



HORIZONTAL APPLICATION OF FUNDAMENTAL RIGHTS IN INDIA: CAN PRIVATE CORPORATIONS VIOLATE THE CONSTITUTION?

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ABSTRACT

Fundamental rights in India were originally designed to protect citizens from the misuse of state power. However, contemporary social and economic realities indicate that private corporations now exercise enormous influence over employment, digital communication, access to services, and public discourse. Technology platforms regulate speech, private employers shape workplace dignity, and corporate entities increasingly control sectors that directly affect everyday life. This change raises an important constitutional question: can fundamental rights remain effective if they apply only to the state? This article examines the evolving discussions around the horizontal application of fundamental rights in India and evaluates whether the existing state-centric model is capable of addressing the modern forms of violations of rights. It analyses the constitutional framework under Article 12, judicial efforts to extend constitutional values into private relationships, and the growing constitutional challenges posed by digital corporations that function as public communication spaces. The article argues that while Indian courts have made several attempts to address the rise of private power, the absence of an established framework has resulted in fragmented protection and legal uncertainty. By engaging with comparative constitutional approaches and examining structural gaps in Indian jurisprudence, this article highlights the need for a more functional understanding of constitutional accountability. It argues that protecting dignity, equality, and liberty in a privatised and digital society requires the constitution to evolve beyond traditional state-centred boundaries and respond to new forms of power that shape individual freedoms.

Keywords: Horizontal Application of Fundamental Rights, Private Corporations, Constitutional Accountability, Digital Platforms, State Action Doctrine.

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INTRODUCTION

When the Indian Constitution was framed, the primary concern of its makers was to prevent the abuse of state power. The experience of colonial rule had demonstrated how unchecked government authority could restrict political freedoms, suppress speech, and violate personal liberty. As a result, fundamental rights were conceived largely as shields against arbitrary state action.¹ For decades, this understanding shaped constitutional practice: rights were enforced vertically, regulating the relationship between citizens and the government.

Over time, however, the structure of power in society has changed. Today, private corporations exercise enormous influence over daily life. Technology companies determine how information circulates and which voices gain visibility. Private employers shape working conditions and economic security. Corporations increasingly dominate healthcare, education, transportation, and digital infrastructure. In many cases, the decisions of private actors have consequences that are just as serious as those of public authorities.

This shift exposes a growing constitutional tension. If fundamental rights exist to protect individuals from the misuse of power, limiting their application only to the state leaves significant gaps in protection. Individuals may face discrimination, censorship, or denial of essential services by private entities without access to meaningful constitutional remedies. This concern becomes particularly urgent in situations involving unequal bargaining power, such as employment relationships, platform governance, and access to digital spaces.

Indian courts have attempted to respond to this changing reality, but their approach has remained cautious. Rather than directly extending constitutional obligations to private actors, courts have relied on indirect methods by interpreting statutes and contracts in light of constitutional values. While this approach avoids excessive interference in private affairs, it has also resulted in inconsistent protection and uncertainty about the scope of constitutional accountability. This article argues that the traditional state-centric model of rights enforcement is increasingly inadequate in a privatised and digitised society. It examines how Indian constitutional law has addressed the rise of private power and explores whether a clearer framework is needed to ensure that fundamental rights remain meaningful in contemporary conditions.

¹ Justice K S Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.

CONCEPTUAL FRAMEWORK OF HORIZONTAL APPLICATION OF FUNDAMENTAL RIGHTS

The idea of horizontal application of fundamental rights begins with a deceptively simple but constitutionally significant question: should fundamental rights regulate only the actions of the state, or should they also shape how private actors treat individuals? Traditional constitutional theory has been built around a vertical model, where rights function primarily as shields against government power.² This approach made sense in a historical context where the state was the dominant source of coercive authority and the principal threat to individual liberty. However, contemporary societies operate under very different power structures, where private entities often exercise influence comparable to, and sometimes exceeding, that of public authorities.

