

# Theorizing Law, Social Movements, and State Formation in India

Alf Gunvald Nilsen, Kenneth Bo Nielsen, and Anand Vaidya

In May 2019 the Indian electorate returned Narendra Modi of the right-wing Bharatiya Janata Party (BJP) to the helm of what is professedly the world's largest democracy. But what emerged from this election was no ordinary mandate. Rather, Modi's landslide victory amounted to a decisive advance for a hegemonic project that seeks to make India a Hindu nation. During Modi's first term in power, from 2014 to 2019, this was manifested primarily in vigilante violence against minority groups—particularly Muslims—and coercion against dissidents. However, with the onset of Modi 2.0, we are witnessing the emergence of Hindu nationalist statecraft as a pivotal vehicle for the further advancement of this project.<sup>1</sup>

This turn was first signaled in August 2019, when the Modi government revoked Kashmir's special constitutional status, relegating what was then India's only Muslim-majority state to a union territory. The abolition of Kashmir's statehood was an act of territorial engineering to advance the hegemonic project of the Hindu nationalist movement. The symbolism was clear: the Hindu nation is to be built by purging India's territory of the Muslim enemy within. Then, in November, India's Supreme Court passed its verdict in the Ayodhya dispute in favor of Hindu plaintiffs who claimed the right to the land where the Babri Masjid, a sixteenth-century mosque, stood until it was demolished by Hindu nationalist mobs in December 1992. In doing so, the Supreme Court lent credence to a weaponized mythology that claims the land as the birthplace of Lord Ram, and therefore rightfully belonging to India's Hindu majority, signaling its alignment with the BJP's hegemonic project.<sup>2</sup> The Ayodhya judgment was followed, in early December, by the passing into law of the Citizenship Amendment Act (CAA). This offers expedited citizenship for persecuted religious groups from Afghanistan, Pakistan, and Bangladesh who can prove that they have been living in India since before December 31, 2014. However, the CAA only extends this right to Hindus, Christians, Sikhs, Buddhists, Jains, and Parsis, not to Muslims. Coupled with a national population register and a National Registry of Citizens (NRC) that links the right to Indian citizenship to an individual's capacity to prove that they were born in India between January 1950 and June 1987, or that they are children of bona fide Indian citizens, the CAA is likely to create a hierarchy of graded citizenship in which Indian Muslims become second-class citizens.

Hindu nationalist statecraft, then, follows the overarching logic of Modi's authoritarian populism, which draws a line between "true Indians" and their "antinational enemies" within.<sup>3</sup> Crucially, Hindu nationalist statecraft advances through lawmaking rather than vigilante violence or state coercion—for example, the erasure of Kashmiri statehood was brought about by revoking Article 370 of the Indian constitution, which granted the state special status, as well as Article 35A, which provided further autonomy. Indeed, as Christophe Jaffrelot and Gilles Verniers put it,<sup>4</sup> "the second Modi-led government has . . . radically changed gears and used the legislative and executive route to transform India into a *de jure* ethnic democracy."

This conjuncture compels a critical rethinking of the political economy of the world's largest democracy. In this article, we propose a conceptual framework for this, focusing on the historical relationship among law, state formation, and social movements. Although law, since the inception of Modi 2.0, has served primarily as a vehicle of majoritarian statecraft from above, the legal domain nonetheless remains a significant part of the repertoires of contention mobilized by subaltern movements. The legal domain has, for example, been crucial to the institutionalization of the movement-driven, rights-based agenda that brought about new civil liberties and socioeconomic entitlements from the early 2000s to the early 2010s. Similarly, the recent abrogation of Article 370 has been challenged by a slew of petitions questioning the constitutionality of the move.

We argue for the need to think through the relationship among law, social movements, and state formation in the *longue durée* of Indian democracy. While we acknowledge the problems that arise with the neat “demarcation of time into different slices,”<sup>5</sup> we nevertheless believe that important conceptual gains can be made by conceiving of this *longue durée* as animated by three distinct conjunctures in India's passive revolution. The first conjuncture—between 1920 and 1950—saw the emergence of democracy as the central claim of a mass-based freedom movement through to its constitutional institution, which in turn inaugurated the Nehruvian nation-building project under the hegemony of the Indian National Congress. The second conjuncture witnessed the unravelling of the Nehruvian state from the late 1960s to the early 1990s—a phase animated by complex and intersecting political crosscurrents, ranging from the decline of Congress and the Emergency, via the emergence of new social movements and an activist judiciary, to an incipient move away from developmentalism. Finally, the period from the early 1990s to the present moment of peril can be seen, above all, as a conjuncture animated by the rise of Dalit and lower-caste parties, the emergence of Hindu nationalism as a national political force, and neoliberal transformations of India's political economy. Although these conjunctures have distinct internal temporalities, they are all animated by hegemonic transitions. Situating these conjunctures within a century-long period, we argue that social movements and the state have constituted each other across this *longue durée*, and that this co-constitution has been *both* mediated by *and* inscribed in law. An adequate theorization of this trajectory must be capable of disentangling the different facets of this dialectical

relationship and deciphering its manifestations in key moments in the life of the Indian state. To this end, we propose a Gramscian perspective that focuses on the making and unmaking of unstable compromise equilibriums between dominant and subaltern social forces in state-society relations in and through law and legal formations.<sup>6</sup> The very instability of these compromise equilibriums and the ways in which they are formed, superseded, and reformed over time, we argue, are evidence of a co-constitutive relationship between social movements and the state that is inherently conflictual and therefore always evolving.

We present our argument in three sections. First, we introduce a Gramscian perspective on law and discuss its relationship to hegemony. While social groups (and dominant groups in particular) may often resort to extra-legal means such as violence and corruption to advance their interests, we argue that law and lawmaking are in fact central to the construction of hegemony.<sup>7</sup> More specifically, we suggest that the law is characterized by certain fundamental dualities: it simultaneously enables coercion and fosters consent, and in doing so both constrains and makes concessions to the collective action of social movements. Second, we discuss state formation as a hegemonic process, focusing specifically on how state power must be understood in terms of the balance of power that crystallizes between different social forces acting in and through the institutional ensemble of the state. Law and lawmaking remain at the core of our argument, here in terms of how their centrality in state formation is intimately related to legal culture and consciousness in subaltern imaginaries and practices. Third, we engage the long-standing tradition in South Asian scholarship that draws theoretical sustenance from Antonio Gramsci's work. More specifically, we discuss the proposition in the work of Partha Chatterjee, Sudipta Kaviraj, and Kalyan Sanyal that the Indian state's trajectory is best understood as a case of passive revolution.<sup>8</sup> While Indian state formation can certainly be read in terms of passive revolution, we argue that these perspectives fail to adequately account for how India's passive revolution has been shaped by subaltern movements. By studying how subaltern claims appropriate legal formations and, conversely, how the law mediates such claims in specific ways, we can conceive of India's passive revolution in a genuinely dialectical manner, in which each hegemonic transition always produces new contingencies and new political spaces for contestation. In each section, we illustrate our arguments with examples drawn from the

three key conjunctures of formation and reformation in the trajectory of the Indian state identified above. Consequently, the article is organized around three key analytical concerns rather than according to the chronological unfolding of historical processes of state formation. The examples we use are selected because they illustrate key conjunctural dynamics and are not meant to add up to an exhaustive historical account. Since our objective is predominantly conceptual, we necessarily operate at a relatively high level of abstraction. Consequently, we are unable to capture certain layers of complexity in the actually existing workings of India's state-society relations and its political economy. This pertains first of all to our conception of subaltern groups. Drawing on Gramscian theory, we conceive of subalternity as the state of being adversely incorporated into historically specific power relations. We do not attempt to capture its finer gradations in and across concrete cases and sites, nor do we attempt to address how such gradations impact how law is imagined and mobilized in collective action. Operating at this level of abstraction also prevents us from engaging with the finer dynamics of relations between state and capital and among different fractions of capital. We recognize that state-capital relations in India have been fraught with contradictions, and that there have been significant and shifting divisions among different fractions of capital across time.<sup>9</sup> However, the ways in which these contradictions and divisions shape the relationship among law, social movements, and state formation are arguably best explored in concrete studies of determinate conjunctures in India's postcolonial trajectory.<sup>10</sup> We do, however, hope that what is lost in nuance might be gained in conceptual innovation, and that the framework presented here will invite comparative work in other postcolonial contexts.

