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The Unwritten Constitution provides Greater Opportunities for Human Rights: A Comparative Analysis of the Constitution of India and U.K.

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ABSTRACT

The Constitution is the supreme law of any nation, which forms a base for all other laws and protects the basic spirit of democracy and the rights of individuals. The Constitution of India is a written document comprising several Article and Schedules. On the other hand, the U.K. Constitution is a set of laws and rules, creating state institutions and regulations for the relationship between those institutions. The Constitution of the UK is not codified in a single document. In this research, the human rights aspect as related to the Constitution is discussed. In Contrary to many states during the nineteenth century, the U.K. stayed devoid of revolutionary fervour. As a result, U.K.'s democracy has been reformed tremendously over years rather than in one loud explosion. Codification of citizens' rights and political systems was a crucial step toward independence for fledgling countries, like the United States and Australia. Surprisingly, some countries modelled their written constitutions on the unwritten constitution of the United Kingdom.

The Constitution is needed for the governance of basic laws and to maintain what principles should an enacted law be based upon. The Constitution of a country is the supreme law of the land, and thus, no other law can violate the basic principles of the Constitution.² It gives a reassuring certainty to the principle of rule of law and guarantees the rights to the citizens of the nation. It acts as a protector of the human rights of the people and reduces the chances of an arbitrary action of the government. The research aims at testing if the unwritten Constitution provides greater opportunities for human rights keeping in context a comparative analysis of the Constitution of the United Kingdom and India. For this research, the basic structure, the principle of rule of law, judicial review, the doctrine of separation of power as applicable in the two countries are analysed and a comparative analysis of the scope of human rights provided under the written Constitution of India and the unwritten Constitution of the UK is given.

Keywords: *Unwritten/Constitution/UK/India/Human Right.*

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² Gavison, R. "What Belongs in a Constitution?" 13 CPE 89-105 (2002).

I. INTRODUCTION

(A) Statement of Problem

The Constitution is the backbone of the legal system of any country. In most countries, the Constitution is a written document comprising various rules and legislation. The Constitution of the United Kingdom, New Zealand and Israel are the only three countries in the world that have an uncodified or unwritten Constitution.³ The Indian Constitution is a written one comprising of 470 Articles, 25 Parts, 12 Schedules and 5 Appendices to date.⁴ The problem which is addressed in this research is that ‘the unwritten Constitution provides greater opportunities for human rights. That is, the unwritten Constitution is a flexible one, which helps in providing wider scope for the inception and creation of laws relating to the protection of human rights. The research mainly focuses on the comparative analysis of human rights guaranteed under the unwritten Constitution of the UK and the written Constitution of India.

(B) Review of Literature

The literature which is primarily available and studied for this research is:

1. Articles

i. Lord Diplock, “On the unwritten Constitution”, 9 Isr. L. Rev. 463, 1974.

The article gives a comparison between the written and the unwritten Constitution, keeping a context on the protection of human rights under the unwritten Constitution.

ii. J. Baker, “The Unwritten Constitution of the United Kingdom”, Ecclesiastical Law Journal, Cambridge University Press, 2013.

The article gives a review of the unwritten nature of the Constitution of the UK.

iii. A. Shapira, “The Status of Fundamental Individual Rights in the Absence of a Written Constitution”, 9 Isr. L. Rev. 497, 1974.

This piece of literature gives an analysis of the status of fundamental human rights when there is an uncodified Constitution for the State.

iv. A. Kavanagh, “The Idea of a Living Constitution”, 16 Can. J.L. & Jurisprudence 55, 2003.

The piece of literature gives an overview of the idea of a living Constitution and how an unwritten Constitution serves the advantage of flexibility and adaptability.

³ Grimm, D., *Types of Constitutions*. 98, (The Oxford Handbook of Comparative Constitutional Law, 2012).

⁴ B.K. Sharma, “Introduction to the Constitution of India” (PHI Learning Pvt. Ltd., 10th ed., 2021).

- v. ***D.A.J. Richards, “Human Rights as the Unwritten Constitution: The Problem of Change and Stability in Constitutional Interpretation”, 4 U. Dayton L. Rev. 295, 1979.***

The article looks into the aspect of human rights in an unwritten Constitution, and how the societal changes and Constitutional interpretation co-exist with each other with modernisation.

2. Books

- i. ***A.V. Dicey, “The Law of the Constitution”, (1st ed., Oxford University Press, 2013).***

This book is a collection of the original lectures of A.V. Dicey about his principles of Constitutional law and its growth in England. The book helps in understanding the concept of Constitutional law.

