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# FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY: A STUDY OF JUDICIAL INTERPRETATION AND LEGISLATIVE IMPLEMENTATION

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## ABSTRACT

The Indian Constitution represents a dynamic interplay between the enforceable liberties of the individual (Fundamental Rights, Part III) and the non-justiciable goals of the welfare state (Directive Principles of State Policy, Part IV). This article traces the jurisprudential evolution of this interface, arguing that the relationship has shifted from an initial hierarchy favouring rights to a modern synthesis of "harmonious construction," and finally to a complex contemporary battleground where this harmony is tested by identity politics and digital governance.

Historically, the Supreme Court viewed Directive Principles as subsidiary to Fundamental Rights. However, shifting political ideologies and the post-Emergency era necessitated a "socio-economic turn," where the judiciary read Directives into Fundamental Rights to expand the scope of liberty to include livelihood, education, and dignity. The article analyzes this transformative constitutionalism, highlighting how the "rigid wall of separation" between Parts III and IV was demolished to create a unified code of rights.

However, the current era presents a new friction where the State employs Directive Principles not to expand liberty, but to constrain it. Through an analysis of the Uniform Civil Code (Article 44) debates, the article contrasts the "gender justice" narrative with the constitutional commitment to "legal pluralism" and minority protections. Furthermore, it examines the "Digital Conflict," where the State justifies mass surveillance and mandatory biometric schemes (Aadhaar) under the guise of welfare delivery and efficiency (Directives), clashing with the newly affirmed Fundamental Right to Privacy (Article 21).

Drawing on comparative perspectives from South Africa's "reasonableness"

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standard and Bangladesh's "Basic Structure" doctrine, the article concludes that the conflict between Rights and Directives has not been resolved but relocated. It argues that a truly transformative constitution requires a "culture of justification" where Directive Principles provide the ends of governance, but Fundamental Rights strictly define the means and limits, ensuring that the pursuit of a uniform or digital welfare state does not trample the dignity of the individual.

**Keywords:** Transformative Constitutionalism, Fundamental Rights, Directive Principles of State Policy, Uniform Civil Code, Right to Privacy, Legal Pluralism, Basic Structure Doctrine, Digital Welfare State, Puttaswamy Judgment, Socio-Economic Rights, Culture of Justification.

## 1. INTRODUCTION

### *The Constitutional Paradox: A Conscience Divided?*

The drafting of the Indian Constitution represented a moment of profound rupture from the colonial past, envisaging not merely a transfer of political power but a fundamental reconstruction of state and society.<sup>2</sup> At the heart of this transformative document lies a structural dichotomy that has bedevilled jurists, legislators, and scholars for over seven decades: the bifurcation of individual rights and socio-economic goals into Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy). This division institutionalized a paradox. Part III, modelled on the American Bill of Rights, guarantees justiciable civil and political liberties, protecting the individual against the state.<sup>3</sup> Conversely, Part IV, inspired by the Irish Constitution, enshrines social and economic charters, such as the right to work, education, and public health, which are declared "fundamental in the governance of the country" yet expressly made non-enforceable by courts under Article 37.<sup>4</sup>

This textual separation created an apparent hierarchy of norms. In the early years of the republic, the justiciability of Fundamental Rights (FRs) often collided with the state's

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<sup>2</sup> G. Bhatia, (2019). *The Transformative Constitution: A RADICAL BIOGRAPHY IN NINE ACTS*. 1st ed. Noida: HarperCollins Publishers India.

<sup>3</sup> M. Mate, (2012). *Priests in the Temple of Justice: The Indian Legal Complex and the Basic Structure Doctrine in Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex*. 1st ed. Cambridge: Cambridge University Press.

<sup>4</sup> S. S. R. Ready, (1980) 'FUNDAMENTALNESS OF FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES IN THE INDIAN CONSTITUTION', *Journal of the Indian Law Institute*, 22(3rd ed.), Available at: <https://www.jstor.org/stable/43950702>; See also, M. P. Singh, (2003) 'The Statics and the Dynamics of the Fundamental Rights and the Directives Principles - A Human Rights Perspective', *SCC*, 5(1st ed.), Available at: <https://www.ebc-india.com/lawyer/articles/2003v5a4.htm>

legislative attempts to implement the Directive Principles (DPSPs), particularly in the arena of agrarian reform and property rights.<sup>5</sup> The dilemma was stark: could the state abrogate the individual rights of the few to secure the socio-economic welfare of the many? This tension threatened to tear the fabric of the Constitution, pitting the judiciary, as the guardian of Part III, against the legislature, the implementer of Part IV.

However, viewing these parts as antagonistic overlooks the unified vision of the founding framers. As the historian Granville Austin famously observed, the Fundamental Rights and Directive Principles together constitute the "*conscience of the Constitution*".<sup>6</sup> Austin argued that despite their separation, these provisions share a singular objective: the fostering of a social revolution to create an egalitarian society where citizens are free from coercion by the state or society.<sup>7</sup> The core of the commitment to this social revolution lies in the interplay between Parts III and IV.<sup>8</sup> The evolution of Indian constitutional law, therefore, can be read as a judicial struggle to reconcile this divided consciousness to bridge the gap between the "justiciable" rights of the individual and the "fundamental" duties of the state.

### ***Research Question***

This article interrogates the jurisprudential journey of the Indian Supreme Court in resolving this structural tension. Specifically, it asks: *How has the Indian judiciary transitioned from a doctrine of the "primacy of Fundamental Rights," which characterized the early post-independence era, to a doctrine of "harmonious construction" and integration, where Part IV is read into the content of Part III?*

This inquiry requires mapping the trajectory from the early positivist interpretation, where the non-enforceability of DPSPs rendered them subservient to FRs, to the modern era, where the two are seen as supplementary and complementary.<sup>9</sup> This evolution is not merely a matter of legal interpretation but reflects a deeper shift in the Court's understanding of its role in a transformative democracy from a sentinel of negative liberty to a facilitator of positive socio-

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<sup>5</sup> Sathe, S.P., "Constitutional Law I: Fundamental Rights," Annual Survey of Indian Law, Vol. XXVIII (1992).

<sup>6</sup> M. Mate, *supra note 3*.

<sup>7</sup> T. Devidas, (1975) 'DIRECTIVE PRINCIPLES: SENTIMENT OR SENSE?', Journal of the Indian Law Institute, 17(3rd ed.), Available at: <https://www.jstor.org/stable/43950434>

<sup>8</sup> M. P. Singh, *supra note 4*.

<sup>9</sup> P. P. Rao, (1973) 'FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES', THE INDIAN LAW INSTITUTE.

economic rights.<sup>10</sup>

### ***Literature Overview: Framing the Theoretical Debate***

To conceptualize this transition, this article engages with three distinct but intersecting streams of constitutional scholarship: the sociological, the doctrinal, and the liberal-philosophical.

First, the work of Upendra Baxi provides a critical sociological lens. Baxi has rigorously questioned the traditional boundaries of "law" within the Indian constitutional context. In his critique of the hierarchy between Part III and Part IV, Baxi challenged the positivist assumption that enforceability by courts is a necessary condition for a norm to be considered "law".<sup>11</sup> He posited that the Directive Principles, though non-justiciable, form an integral part of Indian constitutional law because they create binding obligations on the state and define the "constitutionally desired social order".<sup>12</sup> Baxi's scholarship helps frame the initial conflict not just as a legal technicality, but as a struggle over the sociology of law, whether the Constitution is a static document of rules or a dynamic instrument of social change.<sup>13</sup>

Second, the doctrinal analysis, typified by scholars like M.P. Jain and elaborated upon by contemporaries such as P.K. Tripathi and Mahendra P. Singh, focuses on the textual and interpretive shifts within the judiciary. This stream of literature highlights the "damaging opinion" expressed in early judgments like *State of Madras v. Champakam Dorairajan* (1951), which held that DPSPs must run subsidiary to FRs.<sup>14</sup> It traces the doctrinal correction through the "harmonious construction" principle, eventually culminating in the recognition that the balance between Part III and Part IV is a basic feature of the Constitution.<sup>15</sup> This perspective emphasizes that the "fundamentalness" of DPSPs is not a badge of inferiority but a distinct constitutional command that creates a duty for the state, even if it does not create a justiciable right for the individual in the traditional Hohfeldian sense.<sup>16</sup>

Third, Sudhir Krishnaswamy offers a robust defence of the Indian Constitution from the

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<sup>10</sup> M. Mate, *supra note 3*.

