Implementing Constitutional Ideals: The Early Years of Indian Constitutionalism

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There are a number of ways in which we may think about the question of constitutional implementation. One way might be to deny that it is at all a question for legal scholars. Whether or not a constitution takes effect – that is to say, whether or not the relevant political actors in any order take it seriously and follow its directions – might be said to rest on factors external to the constitution. Lawyers can say a great deal about the internal dynamics of constitutional development, but it is less clear how much they can say about the external reasons for constitutional commitment. This terrain is best left to other disciplines. But, of course, one may choose not to deny the question is so thoroughgoing a fashion: perhaps there is some relationship between internal constitutional mechanisms and external constitutional commitment. If so, there is the burden of explaining what this relationship might be, and the conditions under which it might obtain.

In my paper, I avoid these questions. Instead, I view the question of constitutional implementation in a more modest way. I assume that the relevant actors in a political order take the newly enacted constitution seriously – for whatever reason – and ask how they act when constitutional developments follow patterns that they regard to be radically at odds with the constitutional vision that they hold. How do actors behave when they follow the constitution but they constitution does not, as it were, follow them? I explore this question through a study of the first decade of Indian constitutionalism. Although this is a period that has invited relatively less attention by both comparative and Indian scholars, it was a period of fervent and somewhat remarkable constitutional activity: statutes were invalidated, amendments were passed, tensions
between the legislature and judiciary were often serious. My particular interest is in measures relating to welfare (especially property redistribution): in the constitutional challenges that Nehru’s government faced in implementing their economic agenda, and the ways in which they responded to this challenge. I hope to draw some broader comparative lessons from this account, both with regard to the kinds of problems that actors might encounter when they attempt to implement a constitution, and the sorts of solutions through which such problems might be resolved (or, as the case may be, dissolved).