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Deferred Emigrant Voting Rights in South Asia: Analyzing the Puzzle of Non-Enfranchisement in Competitive Regimes

Nathan Allen* 

Department of Political Science, St. Francis Xavier University, Canada

Erin Kinzie 

Department of Political Science, Carleton University, Canada

Ekta Singh 

School of Global Affairs, Dr. B. R. Ambedkar University Delhi, India

Abstract

Emigrant voting rights are a widely accepted practice, with over 140 countries recognizing the right of non-resident citizens to vote from abroad. The process of enfranchisement varies significantly across regions, however. The countries of South Asia depart markedly from global practices: legal adoption of emigrant voting rights occurred after other regions, recognition of voting rights often came through the judicial process rather than legislation, and when legal adoption occurred it has rarely followed up with timely implementation. Present theories of emigrant enfranchisement emphasize a bargain between the diaspora and political actors, in which voting rights are extended in exchange for some desirable action from citizens abroad, be it votes, economic resources, or some other service. These theories cannot account for the distinct trajectory of South Asian cases. Using a comparative area studies approach, we analyze both the politics of legal adoption and the politics of implementation, highlighting the important role state capacity and task complexity plays in frustrating a bargain between home-state elites and potential voters abroad. The challenges of incorporating large emigrant groups into political institutions shaped by the British colonial legacy have frequently thwarted the plans of leaders, even those with an interest in emigrant enfranchisement.

Keywords

Enfranchisement, Emigration, South Asia, Elections, Diaspora voting, Emigrant voting

Corresponding author:

* Email: nallen@stfx.ca

Introduction

Emigrant voting is the international norm; as of 2020, 127 countries have incorporated voters abroad in at least one election.¹ It is, however, rare in South Asia: only the region's smallest countries – the Maldives and Bhutan – consistently offer a mechanism for the electoral incorporation of the emigrants. This is puzzling. South Asian countries have sizable, economically valuable diaspora communities. There are regular competitive elections. Parties in favour of enfranchisement have governed. There is every reason to expect enterprising political actors to offer voting rights for those living abroad, either as a strategy to spur financial inflows or simply to gain new voters. Yet this has rarely occurred.

Why have most South Asian countries not effectively enfranchised their emigrants? We emphasize the importance of low capacity and task complexity in shaping the incentives of actors in competitive regimes. South Asian countries tend to have numerically large diasporas concentrated in non-democratic countries, requiring considerable diplomatic and bureaucratic effort to effectively enfranchise. Additionally, the prevalence of parliamentary systems and single-member districts means South Asian countries lack simple mechanism of institutional incorporation. Given resource constraints and low administrative capacities, ruling parties and electoral management bodies avoid committing themselves to emigrant enfranchisement. Political and bureaucratic inertia funnels emigrant demands into the judiciary, which frequently finds itself as the institutional actor leading enfranchisement efforts.

The paper proceeds as follows. Section II uses an inter-regional comparison to demonstrate the outlier status of South Asia, where non-elected actors play a crucial role in legal recognition of voting rights while parties and electoral authorities defer implementation. Section III reviews three prominent theories of emigrant enfranchisement, explaining why they cannot account for South Asian outcomes. Section IV hypothesizes that, in competitive regimes, low capacity and task complexity influence the preferences of actors vital to emigrant enfranchisement. Sections V and VI examine the politics of legal adoption and deferred implementation of emigrant voting rights, focusing on the actions and public statements of four actors: political parties, electoral authorities, the judiciary, and diaspora associations. Section VII offers reflections on South Asian dynamics, underlining limitations of the study and areas for further research.

The South Asian pattern of emigrant voting rights

Regional studies of emigrant enfranchisement are essential to the literature, allowing authors to sharpen concepts like strategic electoral interests (Wellman, 2021), institutional restrictions (Hutcheson & Arrighi, 2015), the stages of enfranchisement (Palop-García & Pedroza, 2019) and authoritarian enfranchisement (Brand, 2010). Where existing efforts have examined sub-Saharan Africa, North Africa, Europe, and the Americas, South Asia has yet to receive consideration, perhaps because the region's emigrant voters have yet to participate in elections.

We argue that, in relation to emigrant voting rights, South Asia is a region typified by deferred enfranchisement and judicialization. Contextualizing South Asian emigrant voting rights requires distinguishing essential steps in the enfranchisement process; namely, the legal adoption of rights (*de jure* enfranchisement) and the effective implementation of these rights (*de facto* enfranchisement).² Both are common globally; by 2020, *de jure* enfranchisement stood at 73% of all countries, while 63% had implemented these voting rights.

Figure 1 demonstrates regional variation exists in patterns of legal adoption and implementation.³ 88% of South Asian countries legally recognized emigrant voting rights by 2020, on par with Europe

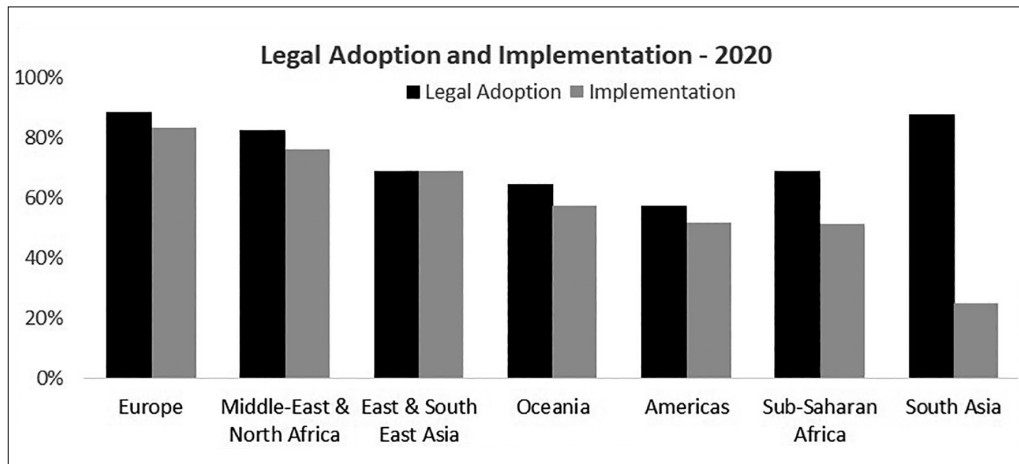


Figure 1. Emigrant Enfranchisement and Implementation (Data from Wellman et al., 2023)

(88%) and higher than the Americas (57%). However, South Asia’s rate of implementation diverges; only 25% of countries in the region implemented non-resident voting rights in the last election. In the Americas, the region with the lowest rate of legal adoption, 51% of countries implemented in the last election. South Asia had more than 60% gap between the percentage of countries adopting rights and implementing rights; Sub-Saharan Africa, the region with the next largest adoption-implementation gap, has a difference of 18%.

