

Horizontal application of fundamental rights : An overview of Constitutional provisions and judicial interpretation

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Abstract

Fundamental rights are the Magna Carta of the Indian Constitution. A research paper would examine how Indian courts have interpreted the Constitution to enforce fundamental rights not just against the state ("vertical application"), but also between private individuals or entities ("horizontal application"), analyzing key legal provisions and landmark cases that have shaped this doctrine in India.

Keywords : Fundamental rights, Vertical Application, Horizontal application

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.

Concept of Vertical and Horizontal Application:

Vertical Application of Fundamental Rights

The vertical application of fundamental rights refers to the traditional understanding that these rights are enforceable only against the State and its instrumentalities. Under this model, the Constitution acts as a check on State power, ensuring that the government does not infringe upon the rights and liberties of individuals. The State is considered to have a duty to respect, protect, and fulfill these rights, while individuals are merely beneficiaries.

Horizontal Application of Fundamental Rights

The horizontal application of fundamental rights implies that private individuals and entities (such as corporations, private employers, or other non-State actors) can also be held accountable for violating someone's fundamental rights. In this framework, constitutional rights are not limited to protecting individuals from the State, but also extend to the vertical approach reinforces the public law/private law divide, where constitutional rights are seen as public entitlements against State action. The horizontal approach reflects an evolving view where human rights must be protected in all spheres of life, acknowledging the power of private actors in shaping people's liberties in modern society. This shift is particularly significant in cases involving privacy, equality, non-discrimination, and dignity, which may be violated by non-State actors.

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

Article 12 and Scope of Horizontal application of Fundamental Rights

The stand of the judiciary, since beginning was not to include private parties under the ambit of “state” and the reason is fundamental rights are guaranteed by the constitution to the citizens as a protection against the arbitrariness of the state and not against private individual. While looking at the approach of the judiciary we can see in certain cases where violation of fundamental rights by private individual or authority is found the judiciary has given a relief to a victim without going into analysing the fact that whether violator was State or not. Looking at the need of the times is that fundamental rights are to be made available against private entities also, otherwise persons aggrieved by actions of large private corporations, will have no place to turn to, thereby defeating the very purpose of fundamental rights as envisaged by the framers of the Constitution. The Article 12 of Part III of the Constitution containing Fundamental Rights gives an open ended, inclusive definition of the term “State”. Due to expansion of the definition of State under Article 12 only vertical application of Fundamental rights is predominantly applied. Due to this initially up to certain limit scope of horizontal application of fundamental right was being curtailed. In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* the Court by a majority held that a body would be considered as “the State” only if it is financially, functionally and administratively dominated by or under the control of the Government, and such control must be pervasive. In *Zee Telefilms v. Union of India*, the Court held that the Board of Control for Cricket in India (BCCI), a society registered under the Tamil Nadu Societies Registration Act, 1975 and enjoying extensive powers in relation to the sport of cricket in India was not “the State” under Article 12. The minority opinion showed the necessity to further enhance the public functions test propounded by Mathew J. and opined that in times of privatisation and liberalisation wherein most of the governmental functions are being delegated to private bodies, the actions of private bodies would also be amenable to the writ jurisdiction of the court.

Direct Horizontal application

In the Indian Constitution, the horizontal application of Fundamental Rights (i.e., their applicability between private individuals/entities rather than just between individuals and the State) is not explicitly mentioned in general terms, but certain provisions allow for such an application. For example

Article 15(2) – Prohibition of discrimination by private individuals: It states that no citizen shall, on grounds of religion, race, caste, sex, or place of birth, be subjected to restrictions in access to shops, public restaurants, hotels, and places of public entertainment. This applies **horizontally**, meaning private entities (such as shop owners or hotel owners) are also bound by this provision.

Article 17 – Abolition of untouchability: It prohibits untouchability in any form and applies to both the **State and private individuals**. Any act of untouchability is punishable by law, making it a clear case of horizontal application.

Article 23 – Prohibition of human trafficking and forced labor: This provision is enforceable against **private individuals and groups**, prohibiting practices like bonded labor and human trafficking.

Article 24 – Prohibition of child labor: It bans the employment of children below 14 years in hazardous industries, and this prohibition applies **not just to the State but also to private employers**.

