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## CAPITAL AND THE CONSTITUTION: RETHINKING DISTRIBUTIVE JUSTICE IN NEOLIBERAL INDIA

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### ABSTRACT

The Indian Constitution, forged in the crucible of post-colonial aspirations, is deeply imbued with a vision of socio-economic transformation and distributive justice. Its Preamble, Fundamental Rights, and particularly the Directive Principles of State Policy (DPSP) collectively articulate a blueprint for a welfare state that actively mitigates inequality and ensures an equitable distribution of material resources. However, the adoption of neoliberal economic policies since 1991, characterized by liberalization, privatization, and globalization (LPG), has presented a profound challenge to this constitutional ethos. This paper critically examines the complex and often contradictory interplay between the ascendant logic of capital accumulation and the constitutional mandate for distributive justice in contemporary India. It argues that the post-liberalization era has witnessed a significant jurisprudential shift, wherein the judiciary, particularly the Supreme Court, has increasingly reinterpreted constitutional provisions in a manner that accommodates and legitimizes the interests of capital, often at the expense of the original constitutional vision. Through a doctrinal analysis of key judgments related to property rights, land acquisition, environmental regulation, and labor law, the paper traces the erosion of the DPSP's primacy and the reconfiguration of fundamental rights to align with market-oriented principles. This has resulted in a constitutional paradox: while the text remains committed to social justice, its interpretation and application have facilitated the very inequalities it sought to dismantle. The paper concludes by advocating for a revitalized constitutionalism that re-centers distributive justice. It calls for a robust application of the 'basic structure' doctrine and a substantive reading of Articles 14, 19, and 21 to critically scrutinize neoliberal policies, thereby reclaiming the Constitution's transformative potential to build a truly egalitarian society in an era of deepening economic disparity.

**Keywords:** Capital, Distributive Justice, Indian Constitution, Judicial Review, Neoliberalism, Socio-Economic Rights.

## **I. Introduction**

The Constitution of India is not merely a charter of governance; it is a social revolutionary document.<sup>1</sup> Framed against the backdrop of centuries of colonial exploitation and deeply entrenched social hierarchies, its primary objective was to engineer a fundamental transformation of Indian society. The Constituent Assembly debates reveal a profound consensus on establishing an egalitarian social order, where the state would be the primary agent in dismantling structures of oppression and ensuring a just distribution of wealth, resources, and opportunities.<sup>2</sup> This commitment is enshrined in the Preamble, which seeks to secure for all its citizens “JUSTICE, social, economic and political,” and is further articulated through the synergy between the justiciable Fundamental Rights (Part III) and the non-justiciable but “fundamental in the governance of the country” Directive Principles of State Policy (Part IV).<sup>3</sup> Together, they form the “conscience of the Constitution,”<sup>4</sup> mandating the state to direct its policy towards securing, among other things, that the ownership and control of material resources are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth.<sup>5</sup>

For the first four decades of the Republic, this constitutional vision translated into a state-led, socialist-inspired development model. The state actively intervened in the economy through nationalization, land reforms, and a robust public sector, with the judiciary often, albeit after some significant tussles, upholding these measures in the name of the greater common good.<sup>6</sup> However, the year 1991 marks a watershed moment in India’s political and economic trajectory. Faced with a severe balance of payments crisis, India embarked on a path of economic liberalization, privatization, and globalization (LPG), fundamentally altering the relationship between the state, the market, and the citizen. This “neoliberal turn” prioritized market efficiency, fiscal discipline, and private capital accumulation as the primary drivers of economic growth.<sup>7</sup>

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<sup>1</sup> GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 50 (1966).

<sup>2</sup> See *CONSTITUENT ASSEMBLY DEBATES*, VOL. VII, 494-95 (Nov. 15, 1948) (statement of Dr. B.R. Ambedkar).

<sup>3</sup> INDIA CONST. art. 37.

<sup>4</sup> AUSTIN, *supra* note 1, at 50.

<sup>5</sup> INDIA CONST. art. 39(b) & (c).

<sup>6</sup> See, e.g., *State of Bihar v. Kameshwar Singh*, A.I.R. 1952 S.C. 252 (upholding the constitutionality of the Bihar Land Reforms Act, 1950).

<sup>7</sup> JAGDISH BHAGWATI, *INDIA IN TRANSITION: FREEING THE ECONOMY* 47-51 (1993).

