

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

HORIZONTAL APPLICATION OF FUNDAMENTAL RIGHTS IN INDIA – NEED AND CHALLENGES

AUTHORED BY - ADARSH GOGOI

INTRODUCTION

The Magna Carta of the Indian Constitution is found in Part III of the document, which specifies essential rights. The goal of include this chapter on fundamental rights is to protect the most fundamental freedoms, including the right to life, liberty, and the search of happiness, which ought to be considered permanent and subject to the least amount of interference from those in positions of control. The concept behind the incorporation of fundamental rights into the Constitution was that everyone ought to conform to a code of social philosophy that would serve as a reminder to the legislature and executive branch whenever rights are being infringed upon, and that would also give citizens a chance to voice public opposition to such actions.

The preamble of the Indian Constitution, which places emphasis on justice, liberty, equality, and fraternity, highlights the importance of upholding fundamental rights in all spheres of society. As the influence of private actors is continuously increasing in various sectors, ensuring accountability and protecting individuals' rights from non-state entities becomes necessary for fostering social justice. In India, the traditional conception of fundamental rights has mostly focused on its vertical application, with the aim of regulating the acts of the government. However, the various judgments given by courts have shown that there is support within the courtrooms of India for the true application of fundamental rights.

This study, aims to understand India's stand on the horizontal application of fundamental rights and how it was developed. This research addresses the constitutional needs for the horizontal application of fundamental rights in order to protect the interests of its citizens, which is the objective of the constitution. While addressing the challenges faced by Indian courts in the way of horizontal application of fundamental rights, this research work also suggests various ways for the efficient implementation of horizontal application of fundamental rights while supporting the need for it.

AIMS AND OBJECTIVE

AIM

This study is an attempt to seek answers to questions regarding the necessity and challenges of the horizontal application of Fundamental Rights in India.

OBJECTIVE

- Examine court rulings and interpretations pertaining to the application of basic rights against non-state actors in a horizontal manner.
- Determine the main obstacles to the successful implementation of horizontal fundamental rights and suggest solutions.
- Understand the development of Horizontal Application of Fundamental Rights in India.

SCOPE AND LIMITATIONS

SCOPE

This project's scope includes examining judicial rulings, constitutional provisions, and practical implications concerning the horizontal application of fundamental rights in India's legal system.

LIMITATIONS

The insufficient amount of time, inappropriate primary material and potential bias in interpreting identity and regionalism are to be blamed for the limitations that arose over the course of investigation.

REVIEW OF LITERATURE

- Indian Constitutional Law¹ by M.P Jain is a timeless classic about Indian constitutional law. In its eighth edition, this book provides a clear, thorough, and systematic conceptual exposition of the complex and diverse topic of constitutional law. Students, researchers, attorneys, judges, legal academics, policy makers, and interested individuals seeking up-to-date information on constitutional jurisprudence will find the book's in-depth insights to be beneficial.
- Fundamental Rights Challenges: Horizontal Effectiveness, Rule of Law and Margin of National Appreciation² by Carmen Martinez-Capdevila provides a thorough analysis of

¹ M.P Jain, Indian Constitutional Law, LexisNexis, (2018).

² Carmen Martinez-Capdevila, Fundamental Rights Challenges: Horizontal Effectiveness, Rule of Law and Margin of National Appreciation, Springer Nature Switzerland AG, (2022).

the current topics related to fundamental rights. The first section examines why there is constant discussion on the subject of whether or not basic rights have a horizontal effect. The second section is devoted to the rule of law and human rights. It makes the case that the model of the rule of law that was previously appropriate is no longer relevant before outlining the significance of the judicial branch in fending off challenges to the judiciary's independence. Lastly, the third part addresses a classic issue in the field of human rights: states' margin of appreciation.

