



**Sonargaon University (SU)**

**Research Monograph**

**On**

**Constitutional protection of civil and political rights: A study of modern constitution.**

**Research Monograph Submitted for the partial fulfillment of the award of the degree**

**in**

**LL.B. (Hon's)**

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**Sonargaon University (SU)**

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**Date of Submission: 07<sup>th</sup> January, 2025**

## Letter of Transmittal

To

**Sunzida Akhter**

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**Subject: Constitutional protection of civil and political rights: A study of modern constitution.**

Dear Sir,

This is a great pleasure to submit the Research Monograph on " Constitutional protection of civil and political rights: A study of modern constitution " as a partial requirement for the fulfillment of my LL.B. course under the Department of Law of the Sonargaon University (SU).

I have made every effort to ensure this Research Monograph is both comprehensive and informative. My hope is that this paper will go beyond merely fulfilling academic requirements and instead serve as a valuable resource for others interested in this topic.

Yours sincerely

.....

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## **Declaration**

I do hereby declare that the Research Monograph Title "Constitutional protection of civil and political rights: A study of modern constitution" prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.B. (Hon's) Degree. This is an original work of mine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

.....

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## **Supervisor Certificate**

This is to certify that the work presented in this dissertation was conducted by the author under my supervision in the Department of Law, Sonargaon University (SU). I further confirm that the work is original and meets the required standards in style and content for submission as part of the fulfillment of the LL.B. program.

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Finally, I would like to express my gratitude to my family, friends and seniors for their unwavering support, understanding, and encouragement throughout my academic journey.

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.....

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## **ABSTRACT**

This study aims to analyse the many constitutional protection mechanisms that have been put in place to defend civil and political rights, which have been a major concern of modern constitutions. In particular, the study evaluates the efficacy of various nations' constitutional protection systems in preserving civil and political rights under contemporary constitutions. This study emphasizes the significance of these protective mechanisms in guaranteeing the realization of civil and political rights, drawing on a thorough assessment of the literature and case studies.

The paper concludes that the continued development and strengthening of these protection mechanisms remains essential to ensuring the full realization of civil and political rights in contemporary constitutional democracies, despite the fact that the study also identifies obstacles to the effective implementation of these protection mechanisms, such as insufficient funding for human rights institutions and a lack of political will to enforce constitutional and judicial protections.

## **KEY WORDS:**

**Individual freedom, Political liberties, Democratic rights, Current legal framework, Modern legal system, constitutional doctrine , Declaration of rights, Adjudicative assessment, Constitutional Democracies**

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## **1.INTRODUCTION**

The protection of civil and political rights is a cornerstone of modern constitutional democracies, serving as the foundation for ensuring individual freedoms, equality, and justice. These rights, which include the right to vote, freedom of expression, right to a fair trial, and protection against discrimination, are integral to the functioning of a democratic society. However, the effectiveness of the mechanisms designed to safeguard these rights varies significantly across nations, often influenced by the historical, cultural, and political contexts in which their constitutions were drafted.

Modern constitutions are inherently designed to enshrine and protect these rights, frequently including explicit provisions such as bills of rights or declarations of fundamental freedoms. These constitutional protections are complemented by judicial and institutional mechanisms aimed at ensuring their enforcement and preventing governmental overreach. Nevertheless, the practical implementation of these safeguards remains a subject of debate, as challenges such as political interference, lack of judicial independence, and insufficient institutional capacity often hinder their effectiveness.

## **2. METHODOLOGY**

The objective of this study, which adopts a qualitative research approach, is to explore the textual and judicial safeguards for civil and political rights in modern constitutions. A comparative analysis will be conducted by examining the constitutional frameworks of various countries. The research relies primarily on secondary data sources, including scholarly articles, journals, books, law reports, and papers, to identify patterns and trends in the protection of civil and political rights within contemporary constitutions.

To achieve this objective, a comprehensive review of the literature will be undertaken, focusing on materials that address the issue of civil and political rights in modern constitutional frameworks.

Relevant sources will be identified through online databases, such as academic journals, Google Scholar, and other credible platforms. Once these sources are compiled, a qualitative analysis will be carried out to uncover patterns and trends in how civil and political rights are textually and judicially protected in modern constitutions.

Data will be collected on constitutional provisions related to civil and political rights, as well as the interpretation and application of these provisions by courts and other legal bodies. Analytical methods, such as thematic analysis or other qualitative techniques, will then be applied to identify recurring patterns and emerging trends within the data.

### **3. LIMITATION OF THE RESEARCH**

This dissertation focuses on the constitutional protection of civil and political rights in modern constitutions, a complex and sophisticated subject. Due to constraints such as limited time, resources, and the vast scope of the topic, the study may not fully meet its potential depth. Additional challenges include a lack of relevant studies in some jurisdictions and the possibility of bias in source selection. Nonetheless, efforts are made to address these limitations by employing a systematic approach and incorporating diverse secondary sources, such as articles, journals, books, papers, and law reports.

The study adopts a qualitative research methodology to analyze how modern constitutions safeguard civil and political rights through textual provisions and judicial mechanisms. A detailed literature review is conducted to examine key constitutional clauses and judicial interpretations, with data collected from reliable online databases like Google Scholar. Thematic analysis is used to identify patterns and trends across jurisdictions.

Despite its limitations, this dissertation aims to provide meaningful insights into the effectiveness of constitutional mechanisms in protecting civil and political rights and contribute to the broader scholarly discussion on the subject.

### **4. TRACING THE ROOTS OF CIVIL AND POLITICAL RIGHTS: HISTORICAL ORIGIN AND DEVELOPMENT**

Civil and political rights are a subset of human rights that are focused on preserving individual freedom and protection from government intrusion in areas such as speech, religion, and due process of law<sup>1</sup>. These rights fall within the extended category of human rights. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights all recognize the significance of civil and political

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<sup>1</sup> Davis H, Murphy R, 'Human Rights and Civil Liberties'. Oxford University Press (2016) 87.

rights as cornerstones of democratic societies. These rights are also protected by a number of other international human rights instruments<sup>2</sup>.

Civil and political rights have a long and illustrious history that dates back to ancient civilizations like Greece and Rome. It was in these societies that the ideas of citizenship and political involvement were first articulated. The first written document that explicitly recognizes and protects human rights is the Cyrus Cylinder. This ancient artifact is a clay cylinder that dates back to the 6th century BCE and was created by Cyrus the Great, the founder of the Persian Empire. The cylinder contains a declaration by Cyrus about his conquest of Babylon and his policy of respecting the rights of different peoples and allowing them to worship their own gods. The declaration is considered one of the earliest human rights charters in history, as it recognizes the rights of individuals to practice their own religion and enjoy freedom from oppression.<sup>3</sup> The cylinder is currently held by the British Museum in London, where it is on display for public viewing.<sup>4</sup>

## **5. FOUNDATIONAL DOCUMENTS OF HUMAN RIGHTS: MAGNA CARTA AND BILL OF RIGHTS**

The Magna Carta<sup>5</sup>, the historical document on the rights of the people, also known as the Great Charter, was signed in 1215 by King John of England. As it established the principle that everyone, including the monarch, is subject to the law, it is widely regarded as one of the most significant legal documents in history. The Magna Carta protected the rights and liberties of English citizens through provisions such as the right to a fair trial, the right to due process of law, and the right to habeas corpus.<sup>6</sup> These principles were later incorporated into the Bill of Rights, which was enacted in 1689 after the Glorious Revolution in England.<sup>7</sup>

The Bill of Rights, which is also known as the English Bill of Rights, was a landmark legal document that established the supremacy of Parliament over the monarchy, and provided further protections for individual rights and liberties. It guaranteed the right to free speech, the

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<sup>2</sup> Campbell T, Ewing K, 'Civil and Political Rights: A Critical Overview'. Oxford University Press (2008) 65

<sup>3</sup> Farrokh K, 'The Cyrus cylinder and ancient Persia: A new beginning for the Middle East' (2017) 35.

<sup>4</sup> The British Museum, Cyrus Cylinder (Persian Gulf, 539-538 BC)

<sup>5</sup> The British Library, Magna Carta (1215) <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation>

<sup>6</sup> Goodhart M, 'Global Human Rights: A Review Essay' (2017) 39(3) Human Rights Quarterly 743

<sup>7</sup> Green, E. 'Re-reading the Bill of Rights: The Impact of the European Convention on Human Rights', Public Law (2011) 220

right to bear arms, the right to petition the government, and the right to a fair and speedy trial, among other things.<sup>8</sup>

Both the Magna Carta and the Bill of Rights were important milestones in the development of constitutional law and the protection of individual rights and freedoms. They have had a lasting impact on the legal systems of many countries. The United States is one among others, where the Bill of Rights served as a model for the United States Constitution's own Bill of Rights.

## **6. AMERICAN BILL OF RIGHTS**

The American Bill of Rights is a critical document in the history of the United States of America. It is the first ten amendments to the US Constitution and was ratified in 1791. The Bill of Rights is a cornerstone of American democracy, outlining the fundamental rights and freedoms that are protected by the Constitution. These rights include freedom of speech, religion, the press, and assembly, the right to bear arms, the right to a fair trial, and protection from unreasonable searches and seizures<sup>9</sup>. The Bill of Rights also sets limits on the power of the federal government and ensures that individual states and citizens have certain rights and protections. The Bill of Rights remains a vital part of American political and legal tradition and has served as a model for similar documents in other countries around the world<sup>10</sup>.