Horizontal application challenges this traditional framework by recognising that private power can be equally capable of undermining dignity, equality, and liberty. Corporations determine working conditions, control access to essential services, shape consumer behaviour, and increasingly regulate speech and information flows. In such an environment, restricting constitutional protection to state action alone risks creating large zones of unregulated power where rights become practically meaningless. The experiences of violations often arise not from government action, but from decisions taken by employers, platform operators, educational institutions, and service providers in today's time.

Two broad models of horizontal application have emerged in constitutional discourse.³ The first is direct horizontal application, where private actors are directly bound by constitutional obligations and can be held accountable for violations of rights.⁴ This model treats fundamental rights as universally applicable standards of conduct, regardless of whether the violator is a public authority or a private entity. The second is indirect horizontal application, where courts interpret existing laws, contractual relationships, and regulatory frameworks in light of constitutional values. India has largely adopted this second approach, preferring to preserve the formal distinction between public and private law while allowing constitutional principles to indirectly influence private conduct.

While the indirect model appears cautious and institutionally restrained, it suffers from important limitations. First, rights protection becomes dependent on the availability and quality

² Mark Tushnet, 'The Issue of State Action' (2003) 47 Harvard Civil Rights-Civil Liberties Law Review 1.

³ Mark Tushnet, 'The Issue of State Action' (2003) 47 Harvard Civil Rights-Civil Liberties Law Review 1.

⁴ Laurence H Tribe, 'On Horizontal Rights in Constitutional Law' (1978) 63 Cornell Law Review 837.

of statutory frameworks. Where labour laws, consumer protection statutes, or regulatory mechanisms are weak, outdated, or poorly enforced, individuals are left without effective remedies. Second, indirect enforcement places significant discretion in the hands of courts, resulting in inconsistent outcomes and legal uncertainty. What qualifies as constitutionally unacceptable conduct in one case may be tolerated in another, depending on judicial interpretation and contextual considerations.

The case for horizontal application becomes especially compelling when private entities perform functions that closely resemble public responsibilities. Digital platforms operate as primary spaces for political debate and social engagement. Private universities determine access to education and social mobility. Corporate healthcare providers influence access to life-saving treatment. In such contexts, treating these actors as purely private ignores the social consequences of their decisions. When private authority shapes public life in such direct ways, constitutional accountability becomes not merely desirable but normatively justified.

Another important dimension of this debate concerns substantive equality.⁵ Formal equality before the law assumes that individuals interact on relatively equal footing. In reality, individuals often confront powerful corporate actors with vastly superior resources, bargaining power, and institutional influence. Without constitutional safeguards, vulnerable groups may face discrimination, exclusion, and unfair practices without meaningful avenues for redress.⁶ Horizontal application seeks to correct these structural imbalances by ensuring that constitutional values guide the exercise of private power.

Critics argue that extending constitutional obligations into private relationships threatens economic freedom and contractual autonomy. However, this concern often rests on a false binary. Horizontal application does not require constitutional intervention in every private dispute. Instead, it focuses on identifying situations where private power creates systemic risks to fundamental rights. The objective is not to constitutionalise private life, but to prevent the emergence of unaccountable zones of authority.

Ultimately, the debate reflects a broader transformation in constitutional thought. As power increasingly shifts away from the state toward private institutions, constitutional law must

⁵ Nancy Fraser, 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation' (2000) 24 *Ethics* 118.

⁶ Subramanian Swamy v Union of India (2016) 7 SCC 221.

evolve if it is to remain responsive to real-world forms of domination and inequality.⁷ Without such adaptation, fundamental rights risk becoming symbolic guarantees disconnected from everyday experiences of injustice.