This paradigm shift has created a deep and abiding tension with the Constitution's foundational commitment to distributive justice. The logic of neoliberalism, which champions deregulation, minimizes the state's role in economic management, and views inequality as a natural, even necessary, byproduct of market competition, stands in stark contrast to the constitutional mandate for an active welfare state that strives to reduce economic disparities. This paper grapples with the central question that arises from this tension: How has the Indian constitutional framework, particularly the judiciary, navigated the conflict between the demands of global capital and the enduring constitutional promise of distributive justice?

This paper argues that the post-1991 era has been characterized by a subtle but significant jurisprudential reorientation. While the Supreme Court has, in some areas like environmental protection and the right to life, expanded the scope of fundamental rights, its interpretation in the core economic sphere has increasingly harmonized constitutional principles with the imperatives of the neoliberal market. This has involved a doctrinal dilution of the Directive Principles, a re-privileging of certain economic rights over collective social welfare, and a re-framing of concepts like 'public purpose' to align with the goals of private investment and corporate growth. The judiciary, once viewed as a bulwark for the common citizen against state and corporate power, has often become an arbiter that legitimizes the processes of capital accumulation, thereby contributing to the widening chasm of inequality in India.

This research paper will proceed in four parts. Part II will trace the historical context of distributive justice within the constitutional framework, focusing on the pre-1991 era's debates on property rights and the judiciary's role in mediating the relationship between Part III and Part IV. Part III will analyze the impact of the neoliberal turn on constitutional interpretation, examining how the judiciary has adapted its doctrines to the new economic policy regime. Part IV will undertake a critical doctrinal analysis of key Supreme Court judgments in areas such as land acquisition, privatization, and labor rights to illustrate this jurisprudential shift. Finally, Part V will conclude by arguing for a necessary rethinking of constitutional interpretation, advocating for a jurisprudence that reclaims the transformative and egalitarian vision of the framers to address the profound challenges of distributive justice in 21st-century India.

## **II. The Constitutional Mandate for Distributive Justice: The Pre-Neoliberal Era**

The Indian Constitution's commitment to distributive justice was a direct response to the colonial legacy of economic exploitation and the pre-existing feudal land tenure systems that

had impoverished the vast majority of the population. The framers were not content with merely granting political freedoms; they sought to create a new social order based on economic equality and justice.<sup>8</sup> This section explores the constitutional architecture designed to achieve this goal and the early judicial struggles to interpret it, setting the stage for the dramatic shifts that would occur in the neoliberal era.

### **The Trinity of Justice: Preamble, Fundamental Rights, and Directive Principles**

The vision of a just society is woven into the very fabric of the Constitution. The Preamble explicitly states the objective of securing “economic justice” for all citizens. This is not a mere rhetorical flourish but the guiding star for interpreting the entire document. The real instruments for achieving this goal were Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy).

Part III guarantees justiciable rights such as equality before the law (Article 14), prohibition of discrimination (Article 15), and freedom of speech (Article 19). Crucially, it originally included a fundamental right to property under Article 19(1)(f) and Article 31, which stipulated that no person could be deprived of their property save by authority of law and that any acquisition of property for a public purpose must be accompanied by compensation.

Part IV, in contrast, lays down non-justiciable principles that are nevertheless “fundamental in the governance of the country.”<sup>9</sup> These directives are a comprehensive charter for a socialist-welfare state. Article 38 directs the state to “strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.” Article 39 contains the most potent distributive commands, obliging the state to ensure:

- i. An adequate means of livelihood for all citizens (39(a)).
- ii. The distribution of ownership and control of material resources to subserve the common good (39(b)).
- iii. The prevention of the concentration of wealth and means of production to the common

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<sup>8</sup> UPENDRA BAXI, THE INDIAN SUPREME COURT AND POLITICS 8-10 (1980).

<sup>9</sup> INDIA CONST. art. 37.

detriment (39(c)).

iv. Equal pay for equal work (39(d)).

The relationship between the justiciable rights in Part III and the non-justiciable directives in Part IV became the central constitutional battleground of the first four decades. The core of the conflict revolved around the right to property. Could the state, in its pursuit of the distributive goals of Article 39(b) and (c) (e.g., through land reforms or nationalization), override the fundamental right to property and the requirement of adequate compensation guaranteed by Article 31?

