THE JURISPRUDENCE OF BLACKLISTING: BALANCING GOVERNANCE, FAIRNESS, AND RIGHTS

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ABSTRACT

This paper examines how the blacklisting jurisprudence fits within Indian administrative law as a complicated convergence of governance, fairness and constitutional rights. While blacklisting is frequently interpreted as an administrative tool, it may entail detrimental civil consequences such as reputational damage and economic deprivation, resulting in "civil death" as highlighted by the courts. By looking at key cases like Erusian Equipment, Patel Engineering and Kulja Industries this paper tracks the way in which courts in India have constitutionalised administrative discretion by embedding concepts of proportionality, natural justice and procedural fairness into their doctrine. Another significant aspect of this paper examines the contrast between state exclusion from operating a business because of the exclusionary powers of the state under Article 298 versus private contractual discretion, whereby the powers of the state are constrained by Articles 14, 19(1)(g), and 21. Finally, this paper identifies a significant gap in the current fragmented, non-codified policy framework in India when compared to structured regimes found in the European Union and United States, and recommends that India move toward codification, independent oversight, and an open and transparent process regarding blacklisting as a legitimate means of regulation and not punitive in nature. The overall emphasis on this analysis is to maintain a focus on the principles of fairness and dignity as they apply to administrative governance in a constitutional democracy.

Introduction

Blacklisting is the act in administrative law of officially prohibiting an individual or entity from participating in government contracts or transactions. At its most functional, you are placing an individual's name on a list that disables the individual from procuring in the future. While the idea of blacklisting would seem to represent an administrative tool, it tends to have long – lasting consequences. The consequences of blacklisting is beyond losing a contract; blacklisting leads toward the loss of reputation, loss of livelihood, and long-lasting economic consequences.[1]

Unlike the commonly available contract options, blacklisting does not have a general statutory framework in India. It is simply linked to the capacity of the executive to contract under Article 298 of the Constitution, presumably including the authority not to contract.[2] When executive officials exercise their authority as administrative entities, they are required, under constitutional mandates to which they are subject, to act in a fair manner and to provide equal protection under the law and adequate and reasonable means that apply to the situation.[3] Absent codification, the rules surrounding blacklisting become all the more necessary or else the discretion is effectively arbitrary. The human cost of blacklisting is stark.

Most firms, particularly smaller firms that depend on contracts with the government, are subject to exclusion as a form of economic shunning that move beyond the economic and into a realm of hurtful impacts on reputation and dignity. Once stigmatized as unreliable, the effects overflow into non-governmental transactions, further curtailing chances for rehabilitation. Such collateral damage explains why blacklisting is far from value-neutral administrative policy but one fraught with deep civil implications.

Meanwhile, blacklisting is justified as a key tool of governance. The state also has an obligation to safeguard public funds, secure dependable performance, and prevent abuse. By blacklisting those who are convicted of serious violations, fraud, or corruption, it aims to prevent loss of confidence in public procurement. In theory, blacklisting is prophylactic, rather than punitive

[1] Sarguroh N & Shrivastav G, '*Need to Relook at the Framework for Blacklisting of Companies in India'* (*IJPIEL*, APR. 8, 2021) <https://ijpiel.com/index.php/2021/04/08/need-to-relook-at-the-framework-for-blacklisting-of-companies-in-india/ >accessed 15 January 2026.
[2] M.P. Jain, *Principles of Administrative Law*, (7th edn, LexisNexis 2017) 1823 – 25.
[3] R. Vakil, "*Constitutionalizing Administrative Law in the Indian Supreme Court*" [2018]16 INT'L J. CONST. L. (475–503).

– it prevents future business by withholding trust from those who have lost it in the past.[4] Yet, in practice, the severity of exclusion often feels indistinguishable from punishment, especially when imposed indefinitely or without adequate reasoning.

Since there is no legislation, the procedure differs from department to department and agency to agency. Some give elaborate show – cause notices and hold hearings; some act in an arbitrary manner, depriving the party in question of a reasonable opportunity to prove itself. This discrepancy undermines the predictability due in government administration and generates uncertainty. Without procedural protection, blacklisting can lapse into arbitrariness.

Several constitutional provisions create the basis for blacklisting as a form of punishment for any violation. Article 14 prohibits arbitrary exclusions, therefore, the exclusion must be substantially fair. In cases of government contract blacklisting, Article 19(1)(g) prohibits the denial of an individual's right to carry on their business or trade. The concept of Article 21 includes the importance of a person's livelihood and dignity and represents a wide scale exclusion from economic life as a whole.[5] Now, these rights do not give contractors some kind of blanket capacity to speak on behalf of the entire business community. But they do state that if the government chooses to exclude somebody, they cannot do it in secret but must ensure the process is fair, predictable, open and commensurate to, or match, the severity of the proper underlying conduct.