<sup>11</sup> U. Baxi, (1969) 'DIRECTIVE PRINCIPLES AND SOCIOLOGY OF INDIAN LAW — A REPLY TO DR. JAGAT NARAIN', *Journal of the Indian Law Institute*, 11(3rd ed.), Available at: <https://www.jstor.org/stable/43950028>

<sup>12</sup> *Ibid.*

<sup>13</sup> S. S. R. Ready, *supra note 4*; See also, U. Baxi, *supra note 11*.

<sup>14</sup> S. S. R. Ready, *supra note 4*.

<sup>15</sup> M. P. Singh, *supra note 4*.

<sup>16</sup> S. S. R. Ready, *supra note 4*; See also, U. Baxi, *supra note 11*.

perspective of political liberalism. Challenging the view that the Directive Principles are merely a "socialist manifesto" unrelated to liberal values, Krishnaswamy argues that they constitute "liberal essentials."<sup>17</sup> He posits that true liberal autonomy and self-determination are impossible without the social and economic conditions guaranteed by Part IV.<sup>18</sup> By interpreting the DPSPs as enabling provisions that allow the state to secure the conditions for the exercise of Fundamental Rights, Krishnaswamy frames the "harmonious construction" doctrine not as a compromise between socialism and liberalism, but as a necessary feature of a distinctively Indian liberalism that prioritizes substantive equality over formal neutrality.<sup>19</sup>

### ***Thesis Statement***

Drawing on these theoretical frameworks, this article argues that the initial discord between Fundamental Rights and Directive Principles was the result of a rigid, positivist reading of the Constitution that viewed rights solely as negative restraints on state power. This early jurisprudence failed to appreciate the "transformative" character of the Indian Constitution, a document designed not merely to limit the state but to reconstruct a deeply unequal society.<sup>20</sup>

The shift toward "harmonious construction" and the eventual reading of Part IV into Part III represent the maturation of "Transformative Constitutionalism" in India. This modern reading acknowledges that the abstract liberties of Part III (such as the right to life and equality) remain hollow without the socio-economic substance provided by Part IV.<sup>21</sup> By integrating these parts, the judiciary has not only harmonized a textual discord but has also operationalized the Constitution's "conscience," ensuring that the project of socio-economic justice is treated not as a policy option, but as a constitutional imperative essential for the realization of fundamental human dignity.<sup>22</sup>

## **2. Historical Jurisprudence: From Conflict to Harmony**

The jurisprudential journey of the relationship between Fundamental Rights (Part III) and

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<sup>17</sup> S. Krishnaswamy, (2019). *Is the Indian Constitution Liberal? in How Liberal is India? (THE QUEST FOR FREEDOM IN THE BIGGEST DEMOCRACY ON EARTH)*. New Delhi: Academic and Opinion-Oriented Publishing, Available at: [Is-The-Indian-Constitution-Liberal.pdf](#)

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> G. Bhatia, *supra note 2*.

<sup>21</sup> U. S. & M. S. Bindal, 'THE PANOPLY OF SOCIO-ECONOMIC RIGHTS: INDIAN AND THE SOUTH-AFRICAN MODEL', Manupatra, Available at: [https://docs.manupatra.in/newslines/articles/Upload/9A91CF91-320E-4275-87D8-4E9DF42B6EDC.1-b\\_Misc.pdf](https://docs.manupatra.in/newslines/articles/Upload/9A91CF91-320E-4275-87D8-4E9DF42B6EDC.1-b_Misc.pdf)

<sup>22</sup> M. P. Singh, *supra note 4*; See also, U. S. & M. S. Bindal, *supra note 21*.

Directive Principles of State Policy (Part IV) is a narrative of shifting power dynamics between the judiciary and the legislature. This evolution can be categorized into three distinct phases: an initial era of conflict where rights reigned supreme, a reactionary phase of socialist amendments where directives were given primacy, and a final synthesis under the doctrine of harmonious construction.

### ***Phase I: Era of Conflict (1950-1970) and the Primacy of Fundamental Rights***

In the years immediately following the promulgation of the Constitution, the judiciary adopted a strict legalistic and positivist approach to the interface between Part III and Part IV. The text of the Constitution presented an apparent hierarchy: Fundamental Rights were expressly made justiciable under Article 32, whereas Directive Principles were declared non-enforceable by courts under Article 37, despite being "fundamental in the governance of the country".<sup>23</sup>

The judicial attitude of this era is best epitomized by the seminal decision in *State of Madras v. Champakam Dorairajan* (1951).<sup>24</sup> In this case, the Supreme Court struck down a communal Government Order regarding admission to medical colleges, rejecting the State's argument that the order was necessary to promote the educational interests of weaker sections as mandated by Article 46 (a Directive Principle).<sup>25</sup> Justice S.R. Das, speaking for the Court, established a clear hierarchy of norms, holding that:

*"The directive principles of the State Policy, which by Article 37 are expressly made unenforceable by a Court, cannot override the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable by appropriate writs... The directive principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights".<sup>26</sup>*

This ruling posited that the chapter on Fundamental Rights was "sacrosanct" and not liable to be abridged by legislative or executive acts purporting to implement Directive Principles.<sup>27</sup> The Court viewed the Directives as subordinate, essentially holding that while the State had a duty to apply them, this duty could not override the rights of the individual.<sup>28</sup> Scholars like S.

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<sup>23</sup> S. S. R. Ready, *supra* note 4.

<sup>24</sup> *State of Madras v. Champakam Dorairajan* (1951) is 1951 AIR 226, 1951 SCR 525.

<sup>25</sup> P. P. Rao, *supra* note 9.

<sup>26</sup> *State of Madras v. Champakam Dorairajan* (1951) is 1951 AIR 226, 1951 SCR 525.

<sup>27</sup> P. P. Rao, *supra* note 9.

<sup>28</sup> S. S. R. Ready, *supra* note 4.

Sundara Rami Reddy have characterized this as the "most damaging opinion" expressed on the value of Directive Principles, as it relegated them to a secondary status merely because they lacked judicial enforceability.<sup>29</sup>

This "fundamentalness" debate, as analyzed by M.P. Singh, stemmed from the distinction between the static nature of Fundamental Rights and the dynamic nature of Directive Principles. The Court's early approach suggested that because individuals could not seek judicial relief for the violation of Directives, these principles were legally inferior to the justiciable Fundamental Rights.<sup>30</sup> This interpretation led to a situation where social welfare legislation, such as agrarian reforms, was frequently struck down for violating property rights and equality provisions, prompting the Parliament to respond with the First Amendment to the Constitution, creating the Ninth Schedule to immunize certain laws from judicial review.<sup>31</sup>

While some judges, like Justice Mudholkar in *Sajjan Singh*, began to question whether the framers intended such a hierarchy, asking if the Preamble and the basic features didn't imply a permanency to the constitutional scheme<sup>32</sup>, the dominant view until the late 1960s remained that in any conflict, Fundamental Rights trumped Directive Principles.<sup>33</sup>

### ***Phase II: The Socialist Turn & Amendments (1971-1976)***

The rigid stance of the judiciary in the 1950s and 60s, particularly regarding property rights, precipitated a legislative backlash. The conflict intensified following the *Golak Nath* (1967) decision, which denied Parliament the power to amend Fundamental Rights.<sup>34</sup> To overcome these judicial roadblocks and further a socialist agenda, the Parliament enacted a series of amendments between 1971 and 1976, aiming to establish the primacy of Directive Principles over Fundamental Rights.

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<sup>29</sup> *Ibid.*

<sup>30</sup> M. P. Singh, *supra note 4*.

<sup>31</sup> A. C. & S. Kabra, (2017) 'DETERMINING THE CONSTITUTIONALITY OF CONSTITUTIONAL AMENDMENTS IN INDIA, PAKISTAN AND BANGLADESH: A COMPARATIVE ANALYSIS', NUJS Law Review, 10(3rd ed.), Available at: <https://nujlawreview.org/wp-content/uploads/2017/12/10-%E2%80%934-%E2%80%93Aratrika-Choudhuri-Shivani-Kabra-%E2%80%93Determining-the-Constitutionality-of-Constitutional-Amendments-in-India-Pakistan-and-Bangladesh-%E2%80%93A-Comparative-Analysis.pdf>

<sup>32</sup> R. Ramachandran, (2000) 'The Supreme Court and the Basic Structure Doctrine', Oxford University Press, Available at: <http://www.commonlii.org/in/journals/INJConLaw/2009/13.pdf>

<sup>33</sup> M. P. Singh, (2008) 'ASHOKA THAKUR V. UNION OF INDIA: A DIVIDED VERDICT ON AN UNDIVIDED SOCIAL JUSTICE MEASURE', NUJS Law Review, 1(2nd ed.), Available at: [https://nujlawreview.org/wp-content/uploads/2016/12/prof.m.p.singh\\_.pdf](https://nujlawreview.org/wp-content/uploads/2016/12/prof.m.p.singh_.pdf)

<sup>34</sup> Sathe, S.P., *supra note 6*.

