasis on devolution and local accountability mechanisms, were designed precisely to disrupt local patterns of political and bureaucratic behavior. However, despite the rhetoric, the national and state-level political settlements have continued to support an essentially top-down approach to service delivery. This has served to further entrench rather than disrupt the status quo. In particular, the rights laws have primarily relied on the instrument of centrally sponsored schemes (CSS) for implementation (state-level Right to Service

²⁸ For an elaboration of this argument see Mody and Walton (2014)

laws are an exception). These CSS are designed to privilege a centrally driven, one-size-fits-all approach to service delivery that can severely limit state innovation.

When states have sought to substantively reform their service delivery systems, as in the Chhattisgarh and Bihar cases presented here, this has largely been a consequence of the shifting political settlement at the state level. Interestingly, where states have innovated in delivery, state-level political formations have actively sort to take credit for the rights schemes. In 2014, many of these state formations were led by non-Congress, non-UPA alliances. This is likely to be one of the reasons why Congress failed to get votes even in the few states where rights approaches were being implemented reasonably well. But the larger point is that effective implementation was driven by state-specific conditions in which rights schemes afforded state governments the financial resources to deliver welfare effectively. Where these conditions did not exist, national legislation might have served as a catalyst for change. However, the guideline-driven, scheme approach to implementing rights empowered the center to impose a one-size-fits-all model. It dis-incentivized innovation and instead served to encourage a political battle between the states and center, with each blaming the other for poor implementation.

Where genuine devolution was attempted, its implementation was half-baked, resulting in distortions rather than transformative change. The MGNREGA is a classic example. In its design, the Act took an important step by mandating that 50% funds be spent by the Gram Panchayat. But this was not accompanied by complementary devolution of roles and responsibilities for implementation. Consequently, Panchayats have become post officers for large funds, with little authority and responsibility for their spending. This served to de-link performance on MGNREGA delivery from electoral outcomes. And the consequence, as highlighted in the discussion on social audits in Andhra Pradesh is that MGNREGA has often merely become a new source of rents for local politicians rather than creating incentives for improved delivery. In this context, accountability instruments either fail to take root or, as we saw in Andhra Pradesh, have limited impact.

Second, as our case studies point out, rights laws failed to tackle the question of administrative capability head on. It is striking that with each new law, the UPA government expended significant political capital in determining financial allocations for implementing the laws. However, no parallel effort was made to identify the human resources and administrative requirements—the staff, skill-sets, training needs, management systems—to implement these laws. This is particularly relevant given the limited capacity of the bureaucracy in its current form—both in terms of size and structure. The Indian bureaucracy is notorious for its limited technical capacity, complex decision-making structures and inefficient workflows. To expect such a system to deliver without significant investments in improving its capacity is a recipe for disaster; rights laws are a good example of this. This is illustrated in the social audit case where bureaucratic silos made it difficult for the state to systematically respond to grievances brought out through the social audit.

To the extent that administrative reforms have been part of the agenda, this has involved penalties for the frontline and use of information technology to improve monitoring, as illustrated by the Right to Service experience. But this only entrenched bureaucratic hierarchies and rules rather than tackling the systemic questions of bureaucratic motivation, organizational structure and decision-making systems. It also overemphasizes bureaucratic failings at the frontline with little attention to the higher levels of government.

It could be argued that enhanced citizen action, using the new accountability instruments like the RTI and social audits, could lead to pressure for administrative changes and, over time influence local political behavior. However, such increased pressures are yet to translate in to politically salient influences that can in fact influence the dynamics between politics, bureaucracy and civil society.

So how can the state be made more responsive to citizen's legitimate claims for social welfare? We conclude with some final thoughts on this central question.

The Modi government has articulated its commitment to improved governance for the next five years. There has been a notable emphasis on improving the performance of civil servants. This is, of course, desirable. But at least in the arena of social welfare and services for citizens, this cannot be achieved through a top-down, technocratic approach. Effective governance, in terms of citizens' everyday interactions with the state, will only be achieved, through a process of dynamic change which disrupts the local political dynamic, fuels shifts in bureaucratic behavior and effectively engages with civil society. These changes are necessarily organic and long term. However, at a policy level there are some changes that can be introduced to create an enabling environment to allow these disruptions to take root.