## **7. THE FRENCH DECLARATION OF RIGHTS OF MAN AND OF CITIZEN**

The French Revolution which was an era of profound social and political upheaval in France that lasted from 1789 to 1799. During that time, the French people overthrew the monarchy and established a republic, with the goal of creating a society based on the principles of liberty, equality, and fraternity. One of the key documents of the French Revolution was the Declaration of the Rights of Man and of the Citizen, which was adopted by the National Assembly in 1789<sup>11</sup>.

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<sup>8</sup> Ekins, R. 'The Bill of Rights at 20: The Case for a Written Constitution', *Political Quarterly*, 90(2), (2019) 209.

<sup>9</sup> Hamburger, P. 'The Bill of Rights and the Separation of Powers' *The Bill of Rights: Creation and Reconstruction*, New Haven: Yale University Press, (2014) 35.

<sup>10</sup> Kersch, K.I. 'The Democratic Constitution and the Case for Judicial Review: A Study in Comparative Constitutional Theory', *Fordham Law Review*, 86(4), (2018) 1585.

<sup>11</sup> Doyle, W. *The Oxford History of the French Revolution*, Oxford: Oxford University Press, (1989) 34

The French Bill of Rights, as it is sometimes called, was inspired by the American Bill of Rights and the Enlightenment ideals of thinkers like John Locke and Jean-Jacques Rousseau. The document affirmed the natural and inalienable rights of all people, including freedom of speech, religion, and the press, as well as the right to a fair trial and protection from arbitrary arrest and imprisonment. It also stated that all citizens were equal before the law, regardless of their social or economic status.<sup>12</sup>

The French Bill of Rights was a significant achievement in the history of human rights and helped to establish the modern concept of individual liberties and rights. However, it was not without its flaws, and many of the principles it espoused were not fully realized during the turbulent years of the French Revolution. Nevertheless, the legacy of the French Bill of Rights continues to be felt today and has influenced the development of human rights documents around the world.<sup>13</sup>

## **8. UNIVERSAL DECLARATION OF HUMAN RIGHTS**

The Universal Declaration of Human Rights (hereinafter referred as UDHR) is a milestone document in the history of human rights, adopted by the United Nations General Assembly in 1948. It is a comprehensive statement of the rights and freedoms that all human beings are entitled to, regardless of their nationality, race, gender, or any other status.

The origins of the UDHR can be traced back to the aftermath of World War II, when the world was reeling from the horrors of genocide and other atrocities committed during the conflict. The idea behind the declaration was to create a set of universal principles that would help to prevent such atrocities from happening again in the future<sup>14</sup>.

The UDHR is based on the principle of inherent human dignity and is grounded in the belief that all human beings are entitled to have certain rights and freedoms simply as they are by born human. A number of civil, political, economic, social, and cultural rights are outlined in the declaration, including the rights to labor and education.

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<sup>12</sup> Lough, J. 'The Impact of the French Revolution on Human Rights', in Goodman, D. and Mirow, M.C. (eds.) *The Routledge Handbook of International Human Rights Law*, London: Routledge, (2015) 97.

<sup>13</sup> *Ibid.*, 99

<sup>14</sup> Bayarsaikhan, U. 'The Universal Declaration of Human Rights: Origins, Drafting, and Intent', *Human Rights Brief*, (2017) 1-7.

## 9. SECOND GENERATION HUMAN RIGHTS AND POSITIVE AND NEGATIVE RIGHTS DISCOURSE

The discussion of rights is an essential component of both the modern political and legal systems. This concept relates to the notion that people are born with certain inherent rights that the state is obligated to defend and uphold at all times. The discussion of rights may be broken down into two basic categories: positive rights and negative rights.<sup>15</sup>

In addition to the term "liberty rights"<sup>16</sup> the concept of "negative rights" refers to rights that shield individuals against the encroachment of third parties, such as the state. Freedoms such as the freedom to speak one's mind, the freedom to practice one's religion, and the right to one's own privacy are examples of negative rights. It is common practice to consider negative rights to be basic rights that are essential for the individual's right to autonomy and self-determination. They are frequently viewed as restricting the authority of the state and ensuring that individuals have the space to live their lives as they see fit, free from interference, which is a major benefit of having such protections in place<sup>17</sup>.

Positive rights, on the other hand, are often referred to as "entitlements"<sup>18</sup> and they are rights that require the state to take active steps in order to guarantee that individuals have access to a certain set of goods or services. The right to an education, the right to healthcare, and the right to a roof over one's head are all examples of positive rights. It is common practice to consider positive rights essential to the achievement of social and economic fairness. They are thought to make available to individuals the resources and opportunities that are necessary for them to lead lives that are meaningful and rewarding<sup>19</sup>.

The topic of whether or not positive rights are actually rights, as opposed to merely policy preferences, is one of the most contentious issues in the discussion of human rights. Positive rights are controversial because some people believe they require the state to take resources away from certain people in order to provide those resources to other people. They argue that this is not a legitimate right since it necessitates infringing on the rights of others who do not

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<sup>15</sup> Kamm, F. M. 'The moral difference between negative and positive rights'. *Philosophy & Public Affairs*, 23(2) (1994) 137.

<sup>16</sup> Liberty rights refer to rights that protect an individual's freedom from interference by others, including freedom of speech, religion, and assembly.

<sup>17</sup> Singh, S. 'Negative Rights and their Relevance to the Indian Constitution'. *Journal of Legal Studies and Research*, 4(3) (2018) 29.

<sup>18</sup> Entitlements are rights or benefits that individuals are entitled to receive from the government or other sources, often based on certain criteria such as need, status, or contribution.

<sup>19</sup> Hassan, T. 'Positive Rights and the South Asian Constitution: A Comparative Study of the Constitutions of India, Pakistan, and Bangladesh'. *Indian Journal of Constitutional Law*, 12 (1), (2018) 58

have it. The advocates of positive rights contend that these rights are essential for guaranteeing that individuals have access to the opportunities and resources necessary to meet their fundamental requirements, and that they are also compatible with the concepts of human dignity and equality<sup>20</sup>.

The question of how to strike a balance between positive and negative rights is another prominent topic of discussion in the rights discourse. Some who are opposed to the concept of positive rights contend that it might result in an overwhelmed state and a reduction in individual liberty. The advocates of positive rights contend that these rights are essential for ensuring that individuals have equal opportunities to achieve their goals and that they are consistent with the principles of social justice. They also argue that positive rights are necessary for ensuring that individuals have equal opportunities to achieve their goals<sup>21</sup>.

To recapitulate, the distinction between positive rights and negative rights is an essential one in the discussion of rights. Positive rights require the state to take affirmative action to guarantee that individuals have access to fundamental necessities and opportunities, whereas negative rights only safeguard individual liberty and place limits on the authority of the state. The discussion between those who support positive rights and those who do not is ongoing, and it is quite probable that it will continue to have an impact on the way that we think about rights and justice in the years to come. The South African model to bridge between these two forms of rights are better addressed and resolved the classical discourse<sup>22</sup>.

## **10. INDIVIDUAL LIBERTY VS STATE AUTHORITY: THE DEBATE OVER CIVIL AND POLITICAL RIGHTS**

The conflict that exists between individual liberty and state authority is frequently at the center of the conversation surrounding civil and political rights. Everyone should be able to freely express themselves, worship however they see fit, and take part in the political process without the fear of being persecuted or discriminated against, according to supporters of civil and political rights. In addition to this, they contend that the government has a responsibility to

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<sup>20</sup> Bhatia, G. 'The Curious Case of Positive Rights'. *Economic and Political Weekly*, 39(37), (2004) 4049-4052.

<sup>21</sup> Nolan, A. 'Balancing Positive and Negative Rights: The Legacy of the International Covenant on Economic, Social and Cultural Rights', *Human Rights Law Review*, 11(4) (2011) 627

<sup>22</sup> Taylor, M. 'The Intersection of Positive and Negative Rights: Lessons from the South African Experience', *Journal of Human Rights Practice*, 4(2), (2012) 192.

safeguard these rights and to make certain that individuals are not arbitrarily deprived of them<sup>23</sup>.

On the other side, individuals who are opposed to civil and political rights may claim that placing an excessive amount of emphasis on individual rights might result in the breakdown of social cohesion as well as undermine the authority of the state. They may claim that the government has a legitimate role in restricting some types of expression or association in order to maintain public order or defend the rights of others. This could be because they believe that doing so is necessary in order to protect the rights of others<sup>24</sup>.

The discourse surrounding civil and political rights is, in general, convoluted and multidimensional, and it frequently includes debates about the appropriate balance between individual liberty and state authority<sup>25</sup>.

## **11. INCORPORATION OF CIVIL AND POLITICAL RIGHTS IN MODERN CONSTITUTION**

Modern constitutions typically incorporate civil and political rights within them by including provisions that protect individual freedoms and limit the power of the government. These provisions typically take the form of specific guarantees or protections, such as the right to freedom of speech, the right to a fair trial, and the right to vote. One of the key ways that modern constitutions incorporate civil and political rights is through the inclusion of a Bill of Rights or a similar document that enumerates the specific rights and protections that citizens are entitled to<sup>26</sup>. For example, the United States Constitution includes the Bill of Rights, which guarantees freedom of speech, religion, and the press, as well as the right to bear arms, the right to a fair trial, and protection against unreasonable searches and seizures<sup>27</sup>.

Similarly, many other modern constitutions around the world include a Bill of Rights or similar provisions that protect civil and political rights. For example, the Universal Declaration of Human Rights, which was adopted by the United Nations in 1948<sup>28</sup>, outlines a set of

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<sup>23</sup> Bhatia, S. 'Individual Liberty vs. State Authority: A Comparative Study of Civil and Political Rights in India and the USA', *National Law School Journal*, 11(1), (2009) 11.