- ii. ***R. Hardin, “The Social and Political Foundations of Constitutions”, 51-72, (1st ed., Cambridge University Press, 2013)***

This book is an evaluation of the social and political forces behind the making of a Constitution. The chapter, ‘Why a Constitution’ and ‘What is a Constitution?’ gave the author an understanding of the basic principles of a Constitution and the need for a Constitution from a global perspective.

- iii. ***P. Leyland, “The Constitution of the United Kingdom: A contextual analysis” (3rd ed., Bloomsbury Publishing, 2016)***

This book is a complete analysis of the principles, doctrines and institutions of the U.K. Constitution. The book offers complete detail about the evolution of the UK Constitution and the unique features of the unwritten Constitution of the country.

- iv. ***B.K. Sharma, “Introduction to the Constitution of India” (10th ed., PHI Learning Pvt. Ltd., 2021)***

This book is one of the latest texts available on the Constitutional law and salient features of the Constitution of India. The book gives an analysis of the basic structure and various landmark judgements of the Supreme Court and High Court related to Constitutional law in India.

- v. ***A. Kavanagh, “Constitutional Review under the UK Human Rights Act” (1st ed., Cambridge University Press, 2009)***

This book is a commentary on the powers of judicial review granted to the courts in the UK after the enactment of the Human Rights Act 1998. It also gives an in-depth analysis of the

dimensions and impact of the UK Human Rights Act 1998.

vi. A.K. Das and P.K. Mohanty, "Human Rights in India" (1st ed., Sarup & Sons, 2007)

The book gives an in-depth analysis of the concept of Human Rights, their international status, their importance and the incorporation under the Indian Constitution and laws in the form of Fundamental Rights.

(C) Research Objective

The objectives of this research are:

- To analyse the importance and types of Constitutions, based on written and unwritten Constitutions.
- To make an evaluation between the Indian and the UK Constitutions based on the inception of basic principles of law and their applicability in the two countries.
- To define the scope of human rights under an unwritten Constitution.
- To analyse if the unwritten Constitution, like that of the UK, provides greater opportunities for human rights in comparison with a written Constitution, like that of India.
- To critique how greater opportunities for human rights are provided under an unwritten Constitution.

(D) Hypothesis

For this research, the primary hypothesis which is assumed is that an unwritten Constitution provides greater opportunities for human rights. Thus, the research assumes that the opportunities for human rights are greater in the Constitution of the United Kingdom, as compared to that of the Indian Constitution.

(E) Research Questions

The given research primarily aims at finding answers to the below-mentioned research questions:

- Does the unwritten Constitution provide greater opportunities for human rights?
- Is the unwritten Constitution model of the UK better than that of the written Constitution of India in terms of human rights and their scope?

(F) Research Methodology

The analysis in this text is based on desk research and it comprises the investigation of different secondary sources. The secondary sources which are used are books, journals, legal reports and

discussions derived from the existing research which were conducted in the past. The research methodology used in the research is descriptive, explanatory, theoretical, analytical and comparative. The benefit of using secondary research methodology is that it provides a data analysis based on the existing research and thus, the scope of error is reduced to a considerable extent.⁵ This research is conducted through an analysis of various texts and material which was primarily available online through credible sources, thus, the reliability of sources is reassured.

II. THE CONSTITUTION

As stated above, the Constitution provides the backbone for the legal framework for any nation. The root of the word Constitution lies in the Latin word, ‘*constituere*’ which means ‘establish or appoint’.⁶ Thus, the general meaning of the word Constitution would be regarded as any establishment of law. However, the legal implication of the word Constitution is different from the generic meaning. The legal meaning of the term is ‘a body of basic principles or existing precedents according to which a State, nation, or any other organization is known to be governed’.⁷ Even companies and associations have a basic set of rules which is regarded as their Constitution.

The Constitution is needed for the governance of basic laws and to maintain what principles should an enacted law be based upon. The Constitution of a country is the supreme law of the land, and thus, no other law can violate the basic principles of the Constitution.⁸ It gives a reassuring certainty to the principle of rule of law and guarantees the rights to the citizens of the nation. It acts as a protector of the human rights of the people and reduces the chances of an arbitrary action of the government.⁹

The Constitution of a nation can either be codified or uncoded. Also, the uncoded Constitution may be either partially unwritten or fully written in various legislations. There are other distinctive features such as flexible or rigid, federal or unitary, republican or monarchy, presidential or parliamentary which help in defining the type of Constitution.¹⁰ The Indian Constitution is partially flexible, quasi-federal, codified, republican and parliamentary. The

⁵ Smith, E., “Pitfalls and Promises: The Use of Secondary Data Analysis in Educational Research”. 56(3) BJES 323-339 (2008).

