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Constitutional Foundations of Welfare Governance in India: A Study of Taxation and Food Regulation as Instruments of Social Justice.

Shivam Tyagi [1], Priyanka Dobriyal [2], Dr Subhash Rawat [3]
[1]Research Scholar, College of Legal Studies, Coer University, Roorkee
Email: shivamtyprince2708@gmail.com
[2]Research Scholar, College of Legal Studies, Coer University Roorkee
Email: priyankadobriyal5@gmail.com
[3]Assistant Professor, School of legal Studies Jigyasa University Dehradun,
Email: subhashrawat1994@outlook.com

Abstract
The main question to be examined in this paper will be: what, according to the Indian Constitution, does the state have to do in terms of welfare governance? In particular, it deals with two broad categories, namely taxation and food regulation, not because they are all-encompassing, but because they highlight different aspects of welfare governance in India. One relates to fiscal issues while the other is related to regulatory measures, which, together, indicate the way constitutional requirements are translated into legislation, imperfect as it might be. Welfare governance in India is not discretionary; it is constitutionally mandated. This point is illustrated through the doctrinal analysis of the Indian Constitution, judicial precedents, including the lawsuit over food rights by the People's Union for Civil Liberties, together with the National Food Security Act of 2013. The paper also engages, more briefly, with theoretical questions about what law can and cannot do as an instrument of social change. The conclusion is less triumphant than some constitutional scholarship on this subject: the foundations are strong, the gap between foundation and reality is large, and filling that gap is a political problem as much as a legal one

Keywords: *welfare state, taxation, food security, social justice, Directive Principles, transformative constitutionalism, distributive justice, India*

INTRODUCTION

Start with something Ambedkar said, because it matters here. In his last address to the Constituent Assembly on 25 November 1949, he warned that India was about to enter, an existence of paradoxes. Political parity on one hand, social and economic disparity on the other. He was not optimistic that the Constitution alone could bridge that gap. What it could do, he thought, was create the institutional conditions under which the gap might be addressed, if the political will existed to use those conditions.

That framing is more honest than the one usually offered in constitutional scholarship on welfare governance, which tends to present the Constitution as an unambiguous mandate for social transformation. This is what. But it is worth keeping in mind the warning issued by Ambedkar. The Constitution commands. It does not provide for its implementation. This will depend upon political and administrative arrangements beyond the reach of the Constitution.

This being said, this paper explores the welfare governance constitutional framework in India by concentrating on the taxation and food regulation mechanisms. The reasons for this focus on the two tools are quite obvious. Taxation is how the government earns money to finance welfare programs, and its structure can contribute to economic inequality either way. Food regulation touches upon one of the fundamental welfare concerns – whether the people have enough food.

It is the Indian Constitution which does so. The Preamble enshrines as the goal of the Republic, economic, social, and political equity. Section III of the Constitution, including Articles 14 and 21, which include the Fundamental Rights, have been read in the last few decades with an increasingly socioeconomic import. Constitutional Article IV's Directive Principles set forth a welfare governance programme which is technically non-justiciable but which has acquired constitutional significance through judicial interpretation.

The rest of the paper is as follows. Section II lays down the theoretical framework that rests upon two concepts; one is the transformative constitutionalism, and the other is Ambedkar's constitutional theory, which are two different things. Section III analyses the relevant constitutional provisions. Sections IV and V examine taxation and food regulation respectively. Section VI takes up the harder theoretical question of what constitutional law can realistically be expected to achieve. Section VII concludes.

II. Transformative Constitutionalism and the Ambedkarite Vision

A. Transformative Constitutionalism

The phrase "transformative constitutionalism" comes from Karl Klare, writing about South Africa in 1998. He used it to describe a constitutional initiative to restore social and political institutions to their original democratic and egalitarian forms, not just through the text of the constitution but through how that text is interpreted and applied over time. The concept travelled. It has been applied to India to Colombia to Kenya. At a certain level of abstraction, it fits almost any constitution that includes socioeconomic rights alongside civil and political ones.

The risk of applying it too broadly is that it becomes analytically empty. Every post-colonial constitution contains aspirational language. Not all of them produce transformation. What distinguishes the Indian Constitution is less the breadth of its aspirations than the seriousness with which its framers engaged with the question of institutional design. They were not simply writing a wish list. They were trying to construct legal and institutional mechanisms capable of producing social change in a deeply unequal society. That is a different enterprise, and a harder one.

The Indian Constitution predates the South African by nearly fifty years, which creates an obvious problem with simply importing the concept. More useful, perhaps, is to read the Indian constitutional project on its own terms and then note where it aligns with what Klare described. The alignment is real: the Constitution does embed a commitment to structural social change, not merely the protection of existing rights. But the Ambedkarite account of why and how is more specific, and more pessimistic, than the general transformative constitutionalism literature tends to be.