### **Law and Hegemony**

The meanings of law are not fixed by the legal texts in which it is inscribed.<sup>11</sup> Rather, as scholars of critical legal studies have long argued, they are "indeterminate" and open to a range of interpretations.<sup>12</sup> Legal symbols and discourses are "relatively malleable resources that are routinely reconstructed as citizens seek to advance their interests and designs in everyday life."<sup>13</sup> The question of which reading wins out over others—to shape daily practice, and to be authorized and enacted through the coercive force of state actors—is a question of struggle and contention. In understanding the dynamics of such contention, it is crucial to recognize that the hegemonic

force of law depends on the perception that it does not simply represent the interests of the elite but is also available for the claims of subaltern groups. As E. P. Thompson argued, the law cannot be seen to be just "without upholding its own logic and criteria of equity; indeed, on occasion, by actually being just." The law may therefore, "on occasion, inhibit power and afford some protection to the powerless."<sup>14</sup>

At the local scale, an example of this dynamic is found in the activism of Adivasi movements in rural Madhya Pradesh during the 1980s and 1990s. Here, Bhil Adivasis were subordinated to the everyday tyranny of a coercive and predatory local state, in which state personnel used their powers of law enforcement to exact bribes from villagers. Crucially, when these communities began to contest everyday tyranny, they did so by turning to the higher echelons of the local state, insisting that legality should prevail in local state-society relations. This was an effective strategy, as state officials could not publicly be seen to condone violations of a legal code that they were supposed to uphold. This kind of "legalism from below"<sup>15</sup> fostered insurgent claims for the right to have rights among Bhil communities.<sup>16</sup> Such oppositional uses of the law are common elements in subaltern resistance. For example, anti-dispossession movements, widespread across India, have actively used the law to fight specific instances of dispossession.<sup>17</sup> The momentum generated by these movements in turn resulted in the introduction of national legally enforceable limits to dispossession, and rights to compensation and resettlement.<sup>18</sup> Capturing this duality—in which the law simultaneously enables coercion and fosters consent, and both constrains and makes concessions to the collective action of social movements—is imperative to any theorization of the relationship among law, social movements, and state formation. Toward this end, we propose a Gramscian understanding of law and lawmaking. Although Gramsci wrote almost nothing about law,<sup>19</sup> his work offers valuable resources for analyzing law as a terrain on which movements interact with state-making projects. Gramsci was keenly aware that law had not only coercive but also ideological effects on the organization of civil society<sup>20</sup> through, for example, its "educative role . . . in developing social conformism."<sup>21</sup> It follows that law and lawmaking should be approached as integral dimensions of the formation, supersession, and transformation of the unstable equilibriums of compromise between social groups that undergird and sustain hegemony.<sup>22</sup> Hegemony, on this reading, is understood as "a set of nested,

continuous processes through which power and meaning are contested, legitimated, and redefined at all levels of society.<sup>23</sup> These processes, in turn, are animated by contentious negotiations between dominant and subaltern social groups.<sup>24</sup> This renewal and modification happens in an active relation to subaltern politics, which itself tends to be articulated through oppositional appropriations of “the social condensations of hegemony” — the institutions, idioms, imaginaries, and routines through which hegemony is enacted.<sup>25</sup>

In terms of law, this is evident in how the oppositional claims making of subaltern movements is often mediated by a “legal consciousness”<sup>26</sup> and posits legal reform as the objective of mobilization. Consider, for example, the proliferation of legal activism in India following the Emergency (1975–77). This was propelled by the introduction, after the Emergency, of public interest litigation (PIL) by the Indian supreme court in an attempt to undo the tarnished legacy of its capitulation to Indira Gandhi.<sup>27</sup> However, whereas PIL was instituted from above, its spectacular proliferation from the late 1970s was a result of how social movements used it to carve out and expand new domains of mobilization, structured around the language and imaginaries of law. As Upendra Baxi remarked of PIL, what had initially emerged as an “expiatory syndrome” became “a catalytic component of a movement for ‘juridical democracy’ through innovative uses of judicial power.”<sup>28</sup> This illustrates the profoundly contingent nature of the co-constitutive relationship between movements and the state, and particularly the contingencies arising from how law mediates this relationship.

Law and legal reform have also played important roles in Dalit and lower-caste politics that proliferated in the 1990s. The expansion of the legal remit of affirmative action through reservations has been particularly significant, as the large and heterogeneous group of Other Backward Classes has sought inclusion into this system of quotas. The struggle for recognition of caste-based violence in criminal law<sup>29</sup> has been equally important, and has resulted in union laws such as the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989, and in state laws such as the recent West Bengal (Prevention of Lynching) Bill, 2019. That this bill has emerged in a non-BJP state with a large Muslim minority at a conjuncture defined by an increase in Hindutva vigilante violence is no coincidence.

Comparably, feminist activism was central to the wave of new social movements that emerged in India after the Emergency, and the law, in turn, has been central

to feminist activism.<sup>30</sup> As Manisha Desai points out, from the early 1980s, the efforts of the autonomous women’s movement to contest India’s patriarchal state centered on achieving gender justice through legal reforms related to rape, gender-based violence, dowry deaths, and sex-selective abortion.<sup>31</sup> More recently, as shown below, India has witnessed a series of campaigns for the enactment of rights-based legislation to make civil liberties and social protection legally enforceable.<sup>32</sup>

Our emphasis on the duality of law, however, makes us attentive to the fact that reliance on law has not translated directly into unequivocal counterhegemonic advances. For example, the jurisdiction of PIL over time became “parasitical on the very same people” it was introduced to empower, as it degenerated into a veritable “slum demolition machine” evicting and expelling the urban poor.<sup>33</sup> Dalit politics demonstrates similar limitations to the efficacy of law in bringing about structural transformation through caste-based reservations and other measures. The Bahujan Samaj Party has held power in Uttar Pradesh for long periods but has failed to effect “a substantial change in the distribution of economic, social, and political opportunities.”<sup>34</sup> And, despite affirmative action, Dalits and lower-caste groups remain vastly overrepresented among India’s poor.<sup>35</sup> In terms of feminist movements, Nivedita Menon has argued that strategies centered on law might in fact be counterproductive, suggesting that feminist activism “may have reached the limits of the emancipatory potential of that language of rights which gives us an entry point into the realm of law.”<sup>36</sup> Rights-based legislation, in turn, has been criticized for excluding subaltern groups whose knowledge and command of the state’s bureaucratic vocabularies and routines might be insufficient to pursue claims under the law, as well as for fostering “bureaucratized activism and procedural citizenship.”<sup>37</sup> Ultimately, these observations testify to the ambiguous workings of the dualities of law, and underscore how, in order to serve a hegemonic purpose, law and lawmaking must act as what Gramsci called an “organic passage”<sup>38</sup> through which political transactions can take place between dominant and subaltern groups. Consequently, law sustains hegemony even as it allows for the partial incorporation of “some aspects of the aspirations, interests, and ideology of subordinate groups.”<sup>39</sup> For this reason hegemony always rests on *unstable* equilibriums of compromise, rather than on an inert edifice of power.

But how are these unstable equilibriums orchestrated and achieved through laws and lawmaking as



essential dimensions of state formation? We seek to answer this question by mapping how the making of particular laws has codified power relations between dominant and subaltern groups, and how these laws have simultaneously made concessions to and contained the collective action of subaltern movements. We do this through select examples from the *longue durée* of the Indian republic, starting with the constitution.

India's constitution was forged between 1946 and 1950. According to Granville Austin,<sup>40</sup> this document embodies and enshrines the commitment among the country's leaders to push forward a social revolution. Pointing to the architecture of the constitution, Austin argues that the Fundamental Rights would advance the social revolution by securing equality for all citizens in the domain of civil and political rights, whereas the Directive Principles would ensure the positive right to redistribution and recognition.<sup>41</sup> An alternative reading, however, would argue that the bifurcation of civil and political rights as justiciable rights and socioeconomic rights as nonjusticiable principles for policy making provided the undergirding for a conservative democracy controlled by dominant social forces.<sup>42</sup> The right to property loomed large among the Fundamental Rights, indicating "that the political elite did not conceive of any serious intervention to check economic inequality."<sup>43</sup> While semifeudal landlordism was abolished, this was part of a concerted effort by the postcolonial state to advance bourgeois property relations. And whereas several constitutional amendments were passed to facilitate land reforms, their main effect was to give rise to India's provincial propertied classes.<sup>44</sup> In this sense, Baxi is right in arguing that "the fundamental right to property . . . marked the organized triumph . . . of the claims of the owners of the means of production over those of the owners of labour power."<sup>45</sup> Conversely, the relegation of socioeconomic rights to the domain of Directive Principles weakened the constitutional basis for redistributive struggles.<sup>46</sup>

This constitutional order in turn expressed the balance of power between dominant and subaltern social forces that crystallized during the freedom movement. Whereas Congress under Gandhi's leadership developed into a mass-based organization that engaged in a series of campaigns that followed a pattern of struggle, truce, and renewed struggle at an expanded scale,<sup>47</sup> each moment of truce—1922, 1931, and 1943, respectively—saw the demobilization of radical forms of popular nationalism that often transgressed the parameters of nonviolent *satyagraha* and challenged regnant property

relations.<sup>48</sup> The demobilization of subaltern movements, in turn, reinforced elite dominance—and, with it, a preference for constitutional politics<sup>49</sup>—within the Congress organization. Crucially, demobilization became increasingly coercive as Congress moved toward being a state-bearing party—a process culminating in the repression of the Telangana uprising in 1951.<sup>50</sup> The constitution consecrated this balance of power by facilitating "a deliberate process of social transformation to cure the worst forms of underdevelopment and inequity that threatened the stability of the postcolonial political order."<sup>51</sup> This hegemonic formation was remarkably stable during the two decades after independence, as social movements ceded autonomy to "the strong hand of the Nehruvian state."<sup>52</sup>

The postindependence career of the fundamental right to property also offers insights into the shifting balance of power between dominant and subaltern social forces in other key conjunctures. Following the Emergency, the Janata Party government rode to power on the back of the many broad-based popular movements of the 1970s. A key pledge in the Janata Party's election manifesto was deleting the right to property from the constitution—a pledge that amounted to a response from above to the movements that had destabilized economic and political configurations of power since the late 1960s.<sup>53</sup> Some Janata Party members saw this repeal as a step toward socialism, whereas the future law minister stressed that the *fundamental* right to property had, in fact, prevented Indian legislatures from using property to do public good for the Indian people.<sup>54</sup> With the 44th Amendment (1978), the fundamental right to property was demoted to merely a legal right. At a later conjuncture in the neoliberal era, however, when the balance of power between dominant and subaltern social forces had shifted more decisively in favor of the former, attempts would be made to use PIL to seek legal *reinstitution* of the right to property, in the name of the poor. Petitioners claimed that its dilution had made it easier for the state to acquire citizens' property on the pretext of public interest, without adequate compensation. In effect, the very enactment (the 44th Amendment) that was introduced to help the underprivileged was now allegedly used to dispossess them. Clearly, the changing balance of power between dominant and subaltern social forces, and the unstable equilibriums this balance underpins, combine with the indeterminate nature of law to produce unpredictable shifts that can variously unsettle or reinforce hegemonic configurations.