Above provisions has given direct horizontal effect to Art.21 going beyond the text. In *Consumer Education & Research Centre v. Union of India & Others*, Supreme Court held that Article 21 not only includes the right to health of employees but also applies against private employers in the context of the occupational health hazards caused by the asbestos industry. In *Parmanand Katara v. Union of India* the Court after holding that preservation of life by providing emergency healthcare facilities is protected by Article 21. In the case of *Indian Medical Association v. Union of India*, the Supreme Court gave a plenary interpretation of the word “shops” in Article 15(2) and brought within its ambit all kinds of establishments that provide goods or services. In the decision of *Society of Unaided Private Schools of Rajasthan* upheld the constitutional validity of the Right of Children to Free and Compulsory Education Act 2009 (RTE), which in relevant part required every school, including unaided private schools, to admit twenty-five percent of its class from children belonging to disadvantaged groups and provide free education to them between the ages of 6 and 14. Thus, it can be noticed that the Supreme Court has not only confined the ambit of Direct Horizontal Application to the more obvious provisions. It has in fact gone one step ahead and has made sure that private bodies, just like the State, are made accountable to take positive steps in the direction of safeguarding certain basic rights.

Indirect Horizontal application

The indirect horizontal effect of constitutional rights may result from imposing affirmative duties on the state to protect individuals from certain types of private conduct. Such protective duties are a subset of all positive constitutional duties. The Indirect Horizontality approach has necessarily required juristic innovations whereby the State was held responsible for an individual's deprivation of Fundamental Rights resulting from the acts of a non-state player. The initial trend of Indirect Horizontality can be noticed in cases where the Court has held the State accountable for an individual's acts of malfeasance resulting in the violation of Fundamental Rights of individuals. Like in *Bodhisattwa Gautam v. Subhra Chakraborty*, the Court ordered for the payment of compensation to a rape victim, without requiring for any link with the State.

The Indirect Horizontality becomes more prominent since *Vishaka v. State of Rajasthan*, the Court looked at the State's failure to enact a Sexual Harassment law to regulate both private and public workplaces as an instance of a violation of an individual's Articles 14, 19(1) (g) and 21 rights. In *R. Rajagopal v. State of Tamil Nadu*, the Court, while bringing the Common Law on Defamation at par with the standards of expressional freedoms as required by Article 19(1)(a), also referred to Article 21 in making possible as enforcement of a privacy breach claim against another individual. The landmark case of *Justice K.S. Puttuswamy (Retd.) v. Union of India*, D.Y. Chandrachud, J., acknowledging the threat to privacy posed by both State and non-state actors, enjoined upon the State to put together an effective Data Protection regime to protect the rights of individual.

The other way through which the SC has engaged with Indirect Horizontal Application of Fundamental Rights is by applying them to interpret provisions of private law in accordance with Constitutional principles. In *Githa Hariharan v. Reserve Bank of India*, the Court held that Section 6 of the Hindu Minority and Guardianship Act 1956, which states that “the natural guardians of a Hindu minor... are - (a) in the case of a boy or unmarried girl- the father, and after him, the mother...”, could be interpreted to mean that the mother could become the guardian not only after the death of the father, but also in his absence or because he was indifferent towards the child, or due to lack of understanding between the mother and father. Therefore, rather than invalidating the relevant section on the basis of sexual discrimination prohibited under Article 15(1), the Court interpreted the Hindu Minority and Guardianship Act, 1956 - a private law statute - consistently with the right to equality. In doing so, it applied Article 15 (1) to a private law case, thereby not only impacting and regulating the action of private individuals but also recognizing the Indirect Horizontality of Fundamental Rights.

Judicial Interpretation:

Thus, while the Indian Constitution primarily envisions vertical application (between individuals and the State), certain provisions and judicial precedents establish a horizontal application of Fundamental Rights.

- *Babulal Parate vs. State of Maharashtra*: This case established the principle of horizontal application of Article 14, holding that private hospitals cannot discriminate based on caste.
- *Vishaka & Ors. vs. State of Rajasthan*: This case laid down guidelines to prevent sexual harassment at the workplace, effectively applying the principles of equality and dignity to private companies. The Supreme Court extended Fundamental Rights (Article 14, 19, and 21) horizontally by framing guidelines against sexual harassment in workplaces.
- *People's Union for Civil Liberties vs. Union of India (Right to Information case)*: Analyze how the court used the horizontal application of Article 19 to enforce the Right to Information against private entities in certain circumstances.
- *The Kaushal Kishor v. State of Uttar Pradesh (2023)* case is significant in discussing the horizontal application of fundamental rights in India. The key issue before the Supreme Court was whether fundamental rights, particularly Article 19 (freedom of speech) and Article 21 (right to life and personal liberty), could be enforced against private individuals (horizontal application) or only against the state (vertical application). Supreme Court's Ruling: Partial Horizontal Application of Fundamental Rights. The Court held that certain fundamental rights (like Article 21) can be enforced against private individuals, meaning that individuals also have a duty to respect others' rights. This judgement expanded the Scope of Article 21.