CONSTITUTIONAL FRAMEWORK AND THE LIMITS OF ARTICLE 12

Article 12 of the Indian Constitution defines the “state” for the purpose of enforcing fundamental rights.⁸ Over the years, courts have interpreted this provision expansively to include public authorities, statutory corporations, and government-controlled bodies.⁹ Through judicial interpretation, various tests have emerged to determine whether an organisation qualifies as a state, including financial dependence, administrative control, functional integration, and the presence of deep and pervasive government influence.¹⁰

This judicial expansion was initially seen as progressive, as it brought public sector undertakings and quasi-government bodies within constitutional scrutiny. However, despite these developments, the Article 12 framework remains ill-equipped to address modern forms of private power. The emphasis on ownership and formal control continues to exclude many private corporations that perform socially significant functions.¹¹ Telecommunications companies, digital platforms, private educational institutions, and corporate healthcare providers frequently escape constitutional scrutiny despite exercising substantial influence over public life.

This limitation reflects a formalistic understanding of power.¹² It prioritises institutional classification over real-world impact. As a result, constitutional accountability often depends more on technical legal status than on how an entity’s actions affect individual rights. This approach produces troubling inconsistencies. Public sector entities performing commercial activities remain subject to constitutional obligations, while private corporations performing public-like functions enjoy greater autonomy and fewer accountability mechanisms.

⁷ Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

⁸ Constitution of India art 12.

⁹ M P Singh, ‘Article 12 of the Indian Constitution: The State and its Instrumentalities’ (2002) 44 *Journal of the Indian Law Institute* 1.

¹⁰ *Ajay Hasia v Khalid Mujib Sehravardi* (1981) 1 SCC 722.

¹¹ *Zee Telefilms Ltd v Union of India* (2005) 4 SCC 649.

¹² Upendra Baxi, ‘The State and Economic Policy: Judicial Myopia and its Implications’ (1990) 6 *Journal of Indian Law Institute* 417.

Such asymmetry undermines the normative purpose of fundamental rights. Constitutional protections exist to restrain arbitrary and unequal power. If accountability depends solely on whether an entity fits within a formal definition of “state,” the constitution risks ignoring how power actually operates in society. This disconnect becomes particularly problematic in sectors that have undergone large-scale privatisation, where private actors now control services that were once considered core governmental responsibilities.

A more functional interpretation of Article 12 would shift the focus from ownership structures to the nature of activities performed and the degree of control exercised over individuals. Where private actors dominate essential services, regulate access to public communication platforms, or exercise monopolistic influence, constitutional scrutiny becomes normatively justified. Such an approach would align constitutional doctrine with contemporary realities rather than outdated institutional categories.

However, courts have been hesitant to adopt this functional approach fully. Concerns about judicial overreach, institutional competence, and economic regulation have contributed to doctrinal conservatism. While these concerns are not without merit, excessive caution risks rendering constitutional protections ineffective in the face of expanding private authority. Without recalibration, Article 12 risks becoming increasingly disconnected from social realities and inadequate in addressing modern forms of rights violations. If the constitution is to remain responsive to changing power structures, its interpretive framework must move beyond rigid institutional labels and focus on substantive impact and social consequences.

JUDICIAL TRENDS AND INDIRECT HORIZONTAL ENFORCEMENT

Indian courts have gradually recognised the growing influence of private power, but their response has remained cautious and incremental. Rather than explicitly adopting a doctrine of horizontal application, courts have relied on indirect methods to extend constitutional values into private relationships. This approach reflects a judicial attempt to balance rights protection with respect for private autonomy and institutional boundaries.

In cases involving workplace rights, private educational institutions, housing societies, and employment disputes, courts have infused principles of equality, dignity, and procedural fairness into statutory interpretation.¹³ These interventions demonstrate judicial awareness that

¹³ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

constitutional values cannot remain confined to state action alone. They also indicate an emerging recognition that private authority can produce rights violations of comparable severity to public action.

However, this approach suffers from significant weaknesses. Judicial decisions are often narrowly tailored to the facts of individual cases and lack broader doctrinal coherence. Courts provide relief without articulating clear constitutional standards that can guide future adjudication. As a result, similar disputes may receive different outcomes depending on judicial interpretation, undermining predictability and legal certainty.

