

Economic Inequality as a Constitutional Blind Spot

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Abstract - Economic inequality has emerged as a significant global issue, deeply impacting social cohesion, democratic processes, and the safeguarding of fundamental human rights. Despite its critical significance, economic inequality is often neglected in constitutional frameworks, which typically emphasize political and civil rights while overlooking economic justice. This study critically examines economic inequality as an overlooked aspect of constitutional law, investigating the conceptual underpinnings, historical and ideological origins, and institutional barriers that contribute to its marginalization. Through a comparative analysis of different constitutional systems, this study highlights the limitations of formal equality doctrines and the reluctance of courts to tackle these economic disparities. It also explores the challenges and opportunities related to judicial activism and constitutional reforms aimed at integrating substantive economic rights into the Constitution. By identifying the structural reasons for the persistent neglect of economic inequality, such as liberal individualism, separation of powers, and postcolonial legacies, this paper advocates for a shift in constitutional law towards embracing substantive equality and economic justice. The proposed reform pathways emphasize the explicit constitutional recognition of economic rights, enhanced judicial capacity, and participatory democratic mechanisms to ensure inclusive policymaking. Ultimately, this study contends that addressing economic inequality within constitutional discourse is essential for constitutions to function as comprehensive instruments of social justice and democratic legitimacy in modern societies.

Keywords: Economic inequality, economic rights, constitutional reforms, social justice, economic justice.

Introduction

Economic inequality expresses the unequal allocation of income, wealth, and access to vital resources like education, healthcare, and employment opportunities. In the past few decades, this disparity or inequality has become increasingly evident worldwide. This trend results from a complex interplay of factors, including globalization, technological advancements, neoliberal economic policies, and political decisions that have often prioritized market efficiency over equitable resource distribution. The increasing gap between the affluent and those economically marginalized poses significant challenges, jeopardizing social unity, heightening political division, and weakening the credibility of democratic

institutions.¹ These consequences highlight the urgency of addressing economic inequality not only as a socio-economic issue but also as a fundamental concern within the legal and constitutional frameworks.

Constitutions serve as the highest law of the nations, crafted to ensure basic rights, manage the use of governmental power, and create systems for justice and equality. Although they are important for governance and safeguarding rights, most constitutional structures have predominantly emphasized political and civil freedoms, like freedom of expression, voting rights, and due process. They have mostly overlooked economic inequalities and the underlying conditions that sustain them. This oversight results in a constitutional gap, where economic disparity is not sufficiently recognized or addressed within the highest legal framework, thereby restricting the potential of constitutions to function as comprehensive tools for social justice.²

This paper tries to analyse the causes of this constitutional neglect of economic inequality, arguing that the ongoing constitutional paradigms have been historically in favour of formal equality and individual political freedom instead of substantive economic justice.³ It examines the historical inheritance, the ideological commitment to liberal individualism, and the institutional doctrines such as separation of powers that have marginalized economic rights in constitutional law. This research provides a comparative analysis of different constitutional systems and judicial interpretations to show the sidelining of economic inequality and the implications of this marginalization for policymaking and social equity.

This study also opens up options of constitutional reform and judicial activism to bring economic justice into the constitutional discourse. It demands explicit constitutional recognition of economic and social rights, increased judicial capacity to address economic issues, and the inclusion of participatory democratic mechanisms to ensure that marginalised voices are shaping economic policymaking. Such reforms are critical to the reorientation of constitutional law toward substantive equality, so that the constitutions can fulfill their promise as instruments for the protection of



political and civil rights and the promotion of economic justice and social inclusion in contemporary society.

Conceptualizing Economic Inequality and Constitutional Law

Economic inequality is a complex and multifaceted phenomenon that goes beyond the income or wealth disparities. It encompasses unequal access to essential resources, such as quality education, healthcare, housing, and employment opportunities, all of which shape individual person's life chances and social mobility. It exhibits across the dimensions of race, class, gender, ethnicity, and geography, often intersecting to compound disadvantage. Understanding inequality does requires attention not only to quantitative measures, such as income distribution, but also to qualitative factors, including systemic barriers embedded in social, political, and economic institutions that perpetuate cycles of poverty and exclusion. Constitutions, as foundational legal frameworks, traditionally emphasize political and civil rights, safeguarding individual autonomy and democratic participation, whereas economic and social rights are often relegated to aspirational principles rather than enforceable entitlements. This liberal constitutional heritage has meant that economic inequality is largely treated as a matter of legislative policy rather than constitutional adjudication, thereby limiting constitutional engagement with economic justice. A critical difference arises between formal equality, which mandates identical treatment under the law and prohibits overt discrimination, and substantive equality, which demands proactive measures to dismantle structural disadvantages and promote equitable outcomes through policies such as affirmative action, welfare programs and redistributive taxation. However, many constitutions remain attached to the formal equality, overlooking the necessity of substantive interventions to redress entrenched disparities. Economic inequality is deeply rooted in structural and systemic dynamics, including historical injustices, institutional discrimination, labor market segmentation, and unequal access to capital and services. Constitutions that fail to acknowledge these dimensions risk perpetuating inequality by focusing narrowly on individual rights. Recognition of economic and social rights, such as education, healthcare, housing, and social security, within constitutional texts provides a normative foundation for addressing disparities; however, their inclusion is insufficient without mechanisms for realization and enforcement, which must balance rights with resources and political will.⁴ Economic inequality really messes with how people can use their political rights, you know. Like, groups that are already on the margins do not have the resources to get involved in politics the way they should. It just keeps them out, sort of continuing this cycle of exclusion in democracy. Bridging economic and political rights seems crucial. Without that connection, one cannot