Law, then, establishes a hegemonic equilibrium by defining the *legal* boundaries of relations between dominant and subaltern groups and the limits of what is politically permissible. However, this equilibrium is unstable since the interpretation of laws and the boundary of these relations are subject to contestation. Again, the constitution provides a particularly apt example. As much as it represents the legal consecration of a profoundly asymmetrical balance of power between dominant and subaltern forces, it is not simply a text of and for power from above. As Rohit De has shown, subaltern groups have appropriated the constitution for oppositional use; despite being crafted by an elite, it “became part of the experience of ordinary Indians in the first decade of independence.”<sup>55</sup> A range of actors whose livelihoods and ways of life were threatened by the modernizing zeal of the Nehruvian state used constitutional provisions to petition the Supreme Court for the enforcement of their fundamental rights. On the one hand, this spawned a “constitutionalism from the margins” with the potential to “displace the elite conception of the law.” On the other hand, by using the constitution to push back against the interventions of the modernizing state, subaltern citizens came “into closer engagement with the state and reaffirmed its right to exist.”<sup>56</sup>

### State Formation

State formation is often conceptualized as the institutionalization of political power and authority in Weberian terms—that is, as a “compulsory political organization” that exercises continuous domination within a demarcated territory.<sup>57</sup> When viewed in this way, state formation appears to be driven by dominant social forces and imposed upon subaltern groups from above.<sup>58</sup> As the erasure of Kashmiri statehood and the draconian CAA-NRC process discussed earlier demonstrate, it sometimes is. Nevertheless, an exclusive focus on state formation from above elides the co-constitutive relationship between social movements and the state. Rendering these dynamics in terms of an external relationship between binary opposites prevents us from delineating just how a given form of state, at any given moment, is expressive of “the condensation of a relationship of forces defined precisely by struggle.”<sup>59</sup> To avoid this problem, we propose to see state formation as a “hegemonic process.”<sup>60</sup>

The construction of hegemony, Gramsci argued, is intimately related to processes of state formation. Conceiving of the state in expanded terms as the fusion of political and civil society, Gramsci suggested that,

in contrast to premodern political orders, capitalist modernity was characterized by the efforts of dominant groups “to construct an organic passage from the other classes into their own.”<sup>61</sup> This passage is constituted by state institutions, idioms, and technologies of rule, which enable dominant groups to elicit popular consent for hegemonic projects.<sup>62</sup> On this reading, the state is not conceived of as a sovereign entity that exists independently of society but as an institutional ensemble that social forces act in and through.<sup>63</sup> State power, in turn, is “a contingent expression of a changing balance of forces that seek to advance their respective interests inside, through, and against the state system.”<sup>64</sup>

Contrary to what some strands of postcolonial scholarship suggest, the modern Indian state lends itself very well to such an analysis. Ranajit Guha proposed that the colonial state “failed to generate a hegemonic ruling culture” and existed only as an authoritarian externality that provided “no space for transactions between the will of the rulers and that of the ruled.”<sup>65</sup> However, we know that subaltern groups historically had recourse to the colonial state and its ideologies of rule to advance their claims. For example, the Adivasi peasantry of Jharkhand petitioned the colonial state all the way to London, deploying a rhetoric that “admirably mimics the official discourse of colonial primitivism.” Even when they made politico-theological claims to sovereignty and rose in violent revolt, their demand was for “quasi-national autonomy under British colonial overlordship.”<sup>66</sup> Comparably, historically disadvantaged groups often found colonial modernity and liberalism useful in addressing concrete questions of representation, self-esteem, and self-worth.<sup>67</sup> In the postcolonial era, the Dalit movement has found liberal democracy attractive because it enabled them to acquire and expand normative spaces involving not just equality, liberty, and rights, but also self-respect and dignity.<sup>68</sup> This long history of engagement with the state from below shows clearly how subalternity is simultaneously constituted and contested in and through state-society relations.<sup>69</sup>

If we consider the freedom struggle as a state-making project, similar dynamics are apparent. In contrast to Guha’s argument that subaltern politics existed in an autonomous domain,<sup>70</sup> the nationalist movement was a complex field of force animated by a contentious dynamic between the collective action of subaltern groups, which articulated and advanced more radical iterations of nationalism that challenged regnant property relations, and conservative forces pursuing more

moderate initiatives largely commensurable with the interests of dominant groups.<sup>71</sup> The fact that the post-colonial state came to reflect the hegemonic project of elite nationalism is a result precisely of the balance of power that emerged from the demobilization of radical forms of popular nationalism discussed above. But, as De's analysis reveals, this hegemonic project was soon appropriated by subaltern groups "making claims against the state that used the state's own vocabulary."<sup>72</sup>

The contentious dynamics that animated subsequent transfigurations of the Indian state show similar characteristics. For example, the unravelling of the Nehruvian state from the late 1960s was partly propelled by new social movements that represented subaltern groups marginalized by the postcolonial nation-building project.<sup>73</sup> Crucially, these movements often appropriated the state ideology of development to stake claims for redistribution, recognition, and participation.<sup>74</sup> Whereas these movements ultimately failed to halt the rising tide of neoliberalization, their persistent mobilization was nevertheless inscribed in the state that emerged from this process, both in the form of practices such as PIL, and in the rights-based legislation of the United Progressive Alliance (UPA) era (2004–14), discussed below.

Law and lawmaking are integral to these processes of state formation and the construction of hegemony—most fundamentally because it is through law that "political authority and the state . . . attempt to legitimize the social institutions and norms of conduct which they find valuable."<sup>75</sup> Force is an obvious dimension of this equation, insofar as legal institutions are central to what Gramsci called "the apparatus of state coercive power,"<sup>76</sup> and enable dominant groups to enforce order. However, in keeping with our argument that law also plays an important role in the construction of consent, law and lawmaking can be usefully thought of as "moral regulation" in both a totalizing and an individualizing sense: laws are passed on behalf of the nation and citizenship is often understood as equality before the law; yet, law also constitutes the individual as a legal subject and both penalizes law breaking and bestows rights accordingly. Legal culture and legal consciousness consequently come to be diffused throughout the societal fabric and, crucially, woven into the lifeworlds, practices, and imaginaries of subaltern groups.<sup>77</sup> In this way, state formation appears as a profoundly cultural process in which dominant groups encourage some ways of organizing social life while "suppressing, marginalizing, eroding, and undermining others."<sup>78</sup>

Understanding law as a form of moral regulation enables us to elaborate our point about the contentious nature of law and hegemony, insofar as moral regulation is never uncontested. The frequent disjunctures between "unifying representations" and lived experiences of "inequality, domination, and subjugation" give rise to struggles in which the "universalizing vocabularies" of the modern state become "sites of protracted struggle," and in which the meanings and applications of those vocabularies are contested, negotiated, and changed.<sup>79</sup> In the Indian context, this is particularly evident in the salience of citizenship as a mobilizing idiom in subaltern movements. Dalits,<sup>80</sup> poor rural women,<sup>81</sup> informal sector workers,<sup>82</sup> lower-caste peasantries,<sup>83</sup> and Adivasis<sup>84</sup> have—in different ways and with different outcomes—articulated rights-based claims that appropriate the universalizing vocabularies of the post-colonial Indian state in which citizenship figures as a foundational idiom.<sup>85</sup> In the process, these universalizing vocabularies are refracted through "regional histories of claims making" and inflected with vernacular "idioms and forms of negotiation," and are therefore also constantly transformed to the extent that "the practice of claims making is generative of new understandings and subjects of rights."<sup>86</sup>