⁶ Kalyvas, A., “CONSTITUENT POWER” in J. M. Bernstein, A. L. Stoler, *et al* (eds.), *Political Concepts: A Critical Lexicon* 87-117 (Fordham University Press, 2018).

⁷ Merriam-Webster. (n.d.). Constitution. In Merriam-Webster.com dictionary, available at: <https://www.merriam-webster.com/dictionary/Constitution> (last visited June 9, 2021).

⁸ Gavison, R. “*What Belongs in a Constitution?*” 13 CPE 89–105 (2002).

⁹ J. Jowell and D. Oliver (ed.), “*The rule of law and its underlying values: The changing Constitution*”, 5-23 (Oxford University Press, 6, 2007).

¹⁰ *Ibid.*, 1.

U.K. Constitution on the other hand is highly flexible, unitary, partially unwritten, parliamentary and a Constitutional monarchy. These are the basic differences between the nature of the Constitution of India and the UK.

III. COMPARATIVE ANALYSIS BETWEEN THE CONSTITUTION OF INDIA AND THE CONSTITUTION OF THE UNITED KINGDOM

To understand the inception and opportunities of human rights under both Constitutions it is important to first establish the basic understanding of the similarities and differences between the Constitution of India and the UK. As given above there are many distinguishing features between the Constitution of India and the UK, nevertheless, a few similarities also exist between the Constitutional systems of the two countries.

One similarity between the Indian and the U.K. Constitution is that the Judiciary is independent of the government. Both the Constitutions safeguard the rule of law by giving an expressed provision for removal of judges on serious incompetency or misbehaviour, with the consent of both houses of the Parliament.¹¹ Also, both the countries consist of two houses of Parliament. However, the list of differences goes a long way when comparing the Indian and U.K. Constitution.

First of all, the Constitution of the UK is evolutionary, that is, it was developed over a long time with the help of various legislation, common law principles and developments of the legal system as the need arose¹², whereas, the Indian Constitution was framed by the constituent assembly with well-defined provisions.¹³ However, the provision of the amendment of the Constitution in India makes it open to evolution with time.

The most important difference between the Indian and the U.K. Constitution is that the U.K. Constitution is highly flexible. A simple 50% of the Parliament's majority can pass an amendment of the Constitution, by way of legislation, as there is no demarcation between the Constitutional law and ordinary law.¹⁴ On the other hand, in India, the basic ideologies of the Constitution, that is secularism, sovereignty, republic, etc. can never be amended¹⁵, however, a Constitutional amendment can be passed with 2/3rd majority of both houses of the Parliament.¹⁶ This gives the Constitution of India a unique blend of rigidity and flexibility.

¹¹ A. King, *The U.K. Constitution*. (Oxford University Press, Oxford, 2007).

¹² *Ibid*

¹³ P.C. Rao, *The Indian Constitution and International Law*. (Brill Nijhoff. 1995).

¹⁴ V. Bogdanor, *The new U.K. Constitution*. (Bloomsbury Publishing, 2009)

¹⁵ K. Gözler, *Judicial review of Constitutional amendments: a comparative study*. (Kemal Gözler, 2008)

¹⁶ M. Khosla, "Constitutional amendment" in S. Choudhry, M. Khosla, *et al.* (eds.), *The Oxford Handbook of the Indian Constitution* (2016).

The U.K. Constitution is Unitary and the Parliament is the sovereign body, which exercises all powers of the government. The Executive only enjoys the powers delegated to it by the Parliament, and the Judiciary cannot exercise Judicial Review to question the legislature itself.¹⁷ Whereas, the Indian Constitution is quasi-federal, in which each State government enjoys certain powers. Also, the model of judicial review is realized in a strict sense underneath the Indian Constitution, as the laws of Parliament can be quashed by the judiciary either wholly or partially if they are in contradiction to the Constitution or its basic principles.¹⁸ This does not allow the Parliament to be completely sovereign, and Constitutional supremacy is guaranteed, as opposed to the case in the United Kingdom.

