

Incompatible institutions: socialism versus constitutionalism in India

Shruti Rajagopalan¹

© Springer Science+Business Media New York 2015

Abstract There has been a decline in rule of law in India, reflected in the frequent amendments to the Indian Constitution. This paper analyzes the historical, ideological, and economic context for constitutional amendments to understand the reason for the deterioration of constitutionalism in India. I argue that the formal institutions of socialist planning were fundamentally incompatible with the constraints imposed by the Indian Constitution. This incompatibility led to frequent amendments to the Constitution, especially in the area of Fundamental Rights. Consequently, pursuit of socialist policies gradually undermined the Constitution. The contradictory mixture of socialism and constitutionalism led to economic and political deprivations that were never intended by the framers. I demonstrate this incompatibility using evidence from five-year-plans and constitutional amendments in India.

Keywords Indian Constitution · Property rights · Constitutional amendments · Socialist planning · Rule of law

JEL Classification B25 · K100 · K11 · P37

It is now well established that institutions shape economic outcomes. A simple, yet powerful, explanation for the poverty, red tape, and corruption in India is the poor institutional regime: weak property rights, poor enforcement of contracts, and no

✉ Shruti Rajagopalan
shruti.rajagopalan@purchase.edu

¹ Department of Economics, Purchase College, State University of New York, Purchase, NY 10577, USA

rule of law.¹ Scholars have chronicled the gradual decline of constitutionalism in India over the years. Palkhivala (1974) described the amendment process as the systematic defiling and defacing of the Indian Constitution. Singh states that after the constitution was ratified, “over the next 30 years these constituent rules were progressively chipped away” (2006: 305). Subramanian (2007) provides empirical evidence of the decline of Indian the bureaucracy and judiciary.

However, the situation was not always so dismal. On January 26, 1950, a *New York Times* editorial welcomed the newly established Republic of India to the fold of sovereign democratic nations. Claiming that the new Indian Constitution was “starting a new era,” the *Times* went on to say it “is a document in which Britons, especially, can take pride, for it is British liberal parliamentary ideas and practices that form the primary basis for the new federation.” More specifically, it said, institutions like an independent judiciary, a strong bill of rights, federalism, and separation of powers were the foundations of the new republic (Editorial 1950).

Why did the rule of law and constitutionalism progressively deteriorate after such a great beginning? While there is a general consensus that institutions in India did deteriorate, no systematic explanation has been put forth specifically for the constitutional decline during the first few decades of post-independence India. The theme of the existing literature is that India was off to a good start under the leadership of Jawaharlal Nehru, but subsequent leaders like Indira Gandhi undermined the Constitution (see Austin 1999: 270, 573; Das 2000: 174; Guha 2007: 518).

Much of the literature attributes the bad outcome to specific individuals, cases, or historical events. Singh (2006) and Bose (2010) are exceptions, and analyze the deterioration of the constitution as a result of the dynamic between the executive, legislature, and judiciary. Singh (2006) explains the deterioration of property rights through the weakening of separation of powers, where the judiciary failed to check an all-powerful executive. Bose (2010), furthering Singh’s argument, describes the judiciary and the legislature as veto players, where certain conditions make one of the players stronger. Per Bose, constitutionalism in India declined when a weak judiciary failed to sufficiently veto decisions of the legislature.

Singh and Bose accurately describe the tug of war between the executive and the judiciary in India, but narrowly focus on the power of the executive, or essentially the Prime Minister’s office, without explaining *why* the executive was all-powerful until the eighties.

I argue that the reason for the constitutional decline in India is that the formal institutions of socialist planning were incompatible with the Constitution. The Indian Republic was founded as a socialist state as well as a constitutional democracy. By concurrently espousing the ideologies of socialism and constitutionalism, the framers set the stage for many inevitable constitutional conflicts, which manifested in India as a battle between the executive and the judiciary. The

¹ India ranks 87th on the corruption index and is rated 3.3 on a scale of 10 on the Corruption Perception Index where 1 is most corrupt and 10 is most transparent. “In the World Bank’s ‘Ease of Doing Business’ index, India ranks 134th out of 183 countries, scoring particularly badly on enforcing contracts (182nd). Another index, on “Entrepreneurship and Opportunity,” produced by the Legatum Institute, a think tank, puts India 93rd out of 110 countries” <http://www.economist.com/node/18586958>.

Indian experience is not merely a case of a judiciary checking the powerful executive branch—but one where the judiciary and executive were pursuing contradictory goals. The executive pursued socialist planning and the judiciary mainly enforced constitutional rules.

Constitutionalism prevails when general rules are announced beforehand and apply equally to all individuals in a non-arbitrary manner and when democracy is constrained with adequate checks and balances. However, the impossibility of rational calculation under socialism means that planners must have unlimited discretion, which conflicts with constitutional constraints. In India, in order to implement socialist planning, Parliament gradually removed constitutional constraints on democracy.

My analysis shows that the political actors undermining the constitution were pursuing socialist planning to its logical conclusion. This analysis directly challenges the prevailing view that while socialism and constitutionalism were sound and harmonious, poor execution of core principles undermined the constitution. Scholars view the two institutions as so “interdependent as to be almost synonymous” (Austin 1999: 633).² Dhavan states that constitutionalism and socialism are compatible, and that the failure was because the political will to make it work was missing (1992: 60–61).³ Kashyap argues that constitutionalism was “defiled, debased, and debunked openly” *because* the socialist principles in the constitution were unenforceable positive rights (Kashyap 2010: 8).

In addition to this challenge to the literature, my argument contributes to a vast literature on the effect of socialist planning on poor economic growth in India. Scholars blame socialist policies for poor incentives and information and unintended economic consequences (Shenoy 1969; Bhagwati and Desai 1970; Das 2000; Panagariya 2008; Manish 2011; White 2012). However, economic growth was not the only casualty of socialist planning, constitutional principles were also compromised.

In Sect. 1, I describe the ideological vision of the framers of the Indian Constitution. I show that they believed socialism and constitutionalism were congruent. They attempted to reconcile the two institutions of socialist planning and the constitution—though the two are fundamentally incompatible. In Sect. 2, I demonstrate that the conflict between these two institutions undermined rule of law, individual rights, and democracy in India. In Sect. 3, I conclude.

² Even when Austin concedes that these goals are in conflict at times, he believes the conflict is temporary and there is no long-term incompatibility between the two. “The goals of unity–integrity, democracy, and social revolution were not always in perfect harmony and on occasion seemed in competition. These difficulties had to be surmounted, circumvented or accommodated in the conditions prevailing in the country” (Austin 1999: 636). “Conflict between the web’s democracy and social revolution strands is inevitable. . . . efforts toward long-term harmony between the strands make the short-term conflict inevitable” (Austin 1999: 668).

³ Dhavan provides a list of requirements for socialism and constitutionalism to work harmoniously; and his formula hinges on selfless political participants. According to Dhavan, four ingredients are necessary for Nehru’s Plan (which espoused socialist planning within a constitutional democracy) to work: First, Parliament must be determined to enact radical legislation. Second, such legislation must be supported by large ideological consensus, even those adversely affected. Third, bureaucrats must be dedicated and incorruptible. Fourth, Indians must not abuse public power.

1 Socialism versus constitutionalism

1.1 The ideas of India

By the time of Indian independence in 1947, the allure of Soviet-style planning had already faded slightly. But the vast majority of intellectuals in the West still thought that socialist economic policies could be combined with democratic politics in a manner that would yield a more rational allocation of resources than capitalism and a more egalitarian distribution of income, thereby creating a more democratic society by transferring power to the powerless.

Indian political leaders were inspired by members of Fabian Society, especially Harold Laski (see Bhagwati 1993; Austin 1999; Das 2000; Guha 2007; Varma 2008; White 2012). The members of the Fabian Society in London were the first of the British intellectuals to support home rule in India and attracted Indians who were involved in the nationalist movement (Moscovitch 2012). They influenced an entire generation of Indian intellectuals educated in England. These Indians were skeptical of capitalism, which they equated to mercantilism, due to India's historical experience with colonial firms like the British East India Company. They believed that a socialist welfare state would uplift the masses deprived and exploited through 200 years of colonial rule (Das 2000). It was from this colonial past that the idea of an independent India was formed; the Indian independence movement was the coming together of “national” and “social” revolutions.⁴

The most prominent political leader was Jawaharlal Nehru, who while studying law in London, was enormously influenced by Fabian ideas. Nehru believed that capitalism would weaken both political and socioeconomic equality: “Democracy and capitalism grew up together in the nineteenth century, but they were not mutually compatible. There was a basic contradiction between them, for democracy laid stress on the power for many, while capitalism gave real power to the few” (Nehru 2004a [1936]: 547).

The main thread joining these two ideas—critiquing capitalism and embracing democracy—was that political equality was meaningless unless there was economic equality in India. Sydney and Beatrice Webb, the founders of the Fabian Society, emphatically made this connection between substituting the capitalist order with a socialist democracy.⁵ Along with the Webbs, George Bernard Shaw and Harold Laski's ideas left a mark on Nehru during his time at Harrow, Cambridge, and London (Nehru 2004 [1936]: 27).

⁴ “The national revolution focused on democracy and liberty—which the colonial rule had denied to all Indians—whereas the social revolution focused on emancipation and equality, which tradition and scripture had withheld from women and low castes” (Guha 2007: 107).