B. What Ambedkar Actually Said

Ambedkar's constitutional thought is frequently cited and less frequently read carefully. The standard account treats him as an unambiguous advocate for constitutional optimism, for the view that the right legal framework can dismantle caste and deliver social equality. That is not quite right.

Why was Ambedkar a constitutionalist? He understood that after several decades of participation in social reforms, law and institutions were more stable than any attempt to change hearts and minds or to argue culturally. Caste was not a social prejudice that would eventually disappear due to education and persuasion. It was a structure created and maintained through economic dependency, social discrimination, and legitimization through ideology. It could be changed only by targeting its sources through law. That’s why he demanded constitutional rights for depressed classes and did not trust the upper castes’ benevolence.

Ambedkar’s theory of “constitutional morality” becomes relevant in this context and is usually misunderstood. The term was adopted by him from historian George Grote, who had used the term to define the Athenian tradition of following the procedure of the constitution even during a time of emergency. Ambedkar modified it to convey something else, that is, to follow constitutional duty despite the prevailing morality of society, which refers to the dominant values held by the majority. Social morality is at variance with constitutional morality, not in accordance with it.

And for governance of welfare, it is crucially important. The people who need welfare protection the most are precisely those who have the least say in politics. It is morally incumbent upon the state to fulfil its welfare responsibilities not out of political expediency, but rather by dint of constitutional necessity. And it is a tall order, given the track record of governance in India.

It is also the recognition aspect of Ambedkar’s thinking that goes further than redistribution. It was not just that the Dalits had been deprived of the material means but also the fact that they had been denied recognition as members of the polity. Regulation of food supply cannot be considered to be without connection to it. The humiliation of caste based deprivation of food supply, the different utensils for cooking and the segregation of seating arrangements in mid-day meal schemes that prevailed even in the democratic era cannot be captured by calories alone.

III. The Constitutional Architecture

A. The Preamble

In the Preamble, India expresses its dedication to social, economic, political, and economic fairness. In the 1973 Supreme Court judgement of Kesavananda Bharati v. State of Kerala, the court reiterated that Preamble was part of the Constitution and an appropriate guide for interpreting the Constitution. The significance of this for welfare governance is that social and economic justice are not just policy objectives. They are constitutional commitments and the measures against which the activities of the state can be evaluated.

The Preamble also ensures the equality of status and the equality of opportunity. Equality of status is a formal commitment; in other words, the law treats everyone equally. However, equality of opportunity is a substantive commitment; in other words, people should have equal opportunities to take advantage of the formal opportunities given by the law. People who are malnourished and illiterate have equal rights but unequal opportunities. The Preamble's commitment to both kinds of equality creates constitutional pressure toward the material conditions that make equality of opportunity real.

B. Fundamental Rights

Article 21 has had an unusual constitutional history. Beginning as a limited procedural protection against the arbitrary loss of bodily liberty, the Supreme Court expanded its scope beginning in the early 1980s, making it a substantive right to live with dignity. The Supreme Court's landmark judgement in Francis Coralie Mullin v. Union Territory of Delhi (1981) established that everyone has a right to basic necessities including food, clothes, and a safe place to live. From there the extension to a right to food, a right to health, and a right to education followed through subsequent decisions.

This raises interesting constitutional mechanics worth examining. First, the Directive Principles are not justiciable in nature under Article 37. Therefore, as a guiding principle, the right to food issue should be out of reach of judicial enforcement. The move by the Court in Mullin and other cases has been to incorporate directive principles material within Article 21, which has made it justiciable. This is still a contentious issue regarding whether the Court overreached itself or not. The practical effect is clear, however, that socioeconomic rights placed outside the reach of judicial enforcement by the framers have found their way into the justiciable constitutional matrix.

Secondly, Article 14, the equality clause, has been expanded through the development of the concept of "manifest arbitrariness" in Shayara Bano v. Union of India (2017). Welfare policy that discriminates against similarly placed people without any rational basis could be vulnerable to a challenge based on this concept. The application of this doctrine in the context of the discriminatory implementation of the food security schemes based on caste bias in the issuance of ration cards is an underdeveloped field of constitutional law.

C. The Directive Principles

Articles 38, 39, and 47 are welfare provisions per se. Article 38 states that the state should strive for a social order based on justice through all its institutions. Article 38(2), inserted by the 44th Amendment in 1978, states that there should be relatively equal distributions of wealth, social standing, access to resources, and opportunity. As stated in Article 39, the state is obligated to make sure that material resources are used for common good and no economic concentration of power takes place. Article 47 makes the improvement of nutritional levels and public health the foremost duty of the state.