There are other features of differences between the Constitution and Constitutional law of India and the UK. One such feature is the separation of powers between the legislature, executive and judiciary and the presence of a monarch in the UK as a nominal head as compared to the existence of the President in India. The monarch does not enjoy any discretionary power whereas; the President in India has some discretionary powers.¹⁹

IV. HUMAN RIGHTS UNDER THE CONSTITUTION OF U.K. AND INDIA

Human rights are the universal rights that are obtainable to all human beings and are not defined by the State but are evolved through the principles of natural laws of civilization. They protect the dignity of the mankind irrespective of where they live, what they look like, what are their faith and beliefs, how they speak, etc. That is, human rights are accessible unrelated to factors of race, sex, nationality, language, religion, or any other status.²⁰ The roots of human rights lie in the roots of human civilization itself and they have been existent since the times of early civilizations. John Locke in the 17th century discussed natural rights and debated that they cannot be surrendered by a social contract.²¹ The Universal Declaration of Human Rights is the international codification of human rights, which was later adopted by various nations into their legal system to grant basic rights in addition to fundamental freedoms to all citizens. There have been several other international conventions and treaties which have a binding effect on all signatory states, such as the International Convention on Civil and Political Rights of 1966.²²

¹⁷ M. Miah, “*The Limitations of Judicial Review on UK Perspectives*” (Independently Published, 2013) Available at: <https://ssrn.com/abstract=2321931> (Last Visited: June 9, 2021)

¹⁸ *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.* (1973) 4 SCC 225; AIR 1973 SC 1461.

¹⁹ V. Ganesh, “Discretionary Powers of the Indian President”, 53(13) *EPW* 25 (2018).

²⁰ C.R Beitz, *The idea of human rights*. (Oxford University Press, 2011).

²¹ E. Mack, *John Locke*. (A&C Black, New York, 2009).

²² M.A. Glendon, “Knowing the universal declaration of human rights”, 73 *NDLR* 1153 (1997).

The human rights are guaranteed by the Constitution of a nation. The making of the Constitutional law of a nation is done in such a way that no infringement of human rights of individuals takes place. The Constitution of India offers for an expressed provision of fundamental rights for people, mentioned under Part III of the Constitution ranging from Article 12 to 35. The people are guaranteed with the right to impartiality and equality, Article 14 to 18; the right to different types of freedoms including freedom of speech, free expression, movement, etc. under Article 19 to 22; the right against exploitation under Article 23 and 24; the right to freedom of religion under Article 25 to 28; educational and cultural rights assured under Articles 29 and 30; and the right to Constitutional remedies under Article 32 and 226.²³ The individuals are provided with a power to directly file a petition against the State if there is a breach of fundamental rights in any way under Article 32 of the Constitution. The fundamental rights under the Indian Constitution can be amended only up to the extent that the bill does not shake the basic structure of the Constitution.²⁴ Article 226 provides for the writs which can be filed on breach of fundamental rights at the High Courts of the states of India.

In the UK Constitution, human rights are codified in the absolute form under the Human Rights Act 1998. Moreover, historically they were derived from the common law, the Magna Carta of 1215 and the Bill of Rights 1689. The Human Rights Act gave effect to the European Convention on Human Rights in the UK domestic law. After Brexit, that is, the formal exit of U.K. from the European Union, the Human Rights Act 1998 is still in effect, though an examination of the Act is under process and the Act may undergo several changes in the subsequent years.²⁵ The Act provides for 16 basic rights to all people, including immigrants and refugees. The rights include the right to life, freedom from torture and inhumane treatment, freedom of expression, freedom from forced labour, right to a fair trial, right to marry, right to education, right to liberty and security, right to free elections, etc. The scope of the Human Rights Act 1998, if compared to the fundamental rights defined in India is much wider and provides greater protection of human rights to the people. Further, the right to life is protected in an absolute sense, since the elimination of the death penalty from the UK, which is still given under the rarest of the rare cases in India.²⁶

The Constitution of the UK is a collection of legislation and common law principles which have been legislated by the Parliament conferring to the time and need. The various legislations

²³ L. Chandrakanthi, "Human Rights and Fundamental Rights in Indian Constitution: An Assessment", 4(6) *IJM&SS* 754-763 (2016).

²⁴ *I.C. Golaknath and Ors. vs State of Punjab and Anrs.* (1967) AIR 1643; (1967) SCR (2) 762.

²⁵ M. Fordham, "Common law rights", 16(1) *JR* 14-21 (2011).