### **The Judiciary and the Property Rights Conundrum**

The early Supreme Court adopted a strict, legalistic approach, prioritizing fundamental rights over directive principles. In *State of Madras v. Champakam Dorairajan*, the Court held that the directive principles had to conform to and run subsidiary to the fundamental rights.<sup>10</sup> This perspective created a significant roadblock for socio-economic reform legislation. In a series of cases concerning land reform, the Court struck down agrarian reform laws on the grounds that the compensation provided was not a “just equivalent” of the market value of the land, thereby violating Article 31.<sup>11</sup>

This judicial stance placed the judiciary in direct confrontation with Parliament, which represented the democratic will to implement a socialist agenda. Parliament responded with a series of constitutional amendments designed to insulate land reform and other socio-economic legislation from judicial review. The First Amendment (1951) introduced Article 31A and 31B and the Ninth Schedule, effectively protecting laws placed within it from being challenged on the grounds that they violated fundamental rights. The Fourth Amendment (1955) made the adequacy of compensation non-justiciable.

The conflict escalated during the bank nationalization case, *R.C. Cooper v. Union of India*,<sup>12</sup> where the Supreme Court struck down the nationalization of 14 major banks, holding that the compensation offered was illusory. This decision was seen as a major blow to the government’s socialist policies. Parliament once again responded with the Twenty-fifth Amendment (1971),

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<sup>10</sup> *State of Madras v. Champakam Dorairajan*, A.I.R. 1951 S.C. 226.

<sup>11</sup> See, e.g., *State of West Bengal v. Bela Banerjee*, A.I.R. 1954 S.C. 170.

<sup>12</sup> *Rustom Cavasjee Cooper v. Union of India*, A.I.R. 1970 S.C. 564.

which introduced Article 31C. This new article was a radical provision: it stated that any law enacted to implement the directive principles under Article 39(b) or (c) could not be challenged for violating Articles 14, 19, or 31. It also sought to bar any judicial review of whether such a law actually gave effect to the principles.

This long and contentious struggle culminated in the landmark case of *Kesavananda Bharati v. State of Kerala*.<sup>13</sup> The thirteen-judge bench, in a decision that would define the contours of Indian constitutionalism, famously propounded the “basic structure” doctrine. The Court held that while Parliament had the power to amend the Constitution, it could not alter its “basic structure or framework.” While upholding the first part of Article 31C (giving primacy to Article 39(b) and (c) over Articles 14, 19, and 31), it struck down the second part, which ousted judicial review. This was a monumental compromise. The Court affirmed the supremacy of the Constitution and its own role as the ultimate interpreter, but it also constitutionally sanctified the primacy of distributive justice principles over certain fundamental rights, particularly the right to property.

Following *Kesavananda*, the Forty-second Amendment (1976) expanded the scope of Article 31C to cover all directive principles, not just 39(b) and (c). Although this expansion was struck down in *Minerva Mills Ltd. v. Union of India*,<sup>14</sup> the Court reaffirmed that there is “no conflict between the Fundamental Rights and the Directive Principles” and they are “like two wheels of a chariot” that needed to be balanced. This created a doctrine of “harmony and balance,” tilting slightly in favor of the directive principles when it came to socio-economic legislation.

Finally, the constitutional saga surrounding property rights reached its denouement with the Forty-fourth Amendment in 1978. The Janata Party government, seeking to undo some of the more authoritarian aspects of the Emergency-era amendments, removed the right to property from the list of fundamental rights altogether. Article 19(1)(f) and Article 31 were deleted. The right to property was downgraded to a mere constitutional right under a new Article 300A, which states: “No person shall be deprived of his property save by authority of law.” This was a definitive statement that individual property rights would no longer pose a fundamental constitutional obstacle to the state’s distributive justice agenda.

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<sup>13</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225.

<sup>14</sup> *Minerva Mills Ltd. v. Union of India*, A.I.R. 1980 S.C. 1789.

Thus, by the end of the 1980s, a constitutional consensus had been forged. The judiciary had, through a process of conflict and reconciliation, developed a jurisprudence that gave significant weight to the state's socio-economic objectives. The primacy of the directive principles in guiding state policy was acknowledged, and the right to property was significantly curtailed. The constitutional stage was set for a robust, state-led pursuit of distributive justice. It was this hard-won constitutional balance that would be profoundly tested by the neoliberal wave of the 1990s.

### **III. The Neoliberal Turn and its Impact on Constitutional Interpretation**

The economic reforms initiated in 1991 were not merely a technocratic adjustment of fiscal and trade policy; they represented a fundamental ideological shift away from the Nehruvian socialist consensus towards a market-driven model of development. The core tenets of this new paradigm-liberalization (reducing state regulation), privatization (transferring ownership of public assets to the private sector), and globalization (integrating the Indian economy with the global market)-were premised on the belief that private capital, freed from the shackles of the "license-permit raj," would be the most efficient engine of economic growth.<sup>15</sup> The state was re-imagined not as the primary director of the economy and agent of redistribution, but as a facilitator for private enterprise. This ideological shift inevitably seeped into the halls of justice, reshaping the way constitutional principles were interpreted and applied.