Viewing this through a policy lens, the fundamental problem is that there is no uniform rulebook to guide everyone in the same direction. The system is so broken that agencies decide ad hoc what the length of a blackout period will be, which procedures they adopt, and whether or not there will be a process to challenge an agency decision. It is a mess because one agency would potentially approve a temporary blackout, while another agency might permanently blackball a firm. One agency may provide an opportunity for an applicant to present its case, while another agency may wholly reject an opportunity to hear arguments. All of this hybrid system undermines confidence in government contracting and could potentially dissuade firms from contracting with the state.[6] Furthermore, it can be said that without codified systems,

[4] Sarguroh N & Shrivastav G, '*Need to Relook at the Framework for Blacklisting of Companies in India'* (*IJPIEL*, APR. 8, 2021) <https://ijpiel.com/index.php/2021/04/08/need-to-relook-at-the-framework-for-blacklisting-of-companies-in-india/ >accessed 15 January 2026.
[5] M.P. Jain, *Principles of Administrative Law*, (7th edn, LexisNexis 2017) 1823 – 25.
[6] Sarguroh N & Shrivastav G, '*Need to Relook at the Framework for Blacklisting of Companies in India'* (*IJPIEL*, APR. 8, 2021) <https://ijpiel.com/index.php/2021/04/08/need-to-relook-at-the-framework-for-blacklisting-of-companies-in-india/ >accessed 15 January 2026.

Indian courts have consistently intervened to constitutionalize standards of fairness, but such reliance on judicial review ultimately cannot compensate for lack of clarity in legislation.[7] There is, therefore, an immediate need for a more integrated approach that achieves a delicate balance between the state's interest in protecting procurement and the individual's right to fairness and livelihood.

In short, blacklisting is the overlap where accountability or testimonial privilege meets constitutional boundaries. It is a valid protection and a severe sanction. It is undeniable that blacklisting will continue to be used in our government today; however, allowing those who are blacklisted unfettered access to our courts, jails, and safe places would ultimately destroy our capacity as people of faith, justice, and rights. Therefore, the use of this tool is intended to work for us, as a public administrative tool that facilitates the application of penal laws rather than as an arbitrary punitive device or instrument of general exile. The purpose of this introduction is to clearly define what blacklisting is, the constitutional principles on which blacklisting is based, and the policy implications associated with blacklisting. Finally, the subsequent sections will outline the doctrinal development, critically analyse the jurisprudence, and suggest possible reforms intended to reconcile state privileges with constitutional justice.

Blacklisting in Administrative Law

I. Definition and Nature: Administrative Exclusion with Civil Consequences

Blacklisting in administrative law refers to the exclusion of individuals or entities from government contracts, tenders, or other opportunities on grounds of alleged misconduct, breach, or unsuitability. Unlike private actors, the State cannot invoke such exclusion purely on considerations of self – interest. Its decisions are administrative in nature and, therefore, attract constitutional obligations. The Supreme Court has consistently emphasised that blacklisting is not a mere incident of contractual discretion but an administrative act with civil consequences of the most serious kind.

In *Erusian Equipment & Chemicals Ltd. v. State of W.B.* (**"Erusian Equipment"**), the Court famously described blacklisting as a "civil death."[8] Denial of government contracts, especially

[7] R. Vakil, "*Constitutionalizing Administrative Law in the Indian Supreme Court*" [2018]16 INT'L J. CONST. L. (475–503).
[8] *Erusian Equipment & Chemicals Ltd. v. State of W.B.* [1975] 1 SCC 70.

in sectors where the State is the largest or exclusive procurer, has the effect of extinguishing livelihood and impairing reputation. This reasoning distinguishes blacklisting from ordinary termination of contracts, which may result only in a loss of one commercial opportunity. Blacklisting operates prospectively, foreclosing future participation and branding the contractor as untrustworthy.

The authority for the State to contract and, by necessary implication, to refuse to contract is derived from Article 298 of the Constitution.[9] However, the Supreme Court stated in *Patel Engineering Ltd. v. Union of India* (**"Patel Engineering"**) that such discretion is not unfettered and must be exercised in conformity with constitutional principles of fairness and reasonableness.[10] The judicial insistence that blacklisting decisions attract natural justice stems from the recognition of their quasi – penal character.

In practice, blacklisting is usually imposed for charges of fraud, false document submission, contract abandonment, or poor quality. Though some executive directives do give guidance, India does not have a codified law regarding suspension or debarment. This has resulted in the jurisprudence of blacklisting being developed mainly judicially and through court-imposed standards of proportionality and procedural fairness.[11] The framework of public procurement in India demonstrates that this indeterminacy generates inconsistencies, as different departments employ varying procedures and durations for blacklisting.[12] The need for constitutional safeguards to impose limits on the exercise of exclusionary power has therefore made it necessary to rely more heavily on constitutional principles. It is therefore important to recognize that blacklisting is not an administrative tool or a convenience, but rather a means of restricting civil resources, and thus carries very serious civil consequences. The doctrine's conceptual foundation lies in recognising this punitive effect and subjecting the State's discretion to constitutional discipline.

[9] The Constitution of India 1950, art 298.
[10] *Patel Engineering Ltd. v. Union of India* [2012] 11 SCC 257.
[11] Verma S, '*Debarment and Suspension in Public Procurement: A Survey of Important Executive Guidance and Case Law from India' (SSRN, 6 December 2012)* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2185219> Accessed 17 January, 2026.
[12] **Bidhyut Hazarika and P R Jena**, '*Public Procurement in India: Assessment of Institutional Mechanism, Challenges, and Reforms'* (NIPFP Working Paper No 204, National Institute of Public Finance and Policy 2017) <https://nipfp.org.in/media/medialibrary/2017/07/WP_2017_204.pdf> accessed 17 January 2026.

II. Constitutional Framework: Articles 14, 19(1)(g), 21 and 298

The validity and scope of blacklisting must be assessed within the four corners of the Constitution. Articles 14, 19(1)(g), 21, and 298 together provide both the source of the power and the limitations upon its exercise.

