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Human Rights Protections: Comparing Constitutional Guarantees for Human Rights across Nations

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ABSTRACT

Human rights are the fundamental rights and freedoms that belong to every person, regardless of their nationality, ethnicity, religion, gender, or any other status. Numerous legal documents, including national constitutions, international treaties, and laws, recognise and defend human rights. However, depending on how their constitutional protections are interpreted and put into practice, different countries have different levels of protection for human rights. Using the Universal Declaration of Human Rights as a common foundation, this paper compares and contrasts the constitutional safeguards for human rights in various countries. The paper will look at how various constitutions include, define, and restrict human rights as well as how they set up procedures for enforcing them and offering redress when they are violated. Additionally, the paper will analyse the prospects and difficulties of strengthening the protection of human rights through judicial review and constitutional amendment. The United States, the United Kingdom, Germany, and South Africa are just a few of the nations and legal systems from which the paper will provide instances. The final section of the paper will include some suggestions for strengthening the protection of human rights in constitutional theory and practice.

Keywords: Human Rights, Constitutional Guarantees, Comparative Analysis, International Treaties, Legal Challenges.

I. INTRODUCTION

Human rights are fundamental to everyone, regardless of status, and they stem from the understanding that every person is equal and has inherent dignity. Widely accepted as indivisible, global, interdependent, and interconnected³, Human rights are generally protected and advanced by their incorporation into constitutions, which are the supreme international legal documents. Human rights are legally guaranteed by constitutions, which also set out procedures for its upholding and responsibility. They also serve as role models for future

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³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

generations, reflecting the values of society⁴.

However, due to historical, cultural, political, and legal circumstances, different countries take different approaches when it comes to constitutionalising human rights. While some constitutions employ implicit or generic allusions, others expressly list recognised and protected human rights. Adopting international human rights norms or creating original interpretations are two possible strategies. Constitutional provisions include anything from assigning this function to other organisations or procedures to establishing judicial review and remedies for abuses of human rights⁵.

The paper looks at various models and practices in order to analyse and contrast constitutional guarantees for human rights around the world. The study will center on the origins, extent, and substance of human rights as enshrined in constitutions; the institutional and procedural structures that safeguard and enforce these rights; and the pragmatic implications and efficacy of constitutional human rights.

II. FOUNDATIONAL PRINCIPLES OF INTERNATIONAL HUMAN RIGHTS LAW

(A) Universal Declaration of Human Rights (UDHR):

On December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), which has since become a global benchmark for achievement for all peoples and nations⁶. This important text lays out the fundamental freedoms and rights to which every person is naturally entitled, regardless of differences in social or national origin, property, birthplace, race, color, sex, language, religion, political viewpoint, or any other category⁷. Included in the UDHR are civil, political, economic, social, and cultural rights; it consists of thirty articles and a preamble⁸.

Eleanor Roosevelt, the widow of US President Franklin D. Roosevelt, chaired a team of specialists from a variety of legal and cultural backgrounds that worked to formulate the UDHR⁹. A thorough consultation and negotiation process among nations, regions, and groups was involved in this painstaking drafting process, which also incorporated public opinion and

⁴ Protecting Human Rights in Constitutions, United Nations Development Programme, (*accessed at <https://www.undp.org/sites/g/files/zskgke326/files/2023-10/undp-protecting-human-rights-in-constitutions.pdf> on 14.01.2024*).

⁵ HUMAN RIGHTS AND CONSTITUTION MAKING, Office of the United Nations High Commissioner for Human Rights, (*accessed at https://www.ohchr.org/Documents/Publications/ConstitutionMaking_EN.pdf on 14.01.2024*).

⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁷ *Id.* art. 2.

⁸ *Id.* arts. 1-30.

⁹ Universal Declaration of Human Rights | United Nations (*accessed at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> on 14.01.2024*).

views from civil society¹⁰. The Universal Declaration of Human Rights (UDHR) is a tribute to international cooperation, drawing inspiration from historical texts such as the Magna Carta, the French Declaration of the Rights of Man and of the Citizen, the American Bill of Rights, and several national constitution¹¹.

The UDHR, which is regarded as the cornerstone of international human rights law, has served as the model for more than 70 regional and international human rights treaties and declarations. It has been included into the laws and constitutions of many nations, acting as a significant source of reference for judges, juries, and other organisations in the protection and advancement of human rights. Interestingly, with translations available in more than 500 languages, the UDHR is the document that has been translated the most in the world.

The UDHR, a significant turning point in the history of human rights, represents the agreement that all people are created equal and have inherent dignity. It explains how all people want to live in a world where there is justice, freedom, and peace.

(B) International Covenants:

1. International Covenant on Civil and Political Rights (ICCPR)

Adopted by the United Nations General Assembly on December 16, 1966, the international treaty known as the International Covenant on Civil and Political Rights (ICCPR) went into effect on March 23, 1976¹². The document requires those who sign it to respect and protect individual's civil and political rights, which include rights to due process and a fair trial, as well as rights to life, freedom of religion, freedom of expression, freedom of assembly, and voting¹³.