This phase is characterized by the 25th and 42nd Constitutional Amendments. The 25th Amendment (1971) introduced Article 31C, a drastic provision designed to save laws giving effect to the Directive Principles specified in Article 39(b) and (c), which relate to the distribution of material resources and the prevention of concentration of wealth.<sup>35</sup> Article 31C provided that no law containing a declaration that it is for giving effect to such policy shall be called in question on the ground that it abridges rights conferred by Articles 14, 19, or 31.<sup>36</sup> As noted by Satya Prateek, this was a clear attempt to reverse the hierarchy established in *Champakam Dorairajan* and give precedence to specific socio-economic goals over individual liberties.<sup>37</sup>

The Supreme Court's response in *Kesavananda Bharati* (1973) was nuanced. While it upheld the substantive part of Article 31C, acknowledging the importance of Articles 39(b) and (c), it struck down the portion that excluded judicial review, maintaining that the court retained the power to examine whether a law actually furthered the Directive Principles.<sup>38</sup>

However, the legislative assertiveness peaked during the Emergency with the 42nd Amendment (1976). This amendment sought to expand the scope of Article 31C to give immunity to *all* laws enacted to implement *any* of the Directive Principles, not just those in Article 39(b) and (c), against challenges based on Articles 14 and 19.<sup>39</sup> Yash Sinha highlights that this amendment supplied an "invincible aura" to laws advancing DPSPs, effectively subordinating the "golden triangle" of Fundamental Rights (Articles 14, 19, and 21) to the entire chapter of Directive Principles.<sup>40</sup> The government argued that the Directive Principles provided the goals without which Fundamental Rights would be meaningless, and thus required absolute primacy.<sup>41</sup>

This period represented a distortion of the constitutional scheme where the "conscience of the Constitution" was bifurcated, with the State attempting to use the non-justiciable Part IV to

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<sup>35</sup> A. C. & S. Kabra, *supra note 30*.

<sup>36</sup> S. Prateek, (2008) 'TODAY'S PROMISE, TOMORROW'S CONSTITUTION: 'BASIC STRUCTURE', CONSTITUTIONAL TRANSFORMATIONS AND THE FUTURE OF POLITICAL PROGRESS IN INDIA', NUJS Law Review, 1(3rd ed.), Available at: [https://nujlawreview.org/wp-content/uploads/2016/12/satya\\_prateek.pdf](https://nujlawreview.org/wp-content/uploads/2016/12/satya_prateek.pdf)

<sup>37</sup> S. Prateek, *supra note 35*.

<sup>38</sup> *Ibid*.

<sup>39</sup> M. Mate, *supra note 3*.

<sup>40</sup> Y. Sinha, (2023) 'CONSTITUTIONAL ECDYSIS: HOW AND WHY THE INDIAN CONSTITUTION MAY TEST ITS ORIGINAL PROVISIONS', NUJS Law Review, 16(2nd ed.), Available at: <https://nujlawreview.org/wp-content/uploads/2023/12/16.2-Sinha-1.pdf>

<sup>41</sup> M. Mate, *supra note 3*.

obliterate the justiciable protections of Part III.

### ***Phase III: The Doctrine of Harmonious Construction (1980-Present)***

The era of absolute primacy for Directive Principles was short-lived. In the post-Emergency era, the Supreme Court, in *Minerva Mills v. Union of India* (1980)<sup>42</sup>, struck down the expansive portions of the 42nd Amendment, restoring the balance between the two parts of the Constitution.<sup>43</sup>

In a detailed analysis of *Minerva Mills*, the Court held that the Indian Constitution is founded on the "bedrock of the balance" between Part III and Part IV.<sup>44</sup> Justice Chandrachud, writing for the majority, asserted that to give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance were declared to be an essential feature of the "basic structure" of the Constitution.<sup>45</sup> The Court rejected the view that the Directive Principles could only be achieved by abrogating Fundamental Rights, establishing instead that the goals set out in Part IV must be achieved without the "emasculatation of the rights to liberty and equality".<sup>46</sup>

This jurisprudential shift solidified the "Doctrine of Harmonious Construction." Scholars P.P. Rao and T. Devidas have elucidated this relationship using the metaphor of the "two wheels of a chariot." As P.P. Rao notes, the provisions of Part III and Part IV are complementary and supplementary to each other; they are not antagonistic.<sup>47</sup> The conflict envisioned in *Champakam* was replaced by an understanding that Part IV enables the state to create the conditions necessary for the meaningful enjoyment of the rights in Part III.<sup>48</sup> Similarly, T. Devidas argues that the supposed confrontation between the two parts is a "myth" and that the Constitution postulates its value concepts in both parts, which must operate as complementary.<sup>49</sup> The "integrated scheme" envisioned by the Court suggests that the Directive Principles prescribe the goal of social and economic justice, while Fundamental Rights ensure

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<sup>42</sup> 1980 SCC (3) 625

<sup>43</sup> M. Mate, *supra* note 3.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> P. P. Rao, *supra* note 9.

<sup>48</sup> *Ibid.*

<sup>49</sup> T. Devidas, *supra* note 7.

that the means used to achieve these goals do not violate individual dignity.<sup>50</sup>

Consequently, in the modern era, the Directive Principles are no longer merely "subsidiary." They have been elevated to a status of equality with Fundamental Rights, used by courts to interpret and expand the content of rights such as Article 21. As M.P. Singh observes, this harmonious interpretation has become a basic feature of the Constitution, ensuring that the State's obligation to pursue social welfare does not annihilate the individual's essential freedoms.<sup>51</sup>

### 3. The Socio-Economic Turn: Reading Part IV into Part III

The third phase of Indian constitutionalism marks a definitive departure from the hesitation of the post-independence era. Having established the "harmony" between Fundamental Rights (Part III) and Directive Principles (Part IV) in *Minerva Mills*, the Supreme Court embarked on a more radical jurisprudential project: the "socio-economic turn." This phase is characterized not merely by balancing the two parts, but by substantively reading the non-justiciable goals of Part IV into the justiciable content of Part III, primarily through the conduit of Article 21 (Right to Life). This judicial innovation effectively operationalized the "conscience of the Constitution," transforming socio-economic directives into enforceable fundamental rights.

#### *The Right to Life (Art 21) as a Repository of DPSP*

The catalyst for this transformation was the expansive interpretation of "life" and "personal liberty" following *Maneka Gandhi v. Union of India* (1978).<sup>52</sup> The Court began to assert that the right to life could not be restricted to mere animal existence but must include the right to live with human dignity and all that goes along with it, namely, the bare necessities of life.

S. Muralidhar analyzes this shift as the Indian judiciary's overcoming of the traditional "justiciability" objection to economic, social, and cultural (ESC) rights.<sup>53</sup> By expanding the scope of Article 21, the Court adjudicated the enforceability of ESC rights, witnessing attempts to rescue bonded labour from dehumanizing conditions (*Bandhua Mukti Morcha*), ensuring the

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<sup>50</sup> T. Devidas, *supra note 7*.

<sup>51</sup> M. P. Singh, *supra note 4*.

<sup>52</sup> 1978 SCC (1) 248.

<sup>53</sup> S. Muralidhar, (2002) 'Implementation of Court Orders in the Area of Economic, Social & Cultural Rights: An Overview of the Experience of the Indian Judiciary', *Delhi Law Review*, 24 Available at: <https://lawfaculty.du.ac.in/userfiles/downloads/Delhilawreviewjournal/DLR-Vol-XXIV-2002.pdf>

availability of food (*PUCL v. Union of India*), and protecting the rights of pavement dwellers (*Olga Tellis*).<sup>54</sup>

In *Olga Tellis v. Bombay Municipal Corporation* (1985), the Court famously held that the right to life includes the right to livelihood, reasoning that no person can live without the means of living.<sup>55</sup> Muralidhar notes that while the Court recognized this right, the relief granted was often procedural (requiring a just and fair procedure before eviction) rather than a substantive guarantee of alternate housing in all cases.<sup>56</sup> Nevertheless, this marked a doctrinal watershed where the Directive Principle of "adequate means of livelihood" (Article 39(a)) was read into Article 21.