South Asia, then, stands out as a region with an average level of legal adoption and an abnormally low level of implementation. This is partially attributable to the second distinctive regional dynamic: legal adoption of emigrant voting rights that lag the global norm. The global average year of legal adoption is 1995, around the peak of the “third wave” of democracy. In South Asia, the average year of adoption is 2010, 15 years later than the global average and 10 years later than the next closest region (Sub-Saharan Africa: 2000).

Beyond lagged adoption and deferred implementation, a third dynamic sets South Asia apart: the central role non-elected officials play in the recognition of emigrant voting rights. While the process of enfranchisement takes multiple steps, the first act of legal recognition is important as it shifts the public debate from a normative to a regulatory issue. In most cases (70%), initial recognition of emigrant voting rights occurs via legislation, though legal adoption through constitutional amendments and executive decrees are also common (14% and 8% respectively) (Allen & Wellman, 2024). Notably, judicial rulings are the dominant pattern in South Asia, encompassing almost half (43%) of the seven legal adoptions in the region. Outside of South Asia, only 4% of legal adoptions worldwide occurred due to judicial rulings.⁴ Including Afghanistan’s enfranchisement led by international actors following the 2001 fall of the Taliban, 4 of 7 (57%) of enfranchisement processes in South Asia were led by non-elected actors. The disproportionate role of the judiciary in South Asia makes it one of the only two regions where non-elected actors led most enfranchisement processes. In South Asia, only the Maldives and Bangladesh approach the global norm of enfranchisement via legislative act, and the latter was itself spurred by judicial decisions.

South Asia, then, provides a distinct pattern in terms of emigrant enfranchisement. Legal adoption occurred well after the establishment of global norms. The judiciary played a disproportionately important role in first recognizing emigrant voting rights. Even when legal

adoption occurs, countries do not implement these rights, or at least take an abnormally large number of electoral cycles to implement.

Theories of emigrant enfranchisement

How can we explain the South Asian pattern? The existing literature offers some clues, though no convincing answers to the question. Lafleur (2015) identifies three broad explanations for the extension of voting rights to emigrants. In the first, “diaspora governance” approach, enfranchisement is one piece in a broader state strategy to manage relations with external migrants (cf: Brand, 2010; Gamlen, 2014; Itzigsohn, 2000). State actors view diasporas as potentially valuable assets, providing the state with economic resources and influence abroad. To elicit loyalty and cooperation from the diaspora, states offer a suite of policies, including (but not limited to) dual citizenship, specialized diaspora agencies, and voting rights. Diasporas, for their part, use their leverage to actively pursue expanded rights and services through home-state lobbying.

These state-diaspora dynamics are familiar to South Asia. Compared to other regions, South Asian economies are dependent on remittance flows (see Figure 2). Countries in the region adjust policies and structures to support their diaspora, starting with regulating legislation in the 1980s (e.g. Sri Lanka Bureau of Foreign Employment Act, 1985) to establishing ministerial-level units in the 2000s (e.g. Ministry of Expatriate’s Welfare [Bangladesh]). Although dual citizenship is not common, Pakistan launched its National Identity Card for Overseas Pakistanis program while its neighbour devised the Overseas Citizenship of India (Naujoks, 2013; Qaisrani, 2020). Diaspora groups, for their part, advocate for emigrant voting, though in this policy area the judiciary – rather than the government – has been most responsive.

A second “democratization” approach focuses on the electoral calculations that motivate enfranchisement decisions. In short, effective enfranchisement occurs when self-interested political actors seek to improve their electoral prospects through the incorporation of new voters

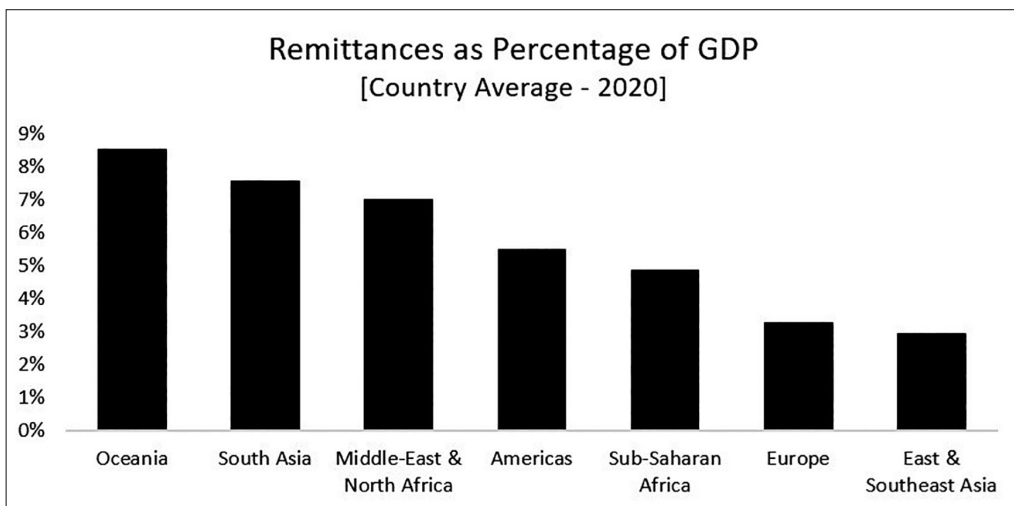


Figure 2. Remittances as Percentage of GDP (Data from: Remittances as Percentage of GDP (Data from World Bank Development Indicators, 2022))

(Wellman, 2021). There are risks. The preferences of potential voters abroad are not always known (Hutcheson & Arrighi, 2015). Depending on the form of institutional incorporation in a country, enfranchising new voters can disrupt familiar electoral dynamics via “tipping” (providing decisive votes in close races) or “swamping” (overwhelming the votes of resident citizens) (Bauböck, 2006). The risks and opportunities of emigrant enfranchisement, then, depend on the perceived alignment of the voting bloc as well as its relative size. Systems with high levels of democratic contestation and government turnover are thus likely to produce conditions for both the legal adoption and implementation of voting abroad.