Along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), integral to the International Bill of Human Rights¹⁴, The six sections of the ICCPR comprise 53 articles. Part I recognises that every people has the right to self-determination and unhindered use of their natural resources¹⁵. States parties are required by Part II to guarantee these rights within their borders and jurisdiction without hindrance¹⁶. The rights that are outlined in Part III include equality before the law, privacy,

¹⁰ Universal Declaration of Human Rights | OHCHR (*accessed at <https://www.ohchr.org/en/universal-declaration-of-human-rights> on 14.01.2024*).

¹¹ Universal Declaration of Human Rights - Wikipedia (*accessed at https://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights on 14.01.2024*).

¹² International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

¹³ *Id.* arts. 6-27.

¹⁴ International Covenant on Civil and Political Rights | OHCHR (*accessed at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> on 14.01.2024*).

¹⁵ International Covenant on Civil and Political Rights, *supra* note 1, art. 1.

¹⁶ *Id.* art. 2.

freedom of thought, conscience, and religion, freedom of opinion and expression, peaceful assembly and association, involvement in public affairs and elections, liberty, security of person, humane treatment in detention, fair and public trial, freedom from torture and cruel, inhuman, or degrading treatment or punishment, freedom from slavery and forced labor, and the right to an effective remedy for rights violations¹⁷. Section IV creates the Human Rights Committee, which is made up of eighteen impartial specialists who keep an eye on state parties' observance of the covenant¹⁸. The covenant's ratification, accession, and amendment are covered in Part V¹⁹, whereas original covenant texts, denunciation, and dispute resolution are covered in Part VI²⁰.

As of April 2021, 173 states were parties to the widely ratified agreement²¹, In terms of human rights governance, the ICCPR is essential. It also includes two optional protocols, one allowing people to file complaints with the Human Rights Committee and the other doing away with capital punishment²². With its articulation of the fundamental civil and political rights that every person possesses, this document is a landmark contribution to the development and defence of human rights.

2. International Covenant on Economic, Social, and Cultural Rights (ICESCR)

Adopted by the United Nations General Assembly on December 16, 1966, the multinational treaty known as the International Covenant on Economic, Social, and Cultural Rights (ICESCR) came into effect on January 3, 1976²³. It requires those who sign it to actively work toward the realisation of the economic, social, and cultural rights (ESCR) of all people, including those who live in trust territories and non-self-governing areas. These rights include the freedom to work, the rights to health care and education, and the right to a living wage²⁴.

Along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), essential to the International Bill of Human Rights²⁵, The 31 articles that make up the ICESCR are divided into 5 sections. In Part I, it is

¹⁷ Id. arts. 3-26.

¹⁸ International Covenant on Civil and Political Rights | OHCHR (*accessed at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> on 14.01.2024*). arts. 28-45.

¹⁹ Id. arts. 46-49.

²⁰ Id. arts. 50-53.

²¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

²² Id.

²³ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

²⁴ Id. arts. 6-15.

²⁵ International Covenant on Economic, Social and Cultural Rights | OHCHR, (*accessed at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> on 14.01.2024*).

acknowledged that every people has the right to self-determination and the unrestricted use of their natural resources and wealth²⁶. States parties are required by Part II to gradually realise the recognised rights by national and international initiatives, to the extent of their financial capacity, and without prejudice²⁷. Substantive rights are outlined in Part III and include the rights to employment, social security, family life, a sufficient standard of living, health, education, and cultural expression²⁸. The Committee on Economic, Social, and Cultural Rights, a group of eighteen impartial specialists tasked with observing state parties' compliance with the covenant, is established in Part IV²⁹. The covenant's ratification, accession, and amending procedures are covered in Part V³⁰.

The International Covenant on Civil and Political Rights (ICCPR) is one of the most commonly ratified human rights treaties, with 117 government parties as of April 2021. It also includes an optional procedure that allows people to file complaints about covenant violations with the Committee on Economic, Social, and Cultural Rights³¹. The ICCPR, which articulates the universal and inalienable economic, social, and cultural rights that are inherent to every human being, is a seminal document that shapes the evolution and defence of human rights.

III. COMPARATIVE STUDY OF CONSTITUTIONAL GUARANTEES

(A) United States of America:

1. Bill of Rights: Freedom of speech, assembly, religion, and the protection against arbitrary arrests

One of the oldest constitutional democracies in the world, the United States of America is proud to have a historic document in its Bill of Rights, which protects the civil and political rights of its inhabitants. The first ten amendments to the US Constitution, officially enacted in 1791 following a contentious dispute between Federalists and Anti-Federalists, are contained in the Bill of Rights, which was ratified in 1788. The main topic of discussion in this debate was whether a bill of rights was necessary to limit the authority of the federal government and safeguard state and individual rights³².