Similarly, the Court read the Directive Principles regarding public health (Article 47) and the environment (Article 48A) into the Right to Life. In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, the Court declared that the preservation of human life is of paramount importance, thereby reading the right to emergency medical care into Article 21.<sup>57</sup> Muralidhar observes that this jurisprudence established benchmarks for ESC rights, such as the "core minimum" obligation of the state to prevent starvation and ensure public health.<sup>58</sup> This era obliterated the rigid law-policy divide, with the Court stepping in to enforce guidelines where the legislature had failed to act, effectively making the state accountable for the socio-economic welfare of its citizens.<sup>59</sup>

### ***Case Study: Right to Education (Art 21A)***

The most distinct crystallization of a Directive Principle into a Fundamental Right is the trajectory of the Right to Education. Originally, Article 45 in Part IV directed the State to "endeavour to provide" free and compulsory education for children up to age fourteen within

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<sup>54</sup> S. Muralidhar, *supra* note 53; See also, P. Singh, (2005) 'PROMISES AND PERILS OF PUBLIC INTEREST LITIGATION IN PROTECTING THE RIGHTS OF THE POOR AND THE OPRESSED', Delhi Law Review, 27 Available at: <https://lawfaculty.du.ac.in/userfiles/downloads/Delhilawreviewjournal/DLR-Vol-XXVII-2005.pdf>

<sup>55</sup> S. Muralidhar, *supra* note 53.

<sup>56</sup> M. P. & B. Nahar, (2017) "CONTINUING MANDAMUS" – A JUDICIAL INNOVATION TO BRIDGE THE RIGHT-REMEDY GAP", The West Bengal National University of Juridical Sciences (WBNUJS), 10(3rd ed.), Available at: <https://nujlawreview.org/wp-content/uploads/2017/08/10-%E2%80%933-%E2%80%93Mihika-Poddar-Bhavya-Nahar.pdf>

<sup>57</sup> U. S. & M. S. Bindal, *supra* note 21; See also, S. Muralidhar *supra* note 53.

<sup>58</sup> P. Singh, *supra* note 54.

<sup>59</sup> A. H. Desai, (2000) 'Public Interest Litigation: Potential and Problems', International Environmental Law Research Centre (IELRC), Available at: <https://www.ielrc.org/content/a0003.pdf>

ten years of the Constitution's commencement.<sup>60</sup>

Rishad Chowdhury provides a definitive legislative and judicial history of this transition. He notes that for decades, this directive remained under-enforced due to governmental inertia.<sup>61</sup> The judicial turning point arrived with *Mohini Jain v. State of Karnataka* (1992), where the Supreme Court, linking education to dignity, held that the "right to education" is concomitant to the fundamental rights enshrined in Part III.<sup>62</sup> This was refined in *Unni Krishnan, J.P. v. State of Andhra Pradesh* (1993), where the Court limited this right to free education for children up to the age of fourteen, explicitly reading the mandate of Article 45 into Article 21.<sup>63</sup>

Chowdhury argues that while *Mohini Jain* and *Unni Krishnan* formulated the right in broad terms, they left the remedy somewhat under-enforced, effectively adopting a model of declaring a violation without compelling immediate compliance.<sup>64</sup> However, these judgments catalyzed the legislative process, leading to the Constitution (Eighty-sixth Amendment) Act, 2002. This amendment inserted Article 21A, which mandates that the State "shall provide" free and compulsory education, thereby shifting the provision from the non-justiciable Part IV (Article 45) to the justiciable Part III.<sup>65</sup> Chowdhury asserts that this amendment sent a message that primary education is now a non-negotiable right, taken out of the realm of transient political majorities and placed beyond the reach of democratic debate regarding its necessity.<sup>66</sup>

### ***Case Study: Gender Justice***

The integration of Part IV into Part III has also been pivotal in advancing gender justice, particularly regarding women's socio-economic rights. Kamala Sankaran argues that the courts have utilized the "special provisions" clause of Article 15(3) alongside the Directive Principles

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<sup>60</sup> R. Chowdhury, (2010) "The Road Less Travelled": Article 21A and the Fundamental Right to Primary Education in India', Indian Journal of Constitutional Law (IJCL), 4 Available at: [https://nalsar.ac.in/images/IJCL\\_Vol.4.pdf](https://nalsar.ac.in/images/IJCL_Vol.4.pdf)

<sup>61</sup> *Ibid.*

<sup>62</sup> A. Dhonchak, (2021) 'Government Copyright in School Textbooks and the Fundamental Right to Education', Indian Journal of Constitutional Law, 10 Available at: [https://ijcl.nalsar.ac.in/storage/2022/02/DhonchakBajaj\\_IJCL\\_volume10\\_2021.pdf](https://ijcl.nalsar.ac.in/storage/2022/02/DhonchakBajaj_IJCL_volume10_2021.pdf) ; See also, R. Chowdhury, *supra note* 60.

<sup>63</sup> R. Chowdhury, *supra note* 60; See also, A. Dhonchak, *supra note* 62.

<sup>64</sup> R. Chowdhury, *supra note* 60.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

to construct a framework of substantive equality.<sup>67</sup>

Sankaran highlights how the principle of "Equal Pay for Equal Work," enshrined in Article 39(d) (a DPSP), was read into Articles 14 and 16 (Fundamental Rights) in *Randhir Singh v. Union of India*.<sup>68</sup> This interpretation allowed the courts to enforce economic parity in public employment, treating the directive principle not as a mere goal but as a constitutional command to the state to eliminate discrimination. Similarly, provisions for maternity relief (Article 42) have been read into the right to life and dignity, allowing the courts to strike down discriminatory employment rules, such as those in *Air India v. Nergesh Meerza*, which penalized pregnancy.<sup>69</sup>

Synthesizing the arguments on justiciability, Sankaran offers a critical nuance: she contrasts the "Right to Life" route with the "Affirmative Action" route. The expansion of Article 21 to include socio-economic rights (health, livelihood) has been relatively non-controversial because, unlike affirmative action (reservations), which is perceived as cutting into the share of others, the expansion of Article 21 rights often results in case-by-case relief without immediate, massive budgetary outlays that threaten other groups.<sup>70</sup> Muralidhar complements this by noting that while the Court has been activist in declaring these rights, the actual implementation often relies on "continuing mandamus" and monitoring, as seen in the *Right to Food* cases (*PUCL*), to bridge the gap between the declared right and the reality of enforcement.<sup>71</sup>

Thus, the socio-economic turn represents the judiciary's attempt to redeem the constitutional pledge of social revolution, using the interpretative tools of Part IV to give substance to the liberties of Part III.

While the post-Emergency era (Section 3) saw the Directive Principles used as a sword to expand the scope of Fundamental Rights, the contemporary era (Section 4) increasingly sees the State employing these same Principles, welfare, efficiency, and uniformity, as a shield to

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<sup>67</sup> K. Sankaran, (2007) 'Special Provisions and Access to Socio-Economic Rights: Women and the Indian Constitution', South African Journal on Human Rights, 23(2nd ed.), Available at: <https://www.tandfonline.com/doi/abs/10.1080/19962126.2007.11864925>

<sup>68</sup> U. S. & M. S. Bindal, *supra* note 21.

<sup>69</sup> K. Sankaran, *supra* note 67; See also, G. Bhatia, *supra* note 2.

<sup>70</sup> K. Sankaran, *supra* note 67.

<sup>71</sup> M. P. & B. Nahar, *supra* note 56.

justify encroachments upon individual liberty and identity.

#### 4. Contemporary Battlegrounds: Identity, Technology, and the State

##### *The Uniform Civil Code (Art 44 vs. Art 25): Pluralism, Gender Justice, and the State*

The tension between Article 44, a Directive Principle of State Policy (DPSP) urging the State to secure a Uniform Civil Code (UCC), and Article 25, a Fundamental Right guaranteeing freedom of religion, represents one of the most enduring conflicts in Indian constitutional law. This conflict is not merely legal but strikes at the heart of the Indian identity, whether it is defined by a homogenized legal uniformity or a celebration of legal pluralism.

