

---

# HORIZONTAL APPLICATION OF FUNDAMENTAL RIGHTS IN INDIA: MYTH OR REALITY?

---

Nikhilesh Sharma, Research Scholar, Himachal Pradesh University, Shimla, Himachal Pradesh.

Bhavana Sharma, Assistant Professor, Himachal Pradesh University Regional Centre  
Khanyara, Dharamshala, Kangra, Himachal Pradesh.

## ABSTRACT

Under the Constitution of India, the classical understanding of Fundamental Rights is that they are vertically applicable. They are mainly enforceable against the “State” as defined under Article 12. The increasing role of private actors in areas formerly exclusively within the domain of the State has raised an important constitutional question: can Fundamental Rights be enforced horizontally against non-state actors? The paper critically examines the question whether the horizontal application of Fundamental Rights in India is a constitutional reality or largely a doctrinal myth.

The paper makes the case, based on an analysis of case law, that the Supreme Court, although not formally adopting a comprehensive doctrine of horizontality, has implicitly been moving in that direction. Judicial attitude is not black and white as seen in cases like *Vishaka v. State of Rajasthan*<sup>1</sup> where guidelines were framed to curb sexual harassment at workplace and *Zee Telefilms Ltd. v. Union of India*<sup>2</sup> where Article 12 status was denied but possibility of writ jurisdiction under Article 226 was acknowledged. Similarly, the right to privacy as a fundamental right in the case of *Justice K.S. Puttaswamy v. Union of India*<sup>3</sup> and decriminalization of homosexuality in the case of *Navtej Singh Johar v. Union of India*<sup>4</sup> hint at a developing rights-based framework that can shape private relationships.

The paper argues that India is moving towards horizontality indirectly and gradually particularly through judicial creativity, expansion of writ jurisdiction and interpretation of Directive Principles. But without a defined doctrine, there is inconsistency and uncertainty. The study argues that horizontal application is not fully functional, but neither is it illusory; it is fragmented and still developing. The challenge is how to find a principled and systematic way to ensure that constitutional rights remain vital as private

---

<sup>1</sup> (1997) 6 SCC 241; AIR 1997 SC 3011

<sup>2</sup> (2005) 4 SCC 649

<sup>3</sup> (2017) 10 SCC 1; Writ Petition (Civil) No. 494 of 2012

<sup>4</sup> (2018) 10 SCC 1; Writ Petition (Criminal) No. 76 of 2016

power expands in a liberalised economy.

**Keywords:** State, Fundamental Rights, Directive Principles of State Policy, Fundamental Duties, Judiciary and Horizontal Application.

## Introduction

The scheme of Fundamental Rights under the Constitution of India has traditionally been understood in a vertical framework. Such rights are primarily enforceable against the “State” as defined under Article 12 and therefore their direct applicability in disputes involving purely private actors is limited.<sup>5</sup> This classical model is a typical example of the liberal constitutional tradition that understands the Constitution not as a regulatory tool for private relations but as a limitation on the power of government.<sup>6</sup> This strict vertical ordering has, however, increasingly been subject to criticism, especially in light of changing socio-economic realities and the growing impact of non-state actors on areas affecting fundamental rights.<sup>7</sup>

As a result, the vertical and horizontal application of rights has become a major doctrinal debate in Indian Constitutional law. Vertical application means that the fundamental rights enforced primarily against the State and its instrumentalities and not generally against private actors. Horizontal application means that the rights are also effective in relations between private parties or entities.<sup>8</sup> The Indian Constitution does not explicitly provide for horizontal application. However, creative reasoning and purposive interpretation have at times blurred the distinction through the extension of constitutional norms into the private sphere in judicial interpretation.<sup>9</sup> This has created an indirect or implicit form of horizontality and has raised questions as to the adequacy of the existing constitutional framework.<sup>10</sup> The urgency of this debate is heightened by the evolving socio-economic landscape marked by privatization, liberalization and globalization (LPG) which has fundamentally transformed the role and functions of the State.<sup>11</sup> As more and more public tasks are given to private groups such as businesses, NGOs and hybrid bodies, the lines between public and private spaces have become less clear.<sup>12</sup> In this situation, the chance that private people will violate rights has gone up a lot,

---

<sup>5</sup> M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th ed., 2018).