Important liberties including the freedom of expression, assembly, and religion, as well as

²⁶ International Covenant on Economic, Social and Cultural Rights, *supra* note 1, art. 1.

²⁷ *Id.* art. 2.

²⁸ *Id.* arts. 6-15.

²⁹ *Id.* arts. 16-25.

³⁰ *Id.* arts. 26-31.

³¹ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Dec. 10, 2008, 48 I.L.M. 5.

³² THE FEDERALIST NO. 84 (Alexander Hamilton).

immunity from unjustified arrests, are guaranteed under the Bill of Rights. Within appropriate bounds, freedom of speech allows people to voice their thoughts and opinions without worrying about government censure³³. The right to freedom of assembly permits meetings in peace for legitimate objectives such as protest, petitioning, or celebration³⁴. Establishing an official religion and interfering with the free practice of any faith are forbidden under the doctrine of freedom of religion³⁵. Protection from arbitrary arrests and imprisonment without a warrant or probable cause is ensured by the safeguard against arbitrary arrests, which also protects the right to a prompt and public trial by an unbiased jury³⁶.

These rights form the cornerstones of American democracy, liberty, and justice, serving as a model for many other nations that have enacted similar constitutional protections for their inhabitants.

2. Equal Protection Clause: Bans discrimination based on race, gender, or other protected categories

As part of the United States Constitution's Fourteenth Amendment, which was enacted in 1868, the Equal Protection Clause states that no state may "deny to any person within its jurisdiction the equal protection of the laws."³⁷ Originally designed to protect recently freed slaves' rights and stop racial discrimination³⁸, its purview has expanded to include a range of discriminatory practices, such as those based on gender, sexual orientation, disability, and other protected classes.

The Supreme Court has developed unique standards of scrutiny over time to judge whether state legislation that categorise people into certain groups are constitutional. Laws that discriminate on the basis of race, national origin, or fundamental rights are subject to the toughest standard, known as strict scrutiny, which presumes their unconstitutionality unless the state can show that they are narrowly tailored to further a compelling government purpose³⁹. Heightened scrutiny, an intermediate level, applies to laws that discriminate against women or people who are not legitimate, and it necessitates a significant connection to a significant government goal⁴⁰. The least strict approach, known as rational basis review, validates laws that discriminate based on factors such as age, wealth, or sexual orientation if they are rationally linked to a genuine

³³ U.S. CONST. amend. I.

³⁴ *Id.*

³⁵ *Id.*

³⁶ U.S. CONST. amend. IV, VI.

³⁷ U.S. CONST. amend. XIV, at 1.

³⁸ ERWIN CHERMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 687 (4th ed. 2011).

³⁹ *Id.* at 694-95.

⁴⁰ *Id.* at 741-42.

government aim⁴¹.

The Equal Protection Clause stands as a crucial protector of human dignity and equality in the United States, preventing states from denying any person equal protection under the laws. It empowers the courts to invalidate laws contravening this principle.

3. Right to Privacy: Derived from implied rights and protections

Despite not being specifically listed in the US Constitution, the right to privacy has developed from the Supreme Court's recognition of implied rights and protections. This right, which includes informational privacy, personal autonomy, freedom from arbitrary searches and seizures, and privacy regarding marriage, reproduction, and personal information, has been influenced by court interpretations⁴².

In his dissenting opinion in *Olmstead v. United States*, Justice Brandeis first defined the right to privacy, referring to it as "the right to be let alone."⁴³ The Court later adopted this theory, stating that people are protected from arbitrary government intrusions by the Fourth Amendment⁴⁴. Expanding this right, the Court safeguarded privacy in matters of marriage⁴⁵, family⁴⁶, and sexuality⁴⁷, Any legislation that violates consenting adults' right to privacy. The Court also acknowledged informational privacy⁴⁸, protecting people from personal information disclosure by the government or other third parties⁴⁹. The right to privacy also stems from the right to personal autonomy, which gives people the freedom to make decisions about their lives⁵⁰.

The right to privacy is a fundamental right that is essential to people's dignity and freedom. It is derived from the guarantees and implied rights provided by the Constitution and the Bill of Rights.

4. Second Amendment: Right to bear arms

The United States Constitution's Second Amendment was ratified in 1791 and added to the Bill of Rights⁵¹, asserts, "A well-regulated Militia, being necessary to the security of a Free State,

⁴¹ Id. at 752-53.

⁴² ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 821-22 (4th ed. 2011).

⁴³ *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

⁴⁴ *Katz v. United States*, 389 U.S. 347, 350-51 (1967).

⁴⁵ *Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965).

⁴⁶ *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972).

⁴⁷ *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

⁴⁸ *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977).

⁴⁹ *NASA v. Nelson*, 562 U.S. 134, 138 (2011).

⁵⁰ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992).