Though South Asia has both contestation and turnover, emigrants remain effectively disenfranchised. Despite their economic contribution, the size of South Asian diasporas proportional to the population is small (see Figure 3), thus the risk of enfranchisement is modest. From a comparative regional perspective, South Asia sits in a middle position on most democracy measures. For example, with a 5-year average Polity score of 4.5, it sits lower than Europe (8.7) and higher than Middle East and North Africa (-2.1). This reflects in 2018 the middling position of the countries, which tend to avoid both long periods of extreme dictatorship and sustained liberal democracy. Since 1990, South Asia experienced higher rates of executive-level turnover (5.6) than any other region, providing plenty of opportunity for new actors to pursue new policies.⁵ Even when parties publicly supportive of voting abroad hold power, they have not implemented. In one case of sustained implementation – the Maldives – the extension of voting rights initially occurred under a government facing a hostile diaspora; in Bhutan, the electoral authorities made the key decisions on both enfranchisement and implementation. Electoral calculations are present in the region, though have rarely determined outcomes.

A third approach explains enfranchisement in terms of the spread of global norms (Rhodes & Harutyunyan, 2010; Turcu & Urbatsch, 2015). The rapid expansion of emigrant voting starting in the 1980s strongly suggests a pattern of norm diffusion. Diffusion could take place via emulating successful peers – which tend to be neighbours (Turcu & Urbatsch, 2015) – or as a mechanism to signal compliance to international norms. Signaling is most important for recently reformed regimes looking to solidify their democratic bona fides. The signaling mechanism has the virtue of explaining restrictive enfranchisement: since the purpose of actions is to please international

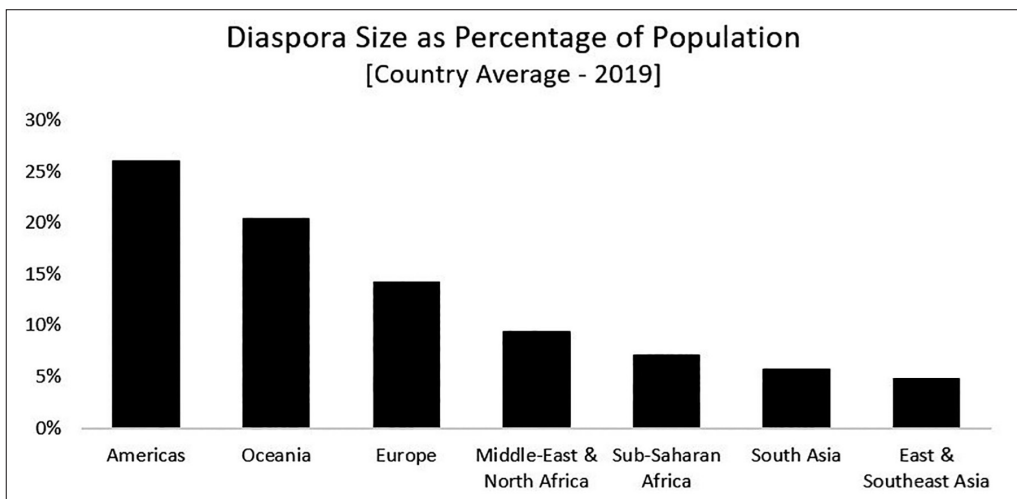


Figure 3. Diaspora size as percentage of population (Data from UN [2019])

actors, either non-implemented legislation or symbolic implementation may suffice.

Global norms certainly influence South Asian outcomes. Enfranchising actions do tend to occur following periods of regime reform. Afghanistan first extended emigrants voting rights via international treaty and an intergovernmental organization implemented its voting abroad. Courts in Nepal, India, and Pakistan all reference international practices. What makes South Asia distinct is the light touch international norms have on politicians and electoral authorities. Indeed, as discussed below, the latter occasionally cite regional practices when publicly explaining their lack of action.

All three existing approaches provide insight into the dynamics of enfranchisement in South Asia but cannot account for distinct set of outcomes discussed in Section II. The idea of exchange underpins all explanations: an actor (state, party, country, etc.) offers the diaspora voting rights in return for something of value (economic resources, votes, loyalty, international legitimacy, etc.). This gets us only so far. The next section refocuses our attention on the administrative costs and risks of enfranchisement.

Capacity, complexity, and competitive regimes

South Asia is characterized by three factors – low capacity, high task complexity, and competitive regimes – that, when combined, make emigrant enfranchisement less likely. The first factor is low capacity, or the hobbled ability of the state to perform core functions. The task of registering emigrants across the globe and providing them a mechanism to vote requires considerable “extractive capacity” – the capability to mobilize resources – and “administrative capacity” – the capability to develop and deliver policy. Compared to other regions, South Asia has the second lowest mean and median “Capacity” scores, behind only sub-Saharan Africa (Hanson & Sigman, 2021). The material resources and administrative competencies required to conduct elections abroad are in short supply.

The second factor is high task complexity, defined in this instance as the technical challenge of incorporating citizens abroad into existing institutions. While all voting abroad requires some projection of capacity beyond borders, there are institutional and demographic factors that can make the task laborious and costly. Two elements of the demographic context hinder enfranchisement. The first is simply size; while South Asian diasporas are small in proportional terms, this is partially driven by the demographic magnitude of the country’s populations; 3 of the 8 most populous countries in the world are in South Asia. In terms of raw numbers, these countries generate large diasporas: Bangladesh: 7,835,152; India 17,510,931; Pakistan: 6,303,286 (UN, 2019). Large diasporas complicate voting modality options; where most low capacity countries rely on in-person voting at diplomatic offices, this becomes unwieldy when dealing with hundreds of thousands – or millions – concentrated in one country. The demographic challenge is compounded when emigrants live in illiberal autocracies that impose restrictions on political activities. South Asian diasporas are concentrated in Gulf states, requiring sensitive diplomatic efforts on the part of home countries to facilitate campaigning and large-scale voting.

Institutional complexity makes the demographic-driven complexity more difficult. Votes from abroad must be incorporated into a country’s institutional framework. Although there is considerable intra- and inter-regional variance in colonial legacies, in terms of national political institutions, British rule left an institutional inheritance that increases complexity in three important ways. First, the parliamentary systems countries were left with – and most continue to use – limit incorporation options. Presidential elections have lower complexity in terms of incorporating non-resident voters. Executive contests typically have one nation-wide district

and one common ballot. There is no need to coordinate with constituencies for registration or counting. The logistical challenge of incorporating emigrants into legislative elections leads many presidential countries to avoid the costs of doing so. Approximately 30% (28 of 93) of countries with presidential systems offer emigrants the vote in executive elections but not legislative elections. Lacking direct presidential elections, most South Asian countries must tackle high complexity means of incorporating emigrant voters.