A first step would be to create space for innovation, through moving away from a Centre-driven Centrally Sponsored Scheme model for delivering rights and welfare to a more flexible model in which the Centre sets the policy agenda but leaves state governments free to determine the pathways to achieve policy goals. This could create greater political incentives at the state level to reform delivery systems. It is also in line with a growing trend in Indian politics for state government elections being driven, to a greater extent than the national elections, by service delivery performance. This is evident, for example, in the post-election debate on the 2014 national Bihar elections, where many polls show that voters indicated a preference for voting for the reformist Nitish Kumar in the state-level elections even as they voted for the BJP in the national elections. A more state government-centered approach to designing and delivering rights may well catalyze shifts in the political settlement that a centrally driven system simply cannot.

A complementary domain of action concerns the need for a long-term project of administrative reform. Here we would emphasize two issues. First, in terms of manpower India's public administration is unusually *small*, relative to demands,

international comparators and the needs of a middle income country. While expansion is only desirable if accompanied with improvements in functioning, the sheer lack of human resources will jeopardize attempts to tackle quality problems. Second, the content of a reform project would need to be significantly different from current debates on what constitutes reform. As we have argued through this paper, the dominant trend in thinking revolves around stronger incentives for performance, not least, as we have seen, in the central thrust of the rights-based approach to have justiciable sanctions for weak performance. However, a lesson we see emerging from our case studies is that such a “high-powered incentive” approach, while useful in some contexts, tends to foster more resistance and distortion than actual change. Rather, as the Himachal Pradesh case suggests, an approach that attempts to shift bureaucratic behavior away from a guideline-driven, legalistic system to one which privileges problem-solving holds the key to success.

Adopting a problem-solving approach is especially important because service delivery challenges in India are getting more complex. This is related to the question of the effectiveness of a justiciable approach to assuring services get delivered. We argued that different types of service delivery *intrinsically* require different approaches to accountability: where the state’s obligation is specific, easily measurable and requires little or no discretion, it is (relatively) easy to adopt a justiciable approach. But in many domains effectiveness requires judgment and discretion. This doesn’t diminish the basic principle of accountability, but it has a large influence on how to implement this.²⁹ This is well-illustrated by the case of education. The country has made substantial progress in the expansion of school infrastructure—school buildings in every habitation, student enrolment at nearly 98%—but now faces the task of ensuring that students enrolled in schools actually improve learning. An emphasis on quality necessitates a very different approach and bureaucratic structure than a system that was expected to construct school buildings. More open, problem-solving approaches are essential to this. An important aspect of this is to invest in building a sense of professional identity around norms of delivery rather than norms of extraction. This is only likely to occur where there is both political and bureaucratic change, accompanied by social pressure. This brings us to our last point concerning greater democratic action.

The most critical element of change lies in the extent to which genuine democratic action is fostered. Greater devolution of action to states and administrative reform will be ineffective if state politics remains driven by clientelistic, populist or identity-based political strategies. We have noted that there has been a heartening tendency for more effective state governments to be electorally rewarded, and vice versa, but this only represents a very partial feature of political behavior and culture. This paper has not sought to assess the nature and evolution of politics in India, but it has argued that this is a fundamental driver of state behaviour. It can help to push for a more decentralized government system whereby electoral accountability is directly linked with service delivery provision. But democratic

²⁹ As noted in the text this draws on Pritchett’s (2013) distinction between “thin” and “thick” accountability.

deepening will only lead to real change if it is part of a wider shift in political party functioning. Absent radical reforms in electoral funding and inner party functioning, change is necessarily going to be limited.

The pursuit of rights and associated accountability mechanisms matter within the broader project of state transformation and democratic deepening. At a minimum they articulate the government's intent to redress deeply entrenched power dynamics between citizens and the state and an associated culture and politics of patronage. However, for rights to fulfill their potential, a serious effort at radically overhauling state administrative systems needs to be put in place. This will only occur if it is aligned with political shifts at the level of the states, of local politicians and at the grassroots. Rights-based accountability instruments can be one element of a project to build the political momentum for change and can be important elements of a more comprehensive project. In particular, well-designed rights and associated accountability processes can contribute to more responsive administrative systems at the grassroots. But if not embedded within a broader project of political and bureaucratic change, a rights-based approach will be of only limited effect, and risks bringing new patterns of distortion. You cannot legislate your way out of the failings of the state!

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