⁵¹ THE FEDERALIST NO. 84 (Alexander Hamilton).

the right of the people to keep and bear Arms, shall not be infringed."⁵² Coming from a time when permanent armies were distrusted and citizen militias were seen as vital defences against despotism⁵³, the historical and cultural backgrounds of the Founding Age are reflected in this amendment.

Encompassing the freedom to defend oneself as well as the freedom to oppose tyranny as a group⁵⁴, the meaning and parameters of the Second Amendment have given rise to a variety of interpretations and debates, especially when it comes to gun control and the avoidance of gun violence⁵⁵. The right of an individual to own and use weapons for legal purposes has been affirmed by the Supreme Court, which has placed a strong focus on domestic self-defence⁵⁶. The Court has noted that this right is not unqualified, though, and that the government is free to impose reasonable limitations like background checks, license requirements, and prohibitions on specific types of weapons⁵⁷. The Court also made it clear that states may control firearms as long as they do not interfere with the fundamental right to self-defence⁵⁸.

The Second Amendment, a unique and divisive constitutional guarantee in the US, reflects the historical and cultural beliefs of the country. It also represents the continuous discussion about how to strike a balance between public safety and private liberty.

(A) United Kingdom:

1. Human Rights Act 1998: Incorporation of the European Convention on Human Rights into UK law

The British constitutional system is based on a combination of common law principles, traditions, and statutes, even though the country does not have a codified constitution⁵⁹. The Human Rights Act (HRA), which brought the European Convention on Human Rights (ECHR) into UK legislation, was a landmark achievement in 1998⁶⁰. This international agreement protects people's civil and political rights in each of the 47 member states that make up the Council of Europe⁶¹.

Two things are important about the HRA under UK law. First of all, it requires governmental

⁵² U.S. CONST. amend. II.

⁵³ *District of Columbia v. Heller*, 554 U.S. 570, 598-99 (2008).

⁵⁴ *District of Columbia v. Heller*, 554 U.S. 599-600 (2008)

⁵⁵ Adam Winkler, *The Reasonable Right to Bear Arms*, 17 *STAN. L. & POL'Y REV.* 597, 597-98 (2006).

⁵⁶ *Heller*, 554 U.S. at 635.

⁵⁷ *Id.* at 626-27, 629.

⁵⁸ *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

⁵⁹ Vernon Bogdanor, *The New British Constitution* (Hart Publishing 2009).

⁶⁰ Human Rights Act 1998, c. 42.

⁶¹ European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221.

entities—including the judiciary—to synchronise their operations with the rights enshrined in the ECHR⁶². Second, it gives people the ability to file claims for ECHR violations committed by public agencies in domestic courts⁶³. The HRA also mandates that courts interpret laws in a way that upholds the rights of the ECHR⁶⁴. Interestingly, the HRA allows for the issuance of a declaration of incompatibility, which forces parliamentary consideration of modifications, even though it does not have the power to overturn incompatible laws⁶⁵.

This constitutional change fosters an atmosphere that improves the protection and promotion of human rights by bringing ECHR rights closer to the UK public. Crucially, it opens up communication between national courts, the Parliament, and the supranational European Court of Human Rights, which is in charge of interpreting and implementing the ECHR⁶⁶. The Human Rights Act (HRA) is a major step toward a UK constitutional framework that is more focused on rights.

2. Freedom of Expression

In the absence of a written constitution, the United Kingdom is governed by a system of legislation, common law, and conventions⁶⁷. The Human Rights Act (HRA), which was passed in 1998 and particularly guaranteed the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) by domestic legislation, marked a significant shift⁶⁸.

Nonetheless, the HRA's guarantee of the right to free speech is not unqualified. It is subject to legislative restrictions that are required in a democratic society, such as safeguarding public order, national security, health, morals, and other people's rights and reputations. Courts must interpret laws in a way that upholds the European Convention on Human Rights (ECHR) rights, declaring a law to be incompatible if it restricts someone's right to free speech⁶⁹. People who believe that public authorities are violating their rights may file claims against them and seek declarations, injunctions, or damages⁷⁰.

The European Court of Human Rights is a supranational organization that interprets the

⁶² Human Rights Act 1998, c. 42, s. 6.

⁶³ *Id.* s. 7.

⁶⁴ *Id.* s. 3.

⁶⁵ *Id.* s. 4.

⁶⁶ Aileen Kavanagh, *Constitutional Review under the UK Human Rights Act* (Cambridge University Press 2009).

⁶⁷ Vernon Bogdanor, *The New British Constitution* (Hart Publishing 2009).

⁶⁸ Human Rights Act 1998, c. 42; European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221, art. 10.

⁶⁹ Human Rights Act 1998, c. 42; European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221, art. 10.

⁷⁰ Human Rights Act 1998, c. 42, s. 7.