have a truly inclusive system or real constitutional justice. But when it comes to constitutions dealing with inequality, there are many hurdles. Courts are on most occasions reluctant to stretch economic rights too far in their interpretations. And politicians push back hard against anything that redistributes wealth. Plus, it is tough to come up with standards that can actually be enforced. The whole thing gets more complicated because economic rights are quite abstract. Policymaking is not straightforward either, which makes it hard for judges to step in without overreaching. So, maybe we need to rethink how doctrines work to push for substantive equality. Development of better institutions to enforce these rights could help, but that part feels a bit unclear on how it would play out exactly.

Historical and Ideological Foundations of the Blind Spot

Liberal constitutionalism started back in the Enlightenment, and it really took off in the 18th and 19th centuries. And that's when it shaped how constitutions ignore economic inequality, like its just built into the system from the start. The whole idea focuses on things such as personal freedom and owning property, so the state doesn't step in much on individual stuff. That approach sees differences in wealth as normal from how markets work freely, not something unfair that needs fixing through the constitution. It seems kind of odd now, but back then they probably thought it was fine. Formal equality means.

everyone gets treated the same under the law, which protected rights to speak freely or gather or vote. But economic issues got pushed aside, not really debated in constitutional talks. Civil and political freedoms were on high priority, while inequality stayed out of it. Some parts of this tradition feel a bit one sided, like they depoliticized money matters on purpose.⁵ By making distributive decisions such as taxation, welfare, and regulation within the purview of the legislative and executive branches under the doctrine of separation of powers, this neglect was further compounded by an encouragement of judicial deference in matters economic and a construction of economic rights as non-justiciable, policy objectives. This is because of the drafting of constitutions in postcolonial and developing nations at times when political considerations relating to stability, solidarity, and civil freedoms take precedence over more thoroughgoing economic protections. While colonialism entrenched socio-economic class structures that proved difficult to overturn through constitutional means, the pursuit of formal equality became paramount in order to legitimate nascent nations, failing to address underlying inequalities.⁶ Norms and traditions have been another factor that has been at play. Where societies were based on a tradition or norm of accepting differences

based on their belief in the ideas of meritocracy and hierarchy, there was no incentive for them to include economic justice in the constitutions they framed. Thirdly, the tendency of legal formalism and conservative approaches in interpretation further worked to keep such issues marginalized. The difficulty in understanding and defining economic rights as well as the judicial tendency to not venture into innovation in the field of economic rights, has also played a role.

Comparative Constitutional Analysis

Studies of different constitutions show big differences in how they handle economic inequalities. Some constitutions include rights to help reduce these inequalities. For instance, the South African Constitution promises rights to shelter, health care, food, water, and social security.⁷ Likewise, the Directive Principles of State Policy of the Indian Constitution provides direction to the government regarding social goals like equitable distribution of resources and poverty alleviation, which are now interpreted by the courts in a justiciable way.⁸ Even with such progress, enforcement remains difficult because of lack of resources, political opposition, and the balance that courts strike between the rights of citizens and the concerns of governance. In the West, like in the United States, some constitutions focus on personal and civil rights but do not clearly mention economic rights. Here, inequality is seen as a problem for lawmakers, not something the constitution should address. Western courts often say that inequality does not break the rule of equal protection, ignoring economic fairness. However, things are changing. In Latin America, constitutional changes now recognize social rights. In Europe, equality now includes economic status.⁹ These trends demonstrate transformative constitutionalism, which involves judicial interpretation that tackles systemic socioeconomic inequality; however, its success is contingent upon the extent of judicial engagement, political will, and institutional competence. Despite the recognition of economic rights, their implementation is inconsistent, with judicial decisions alternating between deference that calls for gradual achievement and mandatory orders demanding redistribution. Additionally, constitutional practices are influenced by structural forces, including historical conditions, social and political environments, and ideological perspectives, with liberal democracies being resistant to economic rights and other states having been inspired by social movements more inclined towards them. Overall, comparative analysis underscores the possibility of incorporating explicit economic rights and broadening equality principles for promoting substantive justice but stresses the importance of judicial expertise, political will, and constitutional processes in achieving this objective.