The argument for a UCC often rests on the modernist assumption that uniformity equates to equality and national integration. However, jurists like M.P. Singh challenge this by invoking the concept of "legal pluralism." Singh argues that diversity is natural while uniformity is often forced.<sup>72</sup> Drawing on the reality of Indian society, Singh posits that legal pluralism is concomitant with social pluralism; the legal organization of society must be congruent with its social organization.<sup>73</sup> From this perspective, the Constitution does not prioritize the UCC as a foremost goal.<sup>74</sup> Instead, provisions like Article 371 (special provisions for states) and the Sixth Schedule (tribal areas) explicitly protect legal and social heterogeneity.<sup>75</sup> Singh suggests that the goal of national unity is strengthened, not weakened, by recognizing this plurality, and that Article 44 must be harmonized with the fundamental duty to promote brotherhood, which implies consensus rather than imposition.<sup>76</sup>

Conversely, the push for a UCC is frequently framed within the discourse of "Gender Justice," specifically targeting "regressive" practices in minority personal laws. Flavia Agnes offers a feminist critique of this narrative, arguing that the UCC debate has been entrapped in communally vitiated identity politics rather than a genuine concern for women's rights.<sup>77</sup> Agnes highlights that the post-independence reforms of Hindu law, often cited as the model for a

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<sup>72</sup> M. P. Singh, (2014) 'On Uniform Civil Code, Legal Pluralism and the Constitution of India', Journal of Indian Law and Society, 5 Available at: <https://docs.manupatra.in/newline/articles/Upload/4B75B6CF-6545-4840-AE3A-1FE84EE3881D.pdf>

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> F. Agnes, (2016). "Personal Laws" in The Oxford Handbook of the Indian Constitution. Oxford University Press.

UCC, did not actually achieve gender equality. For instance, the retention of the Hindu Undivided Family (HUF) property concept and tax benefits privileged Hindu males and excluded women from ancestral property until 2005.<sup>78</sup> Furthermore, Agnes points out that despite statutory monogamy, bigamy remains prevalent among Hindus, where the "second wife" is often left destitute and legally unrecognized, unlike in Muslim law where polygamous wives retain maintenance rights.<sup>79</sup>

Therefore, the binary between a "progressive" UCC and "regressive" personal laws is false. Agnes argues that outlawing practices like polygamy through a UCC does not solve the economic vulnerability of women.<sup>80</sup> Instead, the solution lies in an incremental approach enacting specific, uniform legislation that applies across communities, such as the *Protection of Women from Domestic Violence Act, 2005*, which secures rights to shelter and a violence-free life regardless of religion.<sup>81</sup> This approach, combined with the "anti-exclusion principle" articulated in recent jurisprudence, allows for the democratization of the private sphere without erasing cultural identity.<sup>82</sup> As Singh notes, the realization of a UCC must wait for the evolution of a consensus, lest it violates the constitutional commitment to diversity.<sup>83</sup> The constitutional vision, therefore, leans not towards a flattened uniformity, but a harmonized system where the State intervenes only to ensure that community practices do not block an individual's access to basic dignity and rights.<sup>84</sup>

### ***The Digital Conflict***

#### ***The Friction Between the Right to Privacy and the Welfare State***

The digitization of governance in India has fundamentally altered the relationship between the citizen and the State, creating a new constitutional battleground where the Right to Privacy (Article 21) clashes with the State's mandate to provide welfare (Directive Principles of State Policy). This conflict reached its zenith in the *K.S. Puttaswamy v. Union of India* judgment and the subsequent *Aadhaar* litigation. While the Supreme Court in *Puttaswamy* unanimously recognized privacy as a fundamental right, the practical application of this right remains

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<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> G. Bhatia, *supra note 2*.

<sup>83</sup> M. P. Singh, *supra note 72*.

<sup>84</sup> G. Bhatia, *supra note 2*.

contested, particularly when the State leverages "public welfare" to justify mass data collection and surveillance.

### ***The Welfare State as a Surveillance State***

The core of the State's argument, particularly regarding the Aadhaar scheme, is that technology is a neutral tool necessary for the efficient delivery of subsidies and services, and the fulfilment of its obligations under the Directive Principles (Part IV of the Constitution).<sup>85</sup> By linking biometric identity to welfare, the State claims to eliminate fraud and "leakage." However, legal scholars Vrinda Bhandari and Renuka Sane argue that this narrative obscures the profound power imbalance introduced by such technologies. They contend that the distinction between the State and private actors is blurring, and the State is increasingly using private sector infrastructure to monitor citizens.<sup>86</sup>

In the *Aadhaar* judgment, the majority upheld the scheme by accepting the State's welfare justification. However, as critics note, this effectively allows the Directive Principles to override the Fundamental Right to privacy. The friction arises because the State's welfare mechanism, the centralized collection of biometric and demographic data, inherently creates a surveillance architecture. Bhandari and Lahiri point out that the very existence of such a surveillance apparatus, regardless of its actual use, impinges upon personal liberty and creates a "chilling effect" on free speech.<sup>87</sup> The "panopticon-like" nature of digital welfare systems means that citizens are constantly aware they are being watched, which stultifies expression and dissent.<sup>88</sup>

### ***The Failure of "Consent" in the Digital Welfare Regime***

A critical area of conflict is the concept of "consent." In a traditional privacy framework, consent is the bedrock of data collection. However, Bhandari and Sane highlight that the draft Personal Data Protection Bill (based on the Srikrishna Committee Report) fundamentally

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<sup>85</sup> G. Bhatia, *supra* note 2.

<sup>86</sup> V. Bhandari, and R. Sane, (2018) 'Protecting Citizens from the State Post Puttaswamy: Analysing the Privacy Implications of the Justice Srikrishna Committee Report and the Data Protection Bill, 2018', *Socio-Legal Review (SLR)*, 14(2nd ed.), Available at: <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1177&context=slr>

<sup>87</sup> V. Bhandari, and K. Lahiri, (2020) 'The Surveillance State, Privacy and Criminal Investigation in India: Possible Futures in a Post-Puttaswamy World', *University of Oxford Human Rights Hub Journal (U of OxHRH J)*, 3(2nd ed.), Available at: <https://ohrh.law.ox.ac.uk/wp-content/uploads/2021/04/U-of-OxHRH-J-The-Surveillance-State-Privacy-and-Criminal-Investigation-1-1.pdf>

<sup>88</sup> *Ibid.*

dilutes this protection for the State. Section 13 of the draft Bill allows the processing of personal data *without* consent if it is necessary for "any function of the State authorized by law for the provision of any service or benefit".<sup>89</sup>

This creates a paradox: to access constitutionally mandated welfare (like food rations or employment guarantees), a citizen must waive their fundamental right to informational privacy. The "imbalance of power" in citizen-State interactions renders the concept of free consent illusory.<sup>90</sup> The State argues that welfare delivery is "strictly necessary," thereby bypassing the need for explicit consent even for sensitive biometric data. This legislative maneuvering effectively places the State's welfare functions above the citizen's right to control their own data, reintroducing the "culture of authority" that the Constitution sought to transform into a "culture of justification".<sup>91</sup>

### ***Proportionality and the Exclusionary Impact***

The *Puttaswamy* judgment established a four-pronged proportionality test to check State intrusion into privacy: legality, legitimate goal, suitability, and necessity (least restrictive measure).<sup>92</sup> Authors argue that the current digital welfare regime fails this test, particularly the "necessity" and "balancing" limbs.

Gautam Bhatia, in his analysis of the *Aadhaar* case, describes the digital identification regime as a potential "charter of servitude".<sup>93</sup> He notes that the "false positives" or authentication failures in biometric systems disproportionately harm the most vulnerable, the laborer with worn fingerprints or the elderly.<sup>94</sup> In these instances, the "digital" reality overrides the physical reality; the machine's denial of identity leads to the denial of food and basic rights.<sup>95</sup> This is not merely an inconvenience but a violation of the Right to Life (Article 21). The friction here is stark: the State's pursuit of "efficiency" (a welfare goal) directly results in the "exclusion" of the marginalized (a violation of fundamental rights).

Furthermore, the "necessity" standard requires the State to demonstrate that no less intrusive

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<sup>89</sup> V. Bhandari, and R. Sane, *supra note 86*.

<sup>90</sup> *Ibid.*

<sup>91</sup> G. Bhatia, *supra note 2*.

<sup>92</sup> V. Bhandari, and K. Lahiri, *supra note 87*.

<sup>93</sup> G. Bhatia, *supra note 2*.

<sup>94</sup> G. Bhatia, *supra note 2*.