The law is, of course, one such universalizing vocabulary, and its changing forms over time must be understood in terms of how subaltern groups "engage, avoid, or resist the law and legal meanings" through oppositional claims making.<sup>87</sup> After the 1984 Bhopal gas disaster, for example, survivors' groups turned to the law to seek redress. The result, however, has been deeply ambiguous. The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, granted the government of India exclusive rights to represent the victims, operating as *parens patriae*, or legal guardian, casting the victims as *non sui juris*, or judicially incompetent.<sup>88</sup> As such, it provided victims access to the law, but not to rights: they neither had the right to represent themselves, nor to opt out of the eventual out-of-court settlement. One might understand the Bhopal Act in terms of state formation from above—as an attempt at reinstating the government as the guardian of the Indian people, at a conjuncture when the paternalistic Nehruvian state was fast unravelling. At the same time, the case illustrates the ambiguities of engaging the law and legal meanings at the grassroots. As Kim Fortun argues, law can create spaces for oppositional claims making by grassroots organizations to work, even as it undermines the very modes of sociality such spaces were to protect. In other words, while grass-

roots claims making through legal language and processes has been crucial in the Bhopal case, the demands associated with prioritizing legal initiative—in terms of expertise, extensive networks, and social and economic capital—simultaneously transforms the institutional structure of the grassroots. Activists have, accordingly, approached the law with considerable cynicism and criticized it for being “insufficiently lawful,” while simultaneously engaging it creatively as they “strategize within and around law’s insufficiency.”<sup>89</sup>

The appropriation of law in the Bhopal example points to the different temporalities that may be at work in social movement politics and legal processes respectively. Put crudely, while movements’ oppositional projects often demand urgent attention, the wheels of law and lawmaking tend to grind slowly. Consequently, the different temporal registers and horizons that social movement politics and lawmaking operate with, and the sense of “temporal lag” this can create, may in themselves produce the impression of law’s insufficiency. Here, however, we stress how the appropriation of law in the Bhopal example can be seen as part of a more general dynamic in hegemonic formations, in which states “establish a common discursive framework that sets out central terms around which and in terms of which contestation and struggle can occur.”<sup>90</sup> This contentious dynamic must be understood in the context of the development of India’s political economy from the late colonial period to the present, which leads us to engage with analyses of passive revolution.

### Political Economy

For Gramsci, passive revolution designated particular trajectories of capitalist development and state formation that unfolded in Europe after the Napoleonic Wars. In contrast to the classic bourgeois revolutions, trajectories of passive revolution were characterized by the relative weakness of emergent bourgeois classes, consequent coalitions between ascendant bourgeoisies and traditional elites, partial accommodation of subaltern groups, and the central mediating role of the state.<sup>91</sup> Chatterjee’s seminal statement of this perspective makes a case for understanding passive revolution as “the general form of the transition from colonial to post-colonial national states in the twentieth century.” In postcolonial India, this was manifest in a process that both preserved “the institutional structures of ‘rational’ authority set up in the period of colonial rule” in the form of the developmental state and avoided “a full-scale assault on all pre-capitalist dominant classes.”<sup>92</sup>

This shaped the workings of the state in crucial ways: an apolitical ideology of national development became crucial to its legitimacy and the politics of planning centered on controlling and manipulating “the many dispersed power relations in society to further as best as possible the thrust toward accumulation.”<sup>93</sup>

Along similar lines, Kaviraj conceives of passive revolution as the outcome of a conjuncture in which India’s emerging bourgeoisie could neither exercise “moral cultural hegemony” over the nation nor rely on “a simple coercive strategy” to advance capitalist development. Here, the trajectory of passive revolution is animated by a coalition of industrial capital, dominant agrarian groups, and the bureaucratic-managerial elite. Surveying the period from the late 1940s to the late 1980s, Kaviraj argues that the passive revolution should be understood as a set of initial realignments in the immediate wake of independence and a series of distinctive political phases. With the sidelining of factions favoring economic liberalism and the departure of the socialists from Congress, the stage was set for a state-led strategy of capitalist development. However, Nehruvian reformism was persistently abrogated by tensions and contradictions within the ruling coalition and increasingly characterized by a logic of bureaucratization that “saw the people not as subjects but as simple objects of the development process.” Indira Gandhi’s populism failed to overcome this dynamic and by the mid-1980s, Kaviraj argues, India was mired in an “institutional crisis of the state”<sup>94</sup>—evidenced by the incipient liberalization of the economy, ascendant regionalism, and increasingly aggressive communal politics.

Chatterjee and Kaviraj capture much that is important in their analyses of postcolonial India as a case of passive revolution. However, as Ranabir Samaddar points out,<sup>95</sup> their approach fails to account for how subaltern mobilization shapes the form and dynamic of passive revolution. So, while both Chatterjee and Kaviraj acknowledge that India’s passive revolution originates in a struggle for national liberation that came to incorporate subaltern groups, they do not sufficiently appreciate how the dialectic of agitation and demobilization discussed above was a crucial part of the passive revolution. Nor do they account for how the presence of subaltern groups in the freedom movement shaped the political strategies of nationalist elites in ways that affected the trajectory of the passive revolution after 1947.

As argued above, the freedom movement was a field of force animated by contention between conservative and radical iterations of nationalism, advanced



by dominant and subaltern social forces respectively. These originated in a structure of proprietary power that germinated in the colonial economy: from above, an emergent industrial bourgeoisie and a rising class of rural landholders; from below, the vast mass of rural poor and an embryonic industrial working class.<sup>96</sup> The collective action of the latter challenged the direction and meaning of elite nationalism by demanding more radical forms of redistribution and recognition than dominant social forces were prepared to concede. Demobilization was a consistent elite response to militant subaltern agitation, and the instincts that drove it were inscribed in Indian constitutionalism. “The threat of popular uprisings, which could unsettle the nascent political order,” Sandipto Dasgupta writes, “was very much on the minds of the members of the Constituent Assembly.” This anxiety went together with increasingly repressive demobilization of subaltern movements in the postwar years. It ultimately found expression in what Dasgupta calls “transformative constitutionalism”, which, rather than sanctifying already achieved revolutionary structural transformations, aimed to establish “a state machinery that would be able to intervene in and transform society in a deliberate, gradual, and controlled manner, and at the same time be able to maintain the stability of the nascent regime.” In other words, while the constitution was very much an elite construction that provided “a future mechanism for bargaining over substantive resources” for dominant proprietary classes<sup>97</sup>—the key focus in Chatterjee’s and Kaviraj’s analyses—it assumed this form due to the perceived necessity of curtailing the oppositional collective action of subaltern movements.

Similarly, neither Chatterjee nor Kaviraj address how the long unravelling of Congress hegemony and the Nehruvian state—a process that was, above all, an expression of the contradictions of passive revolution<sup>98</sup>—was driven by a groundswell of new social movements.<sup>99</sup> By the late 1960s, it was evident that the postcolonial state had failed to deliver the justice and fullness of life that had been promised at independence. The proliferation of new social movements began with the Naxalite revolt in 1967, as poor peasants mobilized by radical activists rose in armed insurgency and posed a substantial challenge to the Indian state during the first half of the 1970s.<sup>100</sup> Parallel with this, India witnessed a wave of movements organizing social groups that had been neglected both by the Congress party and the established Left parties and mobilizing around issues peripheral to the mainstream of Indian politics. Popular unrest shook Indira Gandhi’s

government in the mid-1970s: starting as an urban protest against inflation and corruption, the Nav Nirman movement rocked Gujarat in January 1974 and resulted in the dissolution of the state’s legislative assembly. The veteran socialist leader Jayaprakash Narayan then took up the cause, which eventually spiraled from a state agitation to an all-India movement.<sup>101</sup>

During the 1980s, organizing and mobilizing by India’s new social movements converged with the rise of lower-caste and Dalit political parties to destabilize the power relations that sustained India’s conservative democracy. Subaltern groups previously excluded from the ambit of party politics, or co-opted as pillars of upper-class and upper-caste hegemony, increasingly made collective claims on the state.<sup>102</sup> The end of the 1980s witnessed a climax of sorts of these political currents, as a National Front government espousing a progressive agenda of decentralization, social justice for backward castes, and pro-agrarian policies came to power in Delhi. However, the National Front government was short-lived, and the 1990s came to be shaped more by neoliberal reforms promoted by economic and political elites.