⁵ “The central wrong of the Capitalist system is neither the poverty of the poor nor the riches of the rich: it is the power which the mere ownership of the instruments of production gives to a relatively small section of the community over the actions of their fellow-citizens and over the mental and physical environment of successive generations. Under such a system personal freedom becomes, for large masses of the people, little better than a mockery... What the Socialist aims at is the substitution, for this Dictatorship of the Capitalist, of government of the people by the people and for the people, in all the industries and services by which the people live“ (Webb and Webb 1920: xiii ff).

Like Nehru, others were also inspired by the socialism as a cure for other social evils. The closest to Nehru's vision was V. K. Krishna Menon, also a student of Harold Laski, and an important member of the Indian National Congress Party. Another important reason, B. K. Nehru reflected, was that "the burning issue for us [Indian students] was Indian independence; the socialists and communists supported it; the capitalists and Conservatives opposed it. Ergo, socialism (or communism) was good; capitalism bad" (Nehru 1977: 20).

An important grassroots socialist leader in India was Jayaprakash Narayan, who founded the Congress Socialist Party in 1934 (which was the socialist caucus of the Indian National Congress Party). They attempted to give voice to Nehru's wishes of instilling a commitment to economic equality and social change within the Indian National Congress. The party's goals included more equal status for women, with a women's movement within the party led by Kamaladevi Chattopadhyay (2010 [1944]) and eliminating caste differences by giving preferential treatment to lower castes for a few decades led by Lohia (2010 [1964]).

These leaders' attribution of equality to socialism was so powerful that within a few years the Congress Socialist Party was more than one-third of the strength of the All India Congress Committee (Devasahayam 2012: 9). With the strength of the socialists increasing, in 1938 the party instituted the National Planning Committee with Nehru as its first chairman (Nehru 2004 [1946]: 435). Its policies were largely inspired by policies already in place in the USSR. India also had its own taste of central economic planning, in an effort to channel resources to aid the British war effort during World War II.

Outside the Indian National Congress Party, an influential group of businessmen also held strong socialist views. In 1944, with independence on the horizon, a group of leading industrialists published *A Brief Memorandum Outlining a Plan of Economic Development for India*, popularly known as the Bombay Plan. They called for a strong state economic plan and claimed that "the existing economic organization, based on private enterprise and ownership, has failed to bring about a satisfactory distribution of the national income... We believe that planning is not inconsistent with a democratic organization of society. On the contrary, we consider that its objects will be served more effectively if the controls inherent in it are voluntarily accepted by the community and only enforced with its consent" (Thakurdas 1945: 65, 91).

In fact, almost all Indian intellectuals at the time of independence were sympathetic to some kind of socialism, mostly influenced by Laski, with critics being few and far between (Friedman 2000).⁶ Austin describes the leaders in New Delhi at the time of independence as "believers in the seamless web: confirmed democrats, advocates of social and economic reforms, and nationalists with broad perspective" (Austin 1999: 17).

⁶ Gandhi was opposed to socialism in theory since for him the means did not justify the ends. Golwalkar (2010 [1964]) believed socialism was not an ideal goal for India since it was not part of Indian tradition but an alien idea imposed from a foreign intellectual movement. Specifically, he viewed it as a movement born out of the hatred and envy of rich capitalists and not out of a higher spiritual need. The real dissent to socialism in an organized manner came much later in the late 1950s from C. Rajagopalachari and the Swatantra Party. The only Indian economist to dissent against central planning was B. R. Shenoy (1969).

Awed by socialist ideals, Nehru visited the Soviet Union for the tenth anniversary of the Bolshevik revolution. Nehru believed he had witnessed a system that had achieved the idea of equality in every sense. In a gushing travelogue, Nehru concluded that the Soviet system treated its workers and peasants, its women and children, even its prisoners better than any liberal system. Describing this visit, he wrote, “the contrast between extreme luxury and poverty are not visible, nor does one notice the hierarchy of class” (1929: 13).

Notwithstanding the prevailing support in India for socialism, many could not accept the Soviet Union’s restrictions on speech and freedom of press. Guha writes, “condemning [the Soviet Union’s] one-party state and its political treatment of political dissidents, the [Congress Socialist Party] stood rather for a marriage of democracy and socialism” (2010: 264). Nehru in particular thought political freedom was too high a price to pay for the economic development promised by Soviet Socialism. He disliked many aspects of Soviet policies including “the ruthless suppression of all contrary opinion, the wholesale regimentation, the unnecessary violence in carrying out various policies” (2004 [1936]: 377).

This sentiment against following the Soviet model completely was not unique to Nehru. The Indian freedom movement can be characterized as Gandhian—one that was non-violent, non-cooperative involving civil disobedience by large masses of people, which made it difficult for the British to govern India. That the movement must be peaceful and non-violent was so fundamental that any deviation from that value towards the Soviet system would not have received acceptance of the people. Political rights offered to British citizens and denied to citizens in the colonies inspired Indian intellectuals.

At the eve of independence in India, there was an overwhelming demand to form a republic. Among the leaders at the time, Jawaharlal Nehru was most in favor of instituting a system of governance where all were equal before the law, as being imperative in unifying India.⁷ To the founders, a republic meant a constitutional democracy accompanied by a framework of individual rights and checks and balances through separation of powers and federalism.

The idea of an Indian republic not only favored the constitutional democracy of the West, but also opposed its economic imperialism. With such ideals, Nehru led India to create two important institutions, which would define India for the future—the Constitution, which would guarantee the rights that were denied during colonial rule, and the Planning Commission, which would ensure economic equality. It is in this conjunction that Fabian socialism was as powerful as it was romantic. Fabians were against violent revolutions and over-regimentation and suppression of the press; and they favored political rights for all citizens. And yet they borrowed the idea of economic egalitarianism from socialism—and the combination worked perfectly, given India’s needs.

⁷ Opposition to the idea of a Constituent Assembly came from two quarters. While the first was Gandhi, once it was clear that the Constituent Assembly would be completely Indian and with sufficient representation from the provinces, Gandhi also supported the idea. The second criticism came from Communists and Marxists, who believed in a social revolution to bring change and were opposed to English-educated lawyers in the Congress leadership claiming to represent all of India.

In order to form a constitutional democracy, the founders formed the Constituent Assembly and the members of the provincial legislative assemblies elected in 1946 chose members through indirect election.⁸ Most of the members of the Constituent Assembly were current or prior members of the Indian National Congress Party. The party, in its 1946 provincial election manifesto, promised the abolition of the feudal system, agrarian land reform, and the nationalization of key industries.

Given the popular political and economic ideology, India was to become a republic with a parliamentary democracy and also a socialist welfare state.⁹ This was summed up in Nehru's *Objectives Resolution* toward the Indian Constitution that was debated, discussed and approved by the Constitution Assembly.¹⁰ Nehru said, "I think also of various Constituent Assemblies that have gone before and of what took place at the making of the great American nation when the fathers of that nation met and fashioned out a constitution that stood the test of so many years ... Then my mind goes back to a more recent revolution which gave rise to a new type of State, the revolution that took place in Russia and out of which has arisen the Union of Soviet Socialist Republics, another mighty country, which is playing a tremendous part in the world" (1946).

The Indian Constitution, adopted in 1950, constrained the state in three ways in order to preserve rule of law and protect the individual while allowing for the socialist or welfare agenda. First, the constitution provides for separation of powers and independent judicial review.¹¹ Therefore, as a parliamentary democracy, the executive was made accountable to the legislature. The legislature was accountable to the electorate and an independent judiciary could review legislation and executive action.¹² Second, the Indian Constitution created a Federal State and Part

⁸ The Assembly was formed as following: (1) 292 members were elected through the Provincial Legislative Assemblies; (2) 93 members represented the Indian Princely States; and (3) 4 members represented the Chief Commissioners' Provinces. After the decision to partition the sub-continent into India and Pakistan, a separate Constituent Assembly was set up for Pakistan and representatives of some Provinces ceased to be members of the Assembly, reducing the membership of the Indian Assembly to 299.

⁹ In many debates in the Constituent Assembly, socialism was used, often interchangeably, to mean two different things. The first was socialist *ideals* or goals, which was mainly economic egalitarianism. The second was socialist *means* towards those goals, which was centralized state planning of the economy. "Broadly, it was used synonymously with "social revolution," meaning national social-economic reform with an equitable society as its goal. In essence, it meant social egalitarianism and political equality. Narrowly, it had a more classical meaning: central government planning, the dominance of the state sector in the economy, and so on" (Austin 1999: 634). During the debates, despite these differences of opinion, a great effort was made to find common ground and reach consensus within a constitutional framework.

¹⁰ The Constituent Assembly discussed the *Objectives Resolution* from December 13–19, 1946 and on December 21, 1946 its consideration was postponed. The matter was discussed again on January 20–22, 1947. On the last day, all members standing adopted it unanimously.

¹¹ It is important to note that the India constitution has a weaker form of separation of powers relative to the US constitution. On the other hand, compared to Britain, where the Parliament is sovereign; the Indian Parliament's powers are subject to both the constitution and judicial review. Since judicial review extends to all aspects of the constitution including the separation of powers, in recent years, there has been much controversy with different branches of government attempting to extend their scope and power.

¹² Separation of powers for the federal government is enumerated in Part V (Articles 52–151) of the Constitution. Separation of powers for the state governments is enumerated in Part VI (Articles 152–242) of the Constitution. Independent state and federal judiciary is enumerated in Articles 13, 32, 139 and 226.