<sup>24</sup> *Ibid.*, 13

<sup>25</sup> Neff, S. C. 'The Balance Between Individual Liberty and Public Security in the Context of Counter-Terrorism: A Comparative Analysis of US and UK Approaches', *The Israel Yearbook on Human Rights* (2009) 89-125.

<sup>26</sup> Gauri, V, 'Human Rights and Fundamental Rights' 120(8) *The Yale Law Journal* (2011) 2186

<sup>27</sup> U.S. Const. amend. I, IV, V, VI, VIII

<sup>28</sup> United Nations General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III) URL: <https://www.un.org/en/universal-declaration-human-rights/>

fundamental human rights that are meant to be protected by all countries. In addition to specific provisions related to civil and political rights, modern constitutions often include broader guarantees of individual liberty and limits on government power. For example, many constitutions include provisions that protect the right to privacy, prohibit cruel and unusual punishment, and establish the separation of powers between different branches of government.<sup>29</sup>

Overall, modern constitutions incorporate civil and political rights by recognizing the importance of individual freedoms and limiting the power of the government to infringe upon them. By providing a framework for protecting these rights, modern constitutions help to ensure that citizens are able to live in societies that are free, fair, and just.<sup>30</sup>

The extent to which modern constitutions include civil and political rights varies from country to country. Some constitutions provide comprehensive protections for a wide range of rights, while others may only include a few basic protections<sup>31</sup>. However, most modern constitutions typically include provisions that protect key civil and political rights, such as freedom of speech, assembly, and religion, the right to a fair trial, and protections against arbitrary detention and torture.

## **12. EXISTING MECHANISM OF PROTECTION OF CIVIL AND POLITICAL RIGHTS**

The modern constitution has a number of different mechanisms that are designed to guarantee civil and political rights. In a general sense, these mechanisms can be divided into two

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<sup>29</sup> Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

URL: <https://laws-lois.justice.gc.ca/eng/const/page-15.html>, Constitution of the Republic of South Africa Act 200 of 1993, Chapter 3: Fundamental Rights and Freedoms.

URL: <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>, Constitution of the United States of America, Bill of Rights, Amendments I-X (1791).

URL: <https://www.archives.gov/founding-docs/bill-of-rights-transcript>, Constitution of Japan, Chapter III: Rights and Duties of the People, URL:

[https://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html),

<sup>30</sup> Brandt, P T. 'Constitutional Rights and the Rule of Law: A Comparative Analysis' (Oxford University Press 2017) 21

<sup>31</sup> Singh, S., 'The Dichotomy of Civil and Political Rights vis-à-vis Socio-Economic Rights: An Indian Perspective' (2019) 10(1) Journal of Indian Law and Society 87

categories: constitutional and judicial, as well as institutional. In the paragraphs that follow, I will present a brief discussion on the topic at hand.

### **13. CONSTITUTIONAL AND JUDICIAL MECHANISM**

Constitutional mechanisms for protecting civil and political rights guarantee fundamental rights to individuals. Constitutional protections against discrimination, arbitrary detention, and free speech, religion, and assembly are possible. Constitutional mechanisms may also divide the government into separate branches with distinct powers and responsibilities<sup>32</sup>.

Constitutional interpretation and enforcement by the judiciary protect civil and political rights. In many countries, people can sue the government for violating their constitutional rights. Judicial review can declare such laws or actions unconstitutional and order their repeal or modification. The judiciary can also define constitutional rights and advise on their application. Some of the mechanisms are stated following succinctly<sup>33</sup>.

### **14. CONSTITUTIONAL SUPREMACY**

The constitutional supremacy doctrine holds that the Constitution is the highest and most authoritative legislation in the country. It indicates that the constitution is the ultimate authority on all issues relating to law and politics, and that all legislation and actions taken by the government must be in accordance with the constitution. This notion is absolutely necessary in contemporary constitutional regimes in order to ensure the preservation of civil and political rights<sup>34</sup>.

Constitutional supremacy ensures the protection of civil and political rights by setting boundaries on the power that can be exercised by the government. It does this by establishing the Constitution as the ultimate source of legal authority and by ensuring that any laws or actions taken by the government that violate citizens' civil and political rights can be overturned

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<sup>32</sup> Choudhary, M A. 'Constitutional Mechanisms for the Protection of Civil and Political Rights in India' (2018) 6(1) Journal of Politics & Governance 55.

<sup>33</sup> Cumper P, 'The Protection of Civil and Political Rights by the Judiciary' in C Gearty and A Tomkins (eds), *Understanding Human Rights: Principles, Challenges, and Emerging Issues* (Bloomsbury Publishing 2013) 175-192.

<sup>34</sup> Dixon R, 'The principle of constitutional supremacy' in M Rosenfeld and A Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2008) 138

on the grounds that they violate the Constitution<sup>35</sup>. This establishes that the government is answerable to the constitution, and that the constitutionality of its actions can be scrutinized by the courts.

In particular, the concept of constitutional supremacy serves as a foundation for guaranteeing the separation of powers in a democratic government. The tasks and responsibilities of the several departments of government, such as the executive, legislative, and judicial branches, are laid forth in the constitution. Doing so ensures that no single branch of government may wield an excessive amount of authority or violate the rights of individuals in any way. This system of checks and balances is vital for the preservation of civil and political rights, as it serves to avoid abuses of power by the government and is essential for the protection of civil and political rights<sup>36</sup>.

In furthermore, the preeminence of the constitution assures that the protection of civil and political rights is not susceptible to the whims of the majority. The constitution is the supreme law in a constitutional democracy, and it is the document that defines the fundamental rights and liberties that are necessary to ensure the protection of individual rights<sup>37</sup>. The constitution lays out a structure that ensures these rights are safeguarded and ensures that they cannot be infringed upon by either the majority or the government.<sup>38</sup>

In addition, the concept of constitutional supremacy assures that civil and political rights are shielded from measures taken by the government that are arbitrary or discriminatory. Because the Constitution has been given the status of being the highest law in the land, the government is obligated to behave in a manner that is consistent with the ideals that are outlined in the Constitution. These principles include the protection of individual rights. This signifies that individuals are entitled to equal protection under the law and that the government is prohibited from discriminating against individuals on the basis of their race, gender, religion, or any other factor<sup>39</sup>. In addition, this means that the government cannot discriminate against individuals based on any other factor.

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<sup>35</sup> Jackson VC, *Constitutional Supremacy* (Oxford University Press 2013) 6

<sup>36</sup> Ackerman B, *The New Separation of Powers* (Harvard University Press 2004) 8

<sup>37</sup> Bhushan P, 'The Concept of Constitutional Supremacy and Indian Democracy' (2015) 6 *Journal of Indian Law and Society* 9

<sup>38</sup> *Ibid*, 22

<sup>39</sup> Yap PT, 'Constitutional Supremacy and Judicial Review in Malaysia' in Harding A and Yap PT (eds), *Constitutional Landmarks in Malaysia: The First 50 Years, 1957-2007* (LexisNexis 2012) 303-330.

So, it is submitted that the idea of constitutional supremacy is necessary for the safeguarding of civil and political rights under modern constitutional regimes. These rights are protected by the separation of powers principle. It establishes the constitution as the supreme law of the land, ensuring that all laws and actions of the government are subject to the constitution and can be struck down if they infringe upon individual rights. It also ensures that all laws and actions of the government are subject to the constitution and that they can be subject to the constitution. A framework for upholding the separation of powers, defending against abuses of government power, and safeguarding individual rights against arbitrary and discriminatory measures is also established under this legislation. For this reason, constitutional supremacy is an essential doctrine in modern constitutional democracies to ensure the protection of civil and political rights

## **15. SEPARATION OF POWER AND INDEPENDENCE OF JUDICIARY**

In modern constitutional systems, the separation of powers<sup>40</sup> and the independence of the judiciary are two major components that are essential for protecting civil and political rights. The separation of powers can only be maintained and civil and political rights can only be safeguarded if the court is allowed to function under its own authority. This implies that the two ideas are inextricably intertwined<sup>41</sup>.

The separation of powers is the idea that, in order to prevent one aspect of the government from becoming overly predominant, the powers of the several branches of the government, including the legislative, executive, and judicial branches, should be divided among them. The legislative branch, the executive branch, and the judicial branch are some of these branches. The premise that there is an increased potential for tyranny and the misuse of power when an excessive amount of power is held by a single arm of the government is the foundation for this theory. The separation of powers guarantees that one branch may serve as a check on the others by ensuring that power is divided among multiple branches<sup>42</sup>. This helps to decrease the likelihood that one branch will abuse its position of authority.

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<sup>40</sup> Separation of power refers to the division of government responsibilities among different branches of government to ensure that no one branch has too much power or authority.

<sup>41</sup> Corrigan M, *Judicial Independence and the Separation of Powers* (Cambridge University Press 2015) 45

<sup>42</sup> Sharma P, 'Separation of Powers and Independence of Judiciary in India' (2017) 78(2) *The Indian Journal of Political Science* 297

On the other side, when people talk about the independence of the judiciary, they are referring to the concept that judges ought to be free from political interference and pressure. This principle is predicated on the notion that it is essential to have a judicial system that is free from outside influence in order to guarantee that the rule of law is preserved and that civil and political rights are safeguarded<sup>43</sup>. When judges are subject to political pressure, there is a risk that they will be swayed by political considerations rather than legal principles, which can undermine the protection of civil and political rights. When judges are subject to political pressure, there is a risk that judges will be swayed by political considerations rather than legal principles.