<sup>6</sup> H.M. Seervai, *Constitutional Law of India* (Universal Law Publishing, 4th ed., 2005).

<sup>7</sup> Upendra Baxi, “The Avatars of Indian Judicial Activism,” in *Explorations in Indian Legal Thought* (Oxford University Press, 1985).

<sup>8</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019).

<sup>9</sup> D.D. Basu, *Commentary on the Constitution of India* (LexisNexis, 9th ed., 2014).

<sup>10</sup> V.N. Shukla, *Constitution of India* (Eastern Book Company, 13th ed., 2017).

<sup>11</sup> S.P. Sathe, *Judicial Activism in India* (Oxford University Press, 2002).

<sup>12</sup> M.P. Singh, “Globalization and Constitutionalism in India,” (2009) 2 *Indian Journal of Constitutional Law* 1.

which goes against the common belief that only the government is a threat to basic rights.<sup>13</sup>

In this context, the research problem focuses on the constraints of the Article 12 framework, which remains the principal avenue for the enforcement of Fundamental Rights.<sup>14</sup> The judicial broadening of the definition of “State” via doctrines such as instrumentality or agency has partially mitigated this limitation, exemplified by rulings like *Ajay Hasia v. Khalid Mujib Sehravardi*<sup>15</sup>. Nonetheless, a considerable gap endures, as numerous private entities wielding considerable power remain beyond the scope of Article 12, thus evading direct constitutional examination.<sup>16</sup> This brings up a basic question: is the current system good enough to protect basic rights in modern India or do we need to be more-clear about horizontal application?<sup>17</sup>

### Research questions:

1. Are the Fundamental Rights enforceable against the private actors in India?
2. Has the judiciary developed a doctrine of horizontality?
3. Is the current approach sufficient, does it make sense?

## 2. Conceptual Framework: Vertical and Horizontal Implementation of Fundamental Rights

Traditionally, the enforcement of Fundamental Rights works in a vertical way, where individuals use these rights against the State to stop the arbitrary use of public power.<sup>18</sup> This model is based on classical constitutional theory, which sees the Constitution mainly as a way to limit government power rather than a way to control how people act in private.<sup>19</sup> In India, Article 12 strengthens this vertical orientation by saying that the "State" is the main duty-bearer against whom Fundamental Rights can be enforced.<sup>20</sup>

The idea of horizontal application of rights, on the other hand, means that Fundamental Rights

---

<sup>13</sup> Upendra Baxi, *The Future of Human Rights* (Oxford University Press, 2002).

<sup>14</sup> D.D. Basu, *Shorter Constitution of India* (LexisNexis, 2013).

<sup>15</sup> AIR 1981 SC 487.

<sup>16</sup> *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649.

<sup>17</sup> Gautam Bhatia, “Horizontal Rights: An Indian Perspective,” (2017) *NUJS Law Review*.

<sup>18</sup> *Supra* note 5.

<sup>19</sup> *Supra* note 6.

<sup>20</sup> *Supra* note 10.

can be enforced in disputes between private people or groups.<sup>21</sup> This means that constitutional rules can also apply to private relationships, which means that rights can go beyond the public sphere.<sup>22</sup> The Constitution of India does not explicitly allow for this kind of horizontal application, but in some cases, judicial interpretation has brought constitutional values into private law areas, making the strict line between public and private less clear.<sup>23</sup>

The concept of horizontality may further be classified into **direct and indirect forms**.<sup>24</sup> **Direct horizontality** denotes a situation where Fundamental Rights are directly enforceable against private actors without the intermediation of the State, thereby imposing constitutional obligations upon individuals and private institutions.<sup>25</sup> This model finds explicit recognition in certain constitutional systems, such as South Africa but remains largely undeveloped in India.<sup>26</sup> On the other hand, **indirect horizontality** involves the application of constitutional principles to private disputes through judicial interpretation. Often by reading Fundamental Rights into existing legal frameworks such as tort law, contract law or statutory obligations. The Indian judiciary has frequently adopted this indirect approach, thereby ensuring that private conduct does not escape constitutional scrutiny altogether.