#### **The Shifting Semantics of Constitutional Language**

The neoliberal era did not necessitate a formal amendment of the Constitution's socialist-leaning text. Instead, the change occurred at the level of interpretation. The judiciary began to infuse existing constitutional language with new meanings that were more consonant with the logic of the market. Key concepts that were central to the distributive justice framework underwent a significant semantic transformation.

- i. 'Public Interest' and 'Public Purpose': In the pre-liberalization era, 'public purpose' was predominantly understood in the context of state-led development and social welfare projects, such as building dams, establishing public industries, or implementing

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<sup>15</sup> CHRISTOPHE JAFFRELOT, INDIA'S SILENT REVOLUTION: THE RISE OF THE LOW CASTES IN NORTH INDIAN POLITICS 435-37 (2003).

land reforms for the landless.<sup>16</sup> In the neoliberal era, the concept was broadened to include and often prioritize projects that facilitated private investment and economic growth. The acquisition of land for private companies to set up factories, Special Economic Zones (SEZs), or infrastructure projects under Public-Private Partnership (PPP) models was increasingly justified as serving a 'public purpose' on the grounds that these activities would generate employment, increase exports, and contribute to overall economic development.<sup>17</sup> This redefinition effectively equated corporate interest with the public interest, often overlooking the localized displacement and dispossession that such projects entailed. The 'greater common good' of the pre-1991 era was subtly replaced by the 'greater economic good' defined in terms of GDP growth and foreign investment.

- ii. 'Equality' under Article 14: The interpretation of the right to equality under Article 14 also witnessed a transformation. While the Court continued to apply the traditional tests of reasonable classification and non-arbitrariness, its application in economic matters began to show greater deference to market logic. In cases involving privatization and disinvestment, the Court adopted a highly restrained standard of review. The argument that selling public assets to private entities, often at undervalued prices, violated the public trust and the principle of common ownership (implicit in Article 39(b)) was consistently rejected. The Court's stance was that policy decisions regarding the economy were within the executive's domain, and as long as the process was formally transparent (e.g., through bidding), the substantive outcome of transferring public wealth into private hands was not a matter for judicial interference.<sup>18</sup> This formalistic interpretation of equality sidestepped the substantive question of whether these policies were exacerbating wealth concentration, a direct violation of the mandate in Article 39(c).
- iii. The Right to 'Carry on any... trade, or business' under Article 19(1)(g): This fundamental right, which was previously balanced against the state's power to impose reasonable restrictions in the public interest (often to achieve socialist goals), gained new prominence. The judiciary became more skeptical of state regulations that were

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<sup>16</sup> See Kameshwar Singh, A.I.R. 1952 S.C. 252.

<sup>17</sup> See, e.g., Sooraram Pratap Reddy v. District Collector, (2008) 9 S.C.C. 552 (upholding acquisition for a private IT park as a 'public purpose').

<sup>18</sup> See BALCO Employees' Union (Regd.) v. Union of India, (2002) 2 S.C.C. 333.



perceived as hindering business and free enterprise. While the Court did not completely abandon its regulatory oversight, there was a discernible shift in emphasis. Regulations seen as “inspector raj” were viewed with suspicion, and the discourse of “ease of doing business” began to influence judicial reasoning. The right to do business was increasingly interpreted as a right to be free from excessive state control, aligning perfectly with the neoliberal agenda of deregulation.<sup>19</sup>

### **The Doctrinal Subordination of Directive Principles**

The most significant casualty of the neoliberal jurisprudential shift was the doctrinal status of the Directive Principles of State Policy. The delicate “harmony and balance” established in *Minerva Mills* began to unravel. While the DPSP were never formally disavowed, their practical influence on judicial reasoning in core economic cases waned considerably.

In the pre-1991 framework, laws aimed at implementing directive principles, particularly Article 39(b) and (c), were afforded a degree of constitutional immunity from challenges based on certain fundamental rights. In the post-1991 era, this protective shield weakened. When privatization policies were challenged as being contrary to the spirit of Article 39(b) and (c), the courts typically held that these directives were non-enforceable policy goals and could not be used to strike down a legitimate executive policy of disinvestment.<sup>20</sup> The argument that the state, as a trustee of public resources, could not alienate them in a way that led to private enrichment was met with the counter-argument that disinvestment was a valid economic strategy to raise revenue and improve efficiency.