XI of the constitution outlined the distribution of powers between Central and State governments (Articles 245–255).¹³ Third, the Fundamental Rights in Part III of the Constitution, despite some dilution by the socialists, secured a sphere protecting the individual from arbitrary actions of the state. It called for the right to equal treatment and protection under the law, right to private property, freedom of speech and religion, and, most importantly, right to writ remedy through an independent judiciary (Articles 12–32). In addition to these negative rights, the framers also wanted to add positive rights to further socialist policies. These positive rights were listed under Directive Principles of State Policy in Part IV of the Indian Constitution as guidelines or suggestions “fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.” These Principles were not really positive “rights” as they were unenforceable in a court of law. Further, in case of any conflict the Constitution deemed Fundamental Rights, which were enforceable, as the superior provision.

As the Constitution was being crafted carefully, another institution was being created, with far less thought and debate. Preparations were in place to set up a central planning commission. The adoption of Soviet style planning was debated in the Provisional Parliament and the Indian Planning Commission was created in March 1950 by a Resolution of the Government of India. Nehru appointed P. C. Mahalanobis, an Indian statistician, to travel and learn from other economists and central planners, the optimal way to utilize India’s economic potential.

The Planning Commission was Nehru’s brainchild and he was also its first Chairman. The Planning Commission was responsible for drafting Five Year Plans (FYP). The main goal of the Planning Commission was economic egalitarianism through scientific and industrial development. These plans were supposed to detail the exact amount of the investments to be made by the public and private sectors and how that investment would be allocated across different industries and sectors. It also included targets to be achieved by various industries for the next 5 years.

In the few areas open to the private sector, a highly restrictive industrial licensing regime was formulated to direct private enterprise. The planning process was put into operation by the Industrial Policy Resolution, 1948, which divided the economy’s industries into three broad categories—those on which the state had a monopoly, those where both the private sector and public sector were allowed to operate and those where private sector may operate, but within the purview of state regulation. This command and control style economy was achieved through a “maze of Kafkaesque controls” imposed on India’s private sector (Bhagwati 1993: 50).

1.2 Incompatible ideas

In Nehru’s vision, the Planning Commission complemented the newly minted Constitution. The planners would execute the dream for an economically just society, which would strengthen the Indian Republic. While Nehru’s dream for a

¹³ The Seventh Schedule of the Constitution provided a list of subjects on which the Parliament and state legislatures could legislate.

participatory and prosperous democracy was laudable, the institutions he created to achieve the goals were in conflict from the very beginning.

Socialism requires social ownership of the means of production and the abolition of private property. Mises argued that without the private ownership of the means of production, there would be no exchange of these means of production. Without market prices emerging from exchange, the planners cannot rationally allocate these goods (Mises 1922). Given the impossibility of rational economic calculation in socialist planning, Hayek (1944) demonstrates the institutional structure that would emerge from the failure of socialist planning to achieve its desired results.

Due to the impossibility of rational economic calculation, planners require unlimited discretion to execute the plan (see Hayek 1944: 144; Boettke 1995: 12). Under the rule of law, not discretion, but rules must prevail, and therefore planning is incompatible with the rule of law (Hayek 1944: 92, 2011 [1960]: 318–19; Tamanaha 2006: 228).

Further, equal treatment before the law will necessarily lead to unequal distribution of resources and distributing the resources equally necessarily implies violating the equality clause. Therefore, one can either have political equality or substantive equality, but cannot have both (Hayek 1944: 87, 1973: 85–86, 1979: 86, 2011 [1960]: 340–341). Further, socialist planning strikes at the root of the right to private property, virtually all other political rights are infringed upon, even if this is not the intention of the planners. A central plan, if executed, will infringe on individual rights to equality and property guaranteed by the constitution.

Planning not only requires agreement of the citizens about the requirement of a central plan, but also about a *particular plan*. First, individuals in society must agree on the shared values or goals that are sought. Second, individuals must collectively agree on the specific hierarchy or ranking of the values, in order to determine specific tradeoffs. Therefore, a central plan must be executed outside of a democratic system, since the level of agreement required for executing a particular plan cannot be achieved by democratic consensus. This will compromise constitutional features like separation of powers and federalism, which distribute power and decision-making.

The incompatibility between (1) socialist planning and rule of law; (2) socialist planning and individual rights; and (3) socialist planning and democracy; led to conflicts between the judiciary and the executive in India resulting in the frequent amendment of the constitution.

Generally speaking, this incompatibility manifested itself in the following form. (1) The Planning Commission, led by the Prime Minister, created Five Year Plans for the economy. (2) To attain the goals in these FYPs the central and state legislatures passed legislation. (3) This legislation was challenged in courts and was subject to independent judicial review. (4) Often such legislation was struck down as unconstitutional for violating Fundamental Rights of individuals. (5) To give validity to void and unconstitutional legislation, Parliament amended the Constitution. This five-step cycle played out a number of times, and the form and severity changed based on the political and substantive context. Fourteen instances of the incompatibility between Planning and the Indian Constitution are detailed in the following section and in Table 1.

Table 1 Consequences of incompatibility between socialist policies and constitutionalism in India (1950–1980)

Socialist policy implemented	Constitution provision violated	Consequential amendment
Land redistribution	Right to equality Right to private property	First Amendment
Price controls	Federalism Right to any occupation, trade or business	Third Amendment
Compensation for acquisition of property	Right to equality Right to private property	Fourth Amendment
Centralization of industry	Federalism	Seventh Amendment
Rent control	Right to equality	Seventeenth Amendment
Tenancy regulation	Right to private property	
Parliamentary Supremacy	Power to amend the constitution	Twenty-fourth Amendment
Centralization of powers		
Bank nationalization	Right to private property Right to carry on any occupation, trade or business Supremacy of fundamental rights	Twenty-fifth Amendment
Abolition of privy purses	Transfer of power	Twenty-sixth Amendment
Land ceiling	Right to private property	Twenty-ninth Amendment
Land redistribution	Right to property Right to equality	Thirty-fourth Amendment
Quantity controls	Federalism	Thirty-ninth Amendment
Price controls	Right to carry on any occupation, trade or business	
Currency controls	Right to carry on any occupation, trade or business	Fortieth Amendment
Restriction of monopolies		
Emergency years	Separation of powers	Forty-second Amendment
Economic reorganization	Judicial review	
Political reorganization	Democratic elections Federalism Fundamental rights	
Nationalization of means of production	Deleted right to private property	Forty-fourth Amendment

2 Indian Constitution versus central planning

The first three decades of central planning in India can be divided into two phases: from 1951 to 1964 and then from 1965 to 1981. The first phase, coinciding with Nehru's tenure as Prime Minister, saw a large role for the public sector in agriculture and the imposition of licensing requirements on the private sector in various industries, but was relatively liberal on international trade. The second

phase extended a much greater role to the state—it imposed enormous restrictions on large enterprises and foreign investment, created reservations for small-scale industries, nationalized banks and the insurance, coal and oil industries, and created even greater licensing requirements for industry (see Panagariya 2008: 48–77 for details on these two phases).¹⁴

It is well established that, in India, the Fundamental Rights were most frequently and substantively amended from 1951 to 1978. Of the first forty-four amendments to the Constitution, thirteen amendments directly altered the Fundamental Rights. India's constitution was amended these thirteen times¹⁵ during the first five FYPs to advance the objectives of these plans. These amendments were substantive, not administrative, and changed the Fundamental Rights in Part III of the Constitution. These constitutional amendments enabled the planners to retroactively give effect to plan objectives *after* the Indian judiciary had struck policy down for violating constitutional principles. These constitutional amendments were not merely rhetorical or procedural; they were substantive infringements on individual rights and important aspects of state machinery like federalism and separation of powers.

The thirteen instances of amending the constitution to accommodate unconstitutional legislation furthering socialist goals is outlined briefly in Table 1 and is discussed in detail with historical and political context in the following sections.

2.1 First Amendment

The First FYP called for land reform and industrial development. But these could not be achieved while maintaining generality and certainty in the law. The Constituent Assembly, which transitioned as India's first provisional Parliament while awaiting general elections, had to choose between these goals and they chose plan objectives.

India's First FYP expressly stated as its objective, to “reduce disparities in wealth and income, eliminate exploitation, provide security for tenants and workers, and, finally, promise equality of status and opportunity to different sections of the rural population” (Planning Commission 1951: 88). Toward this goal, Nehru focused on expanding heavy industry, given planners' concern regarding the lack of economic activity in intermediate goods, especially heavy industry. But since a large part of the economy was agrarian and three-fourths of Indians lived in villages, land reform was also crucial. Therefore, the First FYP focused on agricultural output and preparations were underway to give central importance to industry in the First and Second FYPs.

¹⁴ There is a debate among economists on exactly when socialism ended and liberalization began in India. Contrary to Rodrik and Subramaniam (2005), Srinivasan (2005) and Arvind Panagariya (2004) persuasively argue that the growth of the 1980s was itself caused by a “liberalization by stealth” that took place through this decade. These were unsystematic moves toward opening markets in a few sectors. Further, the aggressive command and control style socialism pursued during the 1970s did not find favor in the 1980s. Therefore this paper only deals with explicit socialist policies conflicting with the constitution and therefore we end the discussion in 1980.

¹⁵ The First, Third, Fourth, Seventh, Seventeenth, Twenty-Fourth, Twenty-Fifth, Twenty-Ninth, Thirty-Fourth, Thirty-Ninth, Fortieth, Forty-Second and Forty-Fourth Amendments to the Constitution were passed by the Parliament to directly give effect to unconstitutional legislation enacted to execute planning.

The First FYP tackled the problem of land reform with two objectives: first, increase agricultural production, and second, serve peasants' interests in land (Planning Commission 1951, Chapter 12). The first target required consolidation of land holdings to increase productivity; while the second target involved breaking up large feudal estates for redistribution among landless peasants. The focus was on abolition of the feudal or *zamindari* system, which meant imposing agrarian land ceilings, and redistributing surplus land holdings. However, both these goals had to be achieved subject to the overall principle of economic egalitarianism. Toward this end, various states formulated legislation to take land from feudal lords and redistribute it among peasants.