The theoretical justification for the horizontal application of rights can be traced to multiple constitutional philosophies. The first is **liberal constitutionalism**, which traditionally emphasizes individual autonomy and limits the role of the Constitution to regulating State action. Under this framework, extending rights horizontally is viewed with caution, as it may unduly interfere with private freedom and contractual autonomy. However, this perspective has been increasingly challenged in modern constitutional democracies. More progressive justification can be found in the concept of **transformative constitutionalism**, which sees the Constitution as an instrument of social justice and a way of reorganizing power relations in society. On this view, the public/private power divide is artificial, especially in cases where private actors exercise substantial power over basic rights. This kind of transformative interpretation is possible because the Indian Constitution emphasizes equality, dignity and social justice<sup>27</sup>.

---

<sup>21</sup> Supra note 8.

<sup>22</sup> Supra note 14.

<sup>23</sup> Supra note 13.

<sup>24</sup> Mark Tushnet, "The Issue of State Action," (2003) *Harvard Law Review*.

<sup>25</sup> *Ibid*.

<sup>26</sup> S. Woolman & M. Bishop, *Constitutional Law of South Africa* (Juta, 2nd ed.).

<sup>27</sup> S.P. Sathe, *Judicial Activism in India* (Oxford University Press, 2002).

Further theoretical support is derived from the concept of “rights as trumps,” as articulated by Ronald Dworkin. He argues that rights function as overriding claims that take precedence over competing social or economic interests.<sup>28</sup> As per this view, the protection of fundamental rights should not be contingent upon the identity of the violator, whether State or private, but rather on the nature and impact of the infringement.<sup>29</sup> This perspective strengthens the argument for extending constitutional protections into the private sphere, particularly in situations involving inequality, exploitation or abuse of power.

In sum, the conceptual framework of vertical and horizontal application reflects an evolving constitutional discourse, wherein the rigid boundaries of traditional doctrine are increasingly being reconsidered in light of contemporary realities.

### 3. Constitutional Framework in India

The constitutional architecture for the enforcement of Fundamental Rights in India is basically based on the notion of ‘State’ under Article 12, which defines the persons upon whom such rights can be enforced. Article 12 adopts an inclusive definition and includes the Government and Parliament of India, the Government and Legislature of each State and ‘all local or other authorities’ within the territory of India or under the control of the Government of India. The judiciary has interpreted this provision broadly to cover bodies which are effectively, financially and administratively controlled by the State, as in *Rajasthan Electricity Board v. Mohan Lal*<sup>30</sup> and later clarified in *Ajay Hasia v. Khalid Mujib Sehravardi*.<sup>31</sup>

Article 13 further strengthens this framework by stating that any law that is inconsistent with or in derogation of Fundamental Rights shall be void. Thus, Part III of the Constitution shall have supremacy over ordinary legislation. However, the scope of Article 13 has traditionally been limited to “law” as defined in that Article and not to purely private conduct. It limits its direct applicability to horizontal disputes.

The procedure for enforcement of Fundamental Rights is given under Articles 32 and 226 wherein the Supreme Court and the High Courts respectively can issue writs for the protection of Fundamental Rights. Article 32 is a Fundamental Right in itself and it is limited to the

---

<sup>28</sup> Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1977).

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

<sup>30</sup> AIR 1967 SC 1857

<sup>31</sup> AIR 1981 SC 487.

violation of Fundamental Rights by the State. Article 226 is wider in its formulation and it authorizes the High Courts to issue writs not only for Fundamental Rights but also “for any other purpose”. This wider reach has enabled the courts to make constitutional remedies available to even private individuals performing public functions as in *Zee Telefilms Ltd. v. Union of India*.<sup>32</sup>

In addition to these provisions, the Directive Principles of State Policy (DPSPs) in Part IV play an important interpretative role in defining the scope of Fundamental Rights.<sup>33</sup> The DPSP are not justiciable. However, the judiciary has employed DPSPs to infuse socio-economic content into the adjudication of rights and has indirectly facilitated the application of constitutional norms in areas involving private actors. The harmonization also finds place in *Minerva Mills v. Union of India*<sup>34</sup>. In this case the Supreme Court highlighted the complementary nature of Fundamental Rights and Directive Principles.