Significance of Kaushal Kishor Judgment is this case marks an important step in recognizing that fundamental rights are not just shields against state actions (vertical application) but can also impose obligations on private individuals in some cases

(horizontal application). It strengthens the protection of personal rights, particularly in cases of hate speech, privacy violations, and personal dignity. It aligns India's constitutional approach with global human rights trends, where private entities and individuals can also be held accountable for violating fundamental rights.

Challenges to Horizontal Application:

The horizontal application of fundamental rights—extending constitutional obligations to non-State actors—presents a transformative approach to human rights protection. However, its implementation in India is fraught with conceptual, legal, and practical challenges. These include-

- **Textual and Doctrinal Limitations :** The language of Part III of the Indian Constitution, especially Articles like Article 15, 19, and 21, primarily addresses the State and not private individuals or entities. Article 12 defines “State” in a limited way, and courts have hesitated to stretch its meaning to include purely private actors. There is no explicit provision providing for the horizontal enforcement of rights, leading to judicial uncertainty and inconsistent application.
- **Judicial Inconsistency :** While the Supreme Court has taken progressive steps in cases like *Vishaka v. State of Rajasthan* and *Justice K.S. Puttaswamy v. Union of India*, it has not consistently enforced fundamental rights horizontally. In cases like *Zee Telefilms v. Union of India*, the Court took a restrictive view of what constitutes a “State” under Article 12, weakening the horizontal effect. This has led to ambiguity in precedents and created unclear boundaries for private parties regarding constitutional obligations.
- **Lack of Legislative Framework :** There is no comprehensive legislation that operationalizes horizontal application of rights, except for sector-specific laws (e.g., POSH Act for sexual harassment, IT Act for data protection). The absence of statutory duties on private actors creates enforcement gaps and limits the scope of fundamental rights beyond the public domain.
- **Difficulty in Balancing Competing Rights :** Horizontal application often requires balancing fundamental rights between private parties, such as privacy vs. freedom of speech, or dignity vs. business autonomy. Courts may struggle with conflicts between constitutional rights and private contractual rights, especially in areas like employment, education, or housing.
- **Limited Role of Direct Horizontal Claims:** In India, horizontal application often occurs through the “indirect effect” doctrine, i.e., courts interpret laws and contracts in conformity with constitutional values. Direct constitutional remedies (e.g., under Article 32 or 226) against private actors are rarely permitted, restricting access to justice for rights violations by non-State entities.
- **Weak Institutional and Administrative Mechanisms :** Regulatory bodies (e.g., NHRC, NCW, TRAI) lack sufficient autonomy or enforcement powers to compel private actors

to comply with fundamental rights standards. Poor awareness among private entities and citizens about horizontal rights further hampers implementation.

- Resistance from Private Sector: The corporate sector often resists constitutional obligations, arguing that such duties interfere with their economic freedoms and contractual autonomy. Imposing fundamental rights standards on private actors may be perceived as judicial overreach or extra-constitutional governance.

Conclusion

The horizontal application of fundamental rights marks a pivotal shift in constitutional jurisprudence, recognizing that private actors can significantly impact individual freedoms. Although the Indian Constitution does not explicitly authorize direct horizontal enforcement, judicial interpretations particularly under Article 21 have progressively extended constitutional protections into private spheres through doctrines like indirect horizontal effect. Judgments such as *Vishaka*, *Puttaswamy*, and *Shayara Bano* illustrate the judiciary's readiness to uphold constitutional values like dignity and equality in private relations. However, the absence of explicit constitutional mandates, inconsistent jurisprudence, and a lack of legislative clarity continue to hinder the full realization of horizontal rights. To address these challenges, India must adopt a more coherent legal framework through legislative reforms, doctrinal precision, and informed judicial engagement with global constitutional trends. In an era of growing privatization and technological influence, a robust horizontal rights regime is vital to preserve the transformative spirit and contemporary relevance of the Constitution.

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