A second factor increasing complexity is single member district plurality (SMD-P) electoral systems, which complicate both voter registration and election modality. In the British political tradition, citizens register and vote in the electoral district in which they reside (“ordinarily resident”), and the terminology can still be found in regional electoral laws (e.g. Pakistan’s Electoral Rolls Act of 1974). Registration rules integrate the voter into the system at the constituency level. The large number of constituencies in SMD-P systems compounds the complexity. Each constituency has its own candidates and distinct ballots that must be provided to voters abroad. Even where a central electoral authority exists to receive ballot requests, it still must coordinate registration and counting with constituency-level actors. The number of actors involved is particularly high in large countries; India, for instance, has 543 seats, Bangladesh 300, and Pakistan 272 directly elected seats. Other large countries with proportional systems simplify the process by incorporating voters abroad into one district (typically the national capital). This procedure simplifies the process and reduces coordination costs, an option not available to most South Asian countries.

Third, South Asian countries tend to have tight election timelines. Elections occur after the dissolution of parliament. Candidates must be registered and ballots printed before any election material can be sent abroad; however, election administrators and parties lack fixed election dates, which hampers their ability to prepare candidates and materials long before the election. Official campaign periods range from 55 (Pakistan) to 108 (Nepal) days. However, there is a consistently short period of time between the publishing of candidates and the beginning of the voting process. India and Pakistan provide approximately 30 days between finalization of candidates and election day; in Nepal, the final closed list for candidates was not published until November 19, 2017, one week before the first phase of voting began. Consistent with what we know about the difficulties of enabling displaced populations to vote (e.g. Grace & Mooney, 2009), time constraints restrict enfranchisement options.

The mix of high complexity and low capacity shape actor preferences in a competitive regime context. Even where countries fall short of the “full democratic package” such as the protection of rights, elections are the main mechanism for selecting leaders and replacing incumbents and integrity remains important. Those actors with responsibility for running elections – election management bodies and incumbent parties – face costs and risks in implementing voting rights for emigrants. Where actors in non-competitive regimes have leeway to run deeply flawed elections, electoral integrity risk influences actors in a competitive regime. These actors prefer running elections that meet standard levels of legitimacy, both domestically and internationally.

These elections are often conducted with limited resources in challenging environments. The most basic cost of enabling voting abroad is simply the resources required to accomplish a complex task. As important, but less tangible in dollars and cents, is the perceived electoral integrity risk that comes with enfranchising a difficult-to-monitor electorate. Logistical problems extending the vote to residents living abroad could mar an otherwise standard election management performance. Even political actors who perceive emigrants as a potential voting bloc while sitting in opposition are liable to have their enthusiasm for enfranchisement tempered once they are responsible for overseeing elections. Patterns of reticence among key actors leaves the task of spearheading emigrant enfranchisement to actors with less direct responsibility for

overseeing direct elections, such as the judiciary.

No one of these factors on their own would produce the outcomes we see in South Asia. Emigrant voting is the norm in competitive regimes. Furthermore, low capacity countries like Senegal and Kyrgyzstan run elections abroad, as do high task-complexity countries with British institutions such as Australia and Malaysia. However, the combination of these three factors – low capacity, high complexity, and competitive regimes – generate a political dynamic that can partially account for South Asia’s key puzzles; namely, the prevalence of non-elected actors leading legal adoption that lags the global norm and produces deferred implementation.

In highlighting the interlocking importance of capacity, complexity, and competitive regimes, we are developing a hypothesis generated from our study of South Asia. Broadly speaking, we are engaged in comparative area studies, inspired by the observation that the “fluid concept of globalisation has to be grounded in area studies” (Basedau & Köllner, 2007, p. 107). Where Section II uses the inter-regional comparison to highlight a distinct South Asia trajectory with regards to emigrant voting rights, Sections V and VI use intra-regional comparison to verify common actors and processes. These are not meant to be complete accounts, but concise narratives based on the public record that stress relative importance of our hypothesis while reviewing the theoretically relevant non-importance of other factors (e.g. electoral interests). Below, we provide a short overview of both the politics of legal adoption and the politics of deferred implementation to illustrate the dynamics discussed.

Politics of legal adoption

There have been three judiciary-led legal adoptions. In all three, major parties championed emigrant voting rights, with varying levels of enthusiasm. Partisan support was broadest in Pakistan. Following almost a decade of rule by Pervez Musharraf, competitive elections in 2008 brought to power Pakistan People’s Party [PPP]. Benazir Bhutto’s exile strengthened her ties to the diaspora, though no mention of overseas voting rights appears in PPP’s 2008 Manifesto (PPP, 2008.). Prime Minister Yousaf Gillani placed the issue on the agenda, telling a diaspora audience in Saudi Arabia that the new government would pursue enfranchisement (The News, 2009). This commitment spurred the formation of a ministerial committee, headed by the Chief Election Commissioner, to study the subject. Following some initial pushback from the Election Commission, the committee reached an agreement in principle on the enfranchisement of Pakistanis abroad (Dawn, 2010; The News, 2011). In the lead-up to the 2013 election, the incumbent PPP placed emigrant enfranchisement in its party manifesto, though they did not pursue legal change (PPP, 2013, p. 32).

The PPP-led process was not moving fast enough for Imran Khan, leader of Pakistan Tehreek-e-Insaf [PTI]. Though still a minor party, PTI enjoyed a strong diaspora support. Consistent with his reformer image, and not to be outdone on diaspora issues, Khan and PTI joined a lawsuit on behalf of Pakistanis abroad seeking to force the issue. The court sided with the petitioners and ordered authorities to facilitate emigrant voting (Supreme Court of Pakistan, 2013). Whether for reasons of principle or vote seeking, Khan kept the pressure on the government throughout 2013 and PTI included the issue in its platform (PTI, 2013). The government delayed issuing Ordinance addressing the issue until 2 days before the election, leaving emigrants de facto disenfranchised for that election cycle (Government of Pakistan, 2013).

Where emigrant enfranchisement in Pakistan enjoyed partisan champions, Indian parties have been comparatively circumspect. The Bharatiya Janata Party [BJP] positioned itself as responsive to diaspora issues, with manifestos promising to “nourish the umbilical link between all people

of Indian origin” (cf. BJP, 2004, p. 208). In office, the party reformed citizenship laws, offered new benefits for people of Indian origin living abroad, and institutionalized the celebration of this community through *Pravasi Bharatiya Divas*, all accomplishments it featured during campaigns (BJP, 2009). However, BJP’s position on voting rights for non-resident Indians [NRIs] remained ambiguous. They proposed steps enabling voting abroad, such as expanding proxy voting (BJP, 2004, p. 40); their official platform did not contain promises of support for emigrant voting, though.