The takings clause of the Constitution originally read: "No person shall be deprived of property without due process of law" and "no property... shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation" (Article 31). State laws implementing land reforms were challenged in courts as unconstitutional. One of these, the Bihar Management of Estates and Tenures Act, 1949, assessed the compensation payable to the owner of property acquired at 20 times the assessment for a poor owner and at 3 times the assessment for a rich owner. In *Kameshwar Singh v The Province of Bihar* (AIR 1950 Patna 392), the Patna High Court struck down the legislation as unconstitutional. The Court held that the legislation violated the right to equality under Article 14, as it did not give equal compensation and discriminated against richer *zamindars*. The state challenged the High Court's ruling in the Supreme Court.¹⁶

One of the main problems faced by the state was to provide just compensation required under Article 31. The Indian state could not provide compensation for the extensive land redistribution *and* also fulfill the objectives of the First FYP. Many policies pursued to fulfill the First FYP and give meaning to the socialist principles in Part IV of the Constitution, violated other parts of the Constitution. Nehru described this tension as one between the policies of the state "which represent dynamic movement towards a certain objective" and Fundamental Rights which "represent something static, to preserve certain rights" (Nehru 1951: 8820).

While the challenge in *Kameshwar Singh v The Province of Bihar* was pending in the Supreme Court, the Constituent Assembly which, at the time, was the Provisional Parliament (pending elections), passed the Constitution (First Amendment) Act, 1951,¹⁷ diluting the eminent domain clause and the right to private property to enable policies giving effect to the First FYP.

¹⁶ However, not all Courts ruled like the Patna High Court. In *Surya Pal Singh v State of UP* (AIR 1951 All 674) the Allahabad High Court upheld the validity of the United Province land reform legislation. These decisions were challenged and pending appeal to the Supreme Court.

¹⁷ Members of the Provisional Parliament in 1951 were members of the Constituent Assembly that drafted the constitution. With the exception of a handful of members, these framers believed in socialist planning. With a clever legal innovation, they by-passed judicial review for legislation concerning agrarian reform and enabled legislation previously declared invalid by the Courts to become valid retrospectively. The First Amendment created the Ninth Schedule, a list of legislation not subject to judicial review, and the Amendment passed in Parliament with a majority of 228 to 20. The constitution framers viewed the Ninth Schedule as a necessary trade-off between constitutionalism and execution of the land redistribution agenda essential for prosperity in India.

The Statement of Objects and Reasons forming part of the First Amendment explicitly stated, “The validity of agrarian reforms ... formed the subject-matter of dilatory litigation, as a result of which the implementation of these important measures [land reform], affecting large numbers of people, has been held up. ... The opportunity has been taken to propose a few minor amendments to other articles in order to remove difficulties that arise.”

The First Amendment created a list of preferred legislation called the Ninth Schedule, placed within the Constitution to supersede the Constitution. Article 31B stated that laws to be listed in the Ninth Schedule could not become void on the ground that they violated any Fundamental Right; the government proposed to protect all land reform legislation by including such legislation in the Ninth Schedule. The legislation was fully protected against any challenge in a court of law. The “few minor amendments to other articles in order to remove difficulties” essentially defeated the purpose of the constitutional constraint.¹⁸

For the development of the industrial sector, the Industries (Development and Regulation) Act 1951, based on Industrial Policy Resolution, 1948, instituted a highly restrictive industrial licensing regime to control the private sector. Under the Act, all private industrial undertakings had to register with the central government. Any new undertaking required state permission, and expansion of existing firms required licenses. In certain cases, the government could assume control of private industries.

During the formulation of the First FYP, there was concern that empowering the state to impose controls on private enterprise would violate the Constitution. The government had already experienced problems with the judiciary on land policy. Nehru’s government realized that fulfilling the Industrial Policy Resolution, 1948 would conflict with Article 19(1)(g), which guaranteed all citizens the right “to practice any profession, or to carry on any occupation, trade or business.”¹⁹

To solve this problem, the First Amendment to the Constitution added an exception to the above right which stated that nothing would prevent the State from making any law relating to “the carrying on by the State, or by a corporation owned or controlled by the State, of any trade business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise” (Article 19(1)(g) Proviso).

2.2 Third Amendment

The FYP’s ability to allocate resources through price controls was also frustrated by the Constitution, and in particular by the distribution of legislative power between the federal and state governments.

In addition to land reforms and the industrial policy, the First FYP declared that the “maintenance of a structure of prices which brings about an allocation of

¹⁸ In 1951, the First Amendment was challenged in the Supreme Court in *Shankari Prasad Singh v Union of India* (AIR 1951 SC 458). The Court held that Parliament was empowered to amend the Constitution without any restrictions as long as it followed the procedure laid down for amendment in the Constitution.

¹⁹ The proviso read that the right was subject to reasonable restrictions that the State may impose in the interests of the general public.

resources in conformity with the targets defined in the Plan must be the consistent aim of economic policy” (Planning Commission 1951, Chapter 2).

Halfway into the First FYP, problems relating to the scarcity and unavailability of essential inputs for industrial sector were looming large for the government. In 1954, the central government wanted greater legislative control over pricing the means of production. But the federal structure of the Constitution impeded the government’s ability to control the production, supply, distribution and prices of inputs and essential commodities. Toward this goal, the Constitution (Third Amendment) Act, 1954, was passed to enable the Parliament (instead of state legislatures) to control prices of certain commodities. Pursuant to the new amendment, new legislation—the Essential Commodities Act, 1955—placed a price ceiling on inputs.

2.3 Fourth Amendment

Two further goals embedded in the FYP: (1) acquiring land at below-market rates; and (2) taking over management or ownership of firms; while maintaining other welfare targets were frustrated by constitutional restrictions. The government’s socialist agenda attempted to overhaul the agrarian system, as well as fulfill commitments made to the populace under the First FYP. It was evident that the newly formed Indian state had few resources and a very small tax base, which meant that if compensation had to be provided for all property taken over by the government, other welfare and industrial targets of the FYPs could potentially remain unfulfilled with the magnitude of the compensation bankrupting the Indian treasury. However, High Courts across the country constantly curtailed takings without just compensation by Indian states.

In *State of West Bengal vs. Bela Banerjee* (AIR 1954 SC 170), the validity of the West Bengal Land Development and Planning Act, 1948, which provided for acquisition of land after payment of compensation not exceeding the market value of the land on December 31, 1946, was challenged. The Supreme Court reasoned that while the legislature has the discretion to lay down principles on the basis of which the government paid compensation for appropriated property, such principles must ensure that the compensation is “a just equivalent to what the owner has been deprived of” and that the content of such principles be adjudicated by the court.

This decision prompted Parliament to pass the Constitution (Fourth Amendment) Act, 1955 to continue acquisition of land in keeping with plan objectives. The Fourth Amendment’s Statement of Objects and Reasons clarified “It is considered necessary, therefore, to re-state more precisely the State’s power of compulsory acquisition and requisitioning of private property and distinguish it from cases where the operation of regulatory or prohibitory laws of the State results in deprivation of property.” The Amendment also added three state land reform laws in the Ninth Schedule.

In addition to land reforms, the focus on industry continued. The Constitution prevented the government from taking over private firms or control of management, and the Fourth Amendment was used to get around this roadblock. The Fourth Amendment amended Article 31(2A) to state, “no such law [which transfers

ownership or possession of property to the State or a Corporation] shall be called in question in any court on the ground that the compensation provided by the law is not adequate.” Through the Fourth Amendment, Chapter III-A of the Industrial Disputes Act, 1951 was added to the Ninth Schedule. The Chapter empowered the state to assume management or control of an industrial undertaking in certain cases. Similar provisions involving insurance and the railways were also enabled through the Ninth Schedule.

2.4 Seventh Amendment

In the execution of the First FYP, the central government was hindered in industrial planning by the federal structure and distribution of powers between the central and state legislatures outlined in the Constitution. There was much uncertainty over the precise role and powers of the central government vis-à-vis the state governments.

During the First FYP, the National Development Council (NDC) was set up in 1952 to incorporate the recommendations of Chief Ministers in the planning process. However, this soon turned into a formality and state Chief Ministers complained that the planning process was overly centralized while discussing the Second FYP. Many complained that the plans were sent to the NDC for approval after it was approved by the Parliament (Austin 1999: 164).

The Second FYP was explicit in its goal of centralizing the most important sectors of the economy. “The second five year plan accords high priority to industrialisation, and especially to the development of basic and heavy industries. A large expansion of public enterprise in the sphere of industrial and mineral development is envisaged. It is, in fact, intended to strengthen further the programmes of development in respect of heavy industries, oil exploration and coal and to make a beginning with the development of atomic energy. *The main responsibility for these programmes rests upon the Central Government*” (Planning Commission 1956) (emphasis added).