While the non-justiciability of the above provisions is formally retained through Article 37, the Supreme Court has found two ways to bypass the same. The first way is known as the Mullin technique where the content of Directive Principles is imported into the justiciable Fundamental Rights. The other one is the harmonious construction doctrine laid down in Minerva Mills Ltd. v. Union of India (1980) which says that Directive Principles and Fundamental Rights should be read in harmony as complementary principles and that any legislation passed in the implementation of Directive Principles deserves respect even when it infringes Fundamental Rights.

These principles, when combined, have conferred legal force to the Directive Principles. These are not directly enforceable in any way. However, they influence the way in which the enforceable rights are interpreted, the standard of review used in assessing welfare laws, and even the norms that are applied when challenging such laws.

IV. Taxation as a Welfare Instrument

A. The Fiscal Constitution

The Constitutional distribution of tax power is based upon the federal design of the Seventh Schedule. Taxes leviable by the Union are income tax, corporate tax, customs duties, and excise duty on specific items. Taxes levied by states are taxes on land, agricultural income, profession, and entertainment. With the insertion of Article 246A through the Constitution (101st Amendment) Act 2016, the Goods and Services Tax has been included, thus making it a concurrent tax, to be managed by a council of Union and States.

The provision of Article 265 that stipulates the rule of law prohibits the imposition or collection of taxes unless as provided for by law nature and does not place any substantive limit on what should be taxed or at what rate. There is considerable latitude in the fiscal domain. When there is judicial scrutiny of the tax legislation, the approach followed by the court is a very liberal one – the classification required is not scientific but only requires a rational basis.

There is, however, a limitation on this judicial reluctance to interfere with the decision of the legislature regarding taxation. Taxes that are clearly arbitrary or discriminatory or intended to punish a constitutionally protected feature remain open to attack. Moreover, the whole constitutional context, including the Directive Principles, creates an environment where the scheme of taxation is something that cannot simply be a matter of legislative preference.

B. Does the Constitution Require Progressive Taxation?

This is worth asking directly, because the answer is not obvious. Progressive taxation, where the effective rate rises with income or wealth, is a potent fiscal tool for levelling the economic playing field. According to Article 38(2), the state must do its best to reduce economic and social disparities. Does that constitutional obligation translate into a requirement of fiscal progressivity?

Surely not directly in terms of a mandate. Taxing powers under the Seventh Schedule are enabling provisions which empower taxation without prescribing its nature. No judicial pronouncement has declared that the system of taxation adopted by the legislature is unconstitutional on the grounds of being regressive. Fiscal powers of the legislature are broad.

But the issue does not end here. In Bharat Coking Coal Ltd. v. State of Bihar (1990), the Supreme Court made the following statement regarding the taxing power, "Taxing power is not merely an expedient to raise money but a means of achieving the socioeconomic goals of the Constitution." This statement, if it is given due weightage, clearly indicates that tax structure cannot be evaluated under the Constitution in isolation of its distributive effects.

This contradiction is especially evident in relation to the Goods and Services Tax. The GST is a tax on consumption. Poorer families spend a greater percentage of their income on consumption compared to wealthier ones, and so the GST bears harder on them in a relative sense. While the exemptions of essentials foods from taxation and lower rates for basic commodities partially correct this situation, the overall effect of the regime requires more consideration from a constitutional perspective. The decision to abolish the Wealth Tax in 2015 moves in the wrong direction, abandoning one of the few direct means of taxing accumulated wealth, without any regard for the constitutional requirements of Article 38(2).

C. Tax Expenditures

Another way in which welfare state policy affects the distribution of welfare is through “tax expenditures.” Such expenditures, representing revenue losses arising out of deductions, exemptions, and credits, are one of the more hidden aspects of welfare-state taxation policy. In India, the list of such tax expenditures includes deductions available for contributions to the Provident Fund, payments towards health insurance policies, and charitable donations.

The distributive flaw with respect to deductions from income tax is obvious. These deductions affect only taxpayers, and the welfare needs arise among those individuals least likely to be taxpayers. This is not to say that all forms of tax expenditure are unconstitutional. It is simply that the distributive consequences of tax expenditures are constitutionally relevant and that the framework of welfare under Article 38(2) requires the legislature to consider these consequences. Whether courts are the proper mechanism to ensure this consideration is discussed in Section VI.