The Indian National Congress’s [INC] position on the issue was also ambiguous. Long the country’s dominant party, Congress’s economic policies frequently drew NRI ire. Increasingly competitive politics correlated with a warming to diaspora concerns. Party manifestos packaged diaspora relations in terms of economic and educational reforms along with improved consular services (e.g. INC, 2014). Notably, a Congress-led government first moved to reform residency rules facilitating NRI incorporation, drafting a 2006 bill adjusting the meaning of “ordinarily resident.” This eventually culminated in an amendment to the electoral law providing a subset of NRIs the right to register and vote, providing they physically return to their home constituency (Government of India, 2010). Prime Minister Manmohan Singh publicly recognized the “legitimate desire of Indians living abroad to exercise their franchise and have a say in who governs India” but cited bureaucratic challenges in implementing this vision, calling the country a “slow moving elephant” (Times of India, 2010). The Amendment’s “Statement of Objects and Reasons” stresses the issue of task complexity, explaining that NRIs would not be permitted to vote from abroad due to “certain practical difficulties in enrolling them in the electoral rolls of the concerned constituency and allowing them to cast their votes from outside India within a short span of time available in the election process” (Government of India, 2010).

In 2013 and 2014, NRIs filed several petitions requesting that the government extend them the right to vote from abroad. These petitions originated from the activism of *Pravasi Bharat*, a London-based NRI civil society group. Unlike in Pakistan, the petitions maintained no clear partisan ties. The Supreme Court agreed with the petitioners. Acknowledging the practical difficulties, the Court instructed the Electoral Commission to form a committee to study the issue and recommend practical options (ECI, 2014). In effect, the Court recognized the right to vote from abroad but avoided ordering a specific modality of implementation.

Nepal echoes dynamics from the Pakistani and Indian cases. Like Pakistan, emigrant voting rights were placed on the agenda during a democratic opening. In 2008, Nepal conducted its first competitive elections in nine years and the Electoral Commission began a feasibility study emigrant (The Record, 2017). The Commission conducted a study trip to Gulf countries in 2012 to examine the logistics of emigrant enfranchisement. Parties, for their part, ranged from benign neglect of the issue to open support. During the lead up to the 2013 election, parties sent representatives to the Non-Resident Nepali [NRN] Association conference to “vow goodies in return for capital” (The Kathmandu Post, 2013). Maoist Chairman Pushpa Kamal Dahal, Nepal’s recurrent Prime Minister, told the conference “Although we were unable to provide voting rights to NRNs for the upcoming Constituent Assembly election due to time constraints, we assure them of their right to vote in other national elections.” The Maoists held this line consistently, with former Prime Minister Baburam Bhattarai declaring in 2017 that Nepalis living abroad should also be able to vote (Nagarik News, 2017).

Despite proclamations by former Prime Ministers, politicians did not enact changes in office. Initiative for reform passed to the Election Commission, which dragged its feet on the issue, repeatedly promising to enfranchise emigrants during the next election (Online Khabar, 2013; Sharma, 2017). Logistical issues loomed large. Former Chief Election Commissioner Neel Kantha Uprety explained “Nepal does not have adequate resources and we face administrative

hassles” (The Record, 2017). Ayodhee Prasad Yadav, Chief Election Commissioner in the lead up to the 2017 votes, emphasized demographic challenges, noting “Nepalis are living in 110 countries. It is difficult and costly to register all of them and ensure voting rights” (The Record, 2017). Though supportive of emigrant voting in principle, politicians refrained from publicly pushing the Election Commission on the issue.

The Supreme Court did not share the reticence of the politicians. Like India, civil society pushed forward their claims in the legal system without the sponsorship of a significant party. Prem Chandra Rai, a Kathmandu School of Law professor who served as the executive director of the Law and Policy Forum for Social Justice, filed the case at the behest of migrant workers. In its decision ordering the government to expand voting to emigrants, the court spent considerable attention reviewing international practices and standards, suggesting global norms influenced their decision-making (Supreme Court of Nepal, 2018).

Where the judiciaries in Pakistan, India, and Nepal played a central role in recognizing rights, in Bangladesh it acted as a catalyst for eventual legislative reform. In 1995, on behalf of the UK-based Bangladeshi Voting Rights Movement Central Council, Ali Reza Khan petitioned the Bangladeshi court for the right to inclusion on the voter list (Bdnews24.com, 2007). In 1997, the court sided with Khan, though the decision dealt narrowly with registration for non-residents and did not address the broader issue of voting from abroad (Bangladesh High Court, 1997).

Sheikh Hasina, the Prime Minister at the time of the ruling, was sympathetic to Bangladeshi’s abroad requesting the vote. Following the ruling, she requested an assessment from the Law Commission on the legality of voting abroad and the steps necessary to pursue this potential objective (Khasru, 2017). The retired justices recommended the government extend the vote to Bangladeshi’s abroad, but by that point Hasina no longer held power (Law Commission of Bangladesh, 2001).

Regime instability opened a window for renewed efforts. In 2006, a caretaker government took power to oversee upcoming elections. A dispute over electoral procedures led Hasina’s Awami League to announce a boycott of the contest, prompting unrest and a military-backed state-of-emergency. The caretaker prime minister, Fakhruddin Ahmed, publicly backed emigrant enfranchisement, though took no clear actions (Khasru, 2017). The Awami League and its allies were known to support enfranchisement (Bdnews24.com, 2007). Shafiqur Rahman Chowdhury, President of the Bangladesh Welfare Association and Overseas Union, pressed all to make the necessary reforms, stating “The court has given verdict in favour of making the expatriates voters. We fail to understand why the expatriates are not being enrolled as voters. So, we now don’t have any alternative but to go for a tough movement” (Bdnews24.com, 2007).

The pressure worked, but not in time for the 2008 election. Hasina’s Awami League won the contest and quickly moved to revise the relevant legal framework. A change to the Representation of the People Order in 2009 allowed postal voting from abroad in Article 27(1c) [1]. The Electoral Roll Ordinance was also re-written and amended between 2009 and 2010 to recognize eligibility as pertaining to the last residence in Bangladesh. These reforms put in place the basic legal framework for voting from abroad.

The politics of legal adoption in the Maldives diverges from the previous cases in many ways; however, one familiar feature is the emergence of the issue during a period of regime crisis. The long serving president Maumoon Abdul Gayoom faced violent unrest in 2003, accompanied by growing calls for political reforms. Though the regime held regular elections it prohibited political parties and repressed organized opposition activity. In the wake of the 2003 unrest, the opposition Maldivian Democratic Party announced its existence from exile in Sri Lanka (Fernando & Singh, 2019).

