

# Does democracy mean different things in India and Pakistan?

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*In the run-up to Pakistan's general elections on May 11, India At LSE publishes three posts reflecting on India-Pakistan bilateral relations and democracy in South Asia. Matthew Nelson starts the series by asking whether the relationship between democracy and the rule of law operates differently in non-western contexts like India and Pakistan.*

In this post, I consider whether 'democracy' might mean different things in different places—focusing, specifically, on the relationship between democracy and the rule of law. Is democracy grounded in elections or a particular understanding of 'justice' set apart from 'the rule of law'? Does this relationship operate differently in western contexts like the U.K. and non-western contexts like India or Pakistan? Does it operate differently in secular and Islamic states?



In my book, "[In the Shadow of Shariah: Islam, Islamic Law and Democracy in Pakistan](#)", I describe voters who call on their elected leaders to provide a very specific type of patronage—the provision of protection: political protection from the enforcement of existing laws. My work focuses on Muslim families who seek to prevent their daughters from controlling land they are entitled to inherit by a set of Quranic injunctions and, in Pakistan, by Islamic statutory laws. These Muslim families do not seek to change existing injunctions; they do not press for legal reforms. They simply try to ensure that, with the help of their political patrons, 'accountability' involves an effort to derail the consistent application of existing Islamic laws.

Beginning in 1948, Pakistan saw a push for Shariah law to replace the tribal 'custom' of female disinheritance. This was complicated, however, after 1980, when the promulgation of a new Islamic tax on agricultural production (known as *ushr*) changed the valuation of land. Owing to the lack of any strong agricultural income tax, the weak implementation of this *ushr*-based tax effectively reduced the tax on land. Land became increasingly valuable (owing to this lower tax burden), and brothers became even more reluctant to share 'ancestral' land with their sisters (particularly those who married outside their family home). Some women began to receive their Islamic shares 'on paper'. But, more often than not, their control over the land was limited.

While researching my book in the northern Punjab districts of Lahore, Sialkot and Sargodha, I found that, politically, the challenge for most politicians did not lie in promoting a more rigorous pattern of enforcement for existing Islamic

laws. Nor did it lie in any effort to amend the laws that local constituents considered irksome. Instead, elected officials were simply expected to massage the work of the district bureaucracy (including the district courts) in ways that might succeed in preserving the substance of tribal ‘customs’ and, more specifically, the integrity of ‘all-male’ estates.

Given the shape of existing postcolonial laws (i.e. Islamic laws), most of those who travelled to the district courts did not expect to ‘resolve their disputes’ in court. Instead, plaintiffs holding rather small plots of land simply *used* the inefficiencies of the courts to detain their opponents until, slowly but surely, a custom-friendly ‘compromise’ could be reached outside of the courts themselves. The logic of political society was not a legal logic; the logic of political society was a language of *safarish* or ‘connections’. Political accountability was the focus of *safarish*: ‘*accountability against the law*’.

Partha Chatterjee (2004, 2011) writes about similar practices in his work on *katchi abadis* in Kolkata—extremely poor squatter settlements where residents ask politically influential *dalals* (or middlemen) to negotiate with state officials in ways that protect their (illegal) homes from demolition. These residents do not seek to repeal or amend existing property laws. Instead, *katchi abadis* residents simply try to make sure that, for the sake of their survival, the law is not enforced.

Regarding the extent to which departures from ‘the rule of law’ point in the direction of democracy, I – unlike Chatterjee – maintain that, in South Asia (and everywhere else), ‘democracy’ exists whenever elected politicians make, amend, and enforce deeply contextualised formal laws. Politicians may decide to amend and enforce secular laws. They may decide to work with ‘religious’ laws. But, in each case *democracy itself depends on the rule of law*.

For scholars like Chatterjee, ‘arbitrary’ and ‘capricious’ forms of accountability are actually ‘democratic’ so long as they facilitate (however precariously) some form of survival for the poor. I argue that our understanding of democracy must set aside Chatterjee’s particularistic conception of ‘postcolonial’ or ‘Indian’ justice in favour of comparison-friendly democratic ‘procedures’—*procedures* within which electoral accountability and the rule of law are brought together to reflect a much wider range of historically contingent local values. Indeed, following Giovanni Sartori, I argue that a comparative approach to democracy cannot *define* ‘democracy’ in ways that overlap with culturally specific conceptions of ‘justice’. Democracy is a travelling concept; its substantive content is ‘thin’.

Chatterjee argues that most people (i.e. the poor) inhabit the domain of ‘political’ society—a relatively rough-and-tumble arena within which elected politicians are called upon to protect their constituents (informally) from the enforcement of existing laws. Indeed, elected elites facilitate the treatment of certain cases as enforcement ‘exceptions’, reflecting (for Chatterjee) a new type of ‘democratic’ accountability.

This ‘accountability’ does not involve a renegotiation of existing laws. It is, Chatterjee argues, simply arbitrary. Within ‘political’ society it is not the state-as-a-whole that declares which laws are enforced; instead, such decisions are left to individual officials wielding the power of the police (or the bureaucracy) according to their own judgement. Different people face different enforcement patterns. But for Chatterjee, this divergence does not stand in the way of ‘democracy’.

In Chatterjee’s argument, political leaders are held to account by local voters. It’s just that politicians do not focus their attention on legislation. In practice, their focus is on legal (*non-*)*enforcement*. In fact, politicians who press for consistent patterns of enforcement are described as unpopular. Favouring ‘consistency’ over ‘patronage’, they fail to win elections.

Chatterjee writes about India. But, as noted above, the patterns he describes are not at all unfamiliar in Pakistan. In Pakistan, just as much as India, voters seek to hold their representatives accountable for a certain ‘distribution of impunity’ in the face of irksome laws.

But again, this raises concerns about the ways in which a particular mechanism of survival – namely, ‘accountable’

impunity – might be described as ‘democratic’. Conceptually speaking, should ‘democratic’ patterns of survival be encouraged within or outside of the law?

It is, of course, quite ironic that Pakistani politicians, promulgating Islamic laws (only to help people avoid those laws, informally, in the context of their local constituencies), might emerge as such a good example of Chatterjee’s (India-centric) understanding of democracy. But of course this similarity merely points to the empirical scope of my disagreement with Chatterjee and his conceptualisation of ‘political’ society as ‘democratic’.

Conceptually, democracy is not defined by any particular type of law: secular law, Hindu law, Islamic law, and so on. Democracy is defined by electoral competition and an abiding commitment to ‘the rule of law’ itself. That law is made and remade over time owing to pressures associated with elections. But within each government, democracy itself is premised on the notion that laws will not be ‘arbitrarily’ enforced.

The substantive values that ‘fill in’ a travelling concept like democracy are not ‘thin’; they reflect a certain ‘thickness’ related to historically contingent local norms. Democracy may involve the distribution of patronage goods (including religious personal laws). But, conceptually, democracy is not in the business of providing privileged access to legal non-enforcement. *Democracy is not a synonym for despotism.*

Democracy is about supporting (or opposing) formal written laws—and, if opposing, mobilising others to rewrite them. Democracy is not about politically untouchable laws. Democracy is about interpreting and re-interpreting formal laws in ways the community can support. There is no difference, procedurally, between democracy in Pakistan, India, or the U.K. Substantively, however, a great deal of legal variation should be expected.

*Return to India At LSE this week for posts about India’s view of the Pakistani election and prospects for bilateral relations.*

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