Another limitation lies in the heavy dependence on legislative frameworks. Where statutory protections are inadequate or silent, constitutional values struggle to find effective expression. This problem is particularly acute in emerging domains such as digital governance, algorithmic decision-making, and corporate data practices, where regulation remains fragmented and reactive. In such areas, individuals often find themselves navigating through ambiguous legal zones without clear rights-based protections. Judicial protection is also largely reactive in nature. Courts intervene only after rights violations have occurred and litigation has commenced. This model offers limited preventive protection and disproportionately benefits individuals with access to legal resources and institutional support. Marginalised communities, who often bear the greatest impact of private power, may lack the capacity to pursue complex constitutional litigation.

Judicial caution is partly driven by concerns about interfering with private autonomy and commercial freedom. Courts fear that direct horizontal application may blur the boundary between public and private law and expand judicial control into areas traditionally governed by contract and market principles. However, this restraint has also resulted in under-enforcement of rights in contexts where private power is structurally dominant. The current judicial approach reflects a transitional phase. Courts recognise that purely vertical enforcement is insufficient, yet they remain hesitant to articulate a coherent horizontal doctrine. Without clearer standards, constitutional protection remains fragmented, unpredictable, and dependent on judicial discretion rather than principled constitutional reasoning.

DIGITAL CORPORATIONS AND THE NEW PUBLIC SPHERE

The rise of digital corporations has created one of the most significant constitutional challenges of the twenty-first century. Social media platforms, search engines, and content-hosting

services now regulate how information is produced, distributed, and consumed. Their algorithms shape public opinion, influence political debates, and determine which voices gain visibility in the digital public sphere.¹⁴ In effect, private technology companies increasingly function as gatekeepers of democratic discourse.¹⁵

Unlike traditional private entities, digital platforms operate as essential infrastructure for public participation.¹⁶ Political mobilisation, journalism, civic activism, and social movements depend heavily on privately owned digital spaces. Treating these platforms as ordinary private actors governed solely by contractual terms fails to capture their social and political significance. When access to public discourse is mediated by corporate policies, constitutional questions inevitably arise.¹⁷

Platform governance is characterised by opacity and discretion. Content moderation decisions are guided by internal corporate standards rather than constitutional principles.¹⁸ Users often face account suspensions, content removal, or algorithmic suppression without clear explanations or effective appeal mechanisms. This lack of transparency undermines procedural fairness and weakens public trust in digital governance structures. The absence of constitutional accountability becomes particularly concerning during politically sensitive periods such as elections, protests, and public emergencies. Algorithmic amplification and content moderation practices can shape political narratives, suppress dissenting voices, and influence democratic outcomes. Yet these decisions remain largely insulated from rights-based scrutiny.

Indian courts have thus far avoided directly applying fundamental rights to digital corporations. Regulation has been left primarily to executive rule-making and platform self-governance.¹⁹ This approach raises concerns about arbitrary enforcement, regulatory capture, and insufficient safeguards for user rights. It also places enormous regulatory power in the hands of private companies whose incentives are driven primarily by profit rather than public interest. From a constitutional perspective, the central issue is not ownership but function. When private platforms exercise control over public communication and access to information, their

¹⁴ Shoshana Zuboff, *The Age of Surveillance Capitalism* (Profile Books 2019).

¹⁵ Google Spain SL v Agencia Española de Protección de Datos (C-131/12) EU:C:2014:317.

¹⁶ Jack M Balkin and Marshall Van Alstyne, 'The Democratic Dilemma of Digital Platforms' (2021) 94 *Southern California Law Review* 261.

¹⁷ Constitution of India art 19(1)(a).

¹⁸ R Rajagopal v State of Tamil Nadu (1994) 6 SCC 632.

¹⁹ Committee of Experts under Justice BN Srikrishna, *A Free and Fair Digital Economy* (Government of India 2018).

decisions acquire constitutional relevance. A purely private law framework is inadequate to address harms arising from algorithmic censorship, data exploitation, and unequal platform governance.