Under neoliberalization, the “structure and dynamic” of the passive revolution “have undergone a change.”<sup>103</sup> Sanyal examines how intensified processes of primitive accumulation have created a “domain of *exclusion*” of the dispossessed—which he distinguishes from a working class *exploited* by capital. The role of the state here is to facilitate the transfer of part of the capitalist surplus to what Sanyal calls “the need economy” to reverse primitive accumulation. Such “developmental governmentality”<sup>104</sup> is, to Sanyal, testimony to capital’s strength: it can successfully carry out primitive accumulation while using state intervention to confine the dispossessed to the need economy. While Sanyal envisions the eventual emergence of a radically anti-capitalist “politics of exclusion,” Chatterjee arrives at different conclusions in his more recent discussion of India’s passive revolution. Engaging Sanyal’s argument, he proposes that ongoing primitive accumulation now occurs in a context where a new moral sense among elites significantly shapes the terms and conditions of primitive accumulation. “There is a growing sense now,” Chatterjee argues, “that certain basic conditions of life must be provided to people everywhere.”<sup>105</sup> In response to this growing sense of moral unacceptability of unleashing the full effects of dispossession on large parts of the population, a new governmentality has come to characterize the relation between the Indian state and its subalterns. Through welfare schemes and laws like the Forest Rights Act and the National Rural Employment Guarantee Act,

the Indian state preemptively reverses the worst effects of primitive accumulation and channels popular politics onto the terrain of governmentality. This ultimately sustains a reconfigured passive revolution under conditions of electoral democracy. In this reading, corporate entities ultimately “possess the power of the elevated state” to produce forms of governance intended to master “the art of hemming in popular demands.”<sup>106</sup>

While Chatterjee<sup>107</sup> identifies “globally prevailing normative ideas” as the source of the “moral unease” that brings rights-based laws into being, his argument fails to consider the contentious politics out of which rights-based laws emerge and into which they arrive. Many of the laws that Chatterjee refers to owe more to the “capacity of subaltern groups to wage sustained campaigns that range from rural India to the footpaths of Jantar Mantar” than to the prescience of the ruling class.<sup>108</sup> The National Rural Employment Guarantee, for example, emerged from a long, contentious process in which activists transcended “the boundaries of the state and negotiated changes within the bill, and at the same time . . . appeared to be standing in opposition to the state, pressuring the state to fulfil its commitments.”<sup>109</sup> In the case of the Forest Rights Act, activists from the Campaign for Survival and Dignity (CSD) managed to persuade leading figures in the UPA government that their activists, in collaboration with the Ministry of Tribal Affairs, should draft the new law. This provided unprecedented openings for framing claims for land rights in very specific ways through the insertion of “word traps.”<sup>110</sup> Through the drafting process, CSD activists took care to construct a legal text that resonated with the many “moralized narratives” of Adivasi dispossession that circulated in India’s public sphere—in large part as a result of years of mobilization around forest rights by subaltern movements. In doing so, they inserted words and phrases that made it possible to interpret the law not according to strict legal provisions but instead “as the redemption or culmination of moralized histories.” In this sense, the Forest Rights Act was written “in order to be interpreted not only in bureaucracies and courts, but by organized groups of landless forest dwellers—and to aid in organizing such groups.”<sup>111</sup>

The more recent fate of the Forest Rights Act and other rights-based legislations won through sustained popular mobilization from below illustrates how the balance of power crystallizing among different social forces has shifted during the transition from the inclusive neoliberalism of the UPA to Modi’s authoritarian populism and its attendant forms of Hindutva statecraft. When subaltern groups claimed the rights granted to them

through such laws, lobbying organizations and owners of both industrial and agricultural capital saw these claims threatening enough to withdraw support from the UPA. Instead, during the run-up to the 2014 elections, Indian capital entered into a coalition with Modi’s BJP, whose “investor-friendly” outlook promised state intervention to overcome obstacles to capitalist accumulation. Tellingly, an early policy move by Modi was a frontal attack on the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which from the point of view of capital made land acquisitions costlier and slower. The attack relied on presidential ordinances and amendment bills, and was endorsed by the Confederation of Indian Industry and the Associated Chambers of Commerce and Industry of India.<sup>112</sup> The bill was never passed, but the Modi government has continued to dilute the rights to consent, compensation, and resettlement enshrined in union law by encouraging the states to enact their own watered-down legislation.<sup>113</sup> Comparably, proposed amendments in 2019 to the Indian Forest Act, 1927, sought to transfer considerable power back into the hands of forest authorities, at the expense of local Adivasi communities and other forest dwellers. A similar fate has befallen the legislation on the right to information, which has also been weakened under Modi.

If we are to grasp “the deeply dialectical character of passive revolution,”<sup>114</sup> it is crucial not to assign subaltern politics to the role of respondent to the predations of capital and elites. This is true across the three distinct moments in India’s passive revolution: in each moment, social movements have shaped law and lawmaking as an integral element of hegemonic projects of state formation, and law and lawmaking have then both enabled and constrained the oppositional projects of these movements. Indeed, each moment in India’s passive revolution has produced new latent and manifest contradictions that have, in turn, created new and unanticipated political spaces for movements to pursue oppositional and even counterhegemonic projects. The challenge that confronts us currently is how to think of this dialectic in a conjuncture in which the Hindu nation is being written into law and, as a result, democratic life in the republic is in real peril.

## Conclusion

“To be sure, in India liberal democracy is weak and brutalized,” Achin Vanaik writes, “but even so it is still meaningful and real.”<sup>115</sup> This simple but incisive point provides a useful point of departure for thinking through

the challenges sketched above. The weakness of Indian democracy flows, above all, from the many constraints on redistribution and recognition woven into its structure. These constraints are a product of a balance of power between social forces that was forged in and through the freedom struggle, and later inscribed in India's constitution in ways that entrenched the property rights of dominant groups and systematically deflected the claims of subaltern movements. Across the seven-decades-long life of the republic, these constraints have—alongside others related to the persistence of ascriptive hierarchies of caste, tribe, and gender—repeatedly been contested and renegotiated through oppositional claims making that has actively enlisted the law as a crucial terrain of struggle. But they have never been decisively sundered.

Today, however, the impact of these long-term constraints intertwine with how the Hindu nationalist statecraft of the Modi regime erodes even the most fundamental pillars of India's constitutional order. As argued, lawmaking is central to this statecraft, which is creating the Hindu nation as a distinctive form of the ethnic state.<sup>116</sup> In arguing this, we are not suggesting that the various elements of Hindu nationalist statecraft—legal and extralegal coercion, neoliberal accumulation strategies, and religious majoritarianism—have not previously played a role in the political life of the republic. What makes Hindu nationalist statecraft unprecedented, however, is that it fuses these elements in an authoritarian populism that propels the making of “a *de jure* Hindu majoritarian state.”<sup>117</sup> The significant inroads of Hindu nationalist statecraft, in turn, have to be understood in terms of how the BJP has become the new state-bearing party in India since 2014. Scholars have written of this in terms of the rise of a new dominant party system underpinned by the ability of the BJP to attract electoral support from beyond its core constituency.<sup>118</sup> But one can go further to argue that what we are witnessing is not just a new *party* system but a new *political* system.<sup>119</sup> In this context it is important to note that the BJP is more than a political party—specifically, it is the electoral wing of the Hindu nationalist movement, which has embedded itself deeply in Indian society for close to a century.<sup>120</sup> Under Modi's rule, the BJP has effectively led the onward march of this movement from civil society into the domain of the state, where it has embedded itself in public institutions. As a result, the Rashtriya Swayamsevak Sangh—the organizational cornerstone of the Hindu nationalist movement—now

exercises unprecedented levels of influence over the machinery of government.<sup>121</sup>

This convergence between long-term constraints on and immediate threats to Indian democracy throws up a perilous conjuncture in which progressive political struggles must be conducted on two fronts. There is no doubt that mobilizing around the defense of India's democracy against Hindu nationalist statecraft must be a cornerstone of progressive politics in the current conjuncture—this was made abundantly clear in the massive protests against the CAA-NRC that rocked India from December 2019 to March 2020. However, our analysis also suggests that there are challenges beyond the necessity of defending formal democracy and constitutional foundations. These challenges reside in the fact that subaltern advances within the legal domain are fundamentally unstable and reversible—they do not come with a permanent guarantee of genuine democratic deepening that can advance substantial redistribution and recognition.

A counterhegemonic project to further a progressive reform agenda would thus have to organize and mobilize along two crucial vectors. First, in terms of law, the most promising and readily available starting point for a progressive social movement project is found in India's rights-based legislation. Although this legislation was put in place to engineer a compromise equilibrium that would stabilize the long-term advance of neoliberalization, the indeterminate nature of law means that the oppositional potential of rights-based legislation is not exhausted by the intentions of its drafters. Rather, the question of whether rights-based legislation can be made to serve counterhegemonic ends will not be settled by the letter of the law alone but by the uses to which it can be put by subaltern movements. In the context of a perilous conjuncture such as the present one, the purpose of reanimating rights-based legislation would be to rekindle some of its initial meanings while adding radical new layers to underpin a far more expansive conception of citizenship.

Second, the radical interpretation of legally recognized rights would have to serve as the central node of organizing and mobilizing efforts to bring together multiple social forces. This effort would have to traverse the entrenched barriers between political parties and social movements that have seriously hindered the development of oppositional collective action from below in India. Furthermore, the making of new political subjects to propel such a counterhegemonic project will have to encompass and engage with oppositional

imaginaries and practices forged in locations of extreme subalternity. These locations can be social—for example, those points in the social order where class relations, religious majoritarianism, and ascriptive hierarchies intersect to produce profound adversity—or they can be spatial, located at the margins where the script of democratic legality does not run: in Kashmir, the Northeast, and the Adivasi-populated areas of central and eastern India. What these locations share is that they have fostered some of the most penetrating critiques of India's extant social, political, and economic order—critiques that have the potential to inflect subaltern appropriations of the law with the subversive capacity needed to decisively shift the balance of power that sustains existing hegemonic formations.

**Alf Gunvald Nilsen** is professor of sociology at the University of Pretoria. He is the author, most recently, of *Adivasis and the State: Subalternity and Citizenship in India's Bhil Heartland* (Cambridge University Press, 2018).

**Kenneth Bo Nielsen** is associate professor of social anthropology at the University of Oslo. He is the author of *Land Dispossession and Everyday Politics in Rural Eastern India* (Anthem Press, 2018), and editor of several books on Indian politics and society.