<sup>95</sup> G. Bhatia, *supra note 2*.

means exist to achieve the welfare goal. Critics argue that the State has failed to prove that a centralized, pervasive biometric dragnet was the *only* way to deliver subsidies, as opposed to less intrusive methods like smart cards.<sup>96</sup> By accepting the State's claim that no alternative existed, the Court in the *Aadhaar* judgment arguably lowered the standard of judicial review for welfare schemes, allowing DPSP-driven efficiency to trump the strict scrutiny required for FR violations.

### ***The Absence of Judicial Oversight***

Finally, the digital conflict is exacerbated by the lack of judicial oversight over the State's surveillance and data processing mechanisms. Bhandari and Lahiri argue that the current legal framework (Telegraph Act, IT Act) vests exclusive control over surveillance authorization in the Executive, with no independent judicial scrutiny.<sup>97</sup> This concentration of power violates the Rule of Law and the separation of powers.

In the context of the "Surveillance State," the lack of oversight means that data collected ostensibly for welfare (e.g., linking Aadhaar to bank accounts or phones) can easily be repurposed for law enforcement or political profiling without the citizen's knowledge.<sup>98</sup> The creation of databases like the Central Monitoring System (CMS) or NETRA, which operate in a legal vacuum without statutory backing, exemplifies how the "welfare" justification is used to mask a surveillance infrastructure that operates outside constitutional checks.<sup>99</sup>

The "Digital Conflict" in India is characterized by the State's attempt to use the Directive Principles (Welfare) as a shield to bypass the rigorous demands of the Fundamental Right to Privacy. Authors like Bhandari, Devadasan, and Bhatia argue that while technology can aid development, the current legal architecture, characterized by broad exemptions for the State, lack of judicial oversight, and the coercion of consent, undermines the transformative vision of the Constitution. They contend that a robust application of the *Puttaswamy* proportionality test

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<sup>96</sup> S. Bedi, (2021) 'Proportionality and Burden of Proof: Constitutional Review in India', Indian Journal of Constitutional Law (IJCL), 10 Available at: [https://ijcl.nalsar.ac.in/wp-content/uploads/2021/10/Bedi\\_IJCL\\_volume10\\_2021-3.pdf](https://ijcl.nalsar.ac.in/wp-content/uploads/2021/10/Bedi_IJCL_volume10_2021-3.pdf)

<sup>97</sup> V. Bhandari, and K. Lahiri, *supra note* 87.

<sup>98</sup> S. Ramaswamy, (2024) 'The Evidence Machine: Rethinking Admissibility and Privacy in The Evidence Machine: Rethinking Admissibility and Privacy in India's AI Surveillance State India's AI Surveillance State', Indian Journal of Law and Technology Indian Journal of Law and Technology, 20(2nd ed.), Available at: <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1618&context=ijlt>

<sup>99</sup> *Ibid.*

requires the State to prioritize individual liberty and dignity over administrative efficiency, ensuring that the "digital republic" does not become a tool for exclusion and control.

## 5. Comparative Perspectives

The tension between the Directive Principles of State Policy (Part IV) and Fundamental Rights (Part III) in the Indian Constitution is not an isolated jurisprudential phenomenon. It reflects a broader global struggle to reconcile the "negative" liberties of the individual (civil and political rights) with the "positive" obligations of the welfare state (socio-economic rights). To understand the Indian position where non-justiciable directives have been judicially transformed into enforceable rights, it is instructive to examine two distinct constitutional models: the "justiciable" socio-economic rights model of South Africa, and the robust application of the Basic Structure doctrine in Bangladesh.

### *South Africa: The Paradox of Justiciability and Reasonableness*

The constitutional trajectories of India and South Africa are historically intertwined; both nations emerged from colonial oppression with a deep commitment to establishing a just society based on human dignity. However, their constituent assemblies adopted divergent structural approaches to socio-economic justice. As noted by legal scholars Uday Shankar and Saurabh Bindal, the Indian Constitution segregated rights based on justiciability, relegating socio-economic rights to non-enforceable Directive Principles, while the 1996 South African Constitution explicitly included socio-economic rights (such as access to housing, health care, food, and water) within its justiciable Bill of Rights.<sup>100</sup>

### *Divergent Judicial Approaches: Minimum Core vs. Reasonableness*

A direct comparative analysis reveals a striking paradox: the Indian judiciary, working with *non-justiciable* text, has arguably adopted a more aggressive enforcement strategy than the South African judiciary, which works with *justiciable* text.

Shankar and Bindal highlight that the Indian Supreme Court, particularly since the 1980s, has discarded the "negative language" of Fundamental Rights. By reading Directive Principles into the Fundamental Right to Life (Article 21), the Indian Court has created a "symbiotic

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<sup>100</sup> U. S. & M. S. Bindal, *supra* note 21.

relationship" between the two parts of the Constitution.<sup>101</sup> In doing so, the Indian courts have often aligned with the "Minimum Core" approach developed by the UN Committee on Economic, Social and Cultural Rights. This approach suggests that a state fails its obligations if it deprives a significant number of individuals of essential foodstuffs, primary health care, or basic shelter.<sup>102</sup> For instance, in *PUCL v. Union of India* (the Right to Food case), the Indian Supreme Court effectively converted government welfare schemes into legal entitlements, issuing continuing mandamus orders to ensure food delivery to destitute populations.<sup>103</sup>

In contrast, the Constitutional Court of South Africa has explicitly rejected the "Minimum Core" obligation argument. In the landmark case of *Government of the Republic of South Africa v. Grootboom*, the South African Court held that determining a minimum core presents difficult questions regarding diverse needs and resources.<sup>104</sup> Instead of defining a rigid baseline of entitlement (as the Indian court did with calorie counts in the Right to Food case), the South African Court adopted a standard of "Reasonableness".<sup>105</sup>

### ***The Reasonableness Review***

Under the South African model, the state's obligation is to take "reasonable legislative and other measures" within its "available resources" to achieve the progressive realization of rights.<sup>106</sup> In *Minister of Health v. Treatment Action Campaign* and *Mazibuko v. City of Johannesburg*, the South African Court emphasized that its role is not to dictate policy or budget allocation but to ensure that state measures are reasonable and democratic processes are accountable.<sup>107</sup>

Shankar argues that this "Reasonableness" approach reflects "judicial minimalism".<sup>108</sup> The South African Court acts with deference to the legislature and executive, wary of breaching the separation of powers. Conversely, the Indian approach, driven by the "Minimum Core" logic (even if not always explicitly named as such), has led to the judiciary effectively designing statutory frameworks for socio-economic rights, such as the Right to Education or Food

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<sup>101</sup> U. S. & M. S. Bindal, *supra note 21*.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

<sup>107</sup> U. S. & M. S. Bindal, *supra note 21*.

<sup>108</sup> *Ibid.*

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### ***Synthesis of the Comparison***

The comparative lesson is profound. The formal status of a constitutional provision (justiciable vs. non-justiciable) is less determinative of its actual impact than the interpretive philosophy of the court. India's "Directive Principles" model, through creative judicial interpretation, has arguably moved closer to a regime of immediate enforcement for certain subsistence rights. Meanwhile, South Africa's "Justiciable" model has evolved into a procedural check on government rationality rather than a guarantee of minimum material outcomes. Shankar suggests that a "symbiotic relationship" between these pathways is necessary: the Indian courts could learn from the South African deference to legislative space to gain legitimacy for their orders, while South Africa could look to India's "Minimum Core" approach to ensure that "reasonableness" does not become a shield for state inaction.<sup>110</sup>

### ***Bangladesh: The Basic Structure Doctrine as a Bulwark Against Autocracy***

While South Africa offers a comparison on *welfare* (Part IV), Bangladesh provides a critical comparative perspective on the *limitation of amendment power* (the Basic Structure Doctrine). The jurisprudential history of Bangladesh mirrors India's struggle to preserve the constitution's core identity against legislative majoritarianism, yet it operates within a more volatile history of martial law and abrupt regime changes.

Scholars Aratrika Choudhuri and Shivani Kabra note that, unlike India, where the Basic Structure Doctrine (BSD) emerged after a two-decade tug-of-war between Parliament and the Judiciary (culminating in *Kesavananda Bharati*), the doctrine in Bangladesh was adopted and applied more swiftly as a necessary defence against the "unbridled proliferation in autocratic arrogations of power".<sup>111</sup>

### ***The Genesis: The Eighth Amendment Case***

The *locus classicus* of the BSD in Bangladesh is *Anwar Hossain Chowdhury v. Bangladesh* (1989), popularly known as the Eighth Amendment Case. In this judgment, the Appellate

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<sup>109</sup> U. S. & M. S. Bindal, *supra* note 21.