V. Food Regulation

A. The Right to Food: How It Was Constructed

PUCL vs. Union of India Case was started in 2001 in conditions that were frankly, absurd. Death by starvation had been witnessed in Rajasthan, and elsewhere in the country. Meanwhile, godowns of the FCI were bursting at the seams with grain, and this grain was even rotting owing to shortage of storage space. It is a suo motu case started by the Supreme Court on a petition that was originally for an altogether different issue. This is one of the most remarkable episodes in Indian constitutional history.

Within the decade to follow, the Court made several interim orders that turned governmental food programs into legally binding rights by making them legally mandatory rather than discretionary. Programs like as the National Old Age Pension Scheme, Antyodaya Anna Yojana, Mid-Day Meal Scheme, and Integrated Child Development Services: all of them received orders from the Court regarding what is the responsibility of the state and to whom. What were until then discretionary schemes and vulnerable to under-funding became constitutionally mandated through the intervention of the judiciary.

Article 21 established a right to food. The argument was rather straight forward. There cannot be life in the absence of proper nourishment. This was well settled by the line of judicial interpretations of Article 21 starting with the case of Mulin. The important point that followed from this was the decision to create Commissioners for monitoring the implementation of this right and receiving regular reports from the state governments. Such an exercise of setting up an administrative structure was rare for the courts.

The claim that it diluted the separation of powers cannot be refuted. However, it ignores the practical aspect. The other option, passing a declaratory judgment recognizing the existence of the guarantee of a sufficient diet, and the expectation that the Executive, had already proven ineffective. The states had not been implementing their own schemes. Thus, the Commissioner approach was the only realistic solution to the problem despite being problematic from a constitutional perspective. Was it effective? This is another issue. Implementation was highly irregular.

B. The National Food Security Act 2013

NFSA is, in some way, a result of the case initiated by PUCL. Ten years of judicial prodding regarding food rights had created the political environment, though not necessarily political will, for legislation. The law grants statutory rights to subsidised foodgrains to about half of India's urban population and three quarters of the country's rural residents. Priority households can avail five kilograms per person per month. Antyodaya households, which represent the poorest of the poor as per the scheme, can claim 35 kilograms per household per month.

The NFSA has achieved constitutionally by transforming what was an abstract right into a specific entitlement with benefits, identification procedures, grievance redressal procedures, and concrete state obligations. This process is described in academia as legislative constitutionalisation, where Parliament gives flesh to a right discovered by the court but under-specified in its structure. The question as to whether the NFSA has made appropriate provision for identifying individuals, especially as to who is considered a priority household, remains an issue. Exclusion errors, or the non-inclusion of potential beneficiaries, have been well documented.

Moreover, the NFSA also has provisions with regard to nutrition in addition to those related to calorific needs. Chapter II of the Act has provisions for pregnant women and lactating mothers through the Maternity Benefit Scheme, and for children through the Mid-Day Meal Scheme and the Integrated Child Development Services. This is a result of the interpretation of Article 47, which talks about improving nutritional levels, as imposing an obligation that goes beyond providing sufficient calories. It is, however, debatable whether there has been any compliance with this.

The constitutional basis of the Act comes from the Entries 33 of the Concurrent List and Entry 26 of List II. Production, distribution, and supply of necessities are the focus of both, as is intrastate trade and commerce. An Act of 2006 Concerning Food Safety and Standards, which created the FSSAI, also bases itself on these Entries.

C. Food Safety and the Limits of Commercial Freedom

The Food Safety also Standards Act of 2006 is another significant legislation on the regulation of food. As opposed to the NFSA that focuses on the distribution of food and the pricing of the food, the FSSA focuses on the safety of the food and what information must be given by the food manufacturers. Its constitutional basis is the state's police power to protect public health, grounded in Article 47 and Article 21's right to health.

Challenges to food safety regulation under Article 19(1)(g) have uniformly failed. In Confederation of Indian Alcoholic Beverage Companies v. State of Andhra Pradesh (2019), the Court restated the settled position: the state's power to regulate food and beverage commerce in the interest of public health is plenary, and commercial rights under Article 19(1)(g) are subject to it under Article 19(6). There is nothing controversial about this outcome. Food safety regulation is among the most obviously legitimate exercises of state power.
What is more interesting, and less settled, is the emerging area of nutrition labelling and food marketing regulation. Debates about warning labels on packs regarding foods high in fat content, salt content, and sugar content and also bans on health claims are very much alive in regulatory and judicial debates. The issue of social justice in favor of such regulation is not an issue of public health per se but an issue of information asymmetry, because the poorer sections of society have less access to nutritional information and fewer options than the affluent. Regulation on the basis of Article 21, Article 47, and Article 19(6) is constitutionally justified, although the exact form is debatable.