European Convention on Human Rights, and its jurisprudence shapes the UK's position on freedom of expression. UK courts are not bound by these rulings, but they must take them into consideration⁷¹. Rather, in order to navigate the delicate balance between the right to free speech and other conflicting interests like privacy, defamation, contempt of court, or hate speech, UK courts have created its own set of rules and guidelines⁷². The UK's constitutional framework highlights the careful consideration given to protecting and governing the basic right to freedom of expression.

3. Right to a Fair Trial

The Universal Declaration of Human Rights and other regional and international protocols recognise the right to a fair trial as a fundamental human right⁷³, International Covenant on Civil and Political Rights⁷⁴, and European Convention on Human Rights⁷⁵, includes essential components including the ability to appeal, the presumption of innocence, legal representation, fair and public hearings, and reasoned rulings⁷⁶.

The Human Rights Act of 1998 brought the European Convention on Human Rights into domestic law, obliging the United Kingdom as a member of the Council of Europe. This gives people the ability to use their rights under the Convention to hold public authorities accountable and seek remedies in UK court⁷⁷. When a law breaches the right to a fair trial, UK courts will declare it incompatible and will interpret the law in accordance with the rights specified in the Convention⁷⁸.

The United Kingdom has implemented its own common law principles and legislative measures in addition to the European Convention. These safeguards include the jury system, rules of evidence, judicial review, legal aid, and the appeals system⁷⁹. The right to a fair trial must be balanced delicately with other interests, such as public order, national security, and the rights of witnesses and victims⁸⁰.

Ensuring a fair, efficient, and accountable justice system is crucial, as this fundamental provision in the UK shields people against arbitrary or illegal interference with their rights and

⁷¹ Id. s. 2.

⁷² David Feldman, *Civil Liberties and Human Rights in England and Wales* (2d ed. 2002).

⁷³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 10 (Dec. 10, 1948).

⁷⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 14.

⁷⁵ European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221, art. 6.

⁷⁶ Id.

⁷⁷ Human Rights Act 1998, c. 42.

⁷⁸ Human Rights Act 1998, c. 42, ss. 3, 4.

⁷⁹ David Feldman, *Civil Liberties and Human Rights in England and Wales* (2d ed. 2002).

⁸⁰ Id.

freedoms. In the UK, the right to a fair trial is fundamental to maintaining the values of justice and due process.

4. Right to Private and Family Life

Through the Human Rights Act of 1998 (HRA), the right to private and family life—a protected human right under the European Convention on Human Rights (ECHR)—has been incorporated into the domestic legal system of the United Kingdom⁸¹. This right is stated clearly in Article 8 of the ECHR, which states that everyone has the right to respect for their home, letters, and private and family life. This right cannot be interfered with by public authorities, unless doing so is required in a democratic society to protect particular legitimate interests⁸².

The right to private and family life encompasses a wide range of human dignity and autonomy, including factors related to personal identity, sexuality, relationships, parenthood, health, education, and expression⁸³. Laws must be interpreted by UK courts in a way that upholds the rights guaranteed by the European Convention on Human Rights. If a legislation is shown to violate a person's right to privacy and family life, courts have the power to declare the laws to be incompatible⁸⁴. Furthermore, people have the ability to file lawsuits against public officials who violate this right, seeking redress in the form of declarations, injunctions, or damages⁸⁵.

The European Court of Human Rights is the supranational body tasked with interpreting and executing the European Convention on Human Rights (ECHR). Its jurisprudence has a considerable impact on the evolution of the right to private and family life in the UK. Although UK courts are required to take into account European Court rulings, they are not legally obligated to do so⁸⁶. In this regard, the courts in the United Kingdom have developed their own guidelines and norms for striking a balance between the right to privacy and family life and conflicting interests, such as public order, national security, or the rights of others⁸⁷. The United Kingdom's dedication to maintaining this fundamental freedom among the intricacies of modern societal interests is demonstrated by this complicated legal system.

(B) Germany:

1. Basic Law for the Federal Republic of Germany

⁸¹ Human Rights Act 1998, c. 42.

⁸² European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221, art. 8.

⁸³ Helen Fenwick & Gavin Phillipson, Text, Cases and Materials on Public Law and Human Rights 1000-01 (4th ed. 2013).

⁸⁴ Human Rights Act 1998, c. 42, ss. 3, 4.

⁸⁵ *Id.* s. 7.

⁸⁶ *Id.* s. 2.

⁸⁷ Fenwick & Phillipson, *supra* note 3, at 1002-03.

The Basic Law for the Federal Republic of Germany, the present constitution for this federal parliamentary republic, was ratified in 1949. The Basic Law has remained in effect even after Germany's reunification in 1990. Originally meant to serve as a temporary constitution until a reunified Germany could draft a permanent one⁸⁸.

Eleven chapters and 146 articles make up the Basic Law, which covers a wide range of topics including fundamental rights, the roles and responsibilities of the federal and state governments, the constitutional organs' role and authority, the principles and processes of legislation, the administration of justice, the safeguarding of the constitution, and the process of amending it⁸⁹. The international human rights treaties that Germany has ratified as well as the laws of the European Union are also incorporated into the Basic Law⁹⁰.