The judiciary effectively created a hierarchy where the government’s neoliberal economic policy choices were treated as paramount, and the directive principles were relegated to the status of aspirational goals with little binding force on these macro-economic decisions. The “two wheels of the chariot” were no longer seen as equal; the wheel of market-driven growth was given a decisive push, while the wheel of distributive justice was allowed to lag behind.

### **The Rise of ‘Good Governance’ and the Proceduralization of Justice**

Another key feature of this judicial shift was the emphasis on ‘good governance’ and

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<sup>19</sup> Philippe Cullet, Fundamental Right to Water in India, 24 LAW, ENV’T & DEV. J. 109, 115 (2008).

<sup>20</sup> BALCO Employees’ Union, (2002) 2 S.C.C. 333, at para 47.

procedural fairness over substantive distributive outcomes. Instead of asking whether a policy decision (like the creation of an SEZ) would lead to a more equitable distribution of resources, the judicial inquiry was often limited to whether the correct *procedure* for acquiring land was followed or whether the environmental clearance process was formally adhered to.

This focus on proceduralism, while important, had the effect of legitimizing policies that had deeply inequitable consequences. A large-scale displacement of agricultural communities for a private industrial project could be deemed constitutionally valid as long as the legal procedures for land acquisition were technically complied with. The substantive constitutional question-whether such a transfer of resources from the poor to the wealthy aligns with the directive principles-was often sidestepped.<sup>21</sup> Justice was reduced from a substantive, distributive ideal to a matter of procedural correctness. This approach provided a veneer of legality and fairness to the processes of capital accumulation and dispossession that characterized the neoliberal economy, without engaging with their fundamental injustice from a constitutional perspective.

In essence, the neoliberal turn did not lead to an overt rejection of the Constitution's distributive justice mandate. The shift was more subtle and insidious. It operated through reinterpretation, selective emphasis, and a move from substantive to procedural review. The constitutional framework, designed to control and direct capital for the common good, was gradually repurposed into a framework that facilitated and legitimized its accumulation, setting the stage for the specific doctrinal shifts examined in the next section.

#### **IV. Doctrinal Analysis of Key Judgments: Capital's March Through the Courts**

The jurisprudential accommodation of neoliberalism is best illustrated by examining the Supreme Court's rulings in specific areas where the interests of capital directly conflicted with the socio-economic rights and resources of ordinary citizens. This section undertakes a doctrinal analysis of key judgments in the domains of privatization, land acquisition, and environmental law, revealing a consistent pattern of judicial reasoning that prioritizes market efficiency and private investment over the constitutional vision of distributive justice.

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<sup>21</sup> Michael R. Anderson, Displacement, Dispossession, and the Law: The Case of Special Economic Zones in India, 16 IND. J. GLOBAL LEGAL STUD. 301, 315-18 (2009).

## Privatization and Disinvestment: The Sanctification of Market Policy

The policy of divesting the state's share in Public Sector Undertakings (PSUs) was a cornerstone of the neoliberal reform package. PSUs, often termed the “temples of modern India,” were created to achieve the constitutional goals of public ownership of resources and prevention of wealth concentration. Their privatization was thus a direct reversal of this long-held strategy. When these policies were challenged in court, the judiciary was forced to confront the tension between the new economic orthodoxy and the established constitutional philosophy.

The landmark case in this regard is *BALCO Employees' Union (Regd.) v. Union of India*.<sup>22</sup> The government's decision to sell a majority stake in the profitable public sector aluminum company, Bharat Aluminium Company Ltd. (BALCO), to a private entity was challenged. The petitioners argued that the disinvestment was arbitrary, against the public interest, and violated the directive principles in Article 39(b), which mandated state control over material resources for the common good.

The Supreme Court's response was a masterclass in judicial deference. The Court declared that economic policy was the exclusive domain of the executive and that the judiciary lacked the expertise to scrutinize its wisdom. It held:

“It is not for the courts to consider the relative merits of the different economic policies... In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.”<sup>23</sup>

By framing the issue as one of non-justiciable “policy,” the Court effectively insulated the core tenets of neoliberalism from constitutional scrutiny. The argument based on Article 39(b) was dismissed on the grounds that directive principles could not be used to invalidate an executive action that was otherwise not illegal. The Court's focus shifted entirely to the *process* of disinvestment, examining only whether the bidding process was transparent. It refused to

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<sup>22</sup> *BALCO Employees' Union (Regd.) v. Union of India*, (2002) 2 S.C.C. 333.