Additionally, Parliament was legislating in areas constitutionally delegated to the state legislatures in order to fulfill objectives and targets of the Second FYP. Once again there was a need to amend the Constitution to provide greater power to the central government. This next amendment was to alter the distribution of legislative powers listed in the Seventh Schedule of the Constitution, mainly by moving entries from the State List, to the Concurrent List, to allow the Parliament to legislate on these matters.²⁰

The object of the Constitution (Seventh Amendment) Act, 1956 was to “avoid these difficulties [multiple entries on acquisition of property] and simplify the constitutional position, it is proposed to omit the entries in the Union and State List

²⁰ Article 245 and 246 describe the sharing of legislative power between the centre and the states. Specifically Article 246 recognizes two law-making bodies, the Parliament and, the state legislatures, and distributes legislative power through three lists in the Seventh Schedule of the Constitution. The matters listed in List I—the Union list are within the exclusive legislative power of the Parliament. List II—the State List, has matters exclusive to the legislative power of the states. And List III, the Concurrent List, has matters that the Parliament and States may concurrently legislate.

and replace the entry in the Concurrent List by a comprehensive entry covering the whole subject.”

Khilnani observes, “during this period the idea of Planning Commission directing India’s economic development within the framework of constitutional democracy was in crisis” (1998: 86). The crisis referred to here is the crisis of the Constitution as a roadblock in economic progress. However, P. C. Mahalanobis, the architect of the FYPs, recognized this and responded by moving toward economics, science and technology and away from political problems. He held a view that objective science was key to increased economic growth, and that political and constitutional problems were merely roadblocks Nehru must deal with (ibid: 87).

While the planning process continued and preparations were being made for the Third FYP, the battle between legislation—giving life to the planning process, and the Constitution—protecting individual rights, continued with Nehru at its helm.

2.5 Seventeenth Amendment

Despite the experience of the first two FYPs, the agricultural program of the central plans continued to be hampered by constitutional restrictions and uncertainty over the amending powers of Parliament. The Third FYP once again prioritized agriculture because the performance in the largest sector of the economy was well below the expectations and targets of the previous plans. “Experience in the first two Plans, and especially in the Second, has shown that the rate of growth in agricultural production is one of the main limiting factors in the progress of the Indian economy. Agricultural production has, therefore, to be increased to the largest extent feasible, and adequate resources have to be provided under the Third Plan for realising the agricultural targets... Both in formulating and in implementing programmes for the development of agriculture and the rural economy during the Third Plan, the guiding consideration is that whatever is physically practicable should be made financially possible, and the potential of each area should be developed to the utmost extent possible” (Planning Commission 1961, Chapter 4).

To give the new land redistribution and tenancy laws legitimacy, Nehru repeatedly amended the Constitution and his final act as Prime Minister was to introduce the Seventeenth Amendment to the Constitution. With this amendment, Nehru continued to remove roadblocks in the path of land reform, industrialization, and nationalization. The Constitution (Seventeenth Amendment) Act, 1964 “proposed to amend the Ninth Schedule by including therein certain State enactments relating to land reform in order to remove any uncertainty or doubt that may arise in regard to their validity.” The Act added 44 laws pertaining to land reform, land consolidation, and tenancy to the Ninth Schedule.

The Seventeenth Amendment also amended the definition of “estate” in Article 31A of the Constitution because “the expression ‘estate’ has been defined differently in different States, and as a result of the transfer of land from one State to another on account of the reorganisation of the States, the expression has come to be defined differently in different parts of the same State. Moreover, many of the land reform enactments relate to lands, which are not included in an estate. Several State Acts relating to land reform were struck down on the grounds that the

provisions of those Acts were violative of Articles 14, 19 and 31 of the Constitution and that the protection of Article 31A was not available to them” (Statement of Objects and Reasons—Constitution (Seventeenth Amendment) Act, 1964).

Nehru died after the introduction, but before the passing, of the Seventeenth Amendment. The constitutional validity of the Seventeenth Amendment was challenged in the Supreme Court in 1964 in *Sajjan Singh v State of Rajasthan* (AIR 1965 SC 845). The main question before the Supreme Court was once again the power of the Parliament to amend the Constitution. The majority opinion of the Supreme Court held that the Parliament had the power to amend the constitution, and as long as the procedure laid down for amendment of the Constitution in Article 368 was followed, amendments would be considered constitutional.

2.6 Commanding heights

After Nehru’s death, the Indian National Congress Party elected Lal Bahadur Shastri as Prime Minister and party members also clamored to provide Nehru’s daughter, Indira Gandhi, with a more prominent role in the Party.²¹ Shastri died in 1966 and when the question of succession arose again, the Indian National Congress Party president, K. Kamaraj, and the party “Syndicate” unreservedly supported Indira Gandhi, who served as Prime Minister for the rest of the term.²² In the 1967 elections, also Indira Gandhi’s first general election, the Syndicate preferred Indira Gandhi for the post of Prime Minister.

Indira Gandhi intended to create a place for herself and identified herself as a socialist, following her father Jawaharlal Nehru. An important factor in this decision was her Chief Advisor P. N. Haksar,²³ who encouraged her to embrace socialist ideology (Guha 2007: 436). The Syndicate that dominated the organizational wing of the Congress “favored dilution of planning, a reduced role for the public sector, and greater reliance on private enterprise and foreign capital” Indira Gandhi on the other hand wanted “to go farther left in her policies” and take an ideological stand that was different from the Syndicate and yet popular enough to hold her position as Prime Minister (Panagariya 2008: 50).²⁴

In May 1967, she announced the Ten-Point Program, which included policies to seize what she called the commanding heights of the economy, like nationalization of

²¹ Party President K. Kamaraj discussed potential successors with Congress cabinet ministers and powerful party members (collectively known as the Syndicate). The Syndicate preferred Lal Bahadur Shastri, Nehru’s Deputy Prime Minister whose policy agenda was a continuation of Nehru’s plan.

²² Some suggest that it was her timid and quiet nature that led to her approval. The Syndicate thought she would be easy to control and hers would be a “collective” leadership. Morarji Desai, the frontrunner, was considered too headstrong and controversial to be controlled by the Syndicate (Guha 2007: 404).

²³ Haksar was a socialist polymath, who was educated at the London School of Economics. He was unabashedly pro-state and anti-market in his leanings. Particularly pro-Soviet, he was considered one of Harold Laski’s best students of his generation and wanted to carry out Laski’s vision in India.

²⁴ Pre-1967, Indira Gandhi had never identified herself as a socialist. The generous interpretation of this move by historians is that she wanted to identify herself with the electorate, which favored socialist policies, in order to get elected. An alternate is that she embraced socialism to increase the public sector and create a position for concentration of power. Historians place her ideological leaning at a different and lower level than Nehru’s (see Austin 1999: 290; Das 2000: 174; Guha 2007: 518).

banks and insurance, curbing monopolies, land reforms, urban land ceiling, rural housing, and abolition of privy purses²⁵—which was a hugely popular agenda (*Ibid*). She followed Haksar’s advice and positioned herself as the “real” socialist relative to Morarji Desai (who was opposed to bank nationalizations) and the Syndicate (which wanted to move away from socialist policies altogether).²⁶ Armed with this Soviet-style socialism, Indira Gandhi set out to nationalize important sectors of the economy.

Before the government could launch and execute this Ten-Point program, the eminent domain power of the state and the power of Parliament to amend the Constitution was again raised before the Supreme Court in a challenge to one of the entries in the Ninth Schedule, the Punjab Security of Land Tenures Act, 1953, on the ground that it deprived individuals of their right to private property. In *Golak Nath v State of Punjab* (AIR 1967 SC 1643) (hereinafter referred to as *Golak Nath Case*) the question of the power of the Parliament to amend the Constitution and the Fundamental Rights was heard by an eleven-judge bench. The majority opinion stated that though prior amendments would not be affected, in future Parliament could not amend the Constitution to abridge any of the Fundamental Rights. In other words, constitutional amendment could not be used to give unconstitutional laws validity. This was the beginning of what would become routine clashes between the government and the judiciary, in the attempt to control means of production.

2.7 Twenty-Fourth Amendment

As a backlash to the ruling in *Golak Nath Case*, the Indira Gandhi–led government first enacted the Twenty-Fourth and Twenty-Fifth Amendment to the Constitution. The Constitution (Twenty-fourth Amendment) Act, 1971, expressly stated that Parliament could amend Fundamental Rights as laid out in Part III of the Constitution. The Statement of Objects and Reasons stated: “The Supreme Court in the well known *Golak Nath’s Case*... reversed by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution including Part III relating to fundamental rights... *It is, therefore, considered necessary to provide expressly that Parliament has power to amend any provision of the Constitution so as to include the provisions of Part III within the scope of the amending power*” (emphasis added). This amendment also enabled Parliament to amend any part of the Constitution under the amendment procedure specified in Article 368. Through this unprecedented legislative move, Indira Gandhi amended the amendment procedure to the Constitution itself, to overcome the hurdles posed by judicial review.

2.8 Twenty-Fifth Amendment

Next, Indira Gandhi’s attempt to nationalize banks ran into resistance by the courts, which prompted further amendment to the Constitution. Even prior to passing the

²⁵ All programs other than abolishing privy purses were detailed in the Fourth and Fifth Five Year Plan. Privy purses were payments made to the royal families of erstwhile Indian princely states as part of their initial agreements to integrate with independent India.

²⁶ Subsequently, the Syndicate split away and created a new Party called Congress (O).

Twenty-Fourth Amendment, undeterred by the judicial pronouncement in the *Golak Nath Case*, Indira Gandhi's government sought to nationalize banks in India without legislation, through executive ordinance. In 1969, the government nationalized 14 banks with assets over 500 million rupees and brought 54 % of India's bank branches into the public sector. This was done first by the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969 promulgated on July 19, 1969, which was followed by the government passing the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, which had retroactive effect from July 19, 1969.

In a popular radio speech, Indira Gandhi argued, "control over the commanding heights of the economy is necessary, particularly in a poor country where it is extremely difficult to mobilize adequate resources for development". She committed the newly nationalized banks to serve the common good and to give credit not only to the rich and big businesses, but also to "millions of farmers, artisans and other self-employed persons" (Gandhi 1969).