Germany is established under the Basic Law as a social and democratic state that upholds the rights to privacy, liberty, and the rule of law as well as federalism, the separation of powers, and public engagement⁹¹. The Federal Constitutional Court, the highest court that interprets and applies the Constitution and considers the validity of legislation and actions by public authorities, is also established by the Basic Law⁹².

Because it represents the lessons from Germany's past and offers a reliable and functional foundation for the nation's governance and growth, the Basic Law is a highly valued and influential constitution.

2. Right to Human Dignity: A core value and foundational right

The fundamental right and central principle of the German constitution, also referred to as the Basic Law, is the right to human dignity. Article 1(1) of the Basic Law, which declares that "Human dignity shall be inviolable," enshrines the right to human dignity. It is the responsibility of all governmental authorities to respect and safeguard it."⁹³ All other fundamental rights in the Basic Law derive from and are constrained by the right to human dignity⁹⁴.

The German constitutional system entails several functions and implications for the right to human dignity. First, because it represents the understanding of each person's intrinsic worth and autonomy, it offers the theoretical and moral foundation for human rights⁹⁵. Second,

⁸⁸ Donald P. Kommers & Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* 1-2 (3d ed. 2012).

⁸⁹ Basic Law for the Federal Republic of Germany, May 23, 1949, BGBl. I.

⁹⁰ *Id.* art. 23, 59.

⁹¹ *Id.* arts. 1, 20, 28, 38.

⁹² *Id.* arts. 92, 93, 100.

⁹³ Basic Law for the Federal Republic of Germany, May 23, 1949, BGBl. I, art. 1(1).

⁹⁴ *Id.* art. 1(2).

⁹⁵ Donald P. Kommers & Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*

because it obliges the state to uphold and defend each person's dignity in every circumstance, it aids in the interpretation and implementation of human rights⁹⁶. Third, because it restricts the use of state authority and forbids any infringement or diminution of human dignity, it is the highest ideal and final standard in the constitutional system⁹⁷.

In Germany, the right to human dignity is a special and powerful constitutional guarantee that reflects the nation's historical lessons and influences its identity and culture.

3. Freedom of Expression

One of the essential rights protected by the German constitution, often known as the Basic Law, is the freedom of expression. This is expressed as follows: "Every person shall have the right freely to express and disseminate his opinions in speech, writing, and pictures and to inform himself without hindrance from generally accessible sources." Article 5(1) of the Basic Law says as much.⁹⁸ The freedom of expression extends to communication channels and methods in addition to speech's substance and form⁹⁹.

Nonetheless, there are legal restrictions on the right to free speech that are put in place to safeguard other fundamental principles like national security, public order, human dignity, and honour¹⁰⁰. Article 5(2) of the Basic Law lists these restrictions, which include general rules, provisions for youth protection, and the right to personal honour¹⁰¹. Additionally, the restrictions are construed in line with the Federal Constitutional Court's case law, which serves as the highest court for interpreting and enforcing the constitution and evaluating the legality of legislation and actions taken by public authorities¹⁰².

In Germany, the right to free speech is a fundamental constitutional provision that upholds the country's historical and cultural traditions and encourages citizen engagement and discourse in a democratic society.

4. Right to Education

One of the essential rights protected by the German constitution, often known as the Basic Law, is the right to an education. The Basic Law's Article 7 enshrines the phrase, "The entire school

375-76 (3d ed. 2012).

⁹⁶ *Id.* at 376-77.

⁹⁷ *Id.* at 377-78.

⁹⁸ Basic Law for the Federal Republic of Germany, May 23, 1949, BGBL. I, art. 5(1).

⁹⁹ Donald P. Kommers & Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* 379 (3d ed. 2012).

¹⁰⁰ *Id.* at 380-81.

¹⁰¹ Basic Law for the Federal Republic of Germany, *supra* note 1, art. 5(2).

¹⁰² *Id.* arts. 92, 93, 100.

system shall be under the supervision of the state."¹⁰³ The freedom to select and create private schools is included in the right to education, as is the freedom to participate in, access, and benefit from education¹⁰⁴.

Germany's complex and decentralised system of federal and state laws, rules, and policies governs the funding, content, structure, and quality of education across all levels and sectors, thereby enforcing the right to education¹⁰⁵. The states are in charge of organising and managing education within their borders, while the federal government establishes the overall guidelines and criteria for education¹⁰⁶. The Standing Conference of the Ministers of Education and Cultural Affairs, an organization that unifies and coordinates state-to-state efforts in the field of education, serves as a conduit for cooperation between the states¹⁰⁷.

The international and regional human rights instruments that Germany has ratified, such as the European Convention on Human Rights, the Convention on the Rights of the Child, and the International Covenant on Economic, Social, and Cultural Rights, also have an impact on the right to education in Germany¹⁰⁸. These documents have been used by the Federal Constitutional Court, the highest court interpreting and implementing the constitution, in rulings on matters pertaining to education, including the proscription of discrimination, the allowance of religious freedom, and the defense of minorities¹⁰⁹.