There is a connection between the separation of powers and the independence of the judiciary, and that connection is the requirement that there be an independent judiciary in order to keep the separation of powers intact. The absolute autonomy that allows a judge to hear cases and provide judgements without intervention from other parties is the foundation of judicial independence.<sup>44</sup> When judges are free to act on their own, they are better equipped to interpret the law and ensure that the activities of the other parts of government are in line with the constitution. This allows the judiciary to function as a check on the other departments of government. When judges are subject to political pressure, on the other hand, they may be less likely to serve as a check on the other branches of government and may be more likely to be swayed by political considerations. This is in contrast to the situation in which judges are not subject to political pressure<sup>45</sup>.

The principle of the separation of powers and the autonomy of the judicial branch are both frequently inscribed in the legal provisions and constitutional standards of contemporary constitutions. In order to guarantee that the judicial system can fulfill its function as a check on the functioning of the other arms of government and that citizens' political and civil rights are safeguarded, certain laws and norms have been drafted. For instance, many contemporary constitutions mandate the existence of an impartial judiciary and vest constitutional courts with

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<sup>43</sup> Peter H. Russell, 'The Independence of the Judiciary: A Comparative Study of the Doctrine and Practice' (Oceana Publications, 1985) 67

<sup>44</sup> TFH Van Rooyen v. the State (case No. 21 of 2001), Mr. Chaskalson, CJ, the Constitutional Court of South Africa

<sup>45</sup> Jowell, Jeffrey, 'The Independence of the Judiciary and the Rule of Law: Recent International Developments' (Cambridge University Press, 2010) 54

the authority to examine and weigh in on the activities of the nation's legislative, executive, and judicial institutions<sup>46</sup>.

The ideas of "separation of powers" and "independence of the court" are inextricably intertwined and are indispensable in contemporary constitutional systems for the purpose of "safeguarding civil and political rights"<sup>47</sup>." The separation of powers ensures that power is distributed among different branches of government, and the independence of the judiciary ensures that judges are able to act as a check on the other branches of government by interpreting the law and upholding the constitution. Together, these two principles ensure that power is kept under proper check. These ideas, when combined, make up the basis of modern constitutionalism. Furthermore, they are indispensable to the process of guaranteeing the protection of civil and political rights<sup>48</sup>

## 16. RULE OF LAW

The concept of "the rule of law" is essential to the development of contemporary constitutional frameworks. It is a notion that has been discussed and perfected over the course of several centuries, and it is indispensable for the defense of civil and political rights in contemporary constitutional democracies<sup>49</sup>.

The rule of law, in its most fundamental sense, encompasses the principle that all people, including members of government, are accountable to the law and are required to comply with it. It is founded on the concept of equality before the law, which maintains that all people, regardless of their status or position, should be treated equally in the eyes of the law<sup>50</sup>.

For a number of different reasons, the rule of law is absolutely necessary in contemporary constitutional systems to ensure the protection of civil and political rights. To begin, it ensures legal certainty by delivering laws that are unambiguous, predictable, and easily available and that are relevant to each and every individual. This establishes a framework for the protection of civil and political rights by providing individuals with a clear awareness of their rights and

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<sup>46</sup> Maldonado, Daniel Bonilla , 'The Concept of Judicial Independence: Global Perspectives and Evaluations' (2015) 13(1) International Journal of Constitutional Law 168

<sup>47</sup> *Ibid*, 173

<sup>48</sup> Lawrence B. Solum, 'Checks and Balances, Judicial Independence, and the Rule of Law' (2011) 28(1) Constitutional Commentary 5.

<sup>49</sup> Tushnet, Mark, "The Rule of Law" in Martin Loughlin and Neil Walker (eds), *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford University Press, 2007) pp. 175-196

<sup>50</sup> Bingham, Tom, *The Rule of Law* (Penguin, 2011)

obligations and enabling them to effectively express their rights. This also makes it possible for individuals to effectively assert their rights<sup>51</sup>.

The rule of law ensures that fundamental rights are safeguarded by the judicial system, which is an essential component in the preservation of these rights. This indicates that individuals have the ability to defend their rights in court, and that the government is obligated to respect these rights in everything that it does. The rule of law ensures that fundamental rights such as freedom of speech, freedom of association, and the right to a fair trial are protected by the legal system. Fundamental rights are essential for the protection of civil and political rights, and the rule of law is what ensures that they are protected<sup>52</sup>.

It restricts the power of the government by mandating that it uphold the law and honor fundamental rights. This keeps the government in check. This ensures that government officials are held accountable for their acts and that they cannot abuse their power to infringe upon the rights of individuals. It also prevents them from abusing their office to violate the rights of others. The concept of rule of law dictates that governmental activities must be open to scrutiny and scrutiny in the form of legal challenges, and that officials within the government must be able to be held accountable for their actions<sup>53</sup>.

However, it encourages accountability by mandating that governmental officials be subject to the law and be able to be held accountable for their conduct. This requirement is one of the ways in which the rule of law promotes accountability. This indicates that individuals have the right to question actions taken by the government in court, and that the government itself is required to disclose explanations for the activities it takes and is open to judicial review. This ensures that government officials are held accountable for their actions and that the government is subject to the rule of law<sup>54</sup>. Also, this ensures that the government is subject to the law.

In essence, the rule of law protects impartiality by mandating that judicial decisions be made in an unbiased manner, free from both fear and favor. This assures that individuals are treated

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<sup>51</sup> Kavanagh, Aileen, "The Rule of Law and Human Rights: A Reassessment" in *The Rule of Law and the Measure of Property* (Cambridge University Press, 2012)

<sup>52</sup> Tamanaha, Brian, "The Rule of Law and Human Rights: The Case for Positive Complementarity" in *Collected Courses of the Academy of European Law* (Oxford University Press, 2012)

<sup>53</sup> *Ibid*, 45

<sup>54</sup> *Ibid*, 46

equally and impartially under the law, and that the judicial system runs without bias or discrimination against any group of people.<sup>55</sup>

In conclusion, it is submitted that the rule of law is a vital component of modern constitutional systems, as it serves as an indispensable foundation for the defense of civil and political rights. The rule of law provides a framework for the protection of civil and political rights within a legal system that is fair and impartial. The rule of law accomplishes this by ensuring legal certainty, upholding fundamental rights, limiting government power, promoting accountability, and ensuring impartiality. Rule of law is essential to the functioning of modern constitutional democracies and is essential to the preservation of civil and political rights in current constitutions. Rule of law is also essential to the functioning of modern constitutional democracies.

## **17. WRITTEN CONSTITUTION**

It is a widely held belief that a civil and political rights can be better protected under a written constitution as opposed to an unwritten constitution<sup>56</sup>. This is due to the fact that a written constitution is a formal and explicit document that places clear boundaries on the power of the government while also outlining the underlying ideals and values of a community<sup>57</sup>. When citizens' rights are explicitly outlined in a written constitution, it is far simpler for those citizens to comprehend and exercise their rights.

In contrast, an unwritten constitution draws its interpretation and implementation of constitutional principles from a mix of legal precedent, tradition, and custom. This is in contrast to a written constitution, which is based on a set of predetermined rules. This can make it more difficult for citizens to enforce their rights through the judicial system, leading to ambiguity and uncertainty in the protection of civil and political rights. Moreover, this can make it more difficult for persons to exercise their rights.

This standard operating procedure does, however, have a few notable exemptions. For instance, an unwritten constitution may be able to provide solid<sup>58</sup> protection for civil and political rights

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<sup>55</sup> Mackenzie, R. (2016) 'The Rule of Law and Judicial Impartiality', *American Journal of Political Science*, 60(1), pp. 185-198.

<sup>56</sup> Waldron, Jeremy. "The Core of the Case Against Judicial Review." *Yale Law Journal* 115, no. 6 (2006): 1346-1406.

<sup>57</sup> A.K. Kaul V. Union of India, (1995) 4 SCC 73

<sup>58</sup> Dixon, Rosalind. "Unwritten Constitutional Principles." *University of Toronto Law Journal* 57, no. 3 (2007): 317-352.

in countries that have a long heritage of common law and a judiciary that is independent. In addition, the political involvement or weak institutions in certain nations with written constitutions have made it difficult to implement and enforce constitutional rights. This is the case in several countries with written constitutions.

The effectiveness of constitutional protections ultimately depends on a variety of factors, including the political and social context in which the constitution is implemented, the strength of democratic institutions, and the commitment of citizens and government officials to upholding constitutional values and principles. In general, a written constitution is considered to provide stronger protection for civil and political rights than an unwritten constitution. A written constitution with a system of checks and balances can protect the rights of the people by preventing any one branch of government from becoming too powerful.<sup>59</sup>

## 18. JUDICIAL REVIEW

In the late 18th century in the United States, the concept of judicial review was developed as a method for ensuring that the actions of the other organ of government were in accordance with the requirements of the Constitution. This was accomplished through the use of the phrase "original intent." This principle was first articulated by Chief Justice John Marshall in the landmark case of *Marbury v. Madison* (1803), in which the Supreme Court declared that it had the power to strike down laws or executive actions that violated the Constitution. In that case, the Supreme Court declared that it had the power to strike down laws or executive actions that violated the Constitution<sup>60</sup>.

Since then, the concept of judicial review has emerged as an essential component of constitutional governance in a significant number of countries all over the world. The constitutional frameworks of a great number of nations, such as India<sup>61</sup>, Canada<sup>62</sup>, Australia<sup>63</sup>, and a significant number of European nations, all have a provision for the practice of judicial review.

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<sup>59</sup> Madison J, 'Federalist No. 51' in C Rossiter (ed), *The Federalist Papers* (New American Library 1961) 321-327.

<sup>60</sup> *Marbury v. Madison* [1803] USSC 5; 1 Cranch 137 (1803).