- **Horizontal Rights: An Institutional Approach³** by Dr Gautam Bhatia offers a fresh conceptual framework for comparing and evaluating constitutional rights. A homeowner declines to rent their home to an individual based only on the individual's race. Numerous real-life instances of this type include the use of private authority to deprive others of their rights. Can these people respond by citing the Constitution? **Horizontal Rights: An Institutional Approach** offers a new angle on these complex, yet age-old problems. This book makes the case that "default verticality," an imprecise notion, has served as the foundation for constitutional study and law throughout countries. The foundation of this rests on a set of philosophical presumptions, according to which constitutional rights are automatically enforceable against the State and require extra explanation when used against private individuals.

RESEARCH QUESTIONS

- In situations involving private entities, how have Indian courts horizontally interpreted and applied basic rights?
- What are the main obstacles India faces when trying to enforce fundamental rights against private actors?
- What effects does the horizontal application of fundamental rights have on India's social justice system and individual freedoms?

RESEARCH METHODOLOGY

In this project, qualitative research techniques were employed, and the researcher revived the Descriptive oriented Doctrinal type of research. The use of secondary sources, documents written by someone who did not directly witness or take part in the events depicted. They are summaries

³ Dr.Gautam Bhatia, *Horizontal Rights: An Institutional Approach*, Hart Publishing, (2023).

and analyses of other people's works.

The researcher has used Harvard Bluebook (20th Edition) as a mode of citation in this project.

HORIZONTAL APPLICATION OF FUNDAMENTAL RIGHTS IN INDIA

Horizontal application of Fundamental Rights means that Fundamental Rights can be imposed against non state as well as private actors. First and foremost, the judiciary never intended to bring private entities under the authority of the "state" for two reasons. Firstly, private action can be easily addressed by the ordinary laws of the country. Secondly, fundamental rights are granted to citizens as a defense against the arbitrary acts of the state rather than against private institutions.⁴

It is often believed that the fundamental rights are enforced "vertically" by the person against the State and it control the relationship between them by acting as a restriction on the power of the State. Private parties' interactions and transactions are not intended to fall under their purview. Common law or legislation passed by the legislature will govern these kinds of exchanges. There are several explanations on how the concept of rights came to be. However, other legal historians claim that common law was considered adequate at the time Constitutions were drafted, shielding individual rights from one another. Nevertheless, over the past thirty years, constitutional courts have come to the conclusion that a purely vertical model of constitutional rights is insufficient. This consensus may have arisen from a number of factors, including expanding rights, feminist critiques of the public/private divide, growing private power, and the decline of the welfare state. As a result, constitutional courts have arranged a number of methods for applying rights "horizontally".

In certain instances where private individuals or authorities have violated basic rights, the court has granted remedies to the impacted party without addressing the issue of whether the violator was the state or not. Fundamental rights must now be available against private companies as well. If they are not granted against private institutions then, people will have to face the adverse affects of the actions of big private companies without any legal remedy, which would defeat the

⁴ Sanu R. Paul, The Need for Horizontal Application of Fundamental Rights in India with Reference to State Action Doctrine in the Context of Globalisation, 2, Christ University, 90, (2013).

objective of fundamental rights which was intended by the Constitution's framers.⁵

In *M.C. Mehta v. Union of India*,⁶ the Indian Supreme Court sent encouraging signals about the inclusion of private corporations as "states." The court in this case has addressed the question of whether a private "state" organization carrying out important public responsibilities is entitled to be referred to as a "state."

The Kerala High Court in the case of *Bharat Kumar K. Palicha and Anr. v. State of Kerala and Ors.*⁷ highlights an important instance of how the state action theory has been interpreted more broadly, granting political parties access to fundamental rights. According to the respondents, a challenge based on the alleged violation of fundamental rights under Articles 19 and 21 of the Constitution may only be brought against actions taken by the state, not to stop a private citizen or political organization from allegedly infringing on that right.

APPLICATION OF HORIZONTALITY OF FUNDAMENTAL RIGHTS UNDER INDIAN JUDICIARY

In India, not only is it about what the government can or cannot do but also how people and private organizations treat each other in relation to basic rights. This idea is often referred to as the "horizontal application of fundamental rights" focuses on guaranteeing equality and justice in the course of regular, legally-guided interactions between citizens.