Similarly, **Fundamental Duties** under Article 51A, though non-enforceable, reflect constitutional expectations from individuals and can serve as normative guides in interpreting rights and obligations within society. Their relevance lies in reinforcing the idea that constitutional values are not confined to the State alone but permeate societal conduct. But none of these tools of interpretation can be found in any explicit form in the Constitution of India for horizontal application of Fundamental Rights. This gap has led to doctrinal uncertainty and courts have filled the gap with indirect means such as expanding the concept of “State” or importing public law remedies to satisfy their desire for a solution to rights violations involving private actors. Hence, although the constitutional architecture does provide some space for the extension of rights into the private sphere it does not go as far as to provide a definite and coherent model for horizontality.

#### **4. Judicial approach to horizontality in India**

##### **(A) Cases Indicating Indirect Horizontal Application**

###### **1. Vishaka v. State of Rajasthan**

This important decision came about because a social worker named Bhanwari Devi was gang-

---

<sup>32</sup> (2005) 4 SCC 649

<sup>33</sup> D.D. Basu, *Shorter Constitution of India* (LexisNexis, 2013).

<sup>34</sup> AIR 1980 SC 1789.

raped, which showed that there was no legal framework in place to deal with sexual harassment at work. The Supreme Court said that gender equality and the right to life include protection from sexual harassment even in private workplaces. It did this by citing Articles 14, 15, 19(1)(g) and 21. The Court used international treaties like CEDAW to make the Vishaka Guidelines binding under Article 14 until a law is passed, which is important because there was no domestic law at the time. The Court told all employers, both public and private, to set up ways to stop and fix problems.

**Importance:** Even though the respondents were state authorities, the guidelines were clearly meant for private employers as well. This shows how judicial law-making can indirectly apply Fundamental Rights to everyone.

## 2. M.C. Mehta v. India Union<sup>35</sup>:

This case came about because oleum gas leaked from a Shriram Foods and Fertilizers unit in Delhi, hurting a number of people. The Supreme Court came up with the idea of absolute liability, which says that businesses that do dangerous or risky things are always responsible for any harm they cause, no matter what.

The Court based its decision on Article 21, which says that the right to life includes the right to a safe and healthy environment. It turned down the usual English law principles (*Rylands v. Fletcher*) and set a higher standard of liability that worked better in India.

**Importance:** The Court imposed constitutional obligations on the private corporation that was at fault by reading Article 21 into industrial activity. This indirectly held private actors to Fundamental Rights standards. This shows how constitutional rules can be used in private law areas.

## 3. People's Union for Democratic Rights v. Union of India<sup>36</sup>

*The Asiad Workers Case* is well-known. It was about the unfair treatment of workers who were building facilities for the Asian Games in Delhi. The Court found that labour laws had been broken, such as not paying minimum wages which it said was against Article 23 (prohibition of forced labour). The Court said that not paying minimum wages is like forced

---

<sup>35</sup> 20 December 1986 (reported 1987 AIR 1086)

<sup>36</sup> AIR 1982 SC 1473; 1983 SCR (1) 456

labour even if the worker says they agree because they have to. The Court said that not only the State but also contractors and private companies working on the project were responsible.

**Importance:** This case exemplifies indirect horizontality by attributing responsibility to private contractors for breaches of Fundamental Rights especially when they function within a framework that includes State responsibilities. It emphasizes that constitutional protections can extend into private agreements when exploitation is apparent.

## **(B) Cases that Limit Direct Horizontality**

### **1. Zee Telefilms Ltd. v. Union of India**

The Supreme Court looked at whether the Board of Control for Cricket in India (BCCI) could be called "State" under Article 12. The Court said that BCCI is not a "State" because it does not have deep and widespread government control or a lot of financial help, even though it does important public work. The Court did say, though, that these kinds of organizations may still be subject to writ jurisdiction under Article 226 when they are doing their public duties. This shows that the government doesn't want to extend direct horizontal application of Fundamental Rights but does allow limited indirect oversight.