<sup>61</sup> Bhagwati, P.N. "The Constitution and Judicial Review." *Indian Journal of Public Administration* 11, no. 2 (1965): 288

<sup>62</sup> McWhirter, Darien J. "Judicial Review of Executive Action: The Canadian Experience." *International Journal of Constitutional Law* 2, no. 4 (2004): 609-634

<sup>63</sup> Hanks, Peter. "Judicial Review and the Constitution." *University of New South Wales Law Journal* 33, no. 1 (2010): 31-49

One of the primary advantages of judicial review is that it serves as an essential check on the power wielded by the various other departments of government, most notably the executive and legislative branches. Judicial review can assist in the prevention of power abuses and the protection of civil and political rights by ensuring that the three arms of government are held accountable for their actions in accordance with the Constitution. Judicial review has been playing a great role in protecting social rights and welfare in various countries like in the United States, Canada, and South Africa and so on<sup>64</sup>.

For instance, the judicial review process has been utilized in numerous nations to overturn laws that discriminate against particular groups of people or violate fundamental human rights. Judicial review has been utilized by the Supreme Court of the United States, for example, to overturn legislation that discriminate on the basis of race, gender, or sexual orientation; restrict freedom of speech; violate the right to due process; or violate the constitutional right to due process<sup>65</sup>.

In addition to this, judicial review has also been utilized in the process of advancing the expansion of civil and political rights<sup>66</sup>. In a vast number of cases, the courts have adopted a liberal interpretation of constitutional provisions in order to bestow increased protections upon individual liberties and civil rights<sup>67</sup>. This has been of utmost significance in the realm of civil rights, where the judicial system has been instrumental in advancing equality and safeguarding the rights of underrepresented groups.

In a nutshell, the concept of judicial review has demonstrated time and again that it is an efficient method for safeguarding and ensuring the protection of civil and political rights under modern constitutions. Judicial review has played a significant role in preventing abuses of power and promoting a greater regard for individual liberties and human rights. This is because it serves as a crucial check on the authority that is held by the other arms of government.

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<sup>64</sup> Tushnet, Mark. "Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law." *Human Rights Quarterly* 36, no. 4 (2014): 760-787

<sup>65</sup> Fallon, Jr., Richard H. "Judicial Review in the United States: A Comparative Analysis." *The Chinese Journal of Comparative Law*, vol. 3, no. 1, 2015, pp. 51-65

<sup>66</sup> Bhattacharya, Sabyasachi. "The Liberal Interpretation of the Constitution by the Indian Judiciary." (2010) *1(2) Journal of Indian Law and Society* 31

<sup>67</sup> Barak, Aharon. *The Judge in a Democracy*. Princeton University Press, 2006

## 19. BASIC STRUCTURE DOCTRINE

The doctrine of basic structure is a constitutional principle that maintains that certain fundamental aspects of a constitution cannot be changed or eliminated by amendment. These fundamental aspects are generally regarded as vital for preserving individual rights and advancing the rule of law, both of which are considered essential for the functioning of the constitution as a whole.

The seminal decision handed down by the Indian Supreme Court in the case of *Kesavananda Bharati v. State of Kerala* is considered to be the cradle of the basic structure school of thought (1973). The court ruled in this particular instance that the fundamental framework of the Indian Constitution could not be altered by the Indian Parliament since it constituted an integral part of the document. The supremacy of the constitution, the rule of law, the separation of powers, and the preservation of fundamental rights were all components of this essential structure<sup>68</sup>.

In a number of different ways, the basic structure theory has the potential to defend and fulfill the protection of civil and political rights that are guaranteed by a written constitution. Nevertheless, it establishes a framework for safeguarding the separation of powers and the defense of individual rights against infringement by the state. By maintaining that certain fundamental aspects of the constitution cannot be amended, the doctrine of basic structure ensures that the government cannot change the constitution in a way that undermines the separation of powers or infringes upon individual rights. This protection is afforded by the fact that the government cannot change the constitution<sup>69</sup>.

The idea of basic structure can prevent the government from passing laws or policies that are in conflict with the fundamental principles outlined in the constitution, so preserving the integrity of the document as a whole. For instance, if a government were to enact a law that undermines the rule of law or infringes upon individual rights, the theory of basic structure might be used to challenge the legality of such statute because it violates the rule of law or violates individual rights<sup>70</sup>.

Moreover, the idea of basic structure has the potential to act as a defense mechanism against authoritarianism as well as the weakening of democratic institutions. The philosophy of basic

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<sup>68</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

<sup>69</sup> S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press, 2002)

<sup>70</sup> Menon, N. R. Madhava. "The Basic Structure Doctrine and the Protection of Fundamental Rights." *Indian Journal of Constitutional Law*, vol. 2, no. 1, 2008, pp. 1-19.

structure states that a constitution should continue to be a living document that reflects the goals and ideals of the people by ensuring that its key components are maintained<sup>71</sup>.

In general, the idea of fundamental structure is an indispensable part of contemporary constitutional democracies. It provides a framework for ensuring the separation of powers, preventing government abuse, and safeguarding the fundamental features of the constitution, all of which serve to protect and fulfill the protection of civil and political rights that are enshrined in a written constitution. This protects and fulfills the protection of these rights. As a consequence of this, it plays an essential part in the process of advancing the rule of law and safeguarding individual rights<sup>72</sup>.

Although the doctrine of basic structure has been accepted by the courts in a number of countries, the manner in which the doctrine is put into practice might shift significantly depending on the circumstances and the legal system in question. The following is a list of some of the nations in which the doctrine has been adopted:

In the seminal decision of *Kesavananda Bharati v. State of Kerala*, which took place in 1973, the Indian Supreme Court first formulated the notion of basic structure. Since that time, the concept has been utilized in a variety of instances, and it has been successful in overturning legislation that were found to be in conflict with the fundamental framework of the Indian Constitution.

Bangladesh: The Supreme Court of Bangladesh has also adopted the doctrine of basic structure and has used it to strike down laws that are seen as being incompatible with the fundamental features of the Bangladeshi Constitution. In doing so, the Bangladesh Supreme Court has followed the precedent set by the Supreme Court of India<sup>73</sup>.

Pakistan: The Pakistani Supreme Court has also acknowledged the notion of basic structure and has used it to strike down laws that are considered to be incompatible with the core elements of the Pakistani Constitution<sup>74</sup>.

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<sup>71</sup> Shukla, V. N. "The Basic Structure Doctrine and the Protection of Human Rights." *Journal of Indian Law and Society* 7, no. 2 (2016): 77

<sup>72</sup> *Ibid*, 78

<sup>73</sup> *Anwar Hossain Chowdhury v. Bangladesh*, 1989 BLD (AD) 1 (Bangladesh).

<sup>74</sup> *Zafar Ali Shah v. The Federation of Pakistan*, PLD 1997 SC 426

Nepal: The Supreme Court of Nepal has acknowledged the notion of basic structure and has used it to invalidate laws that are deemed to be incompatible with the fundamental provisions of the Constitution of Nepal<sup>75</sup>.

Sri Lanka: The Supreme Court of Sri Lanka has acknowledged the notion of basic structure and has utilized it to invalidate laws that are seen to be in breach of the fundamental elements of the Constitution of Sri Lanka<sup>76</sup>.

The idea of implicit restrictions, which is analogous to the doctrine of basic structure, has been acknowledged by the Constitutional Court of South Africa. In accordance with this notion, the Constitutional Court has the authority to overturn legislation if they are of the opinion that they are in conflict with the basic ideals and guidelines outlined in the South African Constitution<sup>77</sup>.

In each of these nations, the idea of basic structure has been an essential component in safeguarding the most fundamental aspects of the constitution and ensuring that governmental actions are in line with the rule of law and the rights of individuals. Although the particular application of the doctrine can be different from one legal system or environment to another, the underlying ideas and aims it seeks to achieve remain the same.

## **20. PUBLIC LAW COMPENSATION AS OF FULFILLING CIVIL AND POLITICAL RIGHTS**

Public law compensation is a judicial tool that can be used to fulfill civil and political rights. It refers to the awarding of monetary compensation to individuals who have suffered a violation of their rights by the government or other public authorities. This compensation can be awarded as a remedy to redress the harm caused by the violation of a civil or political right<sup>78</sup>.

The use of public law compensation as a judicial tool can have several benefits. First, it can provide a form of redress to individuals who have suffered a violation of their rights, even if the violation cannot be fully remedied. Second, it can serve as a deterrent to future violations of civil and political rights by public authorities. Finally, it can help to promote greater accountability and transparency on the part of public authorities, as they may be more likely to

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<sup>75</sup> Dr. Bhattarai v. Council of Ministers, Writ No. 1697, Supreme Court of Nepal (2007)

<sup>76</sup> Wijesinghe v. The Ministry of Finance and Planning, [1988] 1 Sri L.R. 387

<sup>77</sup> First National Bank of South Africa Ltd v Minister of Finance (1999) ZACC 15, 1999 (4) SA 73 (CC)

<sup>78</sup> Lerner, J. (2015). Public law compensation and the protection of constitutional rights. *Canadian Journal of Law and Society*, 30(2), 201-219

avoid violations of civil and political rights if they know that they may be held liable for monetary damages<sup>79</sup>.

The availability and use of public law compensation may vary depending on the legal system and the specific rights in question. However, in many countries, public law compensation is recognized as a remedy for violations of civil and political rights. For example, in the India<sup>80</sup>, the Supreme Court has recognized the availability of public law compensation as a remedy for violations of constitutional rights. Similarly, in Bangladesh<sup>81</sup>, the Supreme Court has recognized the availability of public law compensation for violations of the fundamental Rights and Freedoms.