ASSIMILATION UNDER ARTICLE 12

According to the article 12 of the Indian Constitution the definition of State includes "the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."⁸ The Supreme Court ruled that some private organizations have equal standing with the State for the purposes of enforcing fundamental rights because of their close structural or functional ties to the State, making them eligible to be classified as "other authorities" under Article 12. In, Indian context there have been two tests to determine the extent of "other authorities" under Article 12. This includes a functional test according to which if a

⁵ Robert H. Walker. *The Modern Corporate State: Private Governments and the American Constitution*. Praeger Publishers Inc (1976).

⁶ *M.C. Mehta v. Union of India*, A.I.R. 1987 S.C. 1086.

⁷ *Bharat Kumar K. Palicha and Anr. v. State of Kerala and Ors*, A.I.R. 1997 Ker. 291.

⁸ INDIA CONST. art. 12

private body is carrying out any function which could reasonably be called a function of state, and the other is control test which is also known as a structural test. In this test the degree to which the private body is under the control of the State determines whether it falls in the ambit of “other authorities” or not. In the case of *Pradeep Kumar Biswas v. Indian Institute of Chemical Engineering*,⁹ the Supreme Court stated that only entities that were "functionally, financially, and administratively dominated by or under the control of the Government" were subject to Article 12. In this case the Court upheld the control test.

POSITIVE RIGHTS IMPOSED AGAINST STATE

According to the United Nations Higher commissioner of Human Right the State is required to “respect, protect, and fulfill” a right, this in turn imposes a parallel, set of duties on the State which is clearly stated by United Nations Higher commissioner of Human Right. The need to protect calls for the State to defend citizens against violations of their human rights, regardless of the offenders. In contrast, the duty to respect keeps to the traditional definition of non-interference. State failure to properly prohibit private parties from violating human rights leads to a surrender of the State's obligation to protect.¹⁰

The Supreme Court in the famous case of *Vishaka v. State of Rajasthan*,¹¹ employed this concept and determined that the State had violated the plaintiff's constitutional rights mentioned in Articles 14, 19, and 21 by failing to enact laws regarding sexual harassment in both public and private workplaces. In the same case, the Court released a set of guidelines, famously known as Vishaka guidelines, for a temporary period until the government drafted a statute addressing the problem of sexual harassment. The apex Court in the case of *Medha Kotwal Lele v. Union of India*,¹² concluded that even after fifteen years of the Vishaka case numerous states had not yet put the Guidelines into practice, thereby asking them to comply with the previous judgment within two months. It is important to remember that discrimination both private and public was at issue in Vishaka and Medha Kotwal Lele, and that the State was the respondent in both instances. Thus, in both of the cases Court determined that people have certain rights under against the State. This means that the State needs to make sure that the rights of the individuals are being protected for which they are required to regulate private actors in that direction.

⁹ *Pradeep Kumar Biswas v. Indian Institute of Chemical Engineering*, [1970]3 SCR 363.

¹⁰ Horizontalty under the Indian Constitution: A Schema – Constitutional Law and Philosophy, <https://indconlawphil.wordpress.com/> (last visited May 12, 2024).

¹¹ *Vishaka v. State of Rajasthan*, AIR 1997 SC. 3011.

¹² *Medha Kotwal Lele v. Union of India*, AIR ONLINE 2012 SC 632.

INDIRECT HORIZONTALITY

When a private entity, like a corporation or an individual's organization, is named as a defendant or respondent in a lawsuit, but their behavior and actions are really governed by fundamental freedoms and constitutional norms despite being a part of the private sector, this is known in law as “indirect horizontality.” This theory of indirect horizontality can be better understood with example of *New York Times v. Sullivan*,¹³ where the Supreme Court of the United States stated that the common law of defamation which the state Courts of Alabama applied against the *New York Times* were incompatible with the freedom of speech and expression, guaranteed by the Constitution. As a result, the Court changed defamation law and made them to comply with the principles of the Constitution.