<sup>110</sup> U. S. & M. S. Bindal, *supra* note 21.

<sup>111</sup> A. C. & S. Kabra, *supra* note 31.

Division of the Supreme Court of Bangladesh struck down an amendment that sought to decentralize the High Court Division by setting up permanent benches outside Dhaka.<sup>112</sup>

The reasoning employed by the Bangladeshi judiciary, particularly Justice B.H. Chowdhury, offers a distinct textual basis for the doctrine compared to India. While Indian jurisprudence had to infer implied limitations from the "identity" of the Constitution, the Bangladeshi Court relied heavily on Article 7 of the 1972 Constitution.<sup>113</sup> Article 7 expressly enshrines the doctrine of "Constitutional Supremacy" (as opposed to Parliamentary Sovereignty), declaring that all powers in the Republic belong to the people and that any law inconsistent with the Constitution is void.<sup>114</sup> Justice B.H. Chowdhury argued that the "Constitution itself forms the barometer for testing the constitutionality" of amendments, explicitly rejecting the conflation of the "derivative" constituent power of Parliament (to amend) with the "primary" constituent power of the People (to create).<sup>115</sup>

### ***Defining the Basic Structure***

Much like the Indian Supreme Court, the Bangladeshi Supreme Court has refused to provide an exhaustive list of basic features, treating the concept as an "organic" whole. However, in the *Eighth Amendment Case*, the Court identified specific features rooted in the Preamble and Article 7:

1. **Supremacy of the Constitution:** This is the "pole-star" of the Bangladeshi Constitution.
2. **Democracy and Republicanism:** Ensuring the polity remains a republic of the people.
3. **Independence of the Judiciary:** The Court held that by dispersing the High Court benches without proper infrastructure or consultation, the Eighth Amendment destroyed the "structural integrity" of the judiciary, thereby violating a basic feature.<sup>116</sup>
4. **Separation of Powers:** Explicitly recognized as an inalienable element<sup>117</sup>

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<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> A. C. & S. Kabra, *supra note* 31.

<sup>117</sup> *Ibid.*

### ***Application: From Martial Law to Caretaker Governments***

The trajectory of the BSD in Bangladesh demonstrates its utility as a tool for "constitutional responsiveness" to political crises.

- **The Fifth and Seventh Amendment Cases:** The doctrine was used to strike down amendments that had ratified martial law proclamations. In *Khondker Delwar Hossain v. Bangladesh Italian Marble Works* (Fifth Amendment Case) and *Siddique Ahmed v. Bangladesh* (Seventh Amendment Case), the Court held that the facilitation of military rule subverted the Basic Structure.<sup>118</sup> The Court rejected the doctrine of "state necessity" used to justify these takeovers, asserting that no authority could abrogate the Constitution entirely.<sup>119</sup>
- **The Thirteenth Amendment Case:** In a significant application of the doctrine, the Appellate Division in *Abdul Mannan Khan v. Government of Bangladesh* declared the "Caretaker Government" system (introduced by the 13th Amendment) unconstitutional.<sup>120</sup> The Court reasoned that an unelected caretaker government violated the basic feature of "democracy" and "popular sovereignty," as governance must always be by elected representatives.<sup>121</sup>

### ***Comparison with India***

Choudhuri and Kabra highlight a crucial distinction: while the Indian application of BSD (as seen in *Nagaraj* and *Coelho*) focuses on the "width" and "identity" tests to preserve the equality code and fundamental freedoms, the Bangladeshi application has been intensely focused on structural integrity and judicial independence as the primary means to prevent autocracy.<sup>122</sup> The Bangladeshi Court has been less hesitant to strike down amendments that threaten the unitary character of the judiciary or the democratic process.

Furthermore, the Bangladeshi jurisprudence clarifies a theoretical point often debated in India: the distinction between amendment and replacement. Justice Shahabuddin Ahmed in the *Eighth*

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<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> A. C. & S. Kabra, *supra* note 31.

*Amendment Case* argued that an amendment cannot be a "new Constitution".<sup>123</sup> If the basic pillars are demolished, the Constitution ceases to exist. Thus, the BSD in Bangladesh is framed not just as a judicial check, but as a necessary logical consequence of the distinction between the Parliament (a constituted body) and the People (the constituent power).

Comparing these jurisdictions with India illuminates the plasticity of constitutional texts. In South Africa, justiciable rights are tempered by a "reasonableness" standard that mimics India's deference to policy, whereas India's non-justiciable principles are enforced with a "minimum core" rigidity that mimics a Bill of Rights. In Bangladesh, the Basic Structure Doctrine, borrowed from India, has been rooted more firmly in the textual supremacy of the Constitution (Article 7) to act as a safeguard against the specific historical trauma of martial law. These comparisons reveal that constitutional doctrines are not static legal transplants but are actively reshaped by the specific socio-political imperatives of the nations that adopt them.

## 6. Conclusion

### *Synthesis: The Demolition of the Wall*

The jurisprudential journey of the Indian Constitution, regarding the relationship between Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV), has been one of profound evolution, from a relationship of hierarchy to one of synergy. As synthesized from the historical analysis, the "rigid wall of separation" that initially characterized the judiciary's approach has been irrevocably demolished.

In the early years of the Republic, typified by *State of Madras v. Champakam Dorairajan* (1951), the Supreme Court viewed Fundamental Rights as sacrosanct and Directive Principles as subsidiary, creating a hierarchy that privileged the individual's negative liberties over the State's positive obligations.<sup>124</sup> This dichotomy, described by Justice O. Chinnappa Reddy as a product of a "bourgeoisie understanding" of liberty, often paralyzed the State's ability to implement socio-economic reforms<sup>125</sup>. However, this rigid formalism was gradually eroded,

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<sup>123</sup> *Ibid.*

<sup>124</sup> M. J. O. C. Reddy, (1997) 'The Court and the Constitution- 1950-1996: Peaks and Depths', National Law School Journal (NLSJ), 9(1st ed.), Available at: <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1263&context=nlsj> ; M. K. Sinha, (2008) 'Right to Education: Indian and International Practices', Indian Journal of International Law, 48(2nd ed.), Available at: <https://rwi.lu.se/app/uploads/2012/04/Right-to-Education-Indian-and-International-Practices-Manoj.pdf>

<sup>125</sup> M. J. O. C. Reddy, *supra note* 124.

first by the "doctrine of harmonious construction" and definitively by the landmark judgments in *Kesavananda Bharati* (1973) and *Minerva Mills* (1980).<sup>126</sup>

The current constitutional position, as articulated by jurist M.P. Singh, is that the Constitution is founded on the bedrock of the balance between Parts III and IV. They are "like two wheels of a chariot," neither superior to the other.<sup>127</sup> The judiciary has effectively read the Directive Principles *into* the Fundamental Rights, particularly Article 21, thereby creating a regime of "positive rights" where the right to life encompasses the right to livelihood, health, and education.<sup>128</sup> Thus, the conflict is no longer about *whether* Directive Principles can limit Fundamental Rights, but *how* the two can be co-constituted to achieve the constitutional vision of a social revolution.

### ***The Future: Unresolved Questions and New Battlegrounds***

While the doctrinal war regarding the status of Part IV is settled, the conflict between State goals and individual liberties has not been resolved; it has merely shifted to new, more complex arenas. The sources indicate that the future of this constitutional tension lies primarily in two domains: the "Digital Welfare State" (Data vs. Privacy) and the "Cultural State" (Group Rights vs. Individual Autonomy).

**1. The Digital Conflict: Welfare vs. Privacy** The most pressing contemporary conflict arises from the State's digitization of welfare. Here, the Directive Principles (efficient welfare delivery, preventing leakage of public resources) are weaponized to justify mass surveillance and data collection, clashing directly with the newly affirmed Fundamental Right to Privacy.

Vrinda Bhandari and Karan Lahiri argue that the "Surveillance State" often justifies its intrusion into privacy by citing the benefits of technology in fulfilling welfare obligations.<sup>129</sup> In the post-*Puttaswamy* era, the conflict is no longer about the *existence* of the right to privacy but about the *proportionality* of the State's intrusion. The "unresolved question" here is whether the "legitimate state aim" of welfare (a Directive Principle) can ever justify a disproportionate violation of informational privacy.<sup>130</sup>

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<sup>126</sup> M. P. Singh, *supra* note 4; See also, U. S. & M. S. Bindal, *supra* note 21.