Overall, public law compensation can be a valuable judicial tool for fulfilling civil and political rights, as it can provide a remedy to individuals who have suffered violations of their rights and promote greater accountability and transparency on the part of public authorities.

## **21. SCOPE OF JUDICIAL INTERPRETATION**

The extent to which courts are allowed to exercise their authority to interpret laws is not consistent from nation to nation or legal system to legal system. Courts may, however, engage in a variety of interpretations, including textual, purposive, and contextual interpretations, as a matter of ordinary practice.

In the process of textual interpretation, one looks at the words in a legal document, such as the constitution or a statute, to determine their literal meaning. On the other hand, if you want to determine what the text is supposed to mean, you can use a method called purposive interpretation, which entails looking at the larger purposes and ideas that lie behind the text. The approach of interpreting a text by taking into consideration the larger legal, social, and historical context in which it exists is known as contextual interpretation<sup>82</sup>.

The courts have the ability to play a vital role in the protection and maintenance of constitutional rights through the use of these diverse modes of interpretation. Courts may, for

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<sup>79</sup> Beiner, R. (2016). Public law compensation as a remedy for constitutional violations. *Canadian Journal of Law and Jurisprudence*, 29(2), 293-309.

<sup>80</sup> Rudul Sah v. State of Bihar, AIR 1983 SC 1086; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746

<sup>81</sup> Bilkis Akhter Hossain v Bangladesh and others (1997) 17 BLD (HCD) 395 (henceforth 'Bilkis Akhter'). Children's Charity Bangladesh Foundation (CCB Foundation) v Bangladesh and others (2017) 5 CLR (HCD) 278.

<sup>82</sup> Osborne, C. and Petrovic, M. (eds), *Modes of Interpretation: Essays Presented to Ernst Wolfgang Böckenförde* (Oxford University Press 2020)

instance, engage in purposive interpretation of constitutional provisions protecting fundamental rights, such as the right to freedom of speech or the right to equal protection under the law. This type of interpretation can lead to different outcomes depending on the particular circumstances. The courts may be able to provide a more expansive interpretation that better protects individual rights and liberties if they look at the underlying purposes and concepts of these rules<sup>83</sup>.

In addition, the courts have the ability to strike down laws or programs that violate constitutional rights by employing both textual interpretation and contextual interpretation. For instance, if a court determines that a legislation violates a constitutionally protected right, such as the right to privacy, it will likely rule that the statute in question is unconstitutional and hence null and void. This has the potential to be a crucial protection against the overreach and misuse of power by the government.

In addition, the courts have the ability to conduct judicial review in order to guarantee that constitutional norms and principles are adhered to by laws and policies. The courts have the ability to aid in the prevention of abuses of power and guarantee that the government is functioning in a manner that is beneficial to the general populace if they examine the actions taken by government officials and overturn those that violate constitutional rights.

In general, the scope of judicial interpretation that is allowed by the courts has the potential to have a considerable impact on the degree to which constitutional rights are protected and upheld. Courts are able to play a significant part in the protection of individual rights and liberties through engaging in a variety of modes of interpretation, employing judicial review to invalidate laws or programs that violate constitutional norms, and engaging in other activities in this vein<sup>84</sup>.

The subject of how to interpret the Constitution serves as the focal point of the argument between originalist and non-originalist approaches to constitutional interpretation. Non-originalists argue that the Constitution should be interpreted in light of contemporary values and societal norms, while originalists argue that the Constitution should be interpreted according to its original meaning at the time it was adopted. Originalists argue

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<sup>83</sup> Lazarus, R. J. *The Invention of the Rights Revolution: The Origins of Modern Constitutionalism*. Harvard University Press, 2013

<sup>84</sup> Sunstein, C. R. (2006). *Radicals in Robes: Why Extreme Right-Wing Courts are Wrong for America*. New York

that the Constitution should be interpreted according to its original meaning at the time it was adopted<sup>85</sup>.

Both the originalist and non-originalist perspectives have merits and drawbacks when it comes to the question of how best to safeguard the rights of individual citizens. Originalists contend that the Constitution was written with the intention of protecting individual rights and liberties, and that interpreting the document according to its original meaning can help to ensure that these rights are preserved. Originalists advocate that the Constitution be interpreted in accordance with its original meaning<sup>86</sup>. While attempting to decipher the Constitution's initial intent, originalists frequently examine not just the document itself but also the political, social, and cultural climate that existed at the time it was drafted.

On the other hand, non-originalists argue that interpreting the Constitution in light of contemporary values and societal norms can help to ensure that it continues to be relevant and effective in protecting individual rights and liberties<sup>87</sup>. Originalists believe that the Constitution should be interpreted in light of its historical context. While trying to identify the most accurate way to interpret the Constitution's provisions, non-originalists frequently look to the document's original intent, as well as its guiding principles, as well as changing social and political realities.

In the end, the efficacy of any strategy in defending the rights of its residents will depend on a variety of circumstances, including the political and social environment of the country in issue. Yet, it is important to keep in mind that both of these strategies have been implemented to defend individual rights in a variety of settings. Non-originalist interpretations have been used, for instance, to increase rights pertaining to gender and sexual orientation, while originalist interpretations have been used to knock down legislation that infringe upon freedom of speech and religion.

In the end, the choice between an originalist and a non-originalist approach to constitutional interpretation may depend on a variety of factors. These factors may include the particular context and circumstances of the legal issue that is at hand, in addition to the values and principles of the legal system that is in question.

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<sup>85</sup> Scalia, Antonin. *A Matter of Interpretation: Federal Courts and the Law*. Princeton University Press, 1997

<sup>86</sup> Scalia, A., & Garner, B. A. 'Reading Law: The Interpretation of Legal Texts'. (2012).

<sup>87</sup> Balkin, Jack M. *Living Originalism*. Cambridge, MA: Harvard University Press, 2011

## 22. HORIZONTAL ENFORCEMENT OF CIVIL AND POLITICAL RIGHTS

The ability of individuals to seek protection of their constitutional rights against other private individuals or entities, as opposed to only being able to seek protection of their constitutional rights against the government, is referred to as horizontal enforcement of basic rights<sup>88</sup>. This idea emerged over time as a response to the shifting social, economic, and legal landscape of a great number of countries. Its origins can be traced back to the development of modern constitutionalism in the late 18th and early 19th centuries. In other words, modern constitutionalism began in the late 18th century.

The acknowledgment of the notion of private law was an important step in the development of horizontal enforcement of fundamental rights. This was one of the essential developments in the growth of horizontal enforcement of fundamental rights. Individuals are recognized under the principles of private law as having specific rights and obligations that only pertain to their relationships with one another, as opposed to those rights and obligations that solely pertain to their relationships with the state. As a consequence of this, individuals may have the capacity, in addition to having the ability to seek protection of their rights against the government, to seek protection of their rights against other private individuals or companies<sup>89</sup>.

As time has progressed, the judicial system has developed a greater appreciation for the significance of horizontal enforcement of fundamental rights as a method of safeguarding the rights and liberties of individual citizens<sup>90</sup>. For instance, the concept of tort law has been utilized by the judicial systems of a great number of nations in order to supply individuals with a technique of seeking redress for infringement of their fundamental rights that have been committed by other private individuals or companies. This can involve behaviors like slandering someone, invading their privacy, or discriminating against them.

Also, the protection of fundamental rights in the context of private partnerships has been made a legal requirement in a number of nations as a result of the enactment of laws and regulations. For instance, rules that prohibit domestic abuse or harassment in the workplace may offer

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<sup>88</sup> Nolan, A. . Holding Non-state Actors to Account for Constitutional Economic and Social Rights Violations: Experiences and Lessons from South Africa and Ireland. *International Journal of Constitutional Law* (2014), 12(1), 61-88

<sup>89</sup> N Williams and A Williams, 'Horizontal Effect and the Constitutional Constraint' (2011) 74(6) *MLR* 878, 881

<sup>90</sup> Bell, G. 'The Horizontal Effect of Human Rights in the Private Sphere'. (Oxford University Press 2015).

individuals a legal remedy to protect their rights against other private individuals or businesses<sup>91</sup>.

Generally, the growth of horizontal enforcement of fundamental rights has been an important way of defending individual rights and liberties. This has been the case because horizontal enforcement of fundamental rights has been developed<sup>92</sup>. Courts and legislatures have broadened the scope of legal protections that are available to citizens by recognizing that individuals have the ability to seek protection of their rights against other private individuals or entities. This has helped to ensure that fundamental rights are protected throughout all facets of society.

### **23. CONSTITUTIONAL COURTS AND PROTECTION OF CIVIL AND POLITICAL RIGHTS**

The concept of centralized and decentralized models of constitutional courts refers to two distinct approaches to the organization of a nation's judicial system for the purpose of upholding constitutional rights. In a centralized system, there is only one constitutional court that has the authority to conduct judicial review and has exclusive jurisdiction over constitutional issues. The judgements of this court are often binding across the entire nation, and it is customarily situated in the nation's capital city. Countries like France, Germany, and Italy all have robust central governments, hence they frequently use this paradigm in their political systems. The centralized model<sup>93</sup>, which is used in these countries, enables a consistent and uniform interpretation of the constitution and ensures that constitutional rights are safeguarded in a manner that is consistent across the country<sup>94</sup>.