The Supreme Court of India in the case of *R. Rajagopal v. State of Tamil Nadu*¹⁴ established indirect horizontality with regard to privacy and defamation, which were considered as common law torts before this case. The Court in this case issued an order which aligned the common law of defamation with Article 19(1)(a) of the Constitution. The court with a motive to strengthen a person's right to privacy from other people, it also made reference to Article 21. It is to be noted that a delicate balancing act is frequently required in cases involving indirect horizontality. This is because actions which are being prohibited by State are preferable to private parties.

DIRECT HORIZONTALITY

The phrase “direct horizontal application of fundamental rights” refers to the ability of any person or private organization to directly apply and enforce constitutional protections on another private organization in a conflict without the state or government getting involved. The provisions of Indian Constitution prohibits horizontal right abuses. A citizen cannot be refused entry to retail stores, hotels, restaurants, theaters, or public resorts that are open to the public just because they follow a particular religion, belong to a particular caste or race, because of their gender, or combination of any of these. This is stated in Article 15(2). Under Article 17, the practice of untouchability is prohibited. According to Article 23, both bonded labor and human trafficking are prohibited.

The apex court in the case of *IMA v. Union of India*,¹⁵ held that the term “shops” had a very

¹³ *New York Times v. Sullivan*, 376 U.S. 254 (1964).

¹⁴ *R. Rajagopal v. State of Tamil Nadu*, 1995 AIR 264 1994 SCC (6) 632 JT 1994 (6) 514.

¹⁵ *IMA v. Union of India*, (2011) 7 SCC 179.

broader meaning and it is applied to any type of market which offer's any products or services, rather than just physical store. The Supreme Court while citing the debates from the Constituent Assembly determined that, for the purposes of Article 15(2), schools should be qualified as shops, and as a result of this, the Constitution's non-discrimination principles were to protect private schools as well. This judgment of Court's was based on the observation that in Indian society most of the types of discriminations had been horizontal, as a result of which the people were boycotted and their access were denied from thereby excluding them from the mainstream economy and society.

NEED AND CHALLENGES OF HORIZONTAL APPLICATIONS OF FUNDAMENTAL RIGHTS

The impact of Globalization, Privatization has made in necessary for India for the Horizontal application of Fundamental rights. At the same time the horizontal application of Fundamental rights are also subjected to certain challenges in Indian Context. Some of the need and challenges are discussed in details which help us to develop a better understanding of the issue.

NEED OF HORIZONTAL APPLICATIONS

Globalization, privatization, and the decentralization of governmental duties have led to an interest with designating private entities as states, whether they are real human beings or entities like corporations. The idea that the welfare duties of the traditional State are carried out for the "public interest" has now given way to private actors' control. These private entities have not only assumed the roles, but they have also been held accountable for the obligations that were set down for the conventional State. As the number of Public Sector Undertaking being reduced resulting in the rise of private sector, there needs to be a check on the repressive and arbitrary acts that they conduct and there should be provisions to challenge them on the basis of unconstitutionality.

- **SOCIAL JUSTICE**

Article 12 of the Indian Constitution has a number of clauses that imply that private actors fall under the purview of the state. In the case of *Kesavananda Bharti v. State of Kerala*¹⁶ it was held that the basic structure of the Indian Constitution cannot be changed. This rule governs the preamble and makes the commitment to uphold "social, economic, and political justice," but this guarantee would be become flawed if private actors were also allowed to violate fundamental rights, leaving the State as the only entity protected from

¹⁶ *Kesavananda Bharti v. State of Kerala*, (1973) 4 SCC 225.

such violations. Along with these the preamble also promises for “Liberty of thoughts, expression, belief, faith and worship and Equality of status and opportunity.” Private actors may unjustifiably reject these ideas that the constitution has given its citizens if there is no legal remedy provided. It is often observed that large corporations actively suppress the idea of trade union formation and prevent employees from doing so. They often pay men and women differently and by putting them in cruel working circumstances they also violate their dignity.¹⁷ Thus they have been consistently breaking the concept of equality of position and opportunity.