<sup>23</sup> *Id.* at para 38.

engage with the *substance* of the decision-the transfer of a valuable, profit-making national asset, built with public money, into private hands.

The *BALCO* judgment set a powerful precedent. It was followed in subsequent cases like *Centre for Public Interest Litigation v. Union of India*,<sup>24</sup> where the privatization of two petroleum companies was challenged. The Court once again reiterated the principle of judicial restraint in economic matters. This line of reasoning created a constitutional safe harbor for privatization. The state's power to alienate public resources in favor of private capital was judicially sanctioned, while the constitutional directive to distribute and control those very resources for the public good was rendered toothless in this context. The vision of Article 39(b) was subordinated to the government's newfound commitment to market efficiency.

### **Land Acquisition: 'Public Purpose' as a Handmaiden to Private Enterprise**

Land is the most critical resource in India, and conflicts over its acquisition have been a major flashpoint in the neoliberal era. The colonial-era Land Acquisition Act, 1894, gave the state vast powers to acquire land for a "public purpose." As discussed, the interpretation of this term became the key legal battleground.

In the pre-1991 era, while acquisitions for private companies were permitted, they were subjected to stricter scrutiny.<sup>25</sup> The post-liberalization period saw a dramatic expansion of this doctrine. The judiciary increasingly accepted the state's argument that facilitating private industrial and commercial projects constituted a valid public purpose because it would lead to economic development.

A key case is *Sooraram Pratap Reddy v. District Collector*,<sup>26</sup> where the acquisition of vast tracts of agricultural land for a private IT park project (a "knowledge hub") in Andhra Pradesh was challenged. The farmers argued that taking their fertile land for a private real estate and IT venture could not be considered a 'public purpose'. The Supreme Court disagreed emphatically. It held that the concept of 'public purpose' must be interpreted in line with the "needs of the time." The Court reasoned that in an era of globalization and technological

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<sup>24</sup> *Centre for Public Interest Litigation v. Union of India*, (2003) 7 S.C.C. 532.

<sup>25</sup> See Land Acquisition Act, 1894, § 40(1)(b) & 41 (requiring a formal agreement with the company).

<sup>26</sup> *Sooraram Pratap Reddy v. District Collector*, (2008) 9 S.C.C. 552.

advancement, projects like IT parks, which generate employment and foreign exchange, are vital for the nation's economic health and thus undoubtedly serve a public purpose.

This reasoning was replicated in numerous other cases involving acquisitions for Special Economic Zones (SEZs), industrial corridors, and luxury housing projects.<sup>27</sup> The judiciary's approach had two significant consequences. First, it provided a legal veneer for what was essentially state-facilitated accumulation by dispossession.<sup>28</sup> The coercive power of the state, embodied in the Land Acquisition Act, was used to transfer land from small farmers and rural communities to large corporations at state-determined prices, which were often far below the market value.

Second, it demonstrated a profound disregard for the distributive justice implications. The Court's macro-economic rationale of national development overlooked the micro-level reality of dispossession, loss of livelihoods, and the conversion of self-sufficient farmers into a precarious workforce. The constitutional mandate in Article 39(a) (right to an adequate means of livelihood) and the spirit of Article 39(b) (distribution of resources for common good) were sacrificed at the altar of a top-down, capital-intensive model of development. While the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, later attempted to address some of the procedural and compensatory lacunae, the fundamental judicial acceptance of private profit-making as a 'public purpose' remains a lasting legacy of this era.

### **Environmental Jurisprudence: The Dilution of the Polluter Pays Principle**

While the Indian Supreme Court is globally renowned for its pioneering environmental jurisprudence, particularly the development of the Public Trust Doctrine and the Polluter Pays Principle (PPP), a closer look at its application in the neoliberal context reveals a more complex picture. While the Court has been proactive in certain areas, in cases involving large-scale industrial projects, the principles have often been diluted in favor of economic considerations.

The PPP, as initially articulated in cases like *Indian Council for Enviro-Legal Action v. Union of India*,<sup>29</sup> was a stringent principle of absolute liability. The polluter was held responsible for

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<sup>27</sup> See, e.g., *Ramniklal N. Bhutta v. State of Maharashtra*, (1997) 1 S.C.C. 134.

<sup>28</sup> DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 159 (2005) (describing 'accumulation by dispossession').

<sup>29</sup> *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 S.C.C. 212.

not only compensating the victims of pollution but also for the cost of restoring the degraded environment. However, in the neoliberal era, the application of this principle has often been reduced to a mere financial transaction-a “pay and pollute” scheme.