As the Chairman of the Planning Commission, Indira Gandhi had previously stated her mission in the Preface to the Fourth Five-Year Plan. "The nationalisation of the fourteen big banks is evidence of our determination to bring a greater volume of resources within the area of social decision. It has effected a major change in our economic structure. It enables us to pay more attention to the 'small man's' needs, and it restricts the scope for the monopolistic operations of the privileged few. Among other areas where social considerations have still to make a comparable impact are the enforcement of land laws, the management of public sector enterprises, and the toning up of the administration as a whole" (Planning Commission 1969, Preface).

The nationalization of banks was challenged in the Supreme Court for violating the right to private property of a shareholder and the question of adequate compensation was again raised. In holding the Banking Companies (Acquisition and Transfer of Undertakings) Act void²⁷ the majority judgment of the Supreme Court reasoned, "in all States where the rule of law prevails, the right to compensation is guaranteed by the Constitution or regarded as inextricably involved in the right to property. ... In India, which is a state, the rule of law prevails. Therefore the Constitution of India provides for just compensation" (*R.C. Cooper v Union of India* (1970) 3 SCR 530: 605–606). The Supreme Court struck down the government's proposed bank nationalization due to inadequate compensation.

To remove the problems posed by the Supreme Court enforcing Fundamental Rights, Indira Gandhi was advised to amend the Constitution to give effect to socialist legislation furthering the Directive Principles. The Twenty-Fifth Amendment took away the supremacy of Fundamental Rights. It explicitly stated that laws giving effect to the Directive Principles shall not be deemed void, even if they were inconsistent with Fundamental Rights. This amendment remains on the books till

²⁷ On grounds that (1) the Act makes hostile discrimination, preventing the 14 banks from carrying on their business whereas other Indian and foreign banks may continue to carry on business (2) the Act restricts banks from carrying on business under Article 19, and (3) the Act violates the guarantee of compensation guaranteed under Article 31(2) because the compensation is not according to relevant principles.

date and, certain welfare policies under Directive Principles trump Fundamental Rights. The Statement of Objects and Reasons for the Constitution (Twenty-fifth Amendment) Act, 1971 provided “that if any law is passed to give effect to the Directive Principles contained in clauses (b) and (c) of article 39 and contains a declaration to that effect, such law shall not be deemed to be void on the ground that it takes away or abridges any of the rights contained in article 14, 19 or 31.”

2.9 Twenty-Sixth Amendment

Part of the Ten-Point Program proposed by Indira Gandhi was rescinding the contractual and constitutional obligation of the state to Indian rulers, called the Privy Purses. This posed yet another constitutional challenge to the government’s pursuit of an egalitarian agenda, and prompted further amendment to the Constitution.

Privy Purses were payments made to the royal families of Indian princely states as part of their initial agreements to integrate with independent India. The Indian Constitution protected these agreements. Indira Gandhi made the abolition of Privy Purses a political agenda in her campaigns and the first attempt to abolish the Privy Purses of the princely states lost by one vote in Parliament in 1969. In 1971 with a renewed majority, the government passed the Constitution (Twenty-sixth Amendment) Act, 1971 with the following objective: “The concept of rulership, with privy purses and special privileges unrelated to any current functions and social purposes, is incompatible with an egalitarian social order. Government has, therefore, decided to terminate the privy purses and privileges of the Rulers of former Indian States. It is necessary for this purpose, apart from amending the relevant provisions of the Constitution ... to terminate expressly the recognition already granted to such Rulers and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses.”

2.10 Twenty-Ninth and Thirty-Fourth Amendment

Indira Gandhi attempted to further reform the agrarian system and again raised the question of Parliamentary power to amend the Constitution. The government argued that despite land reform measures since the 1950s, the agrarian system remained unequal. It was therefore important to revise existing laws and reduce the ceiling limit on land holdings held by a family. After a conference of all state governments in 1972, various states passed laws and amendments to reduce the ceiling limit, but many of these laws were pending judicial review. Two land reform laws passed by the state government of Kerala were added to the Ninth Schedule by the Constitution (Twenty-Ninth Amendment) Act, 1972.

Once again, the power of the Parliament to amend the Constitution was challenged in the Supreme Court and a constitution bench comprising 13 judges was convened in 1973 for *Keshavananda Bharati v State of Kerala* (AIR 1973 SC 1461). In its judgment, the Supreme Court formulated the “basic structure” doctrine and held that the amending power of the Parliament could not be exercised in a manner as to destroy or emasculate the basic structure or the fundamental features of the

Constitution. The Court enumerated a non-exhaustive list of such features including but not limited to: supremacy of the Constitution, republican and democratic form of government, separation of powers, federal character of the Constitution, etc. However, the right to private property was not considered part of the “basic structure” of the Constitution.²⁸

Since Parliament had the authority to amend the Constitution, though now limited by the *Basic Structure Doctrine*, it enacted the Thirty-Fourth Amendment adding twenty state laws to the Ninth Schedule.

2.11 Thirty-Ninth and Fortieth Amendment

Now having acquired the power to legitimately amend the Constitution with the *Keshavananda Bharati v State of Kerala* (AIR 1973 SC 1461) judgment; and given that the right to private property was not basic to the Constitution, the government did not intend to stop its socialist agenda at land reforms. As the Chairman of the Planning Commission, Indira Gandhi stated her mission in the Fourth FYP. “There can be no doubt that the responsibilities devolving upon the public sector—without diminishing those of the private sector, in our mixed economy—will grow in range and volume. Socialism involves a reordering of society on a rational and equitable basis and this can only be achieved by assigning an expanding role to the public sector. Following the reorganisation of credit policies resulting from the nationalisation of major banks, the public sector can be expected more and more to occupy the commanding heights of the economy. It alone would be in a position to undertake investments of the requisite magnitude in such industries of vital importance to us as steel, machinery, machine tools, power generation, ship-building, petrochemicals, fuels and drugs” (Planning Commission 1969, Preface).

Indira Gandhi’s government continued its mission to capture the “commanding heights.” In October 1971, the government took over the management of coking coalmines and coke oven plants pending nationalization (Coking Coal Mines (Emergency Provisions) Act, 1971).²⁹ Coalmines were nationalized as being an important input for steel production, which was critical for the success of the Fourth FYP. In 1972, Indian Copper Corporation Ltd, was nationalized and made part of Hindustan Copper Ltd (The Indian Copper Corporation (Acquisition of

²⁸ Though the *Keshavananda Bharati* decision was in 1973, it has become a strong precedent and it still holds on the issue of amendment to the Constitution. The Supreme Court’s post-Emergency rulings in *Minerva Mills v Union of India* (AIR 1980 SC 1789) and *Waman Rao v Union of India* (AIR 1981 SC 271), the Court held that the basic structure of the Constitution could not be amended. The Court did not provide an exhaustive list of articles that formed the basic structure and therefore rendered un-amendable. The Court had also ruled that the question of whether an amendment violated the basic structure was to be *judicially determined*. All amendments post 1973 are now subject to the Basic Structure Test. In *IR Coelho v State of Tamil Nadu* (AIR 2007 SC 861) the Court clarified that the basic Structure test applied to constitutional amendments post-1973 also applies to the Ninth Schedule. If a law is deemed to have violated Fundamental Rights, and was included in the Ninth Schedule after April 24, 1973, it may be challenged in court on the grounds that it destroys or damages the basic structure of the Constitution.

²⁹ The nationalization was done in two phases, the first with the coking coalmines in 1971–1972 (The Coking Coal Mines (Nationalisation) Act, 1972) and then with the non-coking coalmines in 1973 (The Coal Mines (Taking Over of Management) Act, 1973 and The Coal Mines (Nationalisation) Act, 1973).

Undertaking) Act, 1972). Next, general insurance was nationalized³⁰ (General Insurance Business Nationalization Act, 1972) as part of the Ten-Point Program and one of the objectives of the Fourth FYP.

In 1968, the National Textile Corporation was incorporated to manage sick textile undertakings, taken over by the Government (The Sick Textile Undertakings (Taking Over of Management) Act, 1972). Starting with 16 mills in 1968, this number gradually rose to 103 by 1972–1973. In 1974, all these units were nationalized (The Sick Textile Undertakings (Nationalisation) Act, 1974).

Legislation was passed in 1973 to nationalize a *single* firm. Alcock Ashdown Company Ltd was nationalized “for the purpose of ensuring rational and coordinated development and production of goods essential to the needs of the country in general, and defence department in particular” (The Alcock Ashdown Company Limited (Acquisition of Undertakings) Act, 1973). A new layer of regulation was added through the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP), which was aimed specifically at large firms. In 1973, the government restricted any new production activity of companies covered by MRTP to a very narrow set of industries. In addition to the usual licensing procedures, these firms required additional approval from the Central government for all new undertakings, expansion, mergers, amalgamations, and takeovers (for details on MRTP policy, see Panagariya 2008: 59–60; Bhagwati and Desai 1970).

In 1973, the government enacted the Foreign Exchange Regulation Act, 1973 (FERA), which required all non-bank foreign branches, and companies incorporated in India with over 40 % foreign equity, to obtain permission from the central bank in order to conduct business. Foreign non-banks, which did not dilute their foreign equity, were not given “national treatment” and had to wind up their business (for details on FERA policy, see Panagariya 2008: 61; Bhagwati and Desai 1970).