<sup>127</sup> M. J. O. C. Reddy, *supra* note 124; See also, M. P. Singh, *supra* note 4.

<sup>128</sup> U. S. & M. S. Bindal, *supra* note 21; See also, M. P. Singh, *supra* note 4.

<sup>129</sup> V. Bhandari, and K. Lahiri, *supra* note 87.

<sup>130</sup> *Ibid*

The tension is exacerbated by what Gautam Bhatia describes as the "culture of authority" versus the "culture of justification".<sup>131</sup> In the past, the State relied on the "procedure established by law" to enforce Directive Principles at the cost of liberty (as seen in *ADM Jabalpur*). Today, *Puttaswamy* demands that the State provide a rigorous justification for its actions. However, as noted in the analysis of the *Aadhaar* judgment, the Court sometimes defers to the State's "welfare" narrative, allowing the Directive Principle of distributing largesse to overshadow the strict scrutiny required for privacy violations.<sup>132</sup>

Future conflicts will likely revolve around "function creep," the use of data collected for welfare (Part IV) for law enforcement and criminal profiling. With the rise of AI and predictive policing (e.g., AASMA, CCTNS), the "digital persona" of the citizen becomes a site of struggle.<sup>133</sup> The authors suggest that the way forward lies in a robust application of the proportionality standard (legality, necessity, and proportionality strictu sensu), ensuring that the pursuit of a Directive Principle does not result in the creation of a "panopticon" that chills the exercise of Fundamental Rights.<sup>134</sup>

**2. The Identity Conflict: Uniformity vs. Pluralism** The second arena of future conflict lies in the tension between Article 44 (the Directive Principle for a Uniform Civil Code) and Article 25 (the Fundamental Right to religious freedom). This is a clash between the State's directive to homogenize legal personhood and the individual's right to cultural and religious identity.

M.P. Singh argues that the realization of a UCC (Part IV) must not come at the cost of the constitutional commitment to legal and social pluralism. He posits that national unity is fostered not by uniformity, but by the "harmony and spirit of common brotherhood" (Fundamental Duty), which implies consensus rather than imposition.<sup>135</sup> Conversely, Flavia Agnes warns against the co-optation of "gender justice" (a Part III goal) by majoritarian identity politics to push for a UCC that effectively erodes minority rights.<sup>136</sup>

The "unresolved question" is how to reform discriminatory practices within personal laws

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<sup>131</sup> G. Bhatia, *supra note 2*; See also, S. Dhawan, (2024) 'Karnataka High Court Ruling on Content Blocking: A Setback for User Rights', Indian Journal of Constitutional Law, 11 Available at: [https://ijcl.nalsar.ac.in/storage/2025/03/1112IndJConstL\\_Sachin.pdf](https://ijcl.nalsar.ac.in/storage/2025/03/1112IndJConstL_Sachin.pdf)

<sup>132</sup> V. Bhandari, and K. Lahiri, *supra note 87*; See also, G. Bhatia, *supra note 2*.

<sup>133</sup> S. Ramaswamy, *supra note, 98*.

<sup>134</sup> V. Bhandari, and K. Lahiri, *supra note 87*; See also, S. Ramaswamy, *supra note 98*.

<sup>135</sup> M. P. Singh, *supra note 72*.

<sup>136</sup> F. Agnes, *supra note 77*.

without allowing the Directive Principle of uniformity to steamroll the Fundamental Right of diverse communities to exist. Gautam Bhatia offers a way forward through the "Anti-Exclusion Principle".<sup>137</sup> This approach suggests that the Constitution is "transformative" not because it seeks to erase community identity (as a UCC might), but because it seeks to democratize the private sphere. The conflict should be resolved by testing whether a religious practice causes "exclusion" or blocks an individual's access to basic public goods and dignity. If it does (as in *Sabarimala*), the practice must yield, not to a homogenized code, but to the constitutional morality of the Fundamental Rights chapter.<sup>138</sup>

### ***Final Argument: The Constitution as a Transformative Charter***

Based on the synthesis of these sources, the overarching conclusion is that the Indian Constitution is a "transformative" charter. It does not merely set out the rules of government but seeks to reconstruct Indian society itself.<sup>139</sup>

In this transformative vision, the relationship between Rights and Directives is not adversarial but dialectic.

- **Directives provide the Ends:** They define the goals of the social revolution, economic justice, elimination of caste hierarchy, and provision of basic necessities (Part IV).<sup>140</sup>
- **Rights provide the Limits:** They define the boundaries within which these goals must be pursued, respecting human dignity, privacy, and individual autonomy (Part III).<sup>141</sup>

The conflict between them has not been "fully resolved" in the sense of disappearing; rather, it has been institutionalized as a necessary friction that drives constitutional evolution. The shift to new arenas like data privacy confirms this. Just as the Court in *N.M. Thomas* used Directive Principles to read "substantive equality" into Article 16, modern courts must use the Directive

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<sup>137</sup> G. Bhatia, (2016) 'Freedom from Community: Individual Rights, Group Life, State Authority and Religious Freedom under the Indian Constitution', *Global Constitutionalism*, 5(3rd ed.), Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2739235](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2739235)

<sup>138</sup> *Ibid*

<sup>139</sup> G. Bhatia, *supra note 2*; F7

<sup>140</sup> M. P. Singh, *supra note 4*; M. J. O. C. Reddy, *supra note 124*.

<sup>141</sup> G. Bhatia, *supra note 2*; See also, V. Bhandari, and K. Lahiri, *supra note 87*.

Principles (welfare) to justify data collection while simultaneously using Fundamental Rights (privacy) to strictly limit how that data is processed and stored.<sup>142</sup>

### ***The Way Forward***

The authors collectively suggest a path forward characterized by "**Integrated Adjudication**" and "**Dialogic Review**":

1. **Rejection of Binary Thinking:** Courts must reject the binary that views Part III as "individualistic" and Part IV as "communitarian" or "statist." As Uday Shankar notes, the "Minimum Core" approach allows courts to enforce socio-economic directives as rights, but this must be balanced with the "Reasonableness" review to prevent judicial overreach.<sup>143</sup>
2. **Structural Remedies:** To resolve the "right-remedy gap" where Directive Principles remain on paper, courts should employ "continuing mandamus" and "structural interdicts." This ensures that the State's positive obligations (like the Right to Food or Education) are monitored and enforced without the judiciary usurping the executive's budgetary role.<sup>144</sup>
3. **Technological Self-Determination:** In the digital age, the "transformative" purpose of the Constitution must extend to protecting the individual from the "black box" of algorithms. The "Right to Technological Self-Determination" should be recognized as part of the liberty protected by Part III, ensuring that the citizen is not reduced to a data point in the State's pursuit of Part IV goals.<sup>145</sup>

In conclusion, the "battleground" between Part III and Part IV is the engine of India's living democracy. The Constitution does not envision a static harmony, but a dynamic one, where the State is constantly pushed to achieve the welfare goals of the Directives, but is relentlessly pulled back by the Rights whenever it tramples on the dignity of the individual. As Gautam

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<sup>142</sup> A. Bhaskar, (2023) 'RESERVATION AS A FUNDAMENTAL RIGHT: INTERPRETATION OF ARTICLE 16(4) RESERVATION AS A FUNDAMENTAL RIGHT: INTERPRETATION OF ARTICLE 16(4)', Indian Journal of Constitutional Law (NALSAR University of Law), 10(1st ed.), Available at: [https://ijcl.nalsar.ac.in/wp-content/uploads/2021/11/Bhaskar\\_IJCL\\_volume10\\_2021-3.pdf](https://ijcl.nalsar.ac.in/wp-content/uploads/2021/11/Bhaskar_IJCL_volume10_2021-3.pdf) ; See also, V. Bhandari, and R. Sane, *supra note* 86.

<sup>143</sup> U. S. & M. S. Bindal, *supra note* 21.

<sup>144</sup> M. P. & B. Nahar, *supra note* 56; See also, R. Chowdhury, *supra note* 60.

<sup>145</sup> G. Bhatia, *supra note* 2; See also, S. Ramaswamy, *supra note* 98.

Bhatia eloquently puts it, the Constitution transforms the subjects of a colonial regime into citizens of a republic, replacing a culture of authority with a culture of justification.<sup>146</sup> This transformation is an ongoing project, fought now in the servers of data centers as much as in the halls of the legislature.

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<sup>146</sup> G. Bhatia, *supra note 2*.