### **2. Sabhajit Tewary v. Union of India<sup>37</sup>**

The Court said that the **Council of Scientific and Industrial Research (CSIR)** was not "State" under Article 12 because it was a registered society. The decision took a formalistic approach looking at the entity's legal status instead of its functional role or the government's control over it.

## **(C) Recent Jurisprudence That Expands Rights**

### **1. Justice K.S. Puttaswamy v. Union of India**

A nine-judge Bench of the Supreme Court agreed that privacy is a basic right under Article 21. The Court said that privacy is an important part of dignity, freedom and personal liberty and it applies to both public and private life. The judgment recognized that threats to privacy

---

<sup>37</sup>(1975) 1 SCC 485

can emanate from both the State and non-state actors underscoring the necessity for a legal framework to govern private entities. The case did not directly establish horizontality, but it did lay a strong normative foundation for extending constitutional protections into private areas.

## **2. Navtej Singh Johar v. Union of India**

The Court decriminalized consensual same-sex relations by partially striking down Section 377 of the IPC. The judgment emphasized constitutional morality, dignity and individual autonomy. It holds that societal or majoritarian notions cannot override fundamental rights. Although the case directly involved State action, its reasoning has broader implications for private relationships. It affirms that constitutional values must inform interpersonal conduct and social institutions.

## **3. Indian Young Lawyers Association v. State of Kerala<sup>38</sup>:**

The Court overturned the prohibition of menstruation women from the Sabarimala temple in **Indian Young Lawyers Association v. State of Kerala**. According to the majority, this kind of exclusion was against Articles 14, 15, 17 and 25 which emphasizes the importance of equality and dignity over discriminatory religious practices. Significantly, the ruling reflected an indirect horizontal effect by extending constitutional scrutiny into what was previously thought to be a private religious sphere.

**When taken as a whole, these rulings show how Indian jurisprudence is developing and how constitutional principles are becoming more prevalent in both the private and public domains, bolstering the argument for indirect horizontality.**

## **5. Indian Mechanisms facilitating the horizontal effect**

The Supreme Court and High Courts have established institutional and doctrinal systems that allow constitutional principles to penetrate private interactions even if the Constitution does not specifically acknowledge the horizontal application of Fundamental Rights.

### **a. Article 226's expansion (writs against "any person")**

In addition to enforcing fundamental rights, Article 226 gives High Courts the ability to issue

---

<sup>38</sup> (2018) 11 SCC 1; W.P. (C) No. 373 of 2006

writes "for any other purpose" and crucially against "any person or authority." This broader wording has been interpreted by judges to encompass private entities performing public functions, expanding constitutional remedies beyond the specific limitations of Article 12. The Court explained in *Zee Telefilms Ltd. v. Union of India* that an organization may still be subject to writ jurisdiction under Article 226 while carrying out public tasks even if it is not a "State."

#### **b. Remedies under public law against private entities carrying out public duties**

Courts have developed the idea that amenability to constitutional scrutiny is determined by function rather than just form. Private organizations may be subject to public law responsibilities when they carry out important public activities such as utilities, sports governance or education. Without technically designating private players as "State," this functional approach permits the imposition of fairness, non-arbitrariness and rationality norms on them.

#### **c. Application of State Policy Directive Principles (DPSPs)**

DPSPs have often been used by the judiciary to broaden the scope of Fundamental Rights, especially under Article 21. DPSPs are interpretive techniques that include socio-economic justice into rights adjudication, despite being non-justiciable. The Court stressed the coherent interpretation of Parts III and IV in *Minerva Mills case*, allowing constitutional values to indirectly govern private behaviour.

#### **d. Constitutional remedies and tort law In India**

Courts have been mixing constitutional law with tort law more and more especially in cases where someone's right to life and personal freedom has been violated. The development of doctrines like absolute liability in *M.C. Mehta v. Union of India* illustrates how private entities can be constitutionally held accountable via public law remedies. This combination lets victims seek compensation directly under writ jurisdiction, which is faster than going through the normal civil court process.