**Anand Vaidya** is assistant professor of anthropology at Reed College.

## Notes

1. See Jaffrelot, "De Facto Ethnic Democracy?"; Jaffrelot and Verniers, "New Party System?"
2. Sebastian, "How Has the Supreme Court Fared?"
3. Nilsen, "Trajectories of Change."
4. Jaffrelot and Verniers, "New Party System?," 143.
5. Gangatharan, "Problem of Periodization," 862.
6. Nilsen, "For a Historical Sociology."
7. We do not see the law, then, as being all-encompassing in relation to state formation and social movements. For example, it is crucially important to acknowledge the complementarity of law and violence—or "the force of law" and "the law of force," as Hansen puts it—both from above and below; see Hansen, "Democracy against the Law." Corruption, similarly, is both a means by which elites in particular circumvent constraints and an issue around which both everyday resistance and oppositional collective action can be enacted, even from above; see Gupta, "Blurred Boundaries." However, here we focus on the law as a significant modality in the structuring of power and resistance in India's political economy.
8. The "Gramscian tradition" in South Asian scholarship was arguably inaugurated by the Subaltern Studies project, and has since

then spawned a rich body of scholarship. See Ludden, *Reading Subaltern Studies*.

9. See Bardhan, *Political Economy*; Chatterjee, "Democracy and Economic Transformation"; Jaffrelot, Kohli, and Murali, *Business and Politics*.
10. One major fault line in the state-capital relationship in postcolonial India crystallized around land reforms; see Frankel, *India's Political Economy*. Another key fault line ran between state and industrial capital, and pertained to the nature of economic planning and state regulation of the postindependence economy; see Chibber, *Locked in Place*. A case can be made that this conflict was resolved in favor of capital, insofar as planning ultimately enabled Indian capitalists to appropriate the gains while socializing the risks and losses of industrial investment; see Chibber, "Reviving the Developmental State?" What this suggests is that capital has wielded enough structural power to quite successfully shape and subvert state reform and regulation in important ways; see Murali, "Economic Liberalization."
11. Since we are primarily interested in law as a modality of hegemony, we do not address the detailed workings of legislative processes in India.
12. Kennedy, "Stakes of Law."
13. McCann, *Rights at Work*, 7.
14. Thompson, *Whigs and Hunters*, 263, 266.
15. Eckert, "Subjects to Citizens."
16. Nilsen, *Adivasis and the State*, 172–205.
17. Bedi, "Judicial Justice"; Nielsen, "Law and Larai."
18. Nielsen and Nilsen, "Law Struggles"; Nielsen, *Land Dispossession*.
19. Litowitz, "Gramsci, Hegemony, and the Law," 530.
20. Simon, *Gramsci's Political Thought*, 49, 61.
21. Benney, "Gramsci on Law," 276.
22. Gramsci, *Selections*, 168, 181–82.
23. Mallon, *Peasant and Nation*, 6.
24. Williams, *Marxism and Literature*; Roseberry, "Hegemony."
25. Morton, *Unravelling Gramsci*, 92.
26. Silbey, "After Legal Consciousness."
27. Austin, *Working a Democratic Constitution*; Bhuwania, *Courting the People*, 1–49.
28. Baxi, "Taking Suffering Seriously," 108.
29. Jaffrelot, *Silent Revolution*.
30. Ray and Roy, "Feminism."
31. M. Desai, "Feminist Efforts," 96–100; see Menon, *Recovering Subversion*.
32. Ruparelia, "India's New Rights Agenda."
33. Bhuwania, *Courting the People*, 8, 80–111; see also Bhan, *In the Public's Interest*.
34. Jeffrey, Jeffery, and Jeffery, "Dalit Revolution?" 1365.
35. Teltumbde, *Republic of Caste*.
36. Menon, *Recovering Subversion*, 207.



37. Sharma, "State Transparency," 319.
38. Gramsci, *Selections*, 260.
39. Hunt, "Rights and Social Movements," 311; Litowitz, "Gramsci, Hegemony, and the Law," 545.
40. Austin, *Indian Constitution*, 32.
41. Austin, *Indian Constitution*, 32, 63–70.
42. Jaffrelot, *Silent Revolution*; Frankel, *India's Political Economy*.
43. Hasan, *Democracy and the Crisis*, 4.
44. R. Desai, "Slow-Motion."
45. Baxi, "Accumulation and Legitimacy," 77.
46. Chandhoke, "Antecedents."
47. Chandra, *Indian National Movement*.
48. Sarkar, *Modern India*; Guha, *Dominance without Hegemony*, chap. 2.
49. Rothermund, "Constitutional Reforms."
50. Purushotham, "Democratic Origins 3."
51. Dasgupta, "Legalizing the Revolution," 235.
52. Ray and Katzenstein, "In the Beginning," 14.
53. Austin, *Working a Democratic Constitution*, 420–30.
54. Allen, "Revival of the Right," 29.
55. De, *People's Constitution*, 4.
56. De, *People's Constitution*, 4, 222, 227, 219.
57. Jessop, *State*, 25.
58. Nugent, *Modernity at the Edge*.
59. Poulantzas, *State, Power, Socialism*, 151.
60. Mallon, *Peasant and Nation*, 6.
61. Gramsci, *Selections*, 52, 260.
62. Nilsen, "For a Historical Sociology," 48–49.
63. "The integral state" fuses consensual and coercive forms of power and mediates the construction of hegemony through "an increasingly more sophisticated internal articulation and condensation of social relations." Thomas, *Gramscian Moment*, 140.
64. Jessop, *State*, 54.
65. Guha, *Dominance without Hegemony*, 64; see Chatterjee, "Agrarian Relations"; Kaviraj, *Imaginary Institution*; Kaviraj, *Trajectories*.
66. Chandra, "Negotiating Leviathan," 154, 157.
67. Rawat and Satyanarayana, *Dalit Studies*.
68. Rao, *Caste Question*; Guru, "Liberal Democracy."
69. Nilsen, *Adivasis and the State*.
70. Guha, "On Some Aspects."
71. Nilsen, *Politics from Below*, chap. 1.
72. De, *People's Constitution*, 14.
73. Omvedt, *Reinventing Revolution*.
74. See Sinha, "Development Counter-Narratives."
75. Washbrook, "Law, State, and Agrarian Society," 649.
76. Gramsci, *Selections*, 12.
77. Ewick and Silbey, "Conformity, Contestation, and Resistance."
78. Corrigan and Sayer, *Great Arch*, 4.
79. Corrigan and Sayer, *Great Arch*, 6–7.
80. Gorringe, *Untouchable Citizens*.
81. Sharma, *Logics of Empowerment*.
82. Agarwala, *Informal Labor*.
83. Witsoe, *Democracy against Development*.
84. Nilsen, *Adivasis and the State*.
85. Corrigan and Sayer, *Great Arch*, 7; see Jayal, *Citizenship*.
86. Subramanian, *Shorelines*, 19.
87. Silbey, "After Legal Consciousness," 728.
88. Fortun, *Advocacy after Bhopal*, 41.
89. Fortun, *Advocacy after Bhopal*.
90. Joseph and Nugent, "Popular Culture," 20.
91. Gramsci, *Selections*, 105–20; see Thomas, *Gramscian Moment*, chap. 4.
92. Chatterjee, *Nationalist Thought*, 50, 49.
93. Chatterjee, *Nation*, 214.
94. Kaviraj, "Critique," 51, 62, 72.
95. Samaddar, *Passive Revolution*, 98.
96. Bagchi, *Private Investment*; Washbrook, "Law, State and Agrarian Society."
97. Dasgupta, "Conflict, not Consensus," 234, 230, 49.
98. Corbridge and Harriss, *Reinventing India*.
99. Vanaik, *Painful Transition*.
100. Banerjee, *India's Simmering Revolution*; Ray, *Naxalites*.
101. Frankel, *India's Political Economy*, 534.
102. Jakobsen et al., "Mapping," 12–16.
103. Chatterjee, "Democracy and Economic Transformation," 57.
104. Sanyal, *Rethinking*, 254.
105. Chatterjee, "Democracy and Economic Transformation," 55.
106. Bhattacharyya, *Government as Practice*, 183.
107. Chatterjee, "Democracy and Economic Transformation," 55.
108. Baviskar and Sundar, "Democracy versus Economic Transformation?," 87.
109. Chopra, "Policy Making," 98.
110. Vaidya, "Origin of the Forest," 118.
111. Vaidya, "Origin of the Forest," 119.
112. Nielsen and Nilsen, "Law Struggles."
113. Kohli and Gupta, "Mapping Dilutions."
114. Hart, *Rethinking the South African Crisis*, 222.

115. Vanaik, *Rise of Hindu Authoritarianism*, 402.
116. Jaffrelot, "De Facto Ethnic Democracy?"
117. Jaffrelot and Verniers, "New Party System?"
118. See Vaishnav and Hinton, "Dawn of India's Fourth Party System"; Chhibber and Verma, "Rise of the Second Dominant Party System."
119. Jaffrelot and Verniers, "New Party System."
120. Jaffrelot, *Hindu Nationalist Movement*; Vanaik, *Rise of Hindu Authoritarianism*.
121. Jaffrelot, "De Facto Ethnic Democracy?"