Article 298 grants the Union and States the power to carry on trade and contract.[13] This has been read to include the power to refuse contracts or exclude contractors. Yet, because the State is a constitutional entity, its freedom of contract is not absolute. The executive cannot claim the same liberty as a private party, whose refusal to contract is not open to constitutional scrutiny. Courts have clarified that the State's contracting power must be exercised in conformity with constitutional standards, particularly those of fairness and public interest.

Article 14, which embodies equality before the law and non-arbitrariness, has been central to blacklisting jurisprudence.[14] In *UMC Techs. Pvt. Ltd. v. Food Corp. of India* (**"UMC Techs."**), the Supreme Court invalidated a blacklisting order on the ground that the show-cause notice was vague and failed to disclose precise charges.[15] The Court ruled that fairness demands that the notice give enough details so that the affected party can respond positively. This is representative of the way Article 14 has developed from formal equality to substantive fairness in administrative decision-making. Any blacklisting which is arbitrary, disproportionate, or procedurally unfair is likely to be struck down as offending Article 14.

Article 19(1)(g) guarantees the right to practice any profession, or to carry on any occupation, trade, or business.[16] Exclusion from government contracts interferes with this freedom directly, particularly in areas where state contracts form the primary source of business. Although Article 19(6) allows for the reasonable restrictions in the interests of the general public, the courts have held that restrictions under this provision have to meet the test of proportionality.[17] In *Kulja Industries Ltd. v. BSNL* (**"Kulja Industries"**) , the Supreme Court held that a blacklisting for an unlimited period was unconstitutional as it placed too onerous a burden on the right to continue to do business.[18] Restrictions need to be specific to the alleged misconduct

[13] The Constitution of India 1950, art 298.
[14] The Constitution of India 1950, art 14.
[15] *UMC Techs. Pvt. Ltd. v. Food Corp. of India* [2021] 2 SCC 551.
[16] The Constitution of India 1950, art 19(1)(g).
[17] The Constitution of India 1950, art 19(6).
[18] *Kulja Industries Ltd. v. BSNL* [2014] 14 SCC 731.

and should not be punitive out of necessity. Proportionality, as recognized through the judiciary, ensures that blacklisting remains a regulatory tool and not an economic death sentence.

Article 21 ensures that no person shall be deprived of life or personal liberty except according to procedure established by law.[19] The Court has interpreted "life" to include livelihood and dignity in a broad manner. In *Raghunath Thakur v. State of Bihar* (**"Ragunath Thakur"**), the Supreme Court held that blacklisting without giving an opportunity for hearing was against principles of natural justice and was unconstitutional.[20] Arbitrary denial of access to state contracts deprives people of their means of livelihood without reasonable, fair, and just procedure, thus violating Article 21. This argument has found renewed salience in recent years as courts increasingly appeal to Article 21 to restrain administrative actions that cause extreme civil sanctions.

By the interaction of these provisions, the Constitution converts blacklisting from an executive discretion to an administrative act under control. Article 298 provides the authority, while Articles 14, 19(1)(g), and 21 place substantive and procedural restrictions. Blacklisting, therefore, survives as a valid tool of governance only when exercised fairly, proportionately, and with due process.

III. Distinction Between Private Exclusion and State Blacklisting

A core conceptual foundation of blacklisting is the recognition that state exclusion is distinct from private exclusion. Private parties may refuse to contract on grounds of choice or preference without having to provide reasons. Their discretion, subject to ordinary commercial and competition laws, is not tested against constitutional principles. The State, however, is not situated similarly. It acts as both a contracting entity and a constitutional trustee of public interest.

In *Southern Painters v. Fertilizers & Chemicals Travancore Ltd.* (**"Southern Painters"**), the Supreme Court held that exclusion from tendering processes without an opportunity to be heard was deemed to be contrary to the principles of natural justice.[21] Similarly, in *Patel Engineering*, the Court stressed on how widespread the concept of natural justice is beyond government

[19] The Constitution of India 1950, art 21.
[20] *Raghunath Thakur v. State of Bihar* [1989] 1 SCC 229.
[21] *Southern Painters v. Fertilizers & Chemicals Travancore Ltd.* [1994] 1 SCC 655.

purchasing, despite the government's right to choose not to award a contract to an individual, it cannot blacklist that person unless for lawful reasons or according to policy.[22] These cases highlight the public law obligations attached to state contracting. Scholarship on government contracts also reinforces that while such contracts straddle the boundary between private and public law, the constitutional obligations of fairness and accountability necessarily apply to state action.[23]

The judiciary has repeatedly underscored that blacklisting is much more than just a decision made by procurement staff for internal reasons; it is instead a form of punishment with significant and lasting effects on the future reputation and ability of the blacklisted company to enter into contracts. For this reason, courts have imposed rigorous standards of natural justice, including adequate notice, opportunity to respond, and reasoned orders.[24]

IV. Blacklisting as "civil death"

The description of blacklisting as "civil death," originating in *Erusian Equipment*, has become a touchstone in judicial reasoning.[25] The analogy provides a means to describe the devastating impact of exclusion on one's ability to earn a living properly and enjoy a sense of dignity. To exclude a person from all business dealings with the State by virtue of public contracts is a type of economic ostracism. In addition, the determination of indefinite blacklisting as being unconstitutional has recently been made based upon the fundamental principles of fairness and proportionality. In *Kulja Industries*, the Court insisted that blacklisting must be time-bound and proportionate to the misconduct.[26]