²⁶ D.T. Johnson, "The death penalty in India", in N. P. Unnithan (ed.) *Crime and justice in India* 365-389 (Sage Publications, 2013).

govern different aspects of human rights, such as Equality Act 2010 protects the citizens from discrimination and harassment in employment and as users of public services based on nine protected characteristics. The protected characteristics include race, colour, disability, gender, sexual orientation, religion or belief, pregnancy and maternity, etc.²⁷

There are other legislations, and guidelines that protect the human rights of individuals in different circumstances, such as the sentencing council protects the rights of offenders in a way that it prescribes the guidelines for punishments of different offences. In the UK, the Parliamentary sovereignty does not allow that the human rights of people can be infringed by the acts of Parliament. Though not all rights are absolute, and some of them can be limited by the Parliament; the rights which have been derived from the International law in the UK are absolute.

V. GREATER OPPORTUNITIES FOR HUMAN RIGHTS IN THE UNWRITTEN CONSTITUTION

Flexibility is the key distinctive factor of an unwritten Constitution. Thus, it allows greater scope for human rights and their incorporation into a country's legal framework. When associated with the written Constitution, the scope of human rights is much wider and legislation for the protection of those rights is much easier to adopt in an unwritten Constitution. The Indian laws get challenged for violation of fundamental rights, whereas, any such provision of directly challenging an act of the Parliament is not an option in the UK. Also, the process of Constitutional amendments becomes very simple in the UK as compared with India.²⁸

The judiciary is the best interpreter for laws, and any law enacted by the UK Parliament is interpreted by the judiciary. The judiciary can never challenge the legislation directly and can only challenge the proceedings of the Executive while complying with the legislature. In India, the judiciary is the guardian of the Constitution and in some regards holds supremacy over the Legislature and the Executive.

The U.K. Constitution, which is the unwritten Constitution, is referred to as a "living Constitution".²⁹ The unwritten Constitution adapts and evolves as per the changes in society and social attitudes. The best example of such an evolution can be seen in the Marriage (Same-Sex Couples) Act 2013.³⁰ Thus, human rights are protected in a better way in the unwritten

²⁷ J. Wadham, *Blackstone's guide to the Equality Act 2010*. (Oxford University Press, USA. 2010).

²⁸ A. Nurse, "The Citizen and the State" in *The Citizen and the State* 1-17 (Emerald Publishing Limited, 2020).

²⁹ W.H. Rehnquist, "The Notion of a Living Constitution". 29 *HJL&PP* 401 (2005).

³⁰ J. Eekelaar, "Perceptions of Equality: The Road to Same-Sex Marriage in England and Wales". 28(1) *IJLPF* 1-

Constitution, since the ability to change and adapt with time is highest in it. In India, which has a written Constitution, the laws of the Parliament are sometimes stuck under long debates of Constitutional validity and consistency at the Courts. This leaves adaptability lagging. In India, the Constitution has a set of well-defined fundamental rights and the growth of fundamental rights is ascertained by the judiciary. This sometimes makes decision making a bit delayed, as in the case of Aruna Shanbaug.³¹ The case had centred a debate on the interpretation of right to life and personal liberty and that if euthanasia can be legalized in India.

A.V. Dicey described an uncodified Constitution as “the most flexible polity in existence”.³² It is the flexibility of an unwritten Constitution that gives greater opportunities to the inception, interpretation and safeguarding of human rights. The easy process of Constitutional amendments helps in the growth of the Constitution with time and society at the same pace, allowing new legislation to form easily according to the time and need.

VI. WHY U.K. CONSTITUTION IS UNWRITTEN CONSTITUTION OR UNCODIFIED?

The Constitutional Law establishes and governs the state apparatus. The Constitution lays out various means through which the state develops, as well as the major institutions of the state and the principles that regulate their interactions with one another and with the citizens of the state.

Since the civil wars of 1642-1651, there has been no violent political revolution in the United Kingdom. From the French Revolution of 1789 to the Russian Revolution of 1917, practically every other state in Europe witnessed at least one forcible overthrow of the government and its replacement by another during the 18th, 19th, and 20th centuries.³³

U.K., on the other hand, was impermeable to the revolution. Despite the fact that industrial, social, and cultural development changed every element of U.K. society in the nineteenth century, the country's rulers seemed to avoid the pitfalls of their continental counterparts. When U.K. was at the peak of its Sovereign power at the end of the 19th century, historians traced the country's rise to eminence over the past hundred years. They tended to emphasise U.K.'s wisdom in avoiding fundamental class and social conflict, as well as the country's ability to manage evolutionary rather than revolutionary political change.

According to this assessment, U.K.'s transformation has had a significant positive impact. Its

25 (2014).