- **TO INSURE THAT THE RIGHTS OF THE INDIVIDUALS ARE PROTECTED**

Article 17 of the Indian constitution prohibits the practice of untouchability and any impairment resulting from untouchability is considered to be illegal. The language of Article 17 makes it clear that no one, not even the traditional State, a state agency, or private parties, may engage in the act of untouchability. This also demonstrates that there are other parties against whom the Fundamental Rights may be enforced besides those specified in Article 12. Along the same lines, Article 23 forbids horrific acts of forced labor and human trafficking. A brief examination of the article itself reveals that private actors are subject to the same rules, and any infraction by them would result in legal action. The same is true of Article 24, which addresses the problem of child labor and states that "no child under the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment." The Court holds that anyone found guilty of violating this Article will be prosecuted and often orders them to substitute an adult family member for the youngster.¹⁸ Therefore, the aforementioned demonstrates that any state or private actor, for that matter, has the authority to hold violators of Fundamental and Human Rights accountable.

- **TO PROTECT THE RIGHTS OF WORKERS**

An additional justification could be found in the freedom of speech provided by Article 19 of the Indian Constitution. No entity, including the State, its agencies, representatives, or any private individual, can take away this right. However, this right is subject to the requirement that the speech in question be consistent with the interests of the general public. Using the industrial world as an example, big businesses regularly restrict employees' ability to peacefully organize and make demands for issues that are justifiable in nature. Article 19(1)(b) states that one cannot deny someone the freedom to assemble,

¹⁷ MSI RECKONER, *Gender ready reckoner report*.

¹⁸ M.C.Mehta v State of Tamil nadu, AIR (1997) SC 699.

while Article 19(1)(c) states that no "private person" may prevent employees from "forming associations or unions." Although the constitution also provides for the imposition of reasonable restrictions, it is to be noted that even if a private entities fall under the ambit of the state, they are not allowed to impose any reasonable restrictions.

- **TO ENABLE THE WORKERS TO LIVE A DIGNIFIED LIFE**

The right to life as stated in Article 21 guarantees that no one will be denied their right to individual liberty and the ability to live a life of dignity. Without the rights guaranteed to them, human life is incomplete. The term "life" as used here refers not only to death but also to any action that denies someone their ability to enjoy life to the fullest or diminishes their sense of dignity. As a result, different private actors, such as large corporations, must abide by the numerous wage payment and compensation rules in effect as well as the welfare laws for the workers. The workers under them cannot live a life of dignity if the firms fail to provide the same.¹⁹

CHALLENGES FACED

In India, the horizontal application of fundamental rights faces several obstacles, such as a lack of categorization, problems with private entity enforcement, judicial resistance, and mounting pressure on the legal system. The study also discusses how to overcome these obstacles by increasing enforcement mechanisms, reforming legal classification, reducing judge reluctance, and enhancing the judicial system's infrastructure to expedite case resolution.

- **LACK OF CLASSIFICATION**

The impact of fundamental rights in the private sphere has been weakened as a result of the Supreme Court's repeated deliberate division of the private public domain into writ petition and Public Interest Litigation proceedings, which prevent private individuals from enforcing their rights. The Indian legal system needs to undergo self reform and make it clear when and where horizontal effect is acceptable. The judiciary has had a great deal of discretion to interpret in accordance with their opinions because there has been no definite expression or classification. India should follow the South African Constitution's lead in determining which rights are vulnerable to being used against an individual and which are not.

¹⁹ Akshit Rajpal, *Enforceability of Fundamental Rights on Private Individuals*, LEX INSIGHT JOURNAL, ISSUE 1 VOL.1, (2019).

- **ENFORCEMENT ISSUES**

The process of enforcing fundamental rights against private persons has many difficulties due to distinctions between state and non-state actors. For instance, private actors will mostly operate at levels without the regulatory control and accountability like that of state actor therefore it is challenging to ensure conformity with legal obligations. On the other hand, private individuals function with a amount of independence and discretion in their decision-making processes, which are not very often put into practice by government institutes subject to administrative procedures and judicial review. Moreover, inadequate enforcement mechanisms are another barrier, whereby different individuals may have many obstacles to trying to get legal remedies or seeking sanctions for the violation of fundamental rights by private parties. So far, barriers in the form of procedural complexities can often deter individual actions against powerful private parties where there is discrimination, harassment, or other forms of violations of fundamental rights. To further address the problems in enforcement, there must be a multi-dimensional approach that is strengthening the regulatory framework, including access to legal aid and support services, and awareness programs for individual and community rights.