Additionally, reputational damage has been seen to be one of the most serious civil effects of blacklisting. A contractor disqualified by the state will tend to be avoided by private ones as well, thus taking the exclusion much beyond state contracts.[27] This collateral damage converts

[22] *Patel Engineering Ltd. v. Union of India* [2012] 11 SCC 257.
[23] RK Singh, 'Adjudicating the Public–Private Law Divide: The Case of Government Contracts in India' (2017) 50 Verfassung und Recht in Übersee 345 <https://www.jstor.org/stable/26429200> accessed 15 January 2026.
[24] P Leelakrishnan, 'Procedural Fairness in Administrative Decision-Making' (2017) 59 Journal of the Indian Law Institute 1 <https://www.jstor.org/stable/26826613> accessed 15 January 2026.
[25] *Erusian Equipment & Chemicals Ltd. v. State of W.B.* [1975] 1 SCC 70.
[26] *Kulja Industries Ltd. v. BSNL* [2014] 14 SCC 731.
[27] N Sarguroh and G Shrivastav, 'Need to Relook at the Framework for Blacklisting of Companies in India' (2021) Indian Journal of Projects, Infrastructure & Energy Law <https://ijpiel.com/index.php/2021/04/08/need-to-relook-at-the-framework-for-blacklisting-of-companies-in-india/> accessed 15 January 2026.

blacklisting into a punishment similar to penalty, and, accordingly, it warrants increased judicial scrutiny.

The use of the doctrine of proportionality has been particularly noteworthy. The courts have struck down blacklisting orders that were open-ended or made without regard to extenuating circumstances. In the pandemic, for example, certain High Courts quashed blacklisting orders imposed for tardiness in performance, acknowledging that exigencies beyond the contractor's control demanded a balanced approach.[28] This shows the judiciary's attempt to reconcile state interest with individual rights so that blacklisting is a regulatory process, not an economic destruction tool.

Therefore, the difference between blacklisting by the state and private exclusion, along with the identification of blacklisting as "civil death", provides the normative framework of constitutional scrutiny. Blacklisting is required to protect public interest and discipline contractors but cannot be exercised unilaterally. The judiciary has ensured fair proportionality and due process of law applicable for exclusion practices so that the equilibrium between executive prerogatives and individual rights is maintained.

Doctrinal evolution through case law

I. Natural Justice and the Requirement of Hearing

The first and most enduring theme in the jurisprudence of blacklisting is the insistence on natural justice. In *Erusian Equipment,*[29] the apex court made clear that while the State has no obligation to award contracts to any individual, it cannot act arbitrarily in excluding persons from government tenders. The Court highlighted that blacklisting has grave consequences, describing it as a form of "civil death" for contractors who are dependent on government contracts for their livelihood. On that basis, the Court held that such exclusion cannot be imposed without notice and a fair opportunity of hearing. The decision confirmed that the

[28] NS Ravidasan and VK Singh, 'Abuse of Bidding Process and Corruption in EPC Contracts: A Way Forward' (2025) BRICS Law Journal <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.bricslawjournal.com/jour/article/view/1295&ved=2ahUKEwiB4831r7OSAxVjn2MGHcW5KVwQFnoECBsQAQ&usg=AOvVaw2qbNxyDO39c_B8nGOW8vKS> accessed 16 January 2026.

[29] *Erusian Equipment & Chemicals Ltd. v. State of West Bengal* [1975] AIR 266.

principle of natural justice or procedural fairness is a right of the people under Article 14 of the Constitution.

Since this time, the High Courts have reaffirmed and expanded the principles of natural justice in blacklisting. In *M/s Virat Constructions v. State of Uttar Pradesh* [30], the Allahabad High Court found that the company had been wrongfully blacklisted for five years because it was issued without disclosure of the committee report that formed the basis of the decision. The Court stressed that fairness isn't real if the affected party doesn't know what evidence or material the decision is based on, without that, any chance to respond becomes meaningless. The case reaffirmed that natural justice encompasses not only the right to notice but also the right to know the basis of the decision.

The Supreme Court in *UMC Techs.*[31] provided further clarity by stressing that procedural requirements must be followed carefully in blacklisting cases. The Court held that a show-cause notice must specifically state the proposed action of blacklisting; otherwise, the party affected do not get a proper chance to defend themselves. A vague or incomplete notice, it held, is fatal to the validity of the subsequent order. The Court found that procedural safeguards were not only provided to ensure administrative convenience, but served as an essential governing tool by which the State can govern fairly, justly, and effectively.

II. Legitimate Expectation and Policy Flexibility

A second theme within the jurisprudence surrounding procedural fairness is the careful consideration of a person's legitimate expectations and the Government's operational flexibility. This issue arose in the case of *Punjab Communications Ltd. v. Union of India*[32]. Here, a government-owned company argued that prior assurances had created a legitimate expectation of participating in a major telecom project. When the government later changed its policy due to the withdrawal of foreign funding, the company argued that being excluded from the project violated the principle of fairness.

The Supreme Court observed that the concept of legitimate expectation is part of Indian administrative law because it promotes consistency and predictability in government actions.

[30] *Virat Constructions v. State of U.P.* [2019] SCC OnLine All 4672
[31] *UMC Technologies Pvt. Ltd. v. Food Corporation of India* AIRONLINE [2020] SC 884.
[32] *Punjab Communications Ltd. v. Union of India* AIR [1999] SUPREME COURT 1801.