Gayoom responded to the unrest with reform. Among other actions, he took up an offer from

the Commonwealth for assistance devising new electoral laws. The eventual report recommended a sweeping set of changes, most notably an independent electoral commission and rules for political party formation. Though not a top-line item, the report noted the lack of provisions for voting from abroad and recommended enfranchisement via postal voting (Turner, 2004, pp. 18–19). The opposition stood likely to benefit from such a reform, given its support base abroad; their support in the diaspora has held strong for more than a decade (Fernando & Singh, 2019). Despite Gayoom’s supporters controlling the legislature, the eventual reform package ended up enfranchising emigrants.

Bhutan’s enfranchisement occurred with little fanfare and, unlike most of its neighbours, no protracted political debate. Bhutan experienced a gradual democratization process that culminated with elections in 2007 (Turner et al., 2011). Rules written in 2008 did provide limited, albeit partial, access to the ballot for Bhutanese abroad. Voting rights abroad were explicitly limited to privileged groups: diplomatic staff and families, Armed Forces members, civil servants, and students. One clause opened the potential for broad enfranchisement, offering the vote to “Any other group of voters as specified by the Election Commission in consultation with the Government” (Government of Bhutan, 2008). In effect, this left the decision up to the prerogative of the electoral authorities.

The Election Commission chose to exercise its prerogative in the lead up to the 2013 election. Reportedly, the government received requests for ballots from Bhutanese living in New York City. Then Prime Minister Thinley supported this request which the Election Commission opted to accommodate “given the small size of Bhutanese electorate” (Election Commission of Bhutan, 2012). Similar regulation was released prior to the 2018 election.

As of 2020, only Sri Lanka had not extended *de jure* voting rights to emigrants.⁶ Sri Lanka’s institutional framework – particularly a presidential contest and proportional representation – lowers the complexity of incorporation, making enfranchisement more likely according to the hypothesis advanced above. Sri Lanka’s hesitancy to enfranchise reflects vote seeking concerns of incumbents. The composition of the diaspora weighs heavy on calculations. Conflict migrants – specifically ethnic Tamils – constitute a significant portion of Sri Lanka’s overseas population. In the 2000s, initiatives to enfranchise emigrants connected to broader efforts to resolve the domestic conflict or mitigate the negative effects on displaced persons (IOM, 2006). International actors have often been involved in mediating and monitoring efforts though have been cautious when pushing the issue of voting abroad. In 2005, for instance, a Commonwealth observer mission noted the lack of facilities for voting abroad explained in their conclusions that “The issue of whether they should have voting rights is sensitive and there are several dimensions which need to be considered” (Commonwealth Secretariat, 2005, p. 29).

As Collyer (2014) argues, Sri Lanka’s Sinhalese parties do not have an electoral incentive to enfranchise a disproportionately Tamil diaspora. Beyond the mere demographics, there is a perception that Tamils abroad are more hardline than those in Sri Lanka. International Crisis Group (2010, p. i) notes, “most Tamils abroad remain profoundly committed to Tamil Eelam, the existence of a separate state in Sri Lanka. This has widened the gap between the diaspora and Tamils in Sri Lanka.”

Despite the demographics, there have been intermittent efforts by Sinhalese politicians to enfranchise emigrants. Milinda Moragoda’s short-lived Sri Lanka National Congress party led an enfranchisement effort in 2010 (Asian Tribune, 2010). Civil society organizations have been crucial in keeping the issue on the agenda. Enfranchisement of migrant workers was included in the 2011–2016 National Action Plan for the Protection and Promotion of Human Rights (Government of Sri Lanka, 2011). This provided momentum for migrant’s rights associations; lobbying pushed the parliament to appoint a select committee to study the issue (Times of Oman,

2016; UCA News, 2016). The Electoral Commission expressed optimism logistical issues would not serve as a barrier. Chief elections commissioner Mahinda Deshapriya noted at the time that regional experiences were of interest, explaining “We are closely following what India is doing...There are several models we are currently looking at” (Sri Lanka Foundation, 2016). Anticipating a reform, the electoral commission included the implementation of voting abroad into its Strategic Plan: 2017-2020 (Election Commission of Sri Lanka, 2017).

The momentum petered out, however. More than a year after its establishment with broad partisan support, the parliamentary committee had yet to submit a report. Issues of election security, combined with the demographic factor, gave the politicians cold feet. As an election commissioner explained, “The system of electronic voting can be misused especially by the Tamil diaspora since their number is very high in Europe...A large Tamil diaspora may even influence the final results of any election in future” (UCA News, 2017). The select committee turned its attention to mechanisms limiting the scope of the enfranchisement. One included a sunset clause, requiring voters abroad to visit the country at least once during a 5-year period (Wickramasinghe, 2019). This would potentially block the registration of conflict migrants while still including migrant Sinhalese workers. Another more direct form of exclusion studied by the committee was simply to limit the vote to those fulfilling certain professional requirements. While committee members floated options, they did not submit a report and had yet to do so by 2020, when Prime Minister Mahinda Rajapaksa announced intentions to pursue amendments allowing voting abroad (ColomboPage, 2020).

The politics of deferred implementation

Adoption of emigrant voting rights has rarely led to timely implementation. In only the smallest countries – the Maldives and Bhutan – has implementation been both speedy and sustained. In Bhutan, procedures have become more inclusive over time, but logistics hamper implementation. The initial Bhutanese enfranchisement of emigrants was geographically restrictive, limited to only those living in the United States. New regulations in 2018 expanded the scope to Bhutanese in any country. This expansion has met with timeline problems, however; there are approximately three weeks in which applications can be received, ballots distributed, and marked ballot returned. Even though few Bhutanese abroad registered in 2018 - only 3,568 in the primary round – election officials deemed the late arriving postal ballots “a major problem” (Kuensel, 2018).

Maldives has had more success. In 2008, the Electoral Commission made provisions for voting from abroad, opting for in-person voting in select locations with a “large Maldivian population, a Maldivian High Commission, and direct flights from the Maldives” (Minivannews.com, 2008). Elections Commissioner Mohamed Ibrahim explained the limited locations, noting “We’ve got a short period before elections and we have to be prepared for a second round as well, so we found the best four places” (Minivannews.com, 2008). A polling station in London was added in the second round (EIDHR, 2009). The 2013 elections saw voting in the same five countries (United Kingdom, India, Malaysia, Sri Lanka, Singapore) with expanded geographic coverage in India (New Delhi in addition to Thiruvananthapuram). In that contest, Abdulla Yameen of the Progressive Party of Maldives defeated Mohamed Nasheed of the MDV. In the run-up to the 2014 parliamentary elections, the Supreme Court sacked the top officials in the Election Commission. The geographic scope of overseas polling booths dropped, with Singapore and the UK cut from the list (Xinhua, 2014).