- **JUDICIAL RELUCTANCE**

Judicial reluctance in extending fundamental rights horizontally refers to the hesitancy or caution that courts exhibit in applying constitutional protections to private relationships or interactions. This reluctance is a result of number of concerns, including invasion into private autonomy, undue interference in private affairs and many others. Courts might be hesitant to intervene in disputes between private parties. However, due to this reluctance it results in various challenges for the people whose rights are being violated by private actors to access remedies and protection of the law. Overcoming judicial reluctance requires a delicate balancing act between the need to protect individual rights and respect for private autonomy and the rule of law. This could take the form of judicial education, dialogues with stakeholders and in many other ways.

- **INCREASE IN THE PRESSURE OF COURTS.**

With the horizontal application of Fundamental Rights there has been an increase in the number of cases in the court rooms. This has indeed increase a burden on the existing infrastructure, and pressure in the existing number of court. There is a need to increase the number of courts in order to enhance the efficiency of the judiciary. With the technological advancement, and an efficient trial system the Indian legal system can become a model of justice, ensuring that the cases are being resolved on time along with

effective protection of Fundamental Rights.²⁰

CONCLUSION

Horizontal application in India has become one of the significant ways to ensure social justice, protection of rights, and dignity in life. In the light of globalization and privatization of society, it is necessary that constitutional protections must extend beyond state actors and be inclusive of private actors. It is a broadening perspective of the fact that rights and responsibilities are not something that can be considered in isolation in today's society. The need for horizontal applications is emphasized by the changing role of private actors, who wield considerable power and influence over the lives of the citizens. From big corporations to NGOs, these entities exercise functions traditionally done by the state. Hence, they are placed under similar obligations toward the citizens and without mechanisms for holding them responsible, aggrieved persons risk being denied redress and protection.

Moreover, the principle of social justice present in the Indian Constitution demands that all entities, public or private, must comply with the values of equality, liberty, and dignity. It has to be realized that social justice cannot be attained by just vertical enforcement against the state but must be horizontal accountability throughout the sectors of society. But the way to successful horizontal application is full of challenges, including lack of clear legal classification, enforcement issues, judicial reluctance, and burdening the judicial system. These require a various approach with legal reforms, judicial education, and better infrastructure. Despite various limitations, the various judicial verdicts have recognized for the need to widen the scope of fundamental rights horizontally.

BIBLIOGRAPHY

BOOKS:

- Carmen Martinez-Capdevila, *Fundamental Rights Challenges: Horizontal Effectiveness, Rule of Law and Margin of National Appreciation*, Springer Nature Switzerland AG, (2022).
- Dr. Gautam Bhatia, *Horizontal Rights: An Institutional Approach*, Hart Publishing, (2023).

²⁰ Horizontal application of Fundamental Rights: Issues and Concerns, <https://redescreeation.in/horizontal-application.html> (last visited May 13, 2024).

- M.P Jain, Indian Constitutional Law, LexisNexis, (2018).

ARTICLES:

- Akshit Rajpal, Enforceability of Fundamental Rights on Private Individuals, LEX INSIGHT JOURNAL, ISSUE 1 VOL.1, (2019).
- Sanu R. Paul, The Need for Horizontal Application of Fundamental Rights in India with Reference to State Action Doctrine in the Context of Globalisation, 2, Christ University, 90, (2013).
- Robert H. Walker. The Modern Corporate State: Private Governments and the American Constitution. Praeger Publishers Inc (1976).

WEBSITES:

- www.jstor.com
- www.scconline.com
- www.manupatra.com
- www.lexisnexus.com