However, it made an important distinction, unlike natural justice, which gives individuals enforceable rights, legitimate expectation is a softer principle. It does not guarantee any particular outcome but merely a fair consideration. In other words, unless the State has made a clear and specific promise, an expectation cannot become a legal right.

The Court further clarified that government bodies must retain flexibility in shaping and changing policies, especially in areas like public procurement where national priorities may evolve Therefore, the role of the courts is limited, they can review such decisions only for arbitrariness, bad faith, or violation of fairness and not for the merits of the policy. The judgment reflects a careful judicial balance by upholding fairness as a core constitutional value while ensuring that the principle of legitimate expectation does not restrict necessary executive discretion.

III. Proportionality and Reasonableness

The idea of a concept of proportionality and substantive reasonableness as limits on administrative blacklisting was further developed in the case of *Patel Engineering*[33], where the Court stated that although the State has a right to blacklist contractors. The Court reiterated that blacklisting must be for a bona fide public purpose and cannot be used as a punitive measure without a rational justification. This principle is being extended to administrative decisions, which are typically governed by the concept of proportionality in the context of fundamental rights.

This was further developed in *Kulja Industries,*[34] where the Court made a clear distinction between actions taken by private entities and actions taken by the State. While a private entity is free to use its judgement to make any decision it wants, the State must make its decisions in accordance with the Constitution. The Court ruled that any blacklisting by Government bodies must be fair, proportional, and reasonable under Natural Justice principles. In particular, the Court ruled that an indefinite blacklist is clearly dis-proportional in nature as it provides for an excessive and unwarranted penalty. By ordering that the Government limit both the scope and length of these types of orders, *Kulja Industries* assisted in consolidating a doctrinal approach to proportionality for this type of action.

[33] *Patel Engineering Ltd. v. Union of India* AIR [2012] SUPREME COURT 2342.
[34] *Kulja Industries Ltd. v. Western Telecom Project BSNL* [2014] 14 SCC 731.

High Courts have also provided clarity to analysing actions taken pursuant to Principles of Proportionality. In *Gupta Freight Carrier v. Food Corporation of India*[35], the Bombay High Court upheld the FCI's authority to terminate contracts but invalidated the application of the five-year maximum ban as disproportionate. The court was adamant that the pandemic and its consequent disruptions were to be considered, and that applying the most severe sanction would not adequately balance fairness or public interest. Proportionality has evolved as a living standard of judicial review that requires not only a rational basis for the blacklisting but also a consideration of the severity, which ought to orientation context.

IV. Extension into Sovereign Powers

Courts have gradually been chiselling out procedure protections for immigration blacklisting as well, just as in contractual blacklisting-but with relatively more deference to the sovereignty thereof. The tug between sovereignty and equity sharpened into focus during the legal action after the Tablighi Jamaat gathering[36] in the initial stages of the COVID – 19 pandemic. Valid visa-holding foreign nationals were blanket-blacklisted for ten years, and the government exercised its sovereign right in controlling entry and exit. While the Supreme Court ultimately refrained from striking down the orders, it observed that even in matters of sovereignty, administrative measures must not be entirely insulated from the requirements of transparency and fairness. The Court observed that a penalty as harsh as a ten-year exclusion required careful justification including clear reasoning, case – specific evaluation, and proper procedural safeguards rather than a blanket order applied mechanically Following this, High Courts like those in Bombay and Karnataka took the principle even further. They struck down prosecutions and criticized the government for failing to provide individualized reasoning reflecting a stronger judicial readiness to hold executive actions.

This was further developed in *John Robert III v. Union of India* (**"Roughton"**)[37]. The Delhi High Court examined whether an Overseas Citizen of India (**"OCI"**) cardholder could be denied entry to India without being given reasons or an opportunity to be heard. The government defended its decision under Section 3 of the Foreigners Act, 1946,[38] which gives broad powers to control entry of foreigners. The Court held that where the grounds of

[35] *Gupta Freight Carrier v. Executive Director, West Zone, Zonal Office (West)* [2022] SCC OnLine Bom 706.
[36] *Mohd. Anwar v. State (NCT of Delhi)* [2025] SCC OnLine Del 4951.
[37] *John Robert Roughton III v. Union of India* [2025] SCC OnLine Del 2014.
[38] Foreigners Act 1946, s 3.

blacklisting overlap with those prescribed for cancellation of OCI registration under Section 7D of the Citizenship Act, 1955[39], the procedural protections, notice and hearing cannot be bypassed. Importantly, the Court rejected the argument that an OCI cardholder could be treated as an ordinary foreigner, affirming that the "midway" status conferred by the OCI scheme entails a higher threshold of protection. By harmonising the Foreigners Act with the Citizenship Act, the Court reinforced that sovereignty cannot override rule of law.