## References

- Agarwala, Rina. *Informal Labor, Formal Politics, and Dignified Discontent in India*. Cambridge: Cambridge University Press, 2013.
- Allen, Tom. "The Revival of the Right to Property in India." *Asian Journal of Comparative Law* 10, no. 1 (2015): 23–52.
- Austin, Granville. *The Indian Constitution: Cornerstone of a Nation*. Delhi: Oxford University Press, 1999.
- Austin, Granville. *Working a Democratic Constitution: A History of the Indian Experience*. Delhi: Oxford University Press, 1999.
- Bagchi, Amiya. *Private Investment in India*. Delhi: Cambridge University Press, 1972.
- Banerjee, Sumanta. *India's Simmering Revolution: The Naxalite Uprising*. London: Zed, 1984.
- Bardhan, Pranab. *The Political Economy of Development*. Expanded ed. New Delhi: Oxford University Press, 1998.
- Baviskar, Amita, and Nandini Sundar. "Democracy versus Economic Transformation?" *Economic and Political Weekly* 43, no. 46 (2008): 87–89.
- Baxi, Upendra. "Accumulation and Legitimacy: The Indian Constitution and State Formation." *Delhi Law Review* 13 (1991): 72–84.
- Baxi, Upendra. "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India." *Third World Legal Studies* 4, no. 6 (1985): 107–32.
- Bedi, Heather. "Judicial Justice for Special Economic Zones Land Resistance." *Journal of Contemporary Asia* 45, no. 4 (2015): 596–617.
- Benney, Mark. "Gramsci on Law, Morality, and Power." *International Journal of the Sociology of Law* 11, no. 2 (1983): 191–208.
- Bhan, Gautam. *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi*. Delhi: Orient Blackswan, 2016.
- Bhattacharyya, Dwaipayan. *Government as Practice: Democratic Left in a Transforming India*. Delhi: Cambridge University Press, 2016.
- Bhuwania, Anuj. *Courting the People: Public Interest Litigation in Post-emergency India*. Delhi: Cambridge University Press, 2017.
- Chandhoke, Neera. "The Antecedents of Social Rights in India." In *The Indian Constituent Assembly: Deliberations on Democracy*, edited by Udit Bhatia, 83–102. London: Routledge, 2017.
- Chandra, Bipan. *Indian National Movement: The Long-Term Dynamics*. Delhi: Har Anand, 1988.
- Chandra, Uday. "Negotiating Leviathan: Statemaking and Resistance in the Margins of Modern India." PhD diss., Yale University, 2013.
- Chatterjee, Partha. "Agrarian Relations and Communalism in Bengal, 1926–1935." In *Subaltern Studies I: Writings on South Asian History and Society*, edited by Ranajit Guha, 9–38. Delhi: Oxford University Press, 1982.
- Chatterjee, Partha. "Democracy and Economic Transformation in India." *Economic and Political Weekly* 43, no. 16 (2008): 53–62.
- Chatterjee, Partha. *Nationalist Thought and the Colonial World: A Derivative Discourse?* London: Zed, 1986.
- Chatterjee, Partha. *The Nation and Its Fragments*. Princeton, NJ: Princeton University Press, 1993.
- Chhibber, Pradeep, and Rahul Verma. "The Rise of the Second Dominant Party System in India: BJP's New Social Coalition in 2019." *Studies in Indian Politics* 7, no. 2 (2019): 131–48.
- Chibber, Vivek. *Locked in Place: State-Building and Late Industrialization in India*. Princeton, NJ: Princeton University Press, 2003.
- Chibber, Vivek. "Reviving the Developmental State? The Myth of the 'National Bourgeoisie.'" In "The Empire Reloaded," edited by Leo Panitch and Colin Leys. Special issue, *Socialist Register* 41 (2005): 144–65.
- Chopra, Deepta. "Policy Making in India: A Dynamic Process of Statecraft." *Pacific Affairs* 84, no. 1 (2011): 89–107.
- Corbridge, Stuart, and John Harriss. *Reinventing India: Liberalization, Hindu Nationalism, and Popular Democracy*. Cambridge: Polity, 2000.
- Corrigan, Philip, and Derek Sayer. *The Great Arch: English State Formation as Cultural Revolution*. Oxford: Blackwell, 2005.
- Dasgupta, Sandipto. "Conflict, not Consensus: Towards a Political Economy of the Making of the Indian Constitution." In *The Indian Constituent Assembly: Deliberations on Democracy*, edited by Udit Bhatia, 38–57. London: Routledge, 2017.
- Dasgupta, Sandipto. "Legalizing the Revolution." PhD diss., Columbia University, 2014.
- De, Rohit. *A People's Constitution: The Everyday Life of Law in the Indian Republic*. Princeton, NJ: Princeton University Press, 2018.
- Desai, Manisha. "Feminist Efforts to Democratize Democracy: Insights from Four Decades of Activism in India." In *Social Movements and the State in India: Deepening Democracy?*, edited by Kenneth B. Nielsen and Alf G. Nilsen, 93–114. London: Palgrave, 2016.
- Desai, Radhika. "The Slow-Motion Counterrevolution: Developmental Contradictions and the Emergence of Neoliberalism." In *Social Movements and the State in India: Deepening Democracy?*, edited by Kenneth B. Nielsen and Alf G. Nilsen, 25–52. London: Palgrave, 2016.
- Eckert, Julia. "From Subjects to Citizens: Legalism from Below and the Homogenisation of the Legal Sphere." *Journal of Legal Pluralism and Unofficial Law*, nos. 53–4 (2006): 45–75.
- Ewick, Patricia, and Susan Silbey. "Conformity, Contestation, and Resistance: An Account of Legal Consciousness." *New England Law Review* 26 (1991): 731–49.
- Fortun, Kim. *Advocacy after Bhopal: Environmentalism, Disaster, New Global Orders*. Chicago: University of Chicago Press, 2001.
- Frankel, Francine. *India's Political Economy, 1947–2004: The Gradual Revolution*. New Delhi: Oxford University Press, 2005.
- Gangatharan, A. "The Problem of Periodization in History." *Proceedings of the Indian History Congress* 69 (2008): 862–71.
- Gorringe, Hugo. *Untouchable Citizens: Dalit Movements and Democratization in Tamil Nadu*. London: Sage, 2005.
- Gramsci, Antonio. *Selections from the Prison Notebooks*. London: Lawrence and Wishart, 1971.
- Guha, Ranajit. *Dominance without Hegemony: History and Power in Colonial India*. Cambridge, MA: Harvard University Press, 1998.
- Guha, Ranajit. "On Some Aspects of the Historiography of Colonial India." In *Subaltern Studies I: Writings on South Asian History and Society*, edited by Ranajit Guha, 1–8. Delhi: Oxford University Press, 1982.