³¹ *Aruna Ramachandra Shanbaug v. Union of India* (2011) 4 SCC 454

³² A.V. Dicey, *Lectures Introductory to the Study of the Law of the Constitution* (No. 43445-43449) (London, Macmillan Publishing, 1885).

³³ M.I. Thomis and P Holt, *Threats of Revolution in Britain, 1789-1848* (Macmillan, 1977)

commercial and industrial revolutions provided jobs and prosperity for the country's growing population. Many saws God's hand directing the rise of the U.K. country, first saving it from attack and later assisting with its commercial and territorial expansion, in an era when religious belief was common. In 1894, the famous politician, Lord Curzon, Quote that U.K. ruled, under God, over 'the greatest empire for good that the world has seen'.

In other countries, many of which have experienced revolutions or regime change, it has been necessary to start from the beginning, with the establishment of new state institutions and explaining their relationships with one another and their population. The U.K. Constitution, on the other hand, has evolved over time to reflect U.K. political stability.

Other countries, many of which have experienced revolution or regime change, it has been necessary to start from the beginning, about establishment of new state institutions and explaining their relationships with one another and their population. The U.K. Constitution, on the other hand, has evolved over time to reflect the U.K. polity stability.

Materially, U.K. has never considered independence from any ruling state, owing to the country's long, long period of stability. The governing bodies of many European nations, such as France and Germany, have been forced to evolve their constitutions in response to a particular revolt or war.

In Contrary to many states during the nineteenth century, the U.K. stayed devoid of revolutionary fervour. As a result, U.K.'s democracy has been reformed tremendously over years rather than in one loud explosion. Codification of citizens' rights and political systems was a crucial step toward independence for fledgling countries, like the United States and Australia. Surprisingly, some countries modelled their written constitutions on the unwritten constitution of the United Kingdom.

VII. CONCLUSION

The research concludes that the UK Constitution has a much wider scope for human rights than the Indian counterpart. Even though there is a distinct mechanism for the safeguard of people's interest in terms of human rights in India through the institution of fundamental rights in the Constitution and prearrangement for Constitutional remedies through writ petitions, the Indian Constitution does not remain as fast-paced to change as the U.K. Constitution. This gives evidence that an unwritten Constitution provides for greater opportunities for human rights and helps in the evolution of the Constitution with time and societal change, as compared to the written Constitution.

However, an unwritten Constitution is suitable for the unitary arrangement of the country as in the UK, and would not work well with the federal structure or the quasi-federal structure which is followed in India. Also, India is very different to the UK in terms of size, population; division of states, cultural diversity and religious beliefs, and thus, an unwritten Constitution may pose several problems for the country.

Nevertheless, in terms of human rights and opportunities for the evolution of the society, the unwritten Constitution is at an upper hand over the written one, since the flexibility of the unwritten Constitution gives better chances for adapting with change and for passing legislation related to new regimes of rights, which may be left untouched in the original Constitution of the country.

VIII. BIBLIOGRAPHY

(A) Articles

1. A. Kavanagh, "The Idea of a Living Constitution", 16 Can. J.L. & Jurisprudence 55, 2003.
2. A. Shapira, "The Status of Fundamental Individual Rights in the Absence of a Written Constitution", 9 Isr. L. Rev. 497, 1974.
3. D.A.J. Richards, "Human Rights as the Unwritten Constitution: The Problem of Change and Stability in Constitutional Interpretation", 4 U. Dayton L. Rev. 295, 1979.
4. J. Baker, "The Unwritten Constitution of the United Kingdom", Ecclesiastical Law Journal, Cambridge University Press, 2013.
5. Lord Diplock, "On the unwritten Constitution", 9 Isr. L. Rev. 463, 1974.

(B) Books

1. A. Kavanagh, "Constitutional Review under the UK Human Rights Act" (1st ed., Cambridge University Press, 2009).
2. A.K. Das and P.K. Mohanty, "Human Rights in India" (1st ed., Sarup & Sons, 2007).
3. A.V. Dicey, "*The Law of the Constitution*", (1st ed., Oxford University Press, 2013).
4. B.K. Sharma, "Introduction to the Constitution of India" (10th ed., PHI Learning Pvt. Ltd., 2021).
5. P. Leyland, "The Constitution of the United Kingdom: A contextual analysis" (3rd ed., Bloomsbury Publishing, 2016).
6. R. Hardin, "The Social and Political Foundations of Constitutions", 51-72, (1st ed., Cambridge University Press, 2013).