2018 witnessed a contentious election between incumbent Abdulla Yameen and Ibrahim Mohamed Solih of the opposition MDP. Foreign election observers criticized the government for

a lack of transparency and various forms of electoral manipulation (ANFREL, 2018). Notably, though, the campaign abroad was hard fought. Solih visited Sri Lanka, Malaysia and India while Yameen's Vice-Presidential candidate Dr Mohamed Shameem visited Sri Lanka and Malaysia (Khandekar, 2018). The PPM announced a "Colombo Manifesto" targeting voters in Sri Lanka "a 21-promise plan, including low-cost flights, sports facilities and a mosque" (Public Service Media, 2018). While the election itself was widely viewed as flawed, both sides continued to treat voting abroad as an established practice, demonstrating the 'stickiness' of a recent institutional innovation.

High task complexity has played a role in slowing implementation in the rest of South Asia. When making its ruling enfranchising voters abroad, the Indian Supreme Court recognized the technical challenges and ordered the Elections Commission to investigate the issue. Even those sympathetic to diaspora issues voiced worries about technical issues. The Bahujan Samaj Party [BSP] noted "it has to be kept in mind that [postal voting] may not be a viable option so far as the overseas electors are concerned... Since such ballot papers may not be able to reach well within time" (ECI, 2014, p. 19). The BSP listed further problems with other methods. The BJP, for its part, urged "maximum registration of NRIs in the electoral rolls by way of special drive involving the Indian embassies" but cautioned that postal vote may not work due to "logistical challenges and time constraints" (ECI, 2014, p. 19).

The committee eventually endorsed a proposal allowing ballots to be electronically sent to non-residents and physically returned through the mail. The court accepted the proposal, instructing the government to act on the recommendations within eight weeks. The government stalled, sitting on the issue into 2017. That summer, the chief justice admonished the government, complaining, "This is a petition of 2014. Every year you keep saying 'we will amend'. You said this in 2014, 15, 16 and again ... this is not the way your government runs." (Nair, 2017). The government responded by proposing a proxy vote system (The Indian Express, 2017). This was broadly consistent with the committee's report, which noted that proxy voting would solve the issue of "time constraint" if proxies could be appointed at any time (ECI, 2014). The bill passed the Lok Sabha but not the Rajya Sabha, preventing implementation in 2019. With proxy voting proposals stalled, the Electoral Commission resurrected the hybrid postal ballot concept, which they claimed would require no additional regulation (Chopra, 2020).

Where foot dragging in India came from the ruling party, in Pakistan the electoral commission slowed the process. Following the court's decision requiring enfranchisement of emigrants in April 2013, the electoral commission complained it did not have enough time to prepare for the May 11 election (Commonwealth Secretariat, 2013). The court accepted this explanation, and the government and electoral commission took no immediate actions to prepare for the May 11 election. The authorities were reluctant to publicize their decision, however, leaving consular officials without orders as fake websites sprung up promising migrants a mechanism to vote (Khan, 2013). A Presidential Ordinance to regulate voting abroad was announced two days before the election.

The Elections Commission of Pakistan [ECP] continued to publicly commit to pursuing voting abroad. In July 2015, they created a Directorate of Research for Overseas Voting (PILDAT, 2015). The electoral commission also announced the formation of a multi-partisan committee, under the Director General, to examine the issue (Wasim, 2015). However, they did note the significant logistical problems, including potential restrictions on campaigning in Gulf countries and the opportunity for constituency-level fraud. The commission advised caution, warning "a minor error could sabotage the whole electoral exercise." (Khan, 2015). Later that year, however, the ECP announced they would be unable to implement voting abroad for 2018 (Khan, 2015). Their test trials of the voting process had revealed significant hurdles, including (but not limited

to) allowing for timely delivery of ballots and prompting constituency offices to send ballots to the correct addresses. The ECP explained that “even India had been unable for the last one year to allow its nationals living abroad to poll their votes due to a number of technical and legal reasons” (Wasim, 2015).

The Supreme Court received a wave of petitions. The parliamentary sub-committee on electoral reforms shifted increasing responsibility for implementing overseas voting to the National Database and Registration Authority (NADRA), which struck an optimistic tone (Dawn, 2016). No concrete plan emerged by early 2018, despite an impending election. Responding to the petitions, the Supreme Court again ordered both NADRA and the ECP to develop a mechanism for voting abroad (EOM, 2018). The two authorities formed an “I-Voting Solution” taskforce to study the issue (The Express Tribune, 2018). They persuaded the court they would require time to implement electronic voting and would be unprepared for the July 2018 election. The ECP stressed potential election integrity issues associated with a failed rollout, noting, “electoral improprieties in the overseas voting process (or even the impression of such) can potentially lead to political deadlock and turmoil” (ECP, 2018a, p. 4). The incumbent PML-N and opposition PPP agreed, though their assessment was coloured by electoral expectations (Mahmood, 2018). Electronic voting was implemented in 35 by-elections in October of 2018 (ECP, 2018b). Pakistan’s newly elected Prime Minister, Imran Khan, hailed the experiment (Global Village Space, 2020). While only 6,000 voters participated, of a potential 700,000, the ECP warmed to the potential of electronic voting. Their evolution on the issue was not proceeding quickly enough for Khan, whose government announced an Ordinance in May 2021 requiring the ECP to procure electronic voting machines (Wasim & Khan, 2021). The government said the move would “expose” the opposition parties, who had lately been uncooperative on the issue. It was, however, the ECP that voiced the loudest objections, warning that “employing the technologies in haste could be counter-productive and compromise quality of polls.”

Bangladesh has seen both the ruling party and the electoral commission attempt to explain deferred implementation. There was no immediate follow up on the 2010 amendments to the Ordinance giving Bangladeshis abroad the postal vote. A report by the United Nations Development Programme (UNDP) noted at the time, “Given that the postal voting system was not effectively implemented in the 2008 elections, the provision to allow Bangladeshis living abroad to request a postal ballot will present a significant implementation challenge for the future for the BEC” (UNDP, 2010, p. 136). Prime Minister Hasina told parliament in 2013 that further regulatory changes were required (Khasru, 2017). None were forthcoming. Emigrants entered the 2014 election season in a grey zone, legally allowed to vote, but with no clear path to exercise that right. The Electoral Commission did nothing to publicize information on procedures. Frontline state officials were left in the dark; Labour Counsellor to Riyadh, Emdadul Hoque, told the Dhaka Tribune, “I have no knowledge about postal ballot and we have no such activities” (Karim & Islam, 2014).