In Germany, the right to education is an essential constitutional guarantee that reflects national historical and cultural values and serves as a foundation for societal integration and growth.

(C) South Africa:

1. Constitution of the Republic of South Africa, 1996

The Constitution of the Republic of South Africa, 1996, was ratified by this constitutional democracy in South Africa following the end of apartheid and the country's shift to a multiracial society. A Constitutional Assembly, made up of representatives from the political parties that ran in the first democratic elections in 1994, created the constitution. It was verified to adhere to the constitutional principles outlined in the 1993 interim constitution after being approved by

¹⁰³ Basic Law for the Federal Republic of Germany, May 23, 1949, BGBl. I, art. 7(1).

¹⁰⁴ Id. art. 7(2)-(6).

¹⁰⁵ Eckhard Klieme et al., *The German School System*, in *THE EDUCATION SYSTEMS OF EUROPE* 216-17 (Wolfgang Hörner et al. eds., 2007).

¹⁰⁶ Basic Law for the Federal Republic of Germany, *supra* note 1, art. 70, 72, 74.

¹⁰⁷ Klieme et al., *supra* note 3, at 217-18.

¹⁰⁸ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, art. 13; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 28, 29; European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221, art. 2, 14.

¹⁰⁹ Kommers & Miller, *supra* note 8, at 382-83, 388-89, 393-94.

the Constitutional Court¹¹⁰.

Preamble, 14 chapters, and 243 sections make up the constitution, which also covers the bill of rights, the establishment of constitutional institutions, the role and authority of national, provincial, and local governments, the principles and procedures of legislation, the administration of justice, financial and security issues, transitional arrangements, and the amendment process¹¹¹. If customary law and international law are consistent with the constitution, they are also incorporated¹¹².

According to the constitution, South Africa is a sovereign, democratic, unitary nation that upholds the equality and dignity of all people and provides for the rule of law, the separation of powers, cooperative government, and popular engagement¹¹³. It also establishes the Constitutional Court, which serves as the Supreme Court for constitutional disputes and the constitution's defender¹¹⁴.

The nation's historical and cultural values are reflected in this historic document, which also serves as a framework for societal growth and healing.

2. Equality: Prohibiting discrimination based on various grounds, including race and gender

The 1996 adoption of the South African constitution, which followed the end of apartheid and the country's transition to democracy, places a high value on the right to equality. Declaring that all people are created equal and have the right to equal protection and benefits under the law, Section 9 of the Constitution establishes the right to equality¹¹⁵. Additionally, this clause forbids discrimination on any grounds, including race and gender, and permits affirmative action programs to address discrimination that has occurred in the past and is occurring now¹¹⁶.

The Constitutional Court, South Africa's highest court for constitutional disputes, has jurisdiction over the interpretation and implementation of the right to equality. A two-step test has been devised by the courts to evaluate any infringements on the right to equality. Determining whether discrimination or distinction takes place on the basis of the reasons listed in section 9(3) of the constitution is the first step in the process. The impact, goal, and context

¹¹⁰ S. Afr. Const. Ct., In re: Certification of the Constitution of the Republic of South Africa, 1996, 1996 (10) BCLR 1253 (CC).

¹¹¹ S. AFR. CONST., 1996.

¹¹² Id. ss. 39, 211, 232.

¹¹³ Id. ss. 1, 41, 42, 118, 152.

¹¹⁴ Id. ss. 167, 168.

¹¹⁵ S. AFR. CONST., 1996, s. 9(1).

¹¹⁶ Id. ss. 9(2)-(5).

of the law or act are taken into consideration when evaluating whether such differentiation or discrimination is unfair in the second stage¹¹⁷.

The right to equality is influenced by international and regional human rights instruments that South Africa has ratified, including the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the International Covenant on Civil and Political Rights¹¹⁸. These documents have been consulted in court rulings pertaining to equality concerns, such as the acceptance of same-sex marriage, the repeal of the death penalty, and the defence of socioeconomic rights¹¹⁹.

In South Africa, the right to equality is a fundamental constitutional guarantee that upholds the nation's historical and cultural values and serves as a basis for societal progress and reform.

3. Socio-economic Rights: Guaranteeing access to housing, healthcare, and education

Among the few constitutions in the world that specifically guarantee socio-economic rights, such as the right to housing, healthcare, and education, is the South African one, which was ratified in 1996. The state is required under these rights, which are guaranteed by sections 26, 27, and 29 of the constitution, to take appropriate legislative and other actions, within the limits of its financial means, to gradually realise these rights¹²⁰.