#### **e. Public Interest Litigation (PIL) as a means of bridging gaps**

PIL has been a game-changer when it comes to giving constitutional protections to groups that

are vulnerable to private action. Courts have heard petitions about exploitation by private contractors, corporations and institutions by making rules about locus standi less strict. In the case of *People's Union for Democratic Rights v. Union of India*, the Court made it clear that private contractors working on public projects must follow the Constitution. PIL serves as a link between vertical rights and horizontal realities. It assures that constitutional protections are not made useless by formal restrictions. These mechanisms collectively illustrate that notwithstanding the lack of explicit horizontality the Indian constitutional law has developed a resilient indirect framework. By being open to new ways of interpreting the law and being flexible with procedures courts have made sure that private power is not completely free from constitutional discipline. This helps the Constitution reach its transformative goals.

## 6. A Comparative View

A comparative analysis of the horizontal application of rights demonstrates substantial disparities among jurisdictions, especially between the United States and South Africa. It provided critical insights for Indian constitutional law. The state action doctrine in the United States serves as a stringent prerequisite for the enforcement of constitutional rights, especially concerning the Fourteenth Amendment.<sup>39</sup> The U.S. Supreme Court has consistently maintained that constitutional protections are applicable solely in instances of substantial state involvement. It thereby excludes purely private actions from constitutional examination.<sup>40</sup> The Civil Rights Cases made this point clear by saying that the Fourteenth Amendment only stops state action, not private discrimination.<sup>41</sup> Later cases, like *Jackson v. Metropolitan Edison Co. and Flagg Bros., Inc. v. Brooks*, have made this strict approach even stronger by narrowly interpreting exceptions like the public function and nexus tests.<sup>42</sup> This means that the U.S. model has a strict line between public and private areas, which makes it hard for constitutional rights to be used in both areas.<sup>43</sup>

In contrast, South Africa uses a clear constitutional model of horizontality.<sup>44</sup> The Constitution of South Africa's Section 8(2) clearly states that the Bill of Rights applies to both the State and when appropriate, private individuals.<sup>45</sup> This shows that it applies directly to both sides. The

---

<sup>39</sup> Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (Wolters Kluwer, 5th ed., 2015).

<sup>40</sup> Laurence Tribe, *American Constitutional Law* (Foundation Press, 2nd ed.).

<sup>41</sup> *Civil Rights Cases*, 109 U.S. 3 (1883).

<sup>42</sup> *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149 (1978).

<sup>43</sup> Erwin Chemerinsky, *Constitutional Law* (2015).

<sup>44</sup> S. Woolman & M. Bishop, *Constitutional Law of South Africa* (Juta, 2nd ed.).

<sup>45</sup> Constitution of South Africa, 1996, § 8(2).

Constitutional Court has upheld this stance in cases like *Khulumani v. Barclay National Bank Ltd.*, which held private entities responsible for human rights violations.<sup>46</sup> This framework is based on a transformative constitutional vision that seeks to fix past injustices and make sure that private power is held accountable by the Constitution.<sup>47</sup>

For India, these contrasting approaches offer valuable lessons. The U.S. model highlights the importance of **judicial restraint and protection of private autonomy**, cautioning against an over-expansion of constitutional obligations. Conversely, the South African approach demonstrates the benefits of **clear constitutional recognition of horizontality**, ensuring doctrinal certainty and effective rights protection. India presently occupies a **middle path**, relying on indirect mechanisms such as Article 226, PIL and judicial interpretation to extend rights into private spheres. However, the absence of an explicit framework leads to inconsistency and uncertainty. Therefore, India may benefit from adopting a **structured and principled approach**. It combines the flexibility of its current model with greater doctrinal clarity inspired by comparative constitutional experiences.

## 7. Myth or Fact: An Analytical Perspective

The question whether the horizontal application of Fundamental Rights in India is a *myth or reality* remains a contested issue in constitutional jurisprudence, owing to doctrinal ambiguities and evolving judicial approaches.<sup>48</sup>

### (A) Arguments for “Myth”

A key argument in support of the proposition that horizontality is a myth is the lack of any express constitutional recognition. Indian Constitution does not have any express provision to make Fundamental Rights applicable to private individuals as in some modern constitutions.<sup>49</sup> Instead, the enforcement of rights continues to be contingent on the definition of “State” in Article 12. It thus structurally constraining their direct horizontal effect.