The 2018 election witnessed more publicity with the same result. All the major parties expressed support for voting abroad prior to the election (Jugantor, 2018). The electoral commission released a circular outlining the procedure for voting abroad by post on November 12, shortly after laying out the November 8 election schedule. Voters would have to register within 15 days of poll schedule announcement. They would then be sent a postal ballot, which would need to be returned by Dec 30. When asked why procedures and dates were left vague, Election Commission Deputy Secretary Atiar Rahman explained “Nobody has cast votes via postal ballot even after having the opportunity (and) this is why clarity was not required in the circular” (Shaikh, 2018). In total, the commission reported receiving 1 request to vote by mail (Chaity, 2018).

There is little evidence that implementation is opposed for partisan reasons. Rather,

one observer explains that “inertia, failure to prioritise the issue, slow pace of bureaucratic machinery and reluctance to undertake the necessary logistics are primary reasons why these countries continue to deprive their citizens abroad of such a fundamental right” (Khasru, 2017). Bangladesh’s institutions were a complicating factor. As sociologist Habibul Haque Khondker explained, “For the Bangladeshi voters, there will be hundreds of candidates in a parliamentary election, where the constituencies of the voters will have to be matched with those of the candidates -- a Herculean task” (Khondker, 2007). Another set of academics proposed designating specific seats for emigrants (Kalimullah & Hassan, 2014). For its part, the electoral commission saw the primary hurdle as a registration issue and moved to expand electronic in-person registration.

Like Bangladesh, Pakistan, and India, Nepal has also missed at least one election cycle since the initial legal adoption. Soon after the judicial ruling, the electoral commission announced they would begin conducting research trips to prepare for implementation (The Karobar Daily, 2019). In 2020, Ghanashyam Bhusal, the Minister for Agriculture and Livestock Development, told the Non-resident Nepalis Association that voting abroad would occur in the next election, explaining, “All the political parties have uniform understanding on this matter” (The Rising Nepal, 2020).

While parties agreed on implementation in principle, electoral authorities noted the logistical challenges. Ila Sharma, Electoral Commissioner at the time of the ruling, raised potential logistical challenges, noting, “if we want to ensure voting rights of Nepalis abroad, the EC should be allocated enough budget and preparation time. As I’ve already said, these things should be done in the non-election period. Doing these things in 83 days is not possible” (The Himalayan Times, 2018). Sharma’s logistical warnings in 2018 were echoed four years later by former chief election commissioner Bhoj Raj Pokharel, who observed “Countries around the world carry out out-of-country voting through the post or by installing voting booths at embassies, but neither of these options is feasible for Nepal. This is because we have a dismal postal service and our population is so scattered that placing voting booths at embassies across the world will be very expensive and laborious” (Taylor, 2022).

Conclusion

In terms of emigrant voting, South Asian countries depart from international practice in important ways. Comparatively speaking, legal adoption occurred well after the global norm was established, non-elected actors played a disproportionate role in the process, and legal rights have frequently been left unimplemented for extended periods.

While literature conceives of emigrant enfranchisement as a mutually beneficial exchange, South Asia prompts us to pay closer attention to the administrative costs and risks involved in that calculation. South Asia’s demographic and institutional context make voting abroad difficult. The registration challenge alone is daunting, compelling lower-middle income countries to explore expensive, high-tech solutions. The challenge is surmountable, but the costs generate friction, slowing the process.

While shedding light on South Asian enfranchisement processes, this study is limited in at least two important ways. First, the hypothesis linking the region’s delayed, judicially-led emigrant enfranchisement to the combination of complexity, capacity, and competitive regimes remains to be rigorously tested. There are, nonetheless, some signs of external validity, particularly as they relate to institutional inheritance that increases complexity. By 2020, 78% of countries (100 of 129) without a history of British rule had implemented voting abroad in the last election, compared to only 33% (21 of 64) of countries with a legacy of British rule. Beyond delayed

adoption and implementation, the too-often ignored role of the judiciary requires sustained analysis. Understanding these issues - and testing hypotheses - will require more extensive comparison of cases across regions than can be offered here.

Second, the short South Asian case studies inevitably miss granular details that are theoretically significant and consequential to the policy outcomes. To name but a few factors, the narratives gloss over the complexities of intra-party calculations, the strategic vision of court litigants, and the professional norms of electoral authorities. We are writing about countries with large, important diasporas whose democratic rights deserve attention beyond the confines of a limited, regional discussion. Although South Asian countries have been slow to adopt and implement, it is likely they will follow global practices. The story of emigrant enfranchisement is still in an early phase and will prove a rich area for study as countries move from adoption to implementation.

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Conflict of Interests


The author(s) declare that there is no conflict of interest.

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ORCID iD

Nathan Allen  <https://orcid.org/0000-0002-6452-5143>

Erin Kinzie  <https://orcid.org/0009-0008-1366-6991>

Ekta Singh  <https://orcid.org/0000-0003-4927-4013>

Notes

1. This paper uses “emigrant” to mean a citizen of a country residing outside its borders (i.e. non-resident citizen). While “diaspora” sometimes refers to a community living abroad with affective ties to a home country, regardless of citizenship, this article uses “emigrant” and “diaspora” interchangeably.
2. Following Wellman et al (2023), de jure emigrant voting exists “if a constitution, law, regulation, or court decision explicitly acknowledges the enfranchisement of non-resident citizens” (8). De jure enfranchisement fulfills three criteria: 1) non-residents citizens can vote in a national election from abroad; 2) non-residents are not required to maintain active residency; 3) there is a broad scope of enfranchisement for non-resident voters. Implementation exists where emigrants participate in an election under rules consistent with the de jure enfranchisement. In this paper, legal adoption refers to change consistent with de jure enfranchisement, while implementation is the application of these legal rights in practice.
3. Regional breakdowns constructed using UN regional codes. “Middle-East and North Africa” includes Central Asia and Iran.
4. The non-South Asian legal adoptions via judicial ruling include: Austria, Egypt, Marshall Islands, South Africa, South Korea, and Uganda.
5. Count generated using “Party of chief executive has been how long in office” variable in Database of Political Institutions (Cruz et al., 2018).

6. For the purposes of space, this review does not cover dynamics in Afghanistan. While there was a period of emigrant enfranchisement during following the overthrow of the Taliban in 2001, international actors dominated the legal process and the initial implementation of voting rights.

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