In contrast to this approach, the Delhi High Court was far less expansive and adopted a very restricted view in *Randa Chehab v. Union of India* (**"Chehab"**)[40] The petitioner, a U.S. national, challenged her deportation and blacklisting as arbitrary and unreasoned. However, in a departure from the reasonableness based rationale in *Roughton*, the Court relied on *Louis De Raedt De Raedt & Ors vs Union of India* (**"Louis de Raedt"**)[41] and *Hans Muller of Nuremberg v. Superintendent, Presidency Jail* (**"Hans Muller"**)[42] to observe that foreign nationals enjoy only limited protection by the constitution and that the executive's power over entry is "absolute and unfettered". The Court acknowledged that procedural requirements relating to fairness were desirable; however, indicated that the requirements could be limited by matters of Sovereignty, National Security and Foreign Policy. Accordingly, *Chehab's* support for the blacklisting decision can serve as a corrective to the broader *Roughton* reasoning, clearly indicating that the requirement of fairness as a principle of law will not apply uniformly in Sovereignty matters, but will vary depending on the circumstances. The Courts are demanding that even in highly sensitive areas, where Sovereign authority is exercised, the exercise of that Sovereign authority must be both legal, reasonable and fair.

Generally speaking, the blacklisting doctrine has transitioned away from allowing authorities unrestricted discretion to now operate with the boundaries and guidance of Constitutional principles. While the courts are still inclined to defer in the most contentious areas, the law has become increasingly available to keep that exclusionary power – whatever it is called – to account to standards of reason and fairness.

[39] Citizenship Act 1955, s 7D.
[40] *Randa Chehab v. Union of India* [2024] SCC OnLine Del 7375.
[41] *Mr. Louis De Raedt & Ors vs Union of India* [1991] (3) SCC 554.
[42] *Hans Muller of Nuremberg v. Superintendent, Presidency Jail* [1955] AIR 367.

Critical Analysis of the Jurisprudence

I. From Contractual Freedom to Constitutional Discipline

Indian law's approach to blacklisting is thus a decisive departure from treating the State's contracting power as wholly commercial to dominate its constitutional effects. In view of this, precedents like *Raghunath Thakur*[43] have emphasized that the State cannot have an absolute power to blacklist contractors and that even when it acts as a contractor, the State is a public authority subject to. This resembles the "public law overlay" found in English law through *R v. Panel* on Takeovers and Mergers, ex parte Datafin plc[44], which held that private actors carrying out regulatory tasks would be subject to public law standards.

Upendra Baxi[45] has identified that the amalgamation of administrative and constitutional reasoning prevents the State from concealing its duty of fundamental fairness obligations due to private law's implications. Similarly, the strength of Indian case law is rooted in advancing the notion that public power, whether enacted through a contract or legislation is operationally disciplined by the Constitution.

In its development of common law fairness norms as they apply to blacklisting, Indian courts have also contributed to what we can describe as a development of natural justice. The case of *Southern Painters*,[46] is an example of the notable emergence of courts developing the public notions of fairness and justice in India, held that if a contractor was being denied the right to submit an offer to tender without having a chance to be heard, the so-called fair procedure was violated. Scholars, such as M.P. Jain[47], make it clear that, the developing rules of natural justice imposes constraints on arbitrary state conduct in commercial settings. The inconsistencies across the doctrine illustrate an ongoing inconsistency in its reach.

The principle of proportionality is another example of an area in transition. Proportionality analysis was formally entrenched in *Om Kumar v. Union of India*[48]. The decision distinguishes primary review for arbitrariness, as compared to structured proportionality in rights cases. High

[43] *Raghunath Thakur v. State of Bihar* [1989] AIR 620..
[44] *R v. Panel on Takeovers and Mergers, ex parte Datafin plc* [1987] QB 815.
[45] Upendra Baxi, 'Administrative Justice and Fairness in India' [1990] 36, no. 3 Indian Journal of Public Administration 289–308.
[46] *Southern Painters v. Fertilizers & Chemicals Travancore Ltd*. [1994] Supp (2) SCC 699.
[47] M.P. JAIN, *Principles of Administrative Law*, (7th edn, LexisNexis 2017) 1823 – 25.
[48] *Om Kumar v. Union of India* AIR [2000] SC 3689

Courts, notably in *R.K. Industries v. State of Himachal Pradesh*[49], have recently emphasized the principles of the right to a fair hearing and natural justice in cases of blacklisting. While these cases did not formally employ a proportionality analysis, they resonated with a proportionality concern. As Gautam Bhatia[50] argues while proportionality is now well established in case law, it is rarely done in a structured way that only follows a four-step threshold standard; the legitimate aim, rational connection, necessity, and balancing applied in other jurisdictions, notably Germany and Canada. Conversely, in India, the courts develop discourse in terms of "reasonableness," which both brings uncertainty and eliminates proportionality's chances of being a systematic limitation on the exclusionary powers.

Finally, the doctrine of legitimate expectation is also underdeveloped. *Navjyoti Co-op. Group Housing Society v. Union of India* (**"Navjyoti"**)[51] recognized that equally consistent administrative action could engender expectations that could be legally enforceable; however, when it has come time to issue substantive relief, the judicial reluctance has been palpable, even though courts have moved fairly definitively to indicate that an individual's legitimate expectations established by some form of procedural consistency, while important for courts to recognize and determine, can only be both referred to and examined in terms of procedural rather than substantive entitlement. Cases like *Ex parte Coughlan*[52] have formed substantive legitimate expectations in the absence of an overriding public interest, and thus contrasts the position of the courts in India after *Navjyoti*. The operational approach is a reflection of the courts' desire to leave some margin of latitude for the executive without crossing too closely into exclusionary features, particularly in economic or political contexts and policy, but substantively diminishes the role or the ability of the doctrine to protect individuals against sudden and unfair decisions to shift an important policy that had previously been endorsed.