Consider the case of the Sterlite Copper plant in Thoothukudi, as seen in *Sterlite Industries (India) Ltd. v. Union of India*.<sup>30</sup> The plant had been operating for years in violation of environmental norms, causing significant pollution. The Madras High Court ordered its closure. However, the Supreme Court, while acknowledging the pollution, overturned the closure order. Citing the plant’s contribution to the economy and employment, the Court imposed a fine of ₹100 crore as “exemplary damages” and allowed the plant to continue operating, subject to compliance with future regulations.

This judgment exemplifies a worrying trend. Instead of using the PPP as a deterrent to prevent environmental harm, the Court used it as a tool for post-facto regularization of illegalities. The fine, though seemingly large, was a pittance for a massive corporation and was effectively treated as a cost of doing business. The Court’s reasoning explicitly balanced environmental damage against economic benefits, with the latter often tipping the scales. This “balancing” exercise is a hallmark of neoliberal jurisprudence, where the absolute constitutional value of a clean environment (read into Article 21) is converted into a fungible commodity that can be traded off against the interests of capital. The distributive justice aspect-where marginalized communities disproportionately bear the environmental costs of industrial development while the profits are privatized-is lost in this utilitarian calculus.

These doctrinal analyses reveal a judiciary grappling with the ideological pressures of its time. By prioritizing policy deference, redefining ‘public purpose’ to suit corporate investment, and diluting environmental principles, the Supreme Court has often acted as a facilitator, rather than a constitutional check, on the excesses of neoliberal capital. This has had profound consequences for the promise of distributive justice, a theme explored in the final section.

## **V. Rethinking Distributive Justice: Towards a Reclaimed Constitutionalism**

The preceding analysis demonstrates how the constitutional discourse in India has been reshaped to accommodate the logic of neoliberal capital, leading to a steady erosion of its

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<sup>30</sup> *Sterlite Industries (India) Ltd. v. Union of India*, (2013) 4 S.C.C. 575.

distributive justice mandate. The result is a growing contradiction between the constitutional text, which remains committed to a socialist, egalitarian vision, and the reality of its application, which has facilitated unprecedented levels of wealth concentration and inequality.<sup>31</sup> This concluding section argues that a course correction is not only necessary but also possible within the existing constitutional framework. It calls for a revitalized jurisprudence that re-centers distributive justice by re-engaging with the Constitution's foundational principles.

### **Reasserting the Primacy of the Directive Principles**

The most critical step towards a more just jurisprudence is to rescue the Directive Principles of State Policy from their current state of doctrinal neglect. The “harmony and balance” thesis of *Minerva Mills* must be revived and strengthened. Courts must recognize that the DPSP are not merely aspirational platitudes but are the very soul of the constitutional project, containing its core social and economic objectives. They should serve as the primary interpretive lens through which all state actions, including economic policies, are evaluated.

This does not mean that courts should begin directing the government on specific economic policies. The principle of judicial restraint in matters of complex economic policy remains valid. However, this restraint should not translate into complete deference or abdication of constitutional responsibility. Instead of asking whether a policy is “wise,” the courts should ask whether it is “constitutional.” And the constitutionality of an economic policy in the Indian context must be judged against the touchstone of the DPSP.

A policy of disinvestment, for instance, should not be immune from scrutiny simply because it is a “policy.” The Court should be willing to ask substantive questions: Does this specific act of privatization lead to the concentration of wealth in a manner that offends Article 39(c)? Does it alienate crucial material resources of the community in a way that undermines the common good envisioned in Article 39(b)? By framing the questions in this manner, the judiciary can hold the state accountable to its fundamental constitutional obligations without usurping its policy-making role.

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<sup>31</sup> See WORLD INEQUALITY LAB, WORLD INEQUALITY REPORT 2022, 10 (Lucas Chancel et al. eds., 2022) (describing India as “one of the most unequal countries” with the top 10% holding 57% of the total national income).

## A Substantive Reading of Fundamental Rights

Parallel to revitalizing the DPSP, the judiciary must infuse the fundamental rights in Part III with a more robust, substantive understanding of justice. The right to equality, life, and liberty must be interpreted not just as negative restraints on state power but as positive obligations on the state to create the conditions for a dignified human existence.