A functional approach would recognise that digital platforms exercise public-like authority and should therefore be subject to heightened accountability standards. This does not require treating platforms as state entities in all respects, but it does justify obligations relating to transparency, procedural fairness, non-discrimination, and proportionality. Without such recalibration, constitutional protections risk becoming increasingly disconnected from the spaces where modern democratic participation actually occurs.

COMPARATIVE PERSPECTIVES AND CRITICAL ASSESSMENT

Comparative constitutional experience demonstrates that horizontal application is neither radical nor impractical.²⁰ In Germany, courts recognise the indirect horizontal effect of fundamental rights by requiring private law to be interpreted in harmony with constitutional values. This ensures that private relationships are shaped by constitutional principles without directly imposing state-like obligations on private actors.²¹ South Africa adopts an even more explicit approach by permitting direct horizontal application in certain circumstances, particularly when private actors exercise significant power over individuals or perform public-interest functions.²²

These comparative models highlight an inadequacy in the Indian framework, which is doctrinal ambiguity. Instead of establishing clear standards, Indian courts rely heavily on case-by-case discretion. This creates uncertainty for litigants and inconsistent protection of rights. It also weakens the normative force of fundamental rights by reducing them to interpretative tools rather than enforceable constitutional guarantees. Critics argue that extending constitutional obligations to private actors threatens business autonomy and economic freedom. However, this concern is often overstated. Carefully designed frameworks can limit constitutional intervention to situations involving structural power imbalances, public-interest functions, or systemic rights violations. The objective is not to regulate ordinary commercial disputes but to prevent the emergence of unaccountable private authority.

²⁰ Samantha Besson, 'Horizontal Effect and the European Convention on Human Rights' (2010) 8 International Journal of Constitutional Law 671.

²¹ Robert Alexy, *A Theory of Constitutional Rights* (Julian Rivers tr, OUP 2002) 354–360.

²² Constitution of the Republic of South Africa 1996 s 8(2).

India's reluctance to adopt a clearer horizontal doctrine reflects institutional conservatism rather than constitutional necessity. By avoiding explicit recognition, courts risk allowing fundamental rights to remain under-enforced in precisely those areas where private authority is most influential. A critical reassessment is therefore necessary. Without clearer standards and functional accountability, Indian constitutional law risks remaining anchored to outdated assumptions about power while failing to respond effectively to contemporary forms of rights violations.

CONCLUSION

The question of whether private corporations can violate the Constitution reflects a deeper transformation in how power operates in modern society. While the constitution was originally designed to restrain state authority, contemporary realities demand that constitutional protection evolve alongside changing social and economic structures. This article has shown that India's existing framework remains incomplete. The reliance on indirect horizontal application provides limited and inconsistent protection. Article 12 continues to prioritise institutional status over functional impact, leaving powerful private actors outside constitutional scrutiny. Judicial interventions, though important, lack doctrinal coherence and long-term effectiveness.

Moving forward, a functional and impact-based approach is essential. Courts must focus on the nature of power exercised rather than formal ownership structures. Where private corporations control essential services, public discourse, or fundamental aspects of individual autonomy, constitutional accountability becomes normatively justified. At the same time, safeguards must be built to prevent excessive constitutionalization of private law. Proportionality, contextual balancing, and legislative guidance should define the scope of horizontal enforcement. This ensures that rights protection does not undermine legitimate business autonomy or economic freedom.

Legislative frameworks also have a critical role to play. Sector-specific regulations can translate constitutional values into enforceable standards for digital platforms, healthcare providers, educational institutions, and private employers. Such regulation can bridge the gap between abstract constitutional ideals and everyday lived realities. Ultimately, horizontal application is not about expanding judicial power. It is about preserving the relevance of fundamental rights in a society where power increasingly lies beyond the state. If the

Constitution is to remain a living document, it must adapt to protect citizens wherever power shapes their freedoms. Only then can the promise of dignity, equality, and liberty remain meaningful in a privatised and digital age.