All these laws were challenged in the courts and were either pending review or declared unconstitutional by the courts. Indira Gandhi, however, was dedicated to central planning. She famously said “We should be vigilant to see that our march to progress is not hampered in the name of the Constitution” (Editorial, 1975).

After much litigation, the Indira Gandhi-led government passed the Constitution (Thirty-Ninth Amendment) Act, 1975, to add these controversial acts of legislation to the Ninth Schedule. The Statement of Objects and Reasons of the Thirty-Ninth Amendment stated “Recourse was had in the past to the Ninth Schedule whenever it was found that progressive legislation conceived in the interests of the public was imperiled by litigation. It has become necessary to have recourse to this device once again now. Between 1971 and 1973 legislation was enacted for nationalizing coking coal and coalmines for conservation of these resources in the interests of steel industry. These enactments have been brought before courts on the ground that they are unconstitutional. So is the case of sick textile undertakings, which were nationalized in 1974. To prevent smuggling of goods and diversion of foreign exchange which affected the national economy, Parliament enacted legislation, which again has been challenged in the Supreme Court and in High Courts. These and other important and special enactments which it is considered necessary should

³⁰ Life insurance had already been nationalized in 1956.

have the constitutional protection under article 31B, are proposed to be included in the Ninth Schedule.”

As a consequence of these constitutional amendments and the government’s pursuit of a centrally planned, closed economy, black markets, especially for foreign goods, became rampant. To counter this problem, the government introduced another layer of regulation related to foreign exchange and foreign goods (The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976) and revived legislation regulating prices of essential commodities (The Essential Commodities Act, 1955). As part of this process, the Constitution (Fortieth Amendment) Act, 1976, stated in its Objects and Reasons: “Certain Central laws like the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, the Urban Land (Ceiling and Regulation) Act, 1976, the Essential Commodities Act, 1955 and certain provisions of the Motor Vehicles Act, 1939 require protection of article 31B.”

2.12 The Emergency and the Forty-Second Amendment

It is important to clarify that the Fourth or the Fifth Five Year Plans did not cause the declaration of Emergency. However, central planning led to transforming institutions over three decades such that checks and balances in the Constitution, like the separation of powers, federalism, and individual rights, were weakened; and power was centralized in the office of the Prime Minister, who was also the Chairman of the Planning Commission. In this sense, the Emergency was the logical conclusion to the path that was chosen by Nehru in gradually weakening constitutional constraints to make way for welfare policies and five year plans.

The Thirty-Ninth Amendment was challenged in the Supreme Court. Another reason for passing the Thirty-Ninth Amendment was that Indira Gandhi’s power was threatened due to a series of events beginning with the 1971 election.

Raj Narain, a politician who lost to Indira Gandhi in the 1971 Parliamentary election, filed a petition alleging that she had won the election through corrupt practices and had used government officials and official machinery in her campaign. On June 12, 1975, the Allahabad High Court found Indira Gandhi guilty and her election to Parliament was declared null and void. While her appeal was pending in the Supreme Court and she was under pressure to resign, Indira Gandhi issued an Ordinance on June 25, 1975 declaring a state of internal emergency. Elections and civil liberties were suspended, Indira Gandhi ruled by decree.

On August 10, 1975, the government passed the Thirty-Ninth Amendment. The Amendment sought three things—to withdraw the election of the Prime Minister from the scope of the judicial review process; to declare the decision of Allahabad High Court, invalidating Indira Gandhi’s election, void; and to exclude the Supreme Court’s jurisdiction to hear an appeal on the matter of the election (Section 4 Article [329A(3-5)] The Constitution (Thirty-Ninth Amendment) Act, 1975).

The amendment was challenged in the Supreme and the Court declared the parts of the Thirty-Ninth Amendment unconstitutional as it violated three essential features of the Constitution. It destroyed the democratic institution of India, it violated the principle of separation of powers in the Constitution and finally violated

the right to equality of status and opportunity by creating a privileged position for the Prime Minister (*Indira Nehru Gandhi v Raj Narain* (AIR 1975 SC 1461)).

With the declaration of Emergency, the command and control nature of state policy assumed new proportions. The state controlled all aspects of everyday activity from the timings of trains to demographics. The Planning Commission declared that population control and Family Planning were “of the highest priority” (Planning Commission 1974, Chapter 18). Food shortage and poverty were blamed on “over-population” in the seventies. Targets for the number of health centers, doctors, nurses and contraception were specified in the FYP. FYP announced positive incentives, such as small cash payments on undergoing sterilization procedures like male vasectomy, and encouraged the use of technology in free state hospitals to aid gender selection, as a means of population control. Traditionally and culturally the male child is preferred in India and some families choose to abort female fetuses. Introduction of this during Emergency has now led to the widespread problem of female foeticide problem in India.

In April 1976, Indira Gandhi’s son, Sanjay Gandhi and his followers made population-planning program a priority and engaged in “harassment of the regional political leaders over whom they had influence” (Gwatkin 1979: 40). Sanjay Gandhi’s speeches and discussion incited officials and led “to a wave of unilaterally raised sterilization targets” (*Ibid*). These targets were passed on the district level bureaucrats. Soon the bureaucracy resorted to coercive measures in order to meet the sterilization targets, including the forced vasectomy of thousands of men. By the beginning of 1977, 14 million people had been sterilized (Gwatkin 1979: 49). The exact figures for the number of forced sterilizations are unavailable.

“The new economic programme launched last year served to focus attention on those elements in our Plan which had the twin objectives of increasing production and promoting social justice. *The drive against economic offences and the general atmosphere of discipline and efficiency which national emergency helped to foster led to a significant and all-round improvement in economic performance*” (Planning Commission 1974) (emphasis added).

Though Indira Gandhi had declared emergency and suspended democracy, the government amended the Constitution to legitimize the new regime. A committee led by Swaran Singh was appointed to “suggest amendments to the Constitution of India” and was the foundation for the Forty-Second Amendment (Singh 1976).

The Constitution (Forty-Second Amendment) Act, 1976 stated as its Object and Reasons, “The democratic institutions provided in the Constitution have been subjected to considerable stresses and strains and that vested interest have been trying to promote their selfish ends to the great detriment of public good. ... It is, therefore, proposed to amend the Constitution ... to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles.”

The Amendment declared the supremacy of the Parliament, both above the Constitution and the judiciary. The Fundamental Rights in Part III of the Constitution, which expressly protected the individual from the excesses of the State, were now subject to Directive Principles, or socialist welfare agenda of the

State. It is perhaps fitting, that the Forty-Second amendment, which was the most undemocratic and unconstitutional move by the Indian Parliament, should also declare India a “Socialist” state in the Preamble to the Constitution.

2.13 Forty-Fourth Amendment

In 1977, the Janata Party was formed under the leadership of Morarji Desai and supported by Jayaprakash Narayan. Desai was a staunch socialist, in the Nehruvian mould and, Narayan had proposed a 14-point program in 1952 eerily similar to Indira Gandhi’s Ten-point program. Indira Gandhi lost in the 1977 election to Raj Narain, an old school Gandhian Socialist. Both Desai and Narayan were confirmed democrats, and they campaigned on the promise of restoring democracy, reversing the Forty-Second Amendment, and pursuing socialist policies.

In 1978, under a Desai-led Janata Party government, the Forty-Fourth Amendment to the Constitution was debated and passed in the Parliament. This amendment undid most of the emergency powers of the Indira Gandhi government, but retained the socialist features. The government retained Article 31C and Fundamental Rights, which expressly protected the individual from the excesses of the State, were subject to Directive Principles. The Forty-Fourth Amendment also deleted the right to private property and removed all restrictions on the power of eminent domain. The Constitution (Forty-Fourth Amendment) Act, 1978 stated as its object and reasons, “the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be a fundamental right.”

Even though Indira Gandhi’s government was rejected in the election and there was a strong movement against the Emergency, the ideological consensus was towards a socialist society. The excesses of the Emergency as well as the weakening of institutions were blamed on some individuals like Indira Gandhi, and socialism was still embraced by the state and citizens. The problem was not one of individuals or specific instances, but an overall incompatibility between socialist goals and individual rights.

3 Concluding remarks

The constant clash between socialist planning and the Indian Constitution led Parliament to change the Constitution through several amendments. In the process, rule of law, federalism, property rights, separation of powers and the independence of the Indian judiciary were adversely affected. The contradictory mixture of socialism and rule of law led to economic and political deprivations, which were never intended by the framers. Socialist policies gradually undermined the Constitution by placing the expediency of the plan at hand above constitutional principles. Nehru, universally praised as the constitutional democrat, crafted legal innovations like the Ninth Schedule and made amendments to the Constitution to legitimize socialist planning. The same legal tools were used to undermine the rule of law and weaken individual rights in India by Indira Gandhi to legitimize the Emergency.

Socialist planning led India into decades of an anemic rate of growth and alarming levels of poverty and starvation. By the late seventies, with Indira Gandhi's totalitarian policies after the Emergency, all political rights and freedoms that the framers had promised to Indians were also lost. While both these consequences have been well documented, this is a third, important, and long lasting, consequence of the conflict between socialist planning and the Constitution: it changed the fundamental institutions and constitutional provisions in India. The Indian experience serves as a cautionary tale in institutional design and highlights the importance of crafting congruent political and economic institutions.

Acknowledgments For comments and suggestions on this chapter, I am grateful to the editors, referees, Simon Bilo, Peter Boettke, Chris Coyne, Harry David, Peter Leeson, Arvind Panagariya, Nandakumar Rajagopalan, Mario Rizzo, Virgil Storr, Richard Wagner, Larry White and participants of the Colloquium on Market Institutions & Economic Processes at the Department of Economics, New York University, and GSP Workshop at George Mason University.