VI. What Can Constitutional Law Actually Do?

This section is shorter than the others because the honest answer is less satisfying than constitutional scholarship usually admits.
Constitutional fetishism is the most common critique coming out of the critical legal studies approach – it assumes that legal instruments have the ability to transform society when it is actually the political, economic, and social forces that make that change possible. Law, in this case, cannot be seen as an independent cause of such transformations. It simply reflects and reinforces existing power structures rather than challenging them. Welfare provisions of the Constitution are especially vulnerable to this critique due to the wide discrepancy between theory and practice.
India can be taken as an example. The right to food has been recognized by the judiciary. The NFSA has been passed into law. But the rates of malnutrition among children continue to remain some of the highest in the world. India performs badly in the Global Hunger Index against comparable nations. These facts do not discredit the constitutional argument, but they certainly complicate the claim that constitutional welfare obligations are enough to guarantee welfare outcomes.
What can be done by constitutional theorists is to change the claim itself. For law, it is not the production of results but the construction of accountability mechanisms, creation of enforceable norms, and creation of channels for social movement mobilization. While the PUCL litigation has not ended poverty or hunger in India, it certainly has brought about public concern about this problem, created legal norms that social movements could take up, and laid the foundation for NFSA.
The liberty-equality debate should also be faced head-on. Taxation that seeks to redistribute wealth takes away from people what they have earned. Health inspection laws prevent firms from offering unsafe products. This amounts to infringement of classical freedom. It is through the proportionality doctrine enunciated by the Supreme Court of India in K.S. Puttaswamy v. Union of India (2017) that the constitutional dispensation of India seeks to resolve this conflict – restrictions on fundamental rights have to be suitable, necessary, and proportionate. Judicial deference in such matters has hitherto been generous, and there is reason behind the deference. But there has to be more than deference because legislatures, while being experts in welfare issues, are more politically accountable.
The question of democratic legitimacy with regard to judicial enforcement of welfare rights must be answered directly. The issue is that it should be the elected representatives and not the unelected judiciary who decide upon the nature and significance of welfare rights. It is a powerful point. The PUCL Court did indeed redirect public expenditure without having been given any authorization from the legislature. However, the point about constitutional rights is that they are commitments made by the founders of the country and bind future majorities. It is what being entrenched in the Constitution means.
It is the issue of institutional competence that presents more of a challenge. Courts can have constitutional power to uphold welfare rights even if they lack the technical skills and organizational machinery for its enforcement. This was what the Commissioner approach was all about in PUCL. This was an innovative way of addressing an institutional dilemma, and not a way of proving that courts can manage welfare schemes. There does exist a

difference between setting out constitutional standards and enforcing them through judicial administration. The former is a role of courts while the latter is a sign of failure of other branches.

VII. Conclusion

The constitutional underpinnings of welfare administration in India are, on balance, robust. This is not an inconsequential statement. A great many constitutional regimes, including some with aspirational welfare language, have been accompanied by weaker legal regimes than that of India. Through the Directive Principles, an expansive Article 21 regime, and an active judiciary regarding food rights, there has been achieved a legal regime within which welfare duties may be claimed, contested, and partly enforced.

The constitutional scenario on taxes is far from clear-cut. The fiscal constitution is permissive of considerable discretion. The Directive Principles create a normative context that mandates concern about distributional effects, but they do not mandate any specific kind of tax system and courts have not tried to dictate one. The upshot is that any redistributive fiscal policy will depend very much on the will to do so and this has not been consistent. The repeal of the Wealth Tax, the regressive nature of the GST, and the decreasing proportion of direct taxation in the fiscal pie do not fit well with the constitutional mandate in Article 38(2) for minimizing inequalities.

Regarding food regulations, the legislative consolidation in NFSA is definitely an achievement for constitutional welfare law. Converting judicially recognized rights into legal entitlements with implementation measures is precisely the objective of constitutional welfare law. The gap between entitlement and implementation is enormous. But the legal basis for demanding implementation is there, which was not the case until 2001.

Three things would materially advance welfare governance in India. Clearer legislative accountability mechanisms that tie fiscal choices to explicit distributional benchmarks. Stronger administrative delivery systems with particular attention to caste and gender-based exclusions that document clearly shows affect who actually receives welfare benefits. And a judicial culture that holds the executive to constitutional welfare standards without attempting to substitute for it.

None of these is primarily a constitutional question. They are political and administrative questions. That is, in the end, Ambedkar's point. The Constitution creates conditions. Whether those conditions are used to produce social justice depends on what happens in the political arena, the administrative machinery, and civil society. The constitutional scholar's task is to keep the legal framework honest, not to claim more for it than it can deliver.

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