Judicial Responses to Economic Inequality

Courts can help address economic inequality, but they have limits. In countries where the constitution includes socio-economic rights, courts often play a big role. They interpret these rights broadly and make sure people have access to education, healthcare, housing, and social security. Courts have pushed governments to spend money and improve public services. They also hold governments accountable. However, courts face challenges. They don't control budgets, so their decisions depend on political support and administrative ability. Concerns about separating powers can weaken court decisions, leading to rulings that recognize rights but don't enforce actions. Judicial backlash can harm court legitimacy. To address these issues, courts use ideas like progressive realization and proportionality to balance limited resources with protecting vulnerable groups. The success of court rulings varies. Sometimes they lead to real changes and better rights protection. Other times, weak enforcement and political resistance limit their impact. Constitutional courts and special bodies play a key role in shaping laws, helping disadvantaged people fight systemic injustice, and promoting economic justice in human rights. Addressing economic inequality in court is challenging. Courts focus on rights that can be enforced with clear orders and remedies. They must balance individual rights with public interest. Courts set standards for economic justice, but enforcement needs political and constitutional action by the government and society.¹⁰ Participatory processes that engage marginalized communities further enhance legitimacy and responsiveness, situating judicial action within a broader strategy to comprehensively address economic disparities.

Policy Implications and Constitutional Reform

The policy and constitutional changes show the need to include economic inequality in constitutions by clearly recognizing socio-economic rights. Constitutions should do more than just make general statements about equality. They should have enforceable rules that require the state to address differences in income, wealth, education, health care, and housing. This means making sure that real equality is achieved, which may involve affirmative action, while balancing personal freedoms with the common good. For these rules to work, institutions need to be strengthened with special training, diverse skills, and judicial changes that ensure access to justice, independence, and responsiveness through tools like public interest litigation and participatory decision-making. Reform should encourage participatory democracy by using methods like public consultations, citizens' assemblies, and involving civil society, giving disadvantaged groups a say in policy-making and constitutional interpretation. Policy and constitutional reform need coordinated efforts from legislatures, executive branches, and independent bodies to include constitutional duties in

budgeting and policies through fair tax systems, welfare provisions, labor standards, and development plans. Considering resource limits, constitutions should adopt a progressive realization framework, which means governments must take clear steps toward economic justice with specific goals and timelines, while balancing enforceable rights with flexible policies that adapt to changing socio-economic conditions. Public awareness and social mobilization are important for empowering communities and ensuring accountability through education programs, legal aid, and advocacy. Finally, reform can learn from international human rights standards and comparisons, which can add legitimacy to the principles in a constitution.

Conclusion

Economic inequality is still a gap in the constitution. It is caused by historical, ideological, and institutional factors that have shaped constitutions. A strong tradition of liberal constitutionalism, focused on individual freedom, equal rights, and limited government, has kept economic inequality out of the constitution. The separation of powers and assigning economic policies to lawmakers and government leaders also limit court involvement in economic justice. In many postcolonial and developing countries, constitutional issues mainly focus on building the nation and political stability, pushing aside economic rights. This allows structural inequality to continue in constitutional systems.

To fix this gap, we need to change how constitutional law works. It should focus on real economic fairness for the poor, not just equal treatment. Constitutions should clearly state the rights and duties of government bodies to reduce inequality and support inclusive growth. This will help excluded groups claim their rights and make the government responsible for achieving these goals. Courts need special training and new ideas to handle economic and social rights, considering the complexities of economic policies.

Also, adding ways for people to participate in democracy within constitutions is crucial. This ensures that the needs of marginalized groups are heard. It will make the constitution more legitimate and keep economic policymakers in check. Laws should align with constitutional duties, and monitoring systems should be set up to reduce economic inequality in practice.

In the end, changing constitutional law to address economic inequality is essential. Constitutions aim to promote social justice and stay legitimate. Closing the gap between economic and political rights will make the constitution a powerful tool for social and economic change. It will help build united and inclusive communities, ensuring justice means both political freedom and equal opportunity for everyone.

Recommendations for Future Research

In the future, we should use different methods to study economic inequality as a constitutional issue. We need research to see how economic rights help reduce inequality and when these rights are used and enforced. For example, a study could look at how court decisions change policies and affect society.

We should study how courts use strategies like progressive realization, proportionality, and transformative constitutionalism to achieve equality. Comparing how these methods work in different countries can show what works best. We should also look at how constitutional law and economic policy interact and how constitutional promises affect policies on redistribution, welfare, and economic justice. We need to analyze how institutions work together, the resources available, and the role of independent oversight in enforcing economic rights. The role of democracy and participation in changing constitutions and economic policy should also be studied. How do public consultations and citizen assemblies affect constitutional interpretation and policy development, especially for empowering marginalized groups?

To address the lack of focus on economic inequality in constitutions, we should research the cultural and ideological factors that keep it going. It would help to study the dominant liberal or neo-liberal ideas in economic constitutional debates and how to challenge them.

Finally, we should analyze how global issues like climate change, technology, and epidemics add to economic inequality and affect constitutional protections and economic equality. Future research should check if current constitutional frameworks can ensure resilience and equality in these changing situations.

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