Judicial inconsistency has also led to doctrinal uncertainty. Some decisions have taken an expansive and purposive approach while others have taken a restrictive interpretation, leading

---

<sup>46</sup> *Khulumani v. Barclay National Bank Ltd.*, 2007 (6) SA 323 (CC).

<sup>47</sup> Karl Klare, “Legal Culture and Transformative Constitutionalism,” (1998) 14 *SAJHR* 146.

<sup>48</sup> *Supra* note 8.

<sup>49</sup> S. Woolman & M. Bishop, *Constitutional Law of South Africa* (Juta, 2nd ed.).

to a lack of coherence in the law. For instance, in *Sabhajit Tewary v. Union of India*, the Court took a narrow view of “State” and later decisions like *Zee Telefilms Ltd. v. Union of India* have continued to resist extending the ambit of Article 12 to private entities, even if they undertake public functions. Such inconsistency undermines the case for the well-established doctrine of horizontality.

### **(B) Arguments For “Reality”**

On the other hand, one can argue that horizontality in India is a practical reality albeit in an indirect form. One of the strongest indicators is the expansion of writ jurisdiction under Article 226. Here High Courts can issue writs against ‘any person’ performing public functions. This has allowed courts to subject private actors to constitutional scrutiny without formally labelling them as "State."

Judicial creativity has also played a transformative role in extending constitutional norms to the private sphere. In *Vishaka v. State of Rajasthan*, the Supreme Court issued binding guidelines for private employers, thereby enforcing Fundamental Rights indirectly in the private sector. Likewise, in the case of *M.C. Mehta vs. Union of India*, the Court invoked the doctrine of absolute liability to extend the domain of Constitutional norms to private industries. Furthermore, the rising role of private actors in governance and service delivery, especially in sectors such as education, health care and digital platforms, calls for an extension of constitutional accountability beyond the State. In this context, an exclusive vertical model would render Fundamental Rights ineffective against current forms of power.

### **(C) Assessment: India as a Model of Indirect Horizontality**

Overall, it cannot be said that India has fully embraced direct horizontality but certainly has developed a distinctive model of indirect horizontal application. Courts have ensured that constitutional values are incorporated in private relationships through various mechanisms such as expansive interpretation of Article 21, reliance on Directive Principles and evolution of public law remedies. This represents a pragmatic compromise between maintaining private autonomy and ensuring effective protection of Fundamental Rights. Thus, the phenomenon of horizontality in India is not an absolute myth or a doctrinal reality but rather a dynamic and fragmented phenomenon. It is primarily driven by judicial innovation and contextual necessity.

## 8. Present-day Challenges

The rapid expansion of corporate power in a liberalized economy has led to significant changes in labour relations, often resulting in precarious employment, contractualization and dilution of workers' rights. Thus, it raises concerns about the enforceability of Fundamental Rights against private employers. The future development of digital platforms and Big Tech companies has also raised concerns about privacy, data protection and informational autonomy. As these private actors now have considerable influence over personal data and online behaviour.

The judgment in *Justice K.S. Puttaswamy v. Union of India* that affirmed the right to privacy as a fundamental right, underscores the need to regulate not just State surveillance but also private misuse of data. Questions of gender justice in private workplaces also serve to illustrate the limits of a vertical rights agenda. In *Vishaka v. State of Rajasthan*, the Supreme Court extended the protections against sexual harassment to private workplaces, reflecting the constitutional need to regulate private conduct. Moreover, the inequality of contracts and economic exploitation continues to be rampant especially when people are powerless in bargaining and confronted with unfair terms and conditions which could compromise dignity and liberty under Article 21. Sometimes the judiciary has stepped in to redress such imbalances, recognizing that formal consent is no cure for substantive injustice. Taken together, these developments reveal the pressing need for constitutional regulation of private power, as traditional doctrines focused on State action are no longer sufficient to address rights violations today. Without this evolution, Fundamental Rights are at risk of becoming ineffective in the face of the growing non-state authority.