II. The Uneven Reach of Fairness in Sovereign Domains

The greatest terra incognita relates to the fairness doctrines in the context of a sovereign or state action or decision in relation to visa blacklisting, immigration issues, and security issues. To take one example, *Hans Muller*[53] decided that the executive had complete discretion to allow foreigners to enter and remain in the country, and subsequent decisions including *Louis*

[49] *R.K. Industries v. State of Himachal Pradesh* AIR [2021] SC 2114.
[50] Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins 2019).
[51] *Navjyoti Co-op. Group Housing Society v. Union of India* AIR [1993] SC 155.
[52] *R v. North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213 (CA).
[53] *Hans Muller of Nuremberg v. Superintendent, Presidency Jail* [1955] AIR 367.

De Raedt[54] endorsed this plenary view even if some High Courts required individualised reasoning at times.

Commentators such as Tarunabh Khaitan[55] have argued that insulating state action from fairness takes away the transformational reach of Article 14. Comparative jurisprudence serves to illustrate the issue: Canadian Supreme Court ruling *Charkaoui v. Canada*[56] affirmed that national security exclusions must still have at least some minimal procedural fairness standards. The Indian courts' habit of switching between deference and engagement has created doctrinal unpredictability for the rule of natural justice in cases related to sovereign blacklisting.

Policy Gaps and International Comparisons

The most significant issue with India's blacklisting legislation is the absence of a clearly defined and codified system to guide the process. Currently, government departments use disparate executive orders, bidding documents, and inherent powers from Article 298 of the Indian Constitution to support their blacklisting decisions. Courts have tried to bring some balance, cases like *Patel Engineering* and *Kulja Industries*[57] which highlighted the importance of maintaining proportionality and fairness in these decisions. Even with the courts weighing in, however, the overall structure has not developed cohesively and has not established consistency across the board. As Verma[58] articulated, ministries and public sector entities still enjoy an excessively broad scope of discretion. This results in variation among different ministries on the duration of blacklisting, how notice is provided, and how orders of blacklisting are appealed.

By comparison, many other jurisdictions have built more structured and transparent systems.

[54] *Mr. Louis De Raedt & Ors vs Union of India* [1991] (3) SCC 554.
[55] Tarunabh Khaitan, 'Fairness and the Constitution' (2015) 13 International Journal of Constitutional Law 613-618.
[56] *Charkaoui v. Canada* [2007] 1 S.C.R. 350.
[57] *Patel Engineering Ltd. v. Union of India* AIR [2012] SUPREME COURT 2342, *Kulja Industries Ltd. v. BSNL* [2014] 14 SCC 731.
[58] Verma S, '*Debarment and Suspension in Public Procurement: A Survey of Important Executive Guidance and Case Law from India' (SSRN, 6 December 2012)* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2185219> Accessed 17 January, 2026.

The European Union, through Directive 2014/24/EU,[59] clearly defines when companies can be excluded from public contracts, such as in cases of corruption, fraud, or serious professional misconduct. The EU framework also enforces strict proportionality which is that blacklisting usually cannot exceed three to five years, and authorities must consider mitigating steps taken by companies, like corporate compliance reforms.[60] As such, blacklisting operates as a remedy for non-compliance, rather than as a permanent punishment or "death" for corporations, while at the same time ensuring the public integrity.

The United States provides another model from which to draw lessons. Under the Federal Acquisition Regulation,[61] contractors who are being suspended or debarred can receive written notification, access to the evidence used against them, and the opportunity to challenge the suspension and/or debarment decision to a Suspension and Debarment Official Moreover, there is cross-debarment in that the decision made by one Federal Agency applies to all other Federal Agencies. Within the United States, the federal laws view debarment not as a punishment, but rather as a protection against contracting with irresponsible contractors.[62] Thus, this framing allows for due process while affording agencies the much-needed flexibility when making blacklisting decisions.

For India, there are clear lessons here. The first lesson to be learned from North America is that having laws that define "blacklisting" creates uniformity between the various Government agencies and public sector enterprises and removes the continual requirement for the courts to intervene in cases of Blacklisting issues. Second, having independent oversight, maybe a neutral review body rather than the contracting authority itself would enhance fairness and build public trust. Third, introducing a structured proportionality test, similar to the four-step models used in Germany and Canada which is, legitimate aim, rational connection, necessity, and balancing, would give Indian courts a clear, reasoned framework for review. Together these steps would make backlisting a more transparent tool.

[59] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L 94/65.
[60] Christopher R Yutkins and Kania, 'Suspension and Debarment in the US Government: Comparitive Lessons for the EU's Next Steps in Procurement' (2019, SSRN)
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3422499> accessed 17 January 2026.
[61] Federal Acquisition Regulation, 48 C.F.R. 1, § 9.402(a) (2023).
[62] BL Mayeaux, 'Punitive versus Protective Debarment Regimes: The Protection of Government Interests through the Management of Procurement Risk' (2023) *The Army Lawyer* 1-12.