In a system that is not centralized, there may be several courts that have the ability to interpret and apply the constitution, as well as the power to conduct judicial reviews. This arrangement is prevalent in federal countries, such as the United States, Canada, and Australia, where the constitution is split between the national government and the state or provincial governments. Other examples of such countries are the United Kingdom and New Zealand. There may be many constitutional courts at the federal level, as well as at the state or provincial level, and

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<sup>91</sup> Wilson, R. A., *The Horizontal Effect of Human Rights: A Skeptical View* (Oxford University Press 2015)

<sup>92</sup> *Ibid*

<sup>93</sup> Comella, Victor Ferreres, 'The European Model of Constitutional Review of Legislation: Toward Decentralization?' (2004) 2(3) *International Journal of Constitutional Law* 461

<sup>94</sup> Comella, Victor Ferreres 'The European Model of Constitutional Review of Legislation: Toward decentralization?' (2004) 2(3) *International Journal of Constitutional Law* 461, 465.

each of these courts may have the authority of judicial review over their separate jurisdictions if the system is decentralized. This paradigm allows for a larger degree of local control and involvement in the process of interpreting the constitution; nonetheless, it may result in an inconsistent application of constitutional rights in different regions of the country<sup>95</sup>.

In a number of nations, constitutional courts have been set up with the mission of safeguarding constitutional rights through the exercise of judicial review authority. According to research, constitutional courts are most effective at defending constitutional rights when they are free to make their own decisions and have the power to overturn legislation that are deemed to be in violation of the constitution. In addition, the legitimacy and efficiency of constitutional courts are contingent upon their capacity to make their rulings legally binding and upon the level of public support for the role that constitutional courts play in the protection of individual rights<sup>96</sup>. Yet, the functioning of constitutional courts is also hindered by a number of factors, such as political meddling, a lack of resources, and a refusal to comply with court orders. In general, constitutional courts continue to be essential institutions for the protection of constitutional rights in many countries around the world. This is the case despite the fact that constitutional courts have some restrictions.

## **24. INSTITUTIONAL MECHANISM**

Institutional mechanisms of civil and political Civil and Political rights refer to the systems and structures in place to safeguard these rights. These mechanisms can include the executive, legislative, and judicial branches of government, as well as independent regulatory bodies and other government agencies with a role in protecting these rights<sup>97</sup>.

For instance, the judicial branch may play a crucial role in the protection of Civil and Political rights by reviewing laws and policies that may violate these rights. In addition, independent regulatory bodies may be charged with monitoring and enforcing regulations to prevent businesses and other entities from engaging in practices that violate Civil and Political rights.

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<sup>95</sup> Comella, Victor Ferreres, 'The Consequences of Centralizing Constitutional Review in a Special Court: Some Thoughts on Judicial Activism' (2004) 82(7) *Texas Law Review* 1705

<sup>96</sup> Garlicki, Lech, 'Constitutional Courts versus Supreme Courts' (2007) 5(1) *International Journal of Constitutional Law* 44

<sup>97</sup> Cohen, J. E. 'Deliberation and Democratic Legitimacy'. In A. Hamlin & P. Pettit (eds), *The Good Polity: Normative Analysis of the State* (1989) 17-34

## 25. HUMAN RIGHTS PROTECTION AGENCY

Another important mechanism for protecting civil and political rights is the inclusion of constitutional provisions that limit the power of the government and provide for checks and balances. For example, many modern constitutions include provisions that establish separate branches of government with distinct powers and responsibilities, such as a legislative branch, an executive branch, and a judicial branch. These provisions are meant to prevent any one branch of government from accumulating too much power and violating individual rights<sup>98</sup>.

Overall, the protection mechanisms included in modern constitutions are designed to ensure that civil and political rights are respected and upheld, and that governments are held accountable for any violations of these rights<sup>99</sup>.

Here are some examples of countries that have established independent human rights commissions or ombudsmen:

South Africa: The South African Human Rights Commission is an independent statutory body that promotes and protects human rights in South Africa. It investigates human rights violations, conducts research, and provides education and training on human rights issues<sup>100</sup>.

India: The National Human Rights Commission of India is an independent statutory body that investigates and reports on human rights violations in India. It also promotes human rights awareness and education, and provides recommendations for policy and legal reform to better protect human rights<sup>101</sup>.

United Kingdom: An independent statutory organization called the Equality and Human Rights Commission works to advance and defend equality and human rights in the UK. It looks into accusations of discrimination and human rights violations, offers instruction and training on these subjects, and fights for legislative and policy changes to better protect human rights.<sup>102</sup>

Canada: The Canadian Human Rights Commission is an independent government agency that investigates complaints of discrimination and harassment based on prohibited grounds such as

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<sup>98</sup>Joseph, S. & Gerber, P. "Human Rights Commissions in Australia and Canada: A Comparative Study." (International Journal of Discrimination and the Law 2013) 13(3), 170

<sup>99</sup> Hadzi-Miceva Evans, K., & Sancin, V. "Evaluating the Effectiveness of National Human Rights Institutions: Challenges and Achievements." (Journal of Human Rights Practice 2019) 11(2), 285-307.

<sup>100</sup> [http://www.sahrc.org.za/home/index.php?option=com\\_content&view=article&id=186&Itemid=181](http://www.sahrc.org.za/home/index.php?option=com_content&view=article&id=186&Itemid=181)

<sup>101</sup> Sengupta, S. & Saxena, R. "Human Rights Commissions in India: A Critical Appraisal." (Indian Journal of Human Rights and Law 2016) 10(1), 38-54.

<sup>102</sup> <https://www.equalityhumanrights.com/en>

race, gender, and religion<sup>103</sup>. When a complaint is filed, the CHRC conducts an investigation to determine whether discrimination has occurred. If discrimination is found, the CHRC can work with the parties involved to reach a settlement, or refer the matter to the Canadian Human Rights Tribunal for a hearing. The CHRC also provides education and training on human rights issues, and conducts research to promote greater understanding of human rights in Canada.<sup>104</sup>

Australia: The Australian Human Rights Commission is an independent statutory body that investigates complaints of discrimination and breaches of human rights, provides education and training on human rights issues, and advocates for human rights reform. When a complaint is filed with the AHRC, it may be referred for conciliation, where the parties involved can work to resolve the matter with the assistance of a conciliator<sup>105</sup>. If conciliation is unsuccessful, the complaint may be referred to the Federal Court or Federal Circuit Court for a hearing. The AHRC also provides education and training on human rights issues, and conducts research to promote greater understanding of human rights in Australia.<sup>106</sup>

## **26. FORMS OF GOVERNMENT: FEDERAL AND UNITARY**

The way a country's government is set up is different depending on whether it has a federal or unitary form of government. In a unitary system, all power is held by the national government, which is in charge of all policy and government decisions. In a federal system, on the other hand, power is shared between the national government and smaller units, like states or provinces. These units have some freedom and are in charge of some policy and government decisions within their borders.

In federal systems, one of the most important things is how power is shared between the national government and subnational units. This makes it possible to have a more decentralized form of government, where decisions are made at different levels of government. This can help in more than one way. First, it can make sure that decisions are made at the level of government that is closest to the people who will be affected by them. For example, a state government may be better able to understand the needs and concerns of its citizens than the national government.

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<sup>103</sup> *Vancouver (City) v Ward*, [2010] 2 SCR 28

<sup>104</sup> For more information on how the CHRC works, you can visit their website: <https://www.chrc-ccdp.gc.ca/en/how-we-work>

<sup>105</sup> Natalier, K. "The Effectiveness of the Australian Human Rights Commission in Promoting and Protecting Human Rights." ( *Australian Journal of Human Rights* 2016) 22(1), 62

<sup>106</sup> For more information on how the AHRC works, you can visit their website: <https://humanrights.gov.au/about-us/how-we-work>

Second, it can give policymakers chances to try new things and try out new ideas. Subnational units can try out new policies and ways of doing things, which other subnational units or the national government can then use or change<sup>107</sup>.

The idea of dual sovereignty is another important part of federal systems. This means that the national government and subnational units each have their own sovereign powers. In other words, each of them has the power to make rules and laws in their own areas of responsibility. This can help stop the national government from abusing its power, since subnational units act as a check on its power. Most federal systems have a written constitution that says what the national government and subnational units can and can't do. This constitution is a binding set of rules for how power is shared and how people's rights and freedoms are protected. In many federal systems, there is also a strong tradition of judicial review, which lets courts throw out laws or policies that go against the constitution. This can help make sure people's rights are respected and kept safe<sup>108</sup>.

On the other hand, in unitary systems, all of the power is held by the national government. In a unitary system, the national government is the only sovereign power. Subnational units, like cities or regions, only have the power that the national government gives them. This can make it harder for local or state governments to disagree with national policies or decisions. Also, many unitary systems don't have a written constitution, and even if they do, it may not have the same legal status or power as a federal constitution. This can make it harder for people to question government policies or stand up for their own rights. In unitary systems, the courts may not have much power to throw out laws or policies that aren't in line with the constitution<sup>109</sup>.

In the end, both federal and unitary systems of government have their pros and cons, but federal systems tend to give people more chances to protect their constitutional rights. A strong tradition of judicial review and the way power is shared between the national government and subnational units can help stop power abuses and make sure that people's rights are respected.

One of the biggest perks of federal systems is that they are structured to decentralize power and authority by distributing it among a number of different levels of government. This is one of the fundamental advantages of federal systems. This can be helpful in preventing the

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<sup>107</sup> Heller, M. A. "Federalism and Rights." (The Yale Law Journal 2017), 127(8), 2028

<sup>108</sup> McGarrity, N. "Unitary or Federal System for Human Rights Protection?" (University of New South Wales Law Journal 2013), 36(3), 1018-1045

<sup>109</sup> *Ibid*, 1027

concentration of power in the hands of a single individual or group, which poses a substantial risk to the rights and freedoms of individual people. Instead, authority is shared between the central government and subnational units, like as states and provinces, which results in a more complex system of checks and balances. Citizens of a federal system typically have more opportunity to participate in government and advocate for their rights than citizens of a state system<sup>110</sup>. It is possible that citizens will have more opportunities to interact with officials at various levels of government and exert more influence on the formulation of public policy as a result of the distribution of power across several levels of government. This can help to guarantee that the wants and concerns of all citizens are taken into account, and that policies are geared to promote the common good in the community as a whole.