## 9. Way Forward and Recommendations

### (i) Establishing a Clear Doctrinal Base:

A coherent and principled framework on horizontality would reduce inconsistency across decisions of Indian constitutional jurisprudence. The lack of a structured doctrine today leads to ad hoc judicial reasoning, which is harmful to predictability. A clear, well-articulated standard, preferably one derived from existing tests, can help courts decide when constitutional obligations should apply to private actors.

**(ii) Adopting a Functional Test:**

The functional approach should be institutionalised according to the nature of the function exercised and the extent of its impact on fundamental rights rather than the formal status of the entity. This would ensure that private bodies performing public or quasi-public functions (such as education, health care or digital governance) are held constitutionally accountable.

**(iii) Legislative Action:**

Parliament could consider targeted legislation to regulate sectors where private power has a significant impact on fundamental rights, including data protection, labour welfare and platform governance. Legislative clarity can supplement judicial efforts by providing enforceable standards for private actors.

**(iv) To strengthen the horizontal effect through judicial interpretation:**

The Judiciary must continue expanding the scope of Fundamental Rights through purposive interpretation, particularly under Article 21 and through Article 226 jurisdiction. This would allow courts to address violations of rights in private settings, without explicitly changing the constitutional text.

**(v) Autonomy versus Accountability:**

Any movement toward horizontality should be carefully calibrated between individual autonomy and constitutional accountability. Private freedom and contractual liberty are important but they cannot trump core constitutional values like dignity, equality and justice. Thus, a calibrated approach is essential, so as to avoid both overreach and under-protection.

**10. Conclusion**

The aforementioned study shows that the traditional vertical boundaries of the applicability of fundamental rights in India have gradually but significantly changed. Judicial innovations have gradually expanded constitutional principles into private domains through interpretive innovation and procedural flexibility. Even if the constitutional text—particularly Article 12—continues to centre rights enforcement against the State.

The study confirms that, despite its indirect and fragmented nature, horizontality in India is

nevertheless an emerging constitutional reality and is not just an illusion. Court rulings like *Justice K.S. Puttaswamy v. Union of India* and *Vishaka v. State of Rajasthan* demonstrate the judiciary's readiness to make sure that Fundamental Rights are not rendered ineffectual in the face of growing private power. However, instances such as *Zee Telefilms Ltd. v. Union of India* demonstrate the ongoing dependence on the Article 12 framework. It highlights the lack of complete doctrinal acknowledgment of direct horizontality. There is a pressing need for doctrinal coherence and clarity given the evolving constitutional situation characterized by digitalization, privatization and the increasing power of non-state entities. A methodical strategy that balances private autonomy with constitutional accountability is necessary to guarantee that fundamental rights continue to be significant and useful in modern India.

## References

1. M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th ed., 2018).
2. H.M. Seervai, *Constitutional Law of India* (Universal Law Publishing, 4th ed., 2005).
3. Upendra Baxi, "The Avatars of Indian Judicial Activism," in *Explorations in Indian Legal Thought* (Oxford University Press, 1985).
4. Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019).
5. D.D. Basu, *Commentary on the Constitution of India* (LexisNexis, 9th ed., 2014).
6. V.N. Shukla, *Constitution of India* (Eastern Book Company, 13th ed., 2017).
7. S.P. Sathe, *Judicial Activism in India* (Oxford University Press, 2002).
8. M.P. Singh, "Globalization and Constitutionalism in India," (2009) 2 *Indian Journal of Constitutional Law* 1.
9. Upendra Baxi, *The Future of Human Rights* (Oxford University Press, 2002).
10. D.D. Basu, *Shorter Constitution of India* (LexisNexis, 2013).
11. *Ajay Hasia v. Khalid Mujib Sehravardi*, AIR 1981 SC 487.
12. *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649.
13. Gautam Bhatia, "Horizontal Rights: An Indian Perspective," (2017) *NUJS Law Review*.
14. Mark Tushnet, "The Issue of State Action," (2003) *Harvard Law Review*.
15. S. Woolman & M. Bishop, *Constitutional Law of South Africa* (Juta, 2nd ed.).
16. Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1977).