Conclusion

Blacklisting laws illustrate the primary tensions in administrative law: how to balance the discretionary powers of the state to advance public interests with an individual citizen's right to a fair process as well as to a livelihood and dignity. The state must protect its assets, while ensuring the integrity of contracts regarding those assets, and uphold the integrity of its institutions. However, the practice of blacklisting, or removing a person or company from future trade, can impose consequences so severe that blacklisting becomes a civil death sentence.[63] Judges have been aware of this tension, and have populated the doctrine of administrative discretion with principles of natural justice, constitutional principles of proportionality, and non – arbitrariness.[64] The intervention of courts has, and should, delineate the lines of blacklisting practice, by invalidating indefinite blacklisting, establishing notice and hearing, and requiring a written basis.[65]

This demonstrates that blacklisting distributed to an exclusion of contractual discretion becomes an issue of public law that raises significant civil law concerns. However, we continue to rely on litigation. We can only aid once the affected party engages formal court proceedings and eventually, until those proceedings unfold the rationalization of its contracting authority is left to an arbitrary determination on a case by case basis, resulting in a variation in orders and remedies depending on the facts of the cases brought. The post – incident correction is inadequate, because it is fraught with risk and expense for everyday contractors just to be held to some presumptive right to protections that should have been received during the pre – contract phase. This is the central flaw, the absence of some explicit codification or declaration of blacklisting protections. Government departments and agencies rely on circulars, tender terms, or their office powers, which leads to an inconsistent process. Some blacklisting decisions are permanent, other temporary. There are appeal procedures available in some situations, but not in others. This inconsistency diminishes accountability. The absence of legislative guidance means that while discretion may be reviewed by the courts, it still has the potential for being arbitrary.[66] Other jurisdictions recognize the need for fairness.

[63] *Erusian Equipment & Chemicals Ltd. v. State of W.B.* (1975) 1 SCC 70.
[64] *Raghunath Thakur v. State of Bihar* (1989) 1 SCC 229; *Patel Engineering Ltd. v. Union of India* AIR 2012 SUPREME COURT 2342.
[65] *Kulja Industries Ltd. v. Western Telecom Project BSNL* (2014) 14 SCC 731; *UMC Technologies Pvt. Ltd. v. Food Corporation of India* AIRONLINE 2020 SC 884.
[66] *Om Kumar v. Union of India* AIR 2000 SC 3689.

In the European Union, for example, exclusion is limited to specific grounds and is bound in time (usually three to five years), and authorities are required to consider remedial actions available to contractors.[67] In the USA, there is a broad scheme (suspension and debarment) whereby neutral officials provide notice, discovery relevant materials, and hold hearings before exclusion can occur.[68] Both international approaches demonstrate it is feasible to protect public interests while avoiding unfairness, disproportionality, and review. Lessons from these two jurisdictions will allow India to move away from its ad hoc approaches. And, the process can start with codification. Parliaments or the executive, through detailed regulations to create uniform rules concerning the grounds, scope, and procedures for dealing with blacklisting must be instituted.

Making the issuing of show – cause notices, requiring the disclosure of evidence, and issuance of detailed reasons a statutory requirement will advance the protection against arbitrary exclusion. The upshot of both models is that it is necessary to preserve public interests and avoid unchecked exclusion, disproportionality, and review. India can utilize both models to move away from ad – hoc responses. Reform should start with codification. Parliament or the executive should ensure regulations are promulgated, and the regulations should have standard rules for the grounds, scope, and processes for blacklisting. By requiring that the agency issue a show – cause notice, disclose evidence, and provide a reasoned order, arbitrary exclusion would only be possible in limited cases. Deadlines to review and adjudicate are also necessary to end the blatantly unconstitutional practice of bans without end. Similarly, a codified process would limit over – reliance on judicial review, while also improving predictability for business to undertake business with government.

Independent oversight is also critical. At present, the contracting authorities have sole discretion to decide exclusion and there are issues with bias and conflict of interest. The introduction of independent agencies to adjudicate such decisions, similar to a U.S. suspension and debarment authority, would improve impartiality and provide a real forum to resolve disputes. This accountability would both instil a sense of fairness and improve the court burden of handling each decision on a case by case basis. The principle of proportionality is also essential. Blacklisting cannot be a catch – all punitive weapon, but rather an appropriate

[67] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L 94/65.
[68] Federal Acquisition Regulation, 48 C.F.R. 1, § 9.402(a) (2023).

response.[69] It is a statutory test of proportionality where, **(i)** measures must be aimed at an legitimate purpose, **(ii)** be logically connected to that aim, and **(iii)** must be no more intrusive than it is essential. This would ensure that sanctions were targeted towards particular misconduct. Proportionality compels blacklisting to remain a regulatory tool rather than an economic death penalty. Transparency comes third. Making clear the decisions of the blacklist, reasons for the decision, and timeframes public in some sort of central registry would increase accountability and allow contractors to better understand the process. With increased public scrutiny, arbitrary decision-making would be curtailed and there would be some degree of uniformity across agencies.

In conclusion, blacklisting is necessary and fraught with risk: a core governance tool that can ruin lives and businesses if misused.[70] Blacklisting must be administered in strict compliance with the constitutional principles of fairness, equity, and dignity. Judicial review has been effective to curb this abuse, but to be effective, reform must be undertaken that includes codification, independent oversight, proportionality, and transparency. Only then can blacklisting be permitted to function in its role of protection of public funds without violating the constitutional right to justice.

[69] *Patel Engineering Ltd. v. Union of India* AIR 2012 SUPREME COURT 2342; *Kulja Industries Ltd. v. Western Telecom Project BSNL* (2014) 14 SCC 731.
[70] *Southern Painters v. Fertilizers & Chemicals Travancore Ltd*. 1994 Supp (2) SCC 699; Upendra Baxi, 'Administrative Justice and Fairness in India' [1990] 36, no. 3 Indian Journal of Public Administration 289–308.