References

- Alcock Ashdown Company Limited (Acquisition of Undertakings) Act, 1973.
- Austin, G. (1999). *Working a democratic constitution: The Indian experience*. New Delhi: Oxford University Press.
- Banking Companies (Acquisition and Transfer Undertakings) Act, 1969.
- Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969.
- Bhagwati, J. (1993). *India in transition: Freeing the economy*. New Delhi: Oxford University Press.
- Bhagwati, J., & Desai, P. (1970). *India: Planning for industrialization*. London: Oxford University Press.
- Bihar Management of Estates and Tenures Act, 1949.
- Bose, F. (2010). Parliament vs. Supreme Court: A veto player framework of the Indian constitutional experiment in the area of economic and civil rights. *Constitutional Political Economy*, 21(4), 336–359.
- Boettke, P. J. (1995). Hayek's road to serfdom revisited: Government failure in the argument against socialism. *Eastern Economic Journal*, 21(1), 7–26.
- Chatopadhyay, K. (2010 [1944]). Presidential address all India women's conference. In R. Guha (Ed.), *Makers of modern India*. New Delhi: Penguin Viking.
- Coal Mines (Taking Over of Management) Act, 1973.
- Coal Mines (Nationalisation) Act, 1973.
- Coking Coal Mines (Emergency Provisions) Act, 1971.
- Coking Coal Mines (Nationalisation) Act, 1972.
- Constitution of India, 1950.
- Constitution (First Amendment) Act, 1951.
- Constitution (Third Amendment) Act, 1954.
- Constitution (Fourth Amendment) Act, 1955.
- Constitution (Seventh Amendment) Act, 1956.
- Constitution (Seventeenth Amendment) Act, 1964.
- Constitution (Twenty-Fourth Amendment) Act, 1971.
- Constitution (Twenty-Fifth Amendment) Act, 1971.
- Constitution (Twenty-Sixth Amendment) Act, 1971.
- Constitution (Twenty-Ninth Amendment) Act, 1972.
- Constitution (Thirty-Fourth Amendment) Act, 1974.
- Constitution (Thirty-Ninth Amendment) Act, 1975.
- Constitution (Fortieth Amendment) Act, 1976.
- Constitution (Forty-Second Amendment) Act, 1976.
- Constitution (Forty-Fourth Amendment) Act, 1978.
- Das, G. (2000). *India unbound*. New York: Anchor Books.
- Devasahayam, M. G. (2012). *Emergency and India's second freedom*. New Delhi: Times Group Books.

- Dhavan, R. (1992). *Nehru and the constitution*. New Delhi: Indian Law Institute.
- Dicey, A. V. (1915). *An introduction to the study of the law of the constitution*. Indianapolis: Liberty Classics.
- Editorial. (1950). *New York Times*, January 26.
- Editorial. (1975). *New York Times*, December 28.
- Essential Commodities Act, 1955.
- Friedman, M. (2000). *Friedman on India*. New Delhi: Center for Civil Society.
- Foreign Exchange Regulation Act, 1973.
- Gandhi, I. (1969). *Why nationalization*. New Delhi: All India Radio.
- General Insurance Business Nationalization Act, 1972.
- Golwalkar, M. (2010 [1964]). Not socialism but Hindu Rashtra. In R. Guha (Ed.), *Makers of modern India*. New Delhi: Penguin Viking.
- Golak Nath v State of Punjab* (AIR 1967 SC 1643).
- Guha, R. (2007). *India after Gandhi*. London: Macmillan.
- Guha, R. (2010). The Socialist Feminist. In R. Guha (Ed.), *Makers of modern India*. New Delhi: Penguin Viking.
- Gwatkin, D. R. (1979). Political will and family planning: The implications of India's emergency experience. *Population and Development Review*, 5(1), 29–59.
- Hayek, F. A. (1944). *The road to serfdom*. Chicago: University of Chicago Press.
- Hayek, F. A. (1973). *Law legislation and liberty: Rules and order (Vol. I: Law legislation and liberty)*. Chicago: Chicago University Press.
- Hayek, F. A. (1979). *Law legislation and liberty: The political order of a free people (Vol. III: Law legislation and liberty)*. Chicago: Chicago University Press.
- Hayek, F. A. (2011 [1960]). *Constitution of liberty: The definitive edition*. Chicago: Chicago University Press.
- Indian Copper Corporation (Acquisition of Undertaking) Act, 1972.
- Indira Nehru Gandhi v Raj Narain* (AIR 1975 SC 1461).
- Industrial Disputes Act, 1951.
- Industrial Policy Resolution, 1948.
- Industries (Development and Regulation) Act of 1951.
- IR Coelho v State of Tamil Nadu* (AIR 2007 SC 861).
- Kameshwar Singh v The Province of Bihar* (AIR 1950 Patna 392).
- Kashyap, S. C. (2010). *Indian Constitution: Conflicts and controversies*. New Delhi: Vitasta.
- Kesavananda Bharati v State of Kerala* (AIR 1973 SC 1461).
- Khilnani, S. (1998). *The idea of India*. New York: Farrar, Straus and Giroux.
- Lohia, R. (2010 [1964]). The caste system. In R. Guha (Ed.), *Makers of modern India*. New Delhi: Penguin Viking.
- Manish, G. P. (2011). Central economic planning and India's economic performance, 1951–1965. *The Independent Review*, 16(2), 199–219.
- Minerva Mills v Union of India* (AIR 1980 SC 1789).
- Moscovitch, B. (2012). Harold Laski's Indian students and the power of education, 1920–1950. *Contemporary South Asia*, 20(1), 33–44.
- Monopolies and Restrictive Trade Practices Act, 1969.
- Motor Vehicles Act, 1939.
- Nehru, B. K. (1977). B. K. Nehru. In J. Abse (Ed.), *In my LSE*. London: Robson.
- Nehru, J. (1929). *Soviet Russia: Some random sketches and impressions*. Mumbai: Chetana.
- Nehru, J. (1946). The objectives resolution. *Constituent assembly debates*, December 13, 1946.
- Nehru, J. (1951). Parliamentary debate on First Amendment Bill. In L. S. Secretariat (Ed.) (Vol. 16, col. 8820, May 1951). New Delhi: Lok Sabha Secretariat.
- Nehru, J. (2004 [1936]). *An autobiography*. New Delhi: Penguin Book.
- Nehru, J. (2004 [1946]). *The discovery of India*. New Delhi: Penguin.
- Palkhivala, N. A. (1974). *Our constitution defaced and defiled*. New Delhi: Macmillan.
- Panagariya, A. (2004). Growth and reforms during 1980s and 1990s. *Economic and Political Weekly*, 39(25), 2581–2594.
- Panagariya, A. (2008). *India: The emerging giant*. New York: Oxford University Press.
- Planning Commission. (1951). *First five year plan*. New Delhi.
- Planning Commission. (1956). *Second five year plan*. New Delhi.
- Planning Commission. (1961). *Third five year plan*. New Delhi.

- Planning Commission. (1969). *Fourth five year plan*. New Delhi.
- Planning Commission. (1974). *Fifth five year plan*. New Delhi.
- Punjab Security of Land Tenures Act, 1953.
- R.C. Cooper v Union of India*. (1970). 3 SCR 530.
- Rodrik, D., & Subramaniam, A. (2005). Hindu growth to productivity surge: The mystery of the Indian growth transition. *IMFs Staff Papers*, 52(2), 193–228.
- Sajjan Singh v State of Rajasthan* (AIR 1965 SC 845).
- Shankari Prasad Singh v Union of India* (AIR 1951 SC 458).
- Shenoy, B. R. (1969). *A decade of planning in India: Second and third five-year plans, a commentary*. Forum of Free Enterprise.
- Sick Textile Undertakings (Taking Over of Management) Act, 1972.
- Sick Textile Undertakings (Nationalisation) Act, 1974.
- Singh, J. (2006). Separation of powers and the erosion of the “right to property” in India. *Constitutional political economy*, 17(4), 303–324.
- Singh, S. (1976). *Report of the Committee Appointed by the Congress President to suggest amendments to the Constitution of India*. New Delhi.
- Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
- Srinivasan, T. N. (2005). Comments on “From ‘Hindu growth’ to productivity surge: The mystery of the Indian growth transition. *Economic and Political Weekly*, 52(2), 229–233.
- State of West Bengal v Bela Banerjee* (AIR 1954 SC 170).
- Subramanian, A. (2007). The evolution of institutions in India and its relationship with economic growth. *Oxford Review of Economic Policy*, 23(2), 196–220.
- Surya Pal Singh v State of UP* (AIR 1951 All 674).
- Tamanaha, B. Z. (2006). *On the rule of law: History, politics and theory*. Cambridge: Cambridge University Press.
- Thakurdas, P. (1945). *A brief memorandum outlining a plan of economic development for India (2 vols.)*. London: Penguin.
- Urban Land (Ceiling and Regulation) Act, 1976.
- Varma, A. (2008, February 4). *Profit’s no longer a dirty word: The transformation of India*. <http://www.econlib.org/library/Columns/y2008/Varmaprofit.html>.
- Mises, L. (1922). *Socialism: An economic and sociological analysis* (J. Kahane, Trans., 2nd ed.). Indianapolis: Liberty Fund.
- Waman Rao v Union of India* (AIR 1981 SC 271).
- Webb, S., & Webb, B. (1920). *A constitution for the socialist commonwealth of Great Britain*. London: Longmans, Green and Co.
- White, L. H. (2012). *The clash of economic ideas*. New York, NY: Cambridge University Press.