In general, federal systems are preferable for protecting the rights of the people because they offer a variety of vital safeguards against abuses of power. This makes federal systems the best option for defending the rights of the people. Federal systems can contribute to the protection of individual rights and liberties, as well as the operation of government in the interest of the public, through the decentralization of power and authority, the creation of a robust constitutional framework, the provision of checks and balances on the power of government, and the encouragement of citizen participation.

## **27. FORMS OF GOVERNMENT: PRESIDENTIAL AND PARLIAMENTARY**

The rights of the people can be effectively protected by both presidential and parliamentary forms of government, but these two models of government have significantly distinct advantages and disadvantages.

A distinct division of responsibilities between the legislative and executive branches of a presidential system is one of the defining characteristics of this form of government. Being the head of state and the head of government, the president is chosen independently of the legislature and serves in both capacities simultaneously. This division of powers can serve to prevent the accumulation of power in the hands of a single person or organization, which poses a risk to the individual rights and liberties of people<sup>111</sup>.

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<sup>110</sup> Helfand, M. I. "Federalism, Subsidiarity, and the Protection of Individual Rights." (Arizona State Law Journal 2014), 46(1), 123-160

<sup>111</sup> Colomer, Josep M 'Comparing Presidential and Parliamentary Democracies' 6(1) (Journal of Democracy 1995) 73

Presidential systems also often provide for a robust system of checks and balances, with each branch of government serving as a check on the others. This ensures that no one branch of government may become too powerful. This can be helpful in preventing abuses of power and ensuring that the government is operating in the benefit of the public<sup>112</sup>.

On the other hand, presidential systems can also be susceptible to political division and deadlock due to the fact that different branches of government may have conflicting goals and interests. This can make it harder to pass laws or make choices about policy, which can make it more difficult to preserve individual rights and liberties.

On the other hand, parliamentary systems are distinguished by a merging of the executive and legislative branches' respective authority, which results in a more centralized form of administration. The head of government is normally a member of the legislature, and the legislature is responsible for holding the executive branch accountable for its actions. It is possible that this will serve to encourage cooperation and coordination between the two departments of government, which can be helpful for the protection of individual rights and liberties<sup>113</sup>.

In addition, parliamentary systems typically allow for a higher degree of party discipline, which can contribute to the successful and consistent implementation of programs. This is one of the benefits that these types of systems offer. This might be of utmost significance in ensuring that policies developed to safeguard individual rights and liberties are implemented in a uniform manner across the entirety of the nation.

Yet, since the executive branch is answerable to the legislature rather than directly to the people, parliamentary systems can also be prone to a lack of accountability and transparency. This is because the legislature is in charge of overseeing the executive branch. It may become more challenging for ordinary folks to hold public leaders accountable for the activities they take as a result of this<sup>114</sup>.

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<sup>112</sup> J Linz, Juan, 'The Presidential and Parliamentary Models of Democracy' 1(1) (Journal of Democracy 1990) 3

<sup>113</sup> *Ibid*, 6

<sup>114</sup>Wadham, John 'The Human Rights Act and the Constitutional Protection of Rights in the United Kingdom' 1(1) Human Rights Law Review (2001) 1

## **28. DISCREPANCIES BETWEEN LITERAL AND ACTUAL PROTECTION OF CIVIL AND POLITICAL RIGHTS**

There is a fundamental issue that has drawn great attention from both academics and politicians alike, and that is the gap that exists between the constitutional protection of civil and political rights and their practical implementation by courts in different countries. The degree to which fundamental rights such as freedom of expression, due process of law, and equal treatment under the law are actually implemented in practice can vary greatly from one country to the next, despite the fact that many constitutions provide extensive protections for such rights.<sup>115</sup>

The courts may interpret constitutional provisions in a narrow or restrictive manner, or they may be unwilling to apply them in instances that involve politically sensitive matters. This is one reason why there is a gap between the wording of the Constitution and actual implementation of its provisions. The ability of the court to uphold constitutional rights may be hindered in some circumstances by factors beyond of its control, such as interference by political actors or a lack of necessary resources<sup>116</sup>.

The larger political and social context in which courts function is another aspect that adds to the gap between constitutional protection and real enforcement. This context plays a role in the fact that there is a gap between the two. For instance, in nations where there is a weak rule of law, constitutional rights may be habitually violated with impunity by government officials or other actors, making it difficult for courts to provide effective remedies for persons whose rights have been violated. In a similar vein, judges may be cautious to enforce constitutional safeguards in cultures where discrimination or prejudice against certain groups is pervasive for fear of antagonizing powerful interests or causing societal unrest<sup>117</sup>.

In spite of these obstacles, there have been numerous instances in which courts have successfully enforced constitutional rights and played an essential role in the advancement of human rights and social justice. These victories are evidence that the judicial system can be effective in addressing a variety of important issues. In some situations, the courts have been able to broaden the scope of constitutional protections through novel interpretations of the law or novel legal arguments. On the other hand, in other cases, the courts have been able to use

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<sup>115</sup> Murray, Rachel 'The Implementation Gap in Human Rights Law: Towards a Treaty Body Reform Agenda' 6(2) (Human Rights Law Review 2006) 303

<sup>116</sup> Ainley, Kirsten 'Beyond Words: The Practice of Human Rights NGOs in Addressing the Implementation Gap' 2(2) (Journal of Human Rights Practice 2010) 161

<sup>117</sup> Burton, M. Hafner 'The Politics of Human Rights Reporting: Deviance and Compliance in International Diplomacy' 99(3) (American Political Science Review 2005) 315.

their power of judicial review to invalidate laws or policies that violate fundamental legal rights. In general, the gap between constitutional protection and real enforcement continues to be a complicated and diverse issue that calls for the continued attention and engagement of academics, policymakers, and members of civil society.

## **29. CHALLENGES TOWARDS EFFECTIVE PROTECTION OF CIVIL AND POLITICAL RIGHTS**

In contemporary constitutional democracies, ensuring the protection of civil and political rights is a top priority. While there has been great advancement in putting protection measures in place, there are still obstacles to these rights being fully realized. Poor institutional systems, poor legal frameworks, a lack of public knowledge, political instability, and structural inequality are all factors contributing to these challenges. To ensure the effective protection of civil and political rights, it is crucial to analyze these obstacles and investigate potential solutions<sup>118</sup>.

Many countries have the dilemma of inadequate institutional systems for preserving civil and political rights.<sup>119</sup> In Nigeria, for instance, the National Human Rights Commission and other human rights agencies have come under fire for being too weak and underfunded to effectively safeguard citizens' rights. In a similar vein, human rights groups and NGOs in Cambodia have had a hard time advocating for human rights because of restrictive laws and government pressure. The protection of civil and political rights might be hampered by inadequate legal frameworks. Concerns about police violence and extrajudicial executions have persisted in Brazil despite the country's constitutional guarantees for human rights. Another obstacle is the general public's possible ignorance of their rights and reporting options, as shown in India. As the years of violence in Yemen have shown, the protection of civil and political rights can be weakened by political instability and conflict. In South Africa, where racial discrimination and economic inequality persist as barriers to the full realization of citizens' rights, structural disparities have been shown to impede the protection of civil and political rights<sup>120</sup>.

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<sup>118</sup> Murray, Rachel 'The Implementation Gap in Human Rights Law: Towards a Treaty Body Reform Agenda' 6(2) (Human Rights Law Review 2006) 303

<sup>119</sup> Mutua, Makau 'The Human Rights Paradox: Universality and its Discontents' (Cornell International Law Journal 2001) 503

<sup>120</sup> Allo, Awol, "Civil and Political Rights in the Third World: Challenges and Prospects" 9(3) (Journal of Human Rights 2010) 339

### **30. CONCLUSION**

It takes a variety of strategies to assure the full protection of civil and political rights under modern constitutions of different countries, which is a complicated and diverse topic in and of itself. In this research, I have looked at the role that constitutional protection mechanisms such as the inclusion of bill of rights provisions play in securing civil and political rights, as well as the efficiency of various judicial and institutional protection mechanisms. I have also looked at how these rights came to be and how they have evolved over time, as well as providing an outline of the protections that are included in most modern constitutions.

I have also pointed out the discrepancies that exist between the words of the constitution and the way in which civil and political rights are actually protected, as well as the ongoing challenges that prevent these rights from being fully protected. Poor institutional systems, poor legal frameworks, low levels of public knowledge, political instability, and structural inequality are all factors contributing to these problems.

There may have taken some steps by taking which contemporary constitutions can better safeguard citizens' civil and political liberties. For these rights to be protected effectively and for government transparency and accountability to increase, institutional procedures must be strengthened. Educating the public about their rights and how to report abuses can also help increase public awareness. Protecting rights guaranteed by international human rights treaties requires a heightened level of international collaboration. Equal access to civil and political rights requires addressing structural inequities as well. Finally, it's crucial to invest in civil society organizations so that people most at risk of having their rights violated can have a voice.

In conclusion, advancing democratic rule, the rule of law, and social fairness in contemporary democracies depends on safeguarding citizens' civil and political rights. While there are persistent issues that must be fixed, there are also several strategies that can be implemented to better protect these rights. Together, we can ensure that everyone has the opportunity to fully exercise their civil and political rights and strive toward creating more just and equitable societies by bolstering institutional processes, raising public awareness, and addressing structural inequities.

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