Courts are essential to the interpretation and implementation of socio-economic rights in South Africa, especially the Constitutional Court, which is the highest court in constitutional disputes. In order to determine if the state has complied with its constitutional duties, a reasonableness review test that takes into account the nature, extent, significance, and rationale of the state's policies and actions has been established¹²¹. To guarantee that socioeconomic rights are implemented effectively, the courts use a variety of remedies, such as declarations, injunctions, supervision orders, and structural interdicts¹²².

South Africa has ratified several international and regional human rights instruments, including the African Charter on Human and Peoples' Rights, the International Covenant on Economic,

¹¹⁷ Harksen v. Lane NO and Others 1998 (1) SA 300 (CC) at para. 50-54.

¹¹⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217.

¹¹⁹ Minister of Home Affairs and Another v. Fourie and Another 2006 (1) SA 524 (CC); S v. Makwanyane and Another 1995 (3) SA 391 (CC); Government of the Republic of South Africa and Others v. Grootboom and Others 2001 (1) SA 46 (CC).

¹²⁰ S. AFR. CONST., 1996, ss. 26, 27, 29.

¹²¹ Government of the Republic of South Africa and Others v. Grootboom and Others 2001 (1) SA 46 (CC) at para. 41-44.

¹²² Minister of Health and Others v. Treatment Action Campaign and Others 2002 (5) SA 721 (CC) at para. 135-136.

Social, and Cultural Rights, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa¹²³, impact the socioeconomic rights landscape. When making decisions on matters pertaining to socioeconomic rights, such as antiretroviral medication supply, eviction prevention, and basic education delivery, courts make reference to these tools¹²⁴.

In South Africa, socio-economic rights are a fundamental constitutional guarantee that represent the historical and cultural values of the country and serve as a basis for societal development and reform.

4. Bill of Rights: Protecting various rights, such as freedom of religion and the right to a fair trial

The second chapter of the 1996 South African constitution, the Bill of Rights, is essential to protecting rights once apartheid ends and the nation moves toward democracy. It covers a number of rights, such as the freedom of religion and the right to a fair trial, and consists of 35 sections¹²⁵.

Everybody has the freedom of conscience, religion, thinking, belief, and opinion, according to section 15 of the Bill of Rights, which outlines this right. Under some restrictions, it permits religious observances at state-run or state-aided institutions¹²⁶. This right includes expressing one's religion or belief by acts of worship, observance, practice, and teaching, as well as organising, joining, and remaining a member of religious societies¹²⁷.

A fair trial is guaranteed by Section 35 of the Bill of Rights. This covers fundamental components including being made aware of the charges, having legal counsel, having an open and fair trial, the presumption of innocence, the right to stay silent, the ability to appeal, and being shielded from double jeopardy¹²⁸. The right to a fair trial also forbids torture and other cruel, inhuman, or humiliating treatment or punishment, emphasising the right to be treated with dignity and respect¹²⁹.

¹²³ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, (*accessed at* <https://www.studocu.com/in/document/amity-university/corporate-law/bluebook-19th-edition-citation-method/15678645> on 14.01.2024).

¹²⁴ *Id.* at para. 38-39; *Residents of Joe Slovo Community, Western Cape v. Thubelisha Homes and Others* 2011 (7) BCLR 723 (CC) at para. 316-317; *Juma Musjid Primary School and Others v. Essay NO and Others* 2011 (8) BCLR 761 (CC) at para. 66-67.

¹²⁵ S. AFR. CONST., 1996, ch. 2.

¹²⁶ S. AFR. CONST., 1996, ch. 2, s. 15.

¹²⁷ *Id.* s. 31.

¹²⁸ *Id.* s. 35.

¹²⁹ *Id.* ss. 10, 12.

In South Africa, the Bill of Rights is a key constitutional guarantee that upholds the nation's historical and cultural values and serves as a basis for societal progress and transformation.

IV. CONCLUSION

To sum up, this study has conducted a thorough analysis of constitutional protections for human rights in many countries, exploring the origins, range, substance, institutional frameworks, procedural protections, and real-world applications of these rights. Utilising a range of case studies from the United States of America, the United Kingdom, South Africa, and Germany, the article sheds light on the complex process of constitutionalising human rights, highlighting both its advantages and disadvantages.

The results highlight how important constitutions are for promoting and defending human rights since they provide normative direction, legal protections, and means of enforcement. Concurrently, the study draws attention to intrinsic difficulties and constraints, highlighting the disparities between official acknowledgement and practical implementation, disputes between rights and interests, and the necessity of ongoing adjustment in changing environments.

Crucially, this study acknowledges the multiplicity of approaches based on historical, cultural, political, and legal circumstances and concludes that there is no common pattern for constitutionalising human rights. The document promotes comprehensive engagement and consultation of all stakeholders—government, judiciary, civil society, and the public—across the formulation, implementation, and review phases in order to ensure the efficacy and legitimacy of constitutional human rights. Additionally, it promotes a cross-border culture of respect and communication for the advancement of human rights globally by encouraging nations to collaborate, exchange experiences, and participate in international and regional human rights mechanisms.