- i. Substantive Equality (Article 14): The Court's review of economic policies under Article 14 should move beyond a formalistic check on the procedural fairness of a tender or an auction. It must embrace the concept of substantive equality, which is concerned with outcomes, not just processes. A policy that, on its face, appears neutral and non-arbitrary may still be unconstitutional if its predictable effect is to exacerbate existing inequalities and disadvantage marginalized communities. The Court must ask whether the policy has a disparate impact and whether the state has taken adequate measures to mitigate this impact. This would require a more searching and effects-based standard of review for policies that involve the large-scale transfer of public resources to private hands.
- ii. The Right to Life and Livelihood (Article 21): The Supreme Court has famously interpreted the right to life under Article 21 to include the right to livelihood, a clean environment, education, and health.<sup>32</sup> This expansive interpretation provides a powerful tool to advance the cause of distributive justice. However, as seen in the land acquisition and environmental cases, this right is often subordinated to the imperatives of "development." A reclaimed constitutionalism would insist that the right to a secure livelihood and a healthy environment for the poor cannot be treated as a mere externality in the cost-benefit analysis of a development project.

Using the doctrine of proportionality, which is now an established part of Indian constitutional law,<sup>33</sup> the Court should rigorously scrutinize any state action that infringes upon the right to livelihood. The state must be made to demonstrate that its chosen policy (e.g., acquiring fertile agricultural land for an SEZ) is the least restrictive means of achieving its objective and that the social benefits of the project decisively outweigh the social costs of displacement and

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<sup>32</sup> See, e.g., *Olga Tellis v. Bombay Municipal Corp.*, A.I.R. 1986 S.C. 180 (right to livelihood); *Consumer Education and Research Centre v. Union of India*, A.I.R. 1995 S.C. 922 (right to health).

<sup>33</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.



dispossession. This would shift the burden of justification squarely onto the state and the corporate beneficiaries of its policies.

### **Harnessing the Basic Structure Doctrine**

The doctrine of basic structure, born out of the conflict over property rights and distributive justice, remains the ultimate constitutional safeguard. In *Kesavananda*, secularism, democracy, and the rule of law were identified as some of the basic features. It is time for the judiciary to explicitly recognize that “distributive justice” or “the principle of an egalitarian social order” is itself a part of the Constitution’s basic structure.

While the Court has hinted at this possibility,<sup>34</sup> a clear and unequivocal affirmation would have a profound impact. It would mean that no legislative or executive action, and indeed no constitutional amendment, could violate the core commitment to reducing socio-economic inequality. This would provide the strongest possible foundation for judicially reviewing neoliberal policies that fundamentally undermine this commitment. It would empower the Court to strike down policies that, for instance, seek to dismantle the public distribution system, excessively privatize essential services like health and education, or drastically roll back labor protections, on the grounds that they violate the basic structure of the Constitution.

### **Conclusion**

The Indian Constitution was a promise of a future radically different from its colonial and feudal past—a future of justice, equality, and dignity for all. For four decades, the state, with the eventual sanction of the judiciary, took definitive, if imperfect, steps towards fulfilling that promise through a model of state-led development and redistribution. The neoliberal turn since 1991 has placed this constitutional promise under severe strain. The logic of the market and the imperatives of global capital have pushed back against the logic of distributive justice.

This paper has argued that the judiciary, the designated guardian of the constitutional conscience, has often played a role of accommodation rather than resistance in this process. Through deferential interpretations of state economic policy, a redefinition of public purpose to include private profit, and a proceduralization of justice, the courts have frequently provided

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<sup>34</sup> See, e.g., *Waman Rao v. Union of India*, A.I.R. 1981 S.C. 271; *Bhim Singhji v. Union of India*, A.I.R. 1981 S.C. 234 (some judges suggesting that egregious violations of socio-economic justice could be a basic structure violation).

constitutional legitimacy to the neoliberal project. The result has been the marginalization of the Directive Principles and a hollowing out of the Constitution's transformative social vision.

However, the constitutional text and its history of struggle offer powerful resources for a renewal of this vision. By reasserting the centrality of the Directive Principles, adopting a substantive interpretation of fundamental rights, and anchoring the principle of distributive justice within the unamendable basic structure of the Constitution, the judiciary can reclaim its role as a counter-majoritarian check on power-not just the power of the state, but also the increasingly formidable power of private capital.

The path forward is not a return to the "license-permit raj" of the past. It is about imagining a new constitutional political economy for the 21st century-one that harnesses the dynamism of the market but subordinates it to the constitutional goals of social justice and equity. It is about ensuring that development does not lead to dispossession and that growth is not divorced from justice. In an India marked by staggering inequality, the judiciary is faced with a profound choice: to either continue sanctioning a system that concentrates wealth and power, or to wield its immense constitutional authority to redeem the original promise of an egalitarian republic. The future of distributive justice in India may well depend on which path it chooses.