- Gupta, Akhil. "Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State." *American Ethnologist* 22, no. 2 (1995): 375–402.
- Guru, Gopal. "Liberal Democracy in India and the Dalit Critique." *Social Research* 78, no. 1 (2011): 99–122.
- Hansen, Thomas B. "Democracy against the Law: Reflections on India's Illiberal Democracy." In *Majoritarian State: How Hindu Nationalism Is Changing India*, edited by Angana P. Chatterji, Thomas Blom Hansen, and Christophe Jaffrelot, 19–40. Oxford: Oxford University Press, 2019.
- Hart, Gillian. *Rethinking the South African Crisis: Nationalism, Populism, Hegemony*. Durban, South Africa: University of Kwa-Zulu Natal Press, 2013.
- Hasan, Zoya. *Democracy and the Crisis of Inequality*. Delhi: Primus, 2014.
- Hunt, Alan. "Rights and Social Movements: Counter-Hegemonic Strategies." *Journal of Law and Society* 17, no. 3 (1990): 309–28.
- Jaffrelot, Christophe. "A De Facto Ethnic Democracy? Obliterating and Targeting the Other, Hindu Vigilantes, and the Ethno-State." In *Majoritarian State: How Hindu Nationalism Is Changing India*, edited by Angana P. Chatterji, Thomas Blom Hansen, and Christophe Jaffrelot, 41–68. Oxford: Oxford University Press, 2019.
- Jaffrelot, Christophe. *The Hindu Nationalist Movement in India*. New York: Columbia University Press, 1996.
- Jaffrelot, Christophe. *The Silent Revolution: The Rise of the Lower Castes in North India*. London: Hurst, 2003.
- Jaffrelot, Christophe, Atul Kohli, and Kanta Murali, eds. *Business and Politics in India*. New York: Oxford University Press, 2019.
- Jaffrelot, Christophe, and Gilles Verniers. "A New Party System or a New Political System?" *Contemporary South Asia* 28, no. 2 (2020): 141–54.
- Jakobsen, Jostein, Kenneth B. Nielsen, Alf G. Nilsen, and Anand Vaidya. "Mapping the World's Largest Democracy (1947–2017)." *Forum for Development Studies* 46, no. 1 (2017): 83–108.
- Jayal, Niraja. *Citizenship and Its Discontents: An Indian Story*. Cambridge, MA: Harvard University Press, 2013.
- Jeffrey, Craig, Patricia Jeffery, and Roger Jeffery. "Dalit Revolution? New Politicians in Uttar Pradesh India." *Journal of Asian Studies* 67, no. 4 (2008): 1365–96.
- Jessop, Bob. *The State: Past, Present, Future*. Cambridge: Polity, 2016.
- Joseph, Gilbert, and Daniel Nugent. "Popular Culture and State Formation in Mexico." In *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico*, edited by Gilbert Joseph and Daniel Nugent, 3–23. Durham, NC: Duke University Press, 1994.
- Kaviraj, Sudipta. "A Critique of the Passive Revolution." In *State and Politics in India*, edited by Partha Chatterjee, 45–87. Delhi: Oxford University Press, 1997.
- Kaviraj, Sudipta. *The Imaginary Institution of India: Politics and Ideas*. Delhi: Permanent Black, 2010.
- Kaviraj, Sudipta. *The Trajectories of the Indian State: Politics and Ideas*. Delhi: Permanent Black, 2010.
- Kennedy, Duncan. "The Stakes of Law; or, Hale and Foucault." *Legal Studies Forum* 15 (1991): 327–66.
- Kohli, Kanchi, and Debyan Gupta. "Mapping Dilutions in a Central Law." Centre for Policy Research, working paper, September 25, 2017. [www.cprindia.org/research/papers/mapping-dilutions-central-law-o](http://www.cprindia.org/research/papers/mapping-dilutions-central-law-o).
- Litowitz, Douglas. "Gramsci, Hegemony, and the Law." *Brigham Young University Law Review* 2 (2000): 515–51.
- Ludden, David, ed. *Reading Subaltern Studies: Critical History, Contested Meaning, and the Globalization of South Asia*. London: Anthem, 2002.
- Mallon, Florencia. *Peasant and Nation: The Making of Postcolonial Mexico and Peru*. Berkeley: University of California Press, 1995.
- McCann, Michael. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press, 1994.
- Menon, Nivedita. *Recovering Subversion: Feminist Politics beyond the Law*. Ranikhet, India: Permanent Black, 2004.
- Morton, Adam. *Unravelling Gramsci: Hegemony and Passive Revolution in the Global Political Economy*. London: Pluto, 2007.
- Murali, Kanta. "Economic Liberalization and the Structural Power of Business." In Jaffrelot, Kohli, and Murali, *Business and Politics in India*, 25–49.
- Nielsen, Kenneth B. *Land Dispossession and Everyday Politics in Rural Eastern India*. London: Anthem, 2018.
- Nielsen, Kenneth B. "Law and *Larai*: The (De)Judicialisation of Subaltern Resistance in West Bengal." *Journal of Contemporary Asia* 45, no. 4 (2015): 618–39.
- Nielsen, Kenneth B., and Alf G. Nilsen. "Law Struggles and Hegemonic Processes in Neoliberal India: Gramscian Reflections on Land Acquisition Legislation." *Globalizations* 12, no. 2 (2015): 203–16.
- Nilsen, Alf G. *Adivasis and the State: Subalternity and Citizenship in India's Bhil Heartland*. Delhi: Cambridge University Press, 2018.
- Nilsen, Alf G. "For a Historical Sociology of State-Society Relations in the Study of Subaltern Politics." In *New Subaltern Politics: Reconceptualizing Hegemony and Resistance in Contemporary India*, edited by Alf G. Nilsen and Srila Roy, 31–54. New Delhi: Oxford University Press, 2015.
- Nilsen, Alf G. *Politics from Below: Essays on Subalternity and Resistance*. Delhi: Aakar, 2017.
- Nilsen, Alf G. "Trajectories of Change in the World's Largest Democracy: India, 2004–2019." *Mainstream Weekly*, October 13, 2018. [www.mainstreamweekly.net/article8314.html](http://www.mainstreamweekly.net/article8314.html).
- Nugent, David. *Modernity at the Edge of Empire: State, Individual, and Nation in the Northern Peruvian Andes, 1885–1935*. Palo Alto, CA: Stanford University Press, 1997.
- Omvedt, Gail. *Reinventing Revolution: New Social Movements and the Socialist Tradition in India*. New York: East Gate, 1993.
- Poulantzas, Nicos. *State, Power, Socialism*. London: Verso, 1978.
- Purushotham, Sunil. "Democratic Origins 3: Violence and/in the Making of Indian Democracy." In *Indian Democracy: Origins, Trajectories, Contestations*, edited by Alf G. Nilsen, Kenneth B. Nielsen, and Anand Vaidya, 39–50. London: Pluto, 2019.
- Rao, Anupama. *The Caste Question: Dalits and the Politics of Modern India*. Berkeley: University of California Press, 2009.
- Rawat, Ramnarayan, and K. Satyanarayana, eds. *Dalit Studies*. Durham, NC: Duke University Press, 2016.
- Ray, Raka, and Mary Katzenstein. "In the Beginning There Was the Nehruvian State." In *Social Movements in India: Poverty, Power, and Politics*, edited by Raka Ray and Mary Katzenstein, 1–31. Lanham, MD: Rowman and Littlefield, 2005.
- Ray, Raka, and Srila Roy. "Feminism and the Politics of Gender." In *Indian Democracy: Origins, Trajectories, Contestations*, edited by Alf G. Nilsen, Kenneth B. Nielsen, and Anand Vaidya, 151–69. London: Pluto, 2019.
- Ray, Rabintra. *The Naxalites and Their Ideology*. New Delhi: Oxford University Press, 2012.
- Roseberry, William. "Hegemony and the Languages of Contention." In *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico*, edited by Gilbert Joseph and Daniel Nugent, 355–66. Durham, NC: Duke University Press, 1994.
- Rothermund, Dietmar. "Constitutional Reforms versus National Agitation in India, 1900–1950." *Journal of Asian Studies* 21, no. 4 (1962): 505–22.

- Ruparelia, Sanjay. "India's New Rights Agenda: Genesis, Promises, Risks." *Pacific Affairs* 86, no. 3 (2013): 569–90.
- Samaddar, Ranabir. *Passive Revolution in West Bengal: 1977–2011*. New Delhi: Sage, 2013.
- Sanyal, Kalyan. *Rethinking Capitalist Development: Primitive Accumulation, Governmentality, and Post-colonial Capitalism*. New Delhi: Routledge, 2007.
- Sarkar, Sumit. *Modern India, 1885–1947*. London: Palgrave Macmillan, 1983.
- Sebastian, Manu. "How Has the Supreme Court Fared during the Modi Years?" *Wire*, April 12, 2019. [thewire.in/law/supreme-court-modi-years](http://thewire.in/law/supreme-court-modi-years).
- Sharma, Aradhana. *The Logics of Empowerment: Development, Gender, and Governance in Neoliberal India*. Minneapolis: University of Minnesota Press, 2008.
- Sharma, Aradhana. "State Transparency after the Neoliberal Turn: The Politics, Limits, and Paradoxes of India's Right to Information Law." *Political and Legal Anthropology Review* 36, no. 2 (2013): 308–25.
- Silbey, Susan. "After Legal Consciousness." *Annual Review of Law and Social Science*, no. 1 (2005): 323–68.
- Simon, Roger. *Gramsci's Political Thought: An Introduction*. London: Lawrence and Wishart, 2015.
- Sinha, Subir. "Development Counter-Narratives: Taking Social Movements Seriously." In *Regional Modernities: The Cultural Politics of Development in India*, edited by K. Sivaramakrishnan and Arun Agarwal, 286–311. Palo Alto, CA: Stanford University Press, 2003.
- Subramanian, Ajantha. *Shorelines: Space and Rights in South India*. Stanford, CA: Stanford University Press, 2019.
- Teltumbde, Anand. *Republic of Caste: Thinking Equality in the Time of Neoliberal Hindutva*. Delhi: Navayana, 2018.
- Thomas, Peter. *The Gramscian Moment: Philosophy, Hegemony, and Marxism*. Leiden: Brill, 2009.
- Thompson, Edward. *Whigs and Hunters: The Origins of the Black Act*. New York: Pantheon, 1975.
- Vaidya, Anand P. "The Origin of the Forest, Private Property, and the State: The Political Life of India's Forest Rights Act." PhD diss., Harvard University, 2014.
- Vaishnav, Milan, and Jamie Hintson. "The Dawn of India's Fourth Party System." *Carnegie Endowment for International Peace*, September 5, 2019. [carnegieendowment.org/2019/09/05/dawn-of-india-s-fourth-party-system-pub-79759](http://carnegieendowment.org/2019/09/05/dawn-of-india-s-fourth-party-system-pub-79759).
- Vanaik, Achin. *The Painful Transition: Bourgeois Democracy in India*. London: Verso, 1990.
- Vanaik, Achin. *The Rise of Hindu Authoritarianism: Secular Claims, Communal Realities*. London: Verso, 2017.
- Washbrook, D. "Law, State, and Agrarian Society in Colonial India." *Modern Asian Studies* 15, no. 3 (1981): 649–721.
- Williams, Raymond. *Marxism and Literature*. Oxford: Oxford University Press, 1977.
- Witsoe, Jeffrey. *Democracy against Development: Lower-Caste Politics and Political Modernity in Postcolonial India*. Chicago: University of Chicago Press, 2013.