

A Study Relating to the Implications of Kaushal Kishore v. State of Uttar Pradesh: Rights Brought Home or Welcoming Disarray

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Abstract

The Constitution of India protects various civil, political and cultural rights of its subjects by dint of the provisions of Part III. The constitutional scheme mostly guarantees these rights (except a few) vertically making the 'State' duty bound to protect these rights. Since the commencement of the Constitution, the judiciary has expanded the scope and extent of 'State' with an intention to enlarge the canvas of protection of fundamental rights. The inclusive and broad interpretation given to Article 12 certainly amplified the sphere of state actors, but the line of demarcation between state and non-state actors was never faded away. It was an established constitutional scheme that a claim for violation of fundamental rights would lie only against state or its instrumentalities. However, recently the constitution bench in Kaushal Kishore introduced the horizontal application of fundamental rights which changed this well-established vertical protection of fundamental rights. Bringing reference to the countries like Ireland, Canada, Germany, United Kingdom, European Union etc. which have adopted horizontal position, the majority judges ruled that fundamental rights could be claimed against non-state actor as well. Though, prima facie, this judgment seems to be directed towards protecting and promoting rights, but it has posed a serious question before the well-established constitutional scheme. The present paper examines the ratio of Kaushal Kishore to assess whether the ruling will help in securing the rights or it will bring complexities in the legal system. Assessment for the need of the demarcating line between state and non-state actors is the central theme of this paper.

Keywords: *Fundamental Rights, Horizontal Protection, State / Non-State Actors, Indian Constitution.*

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I. Introduction

The Constitution of India, adopted on 26th November 1949 and enforced from 26th January 1950, enshrines a comprehensive catalogue of fundamental rights under Part III (Articles 12–35).² These rights, borrowing from liberal constitutional traditions of the West and adapted to the Indian socio-political milieu, were envisioned as enforceable guarantees against state power. The constitutional design was predicated upon a vertical model of rights protection; whereby the citizen stood as the rights-holder and the ‘State’ as the primary duty-bearer. This vertical structure found its doctrinal anchor in Article 12, which defines ‘State’ for the purposes of Part III to include the Government and Parliament of India, State Governments and Legislatures, and ‘other authorities’ within or under the control of the Government of India.³ For over seven decades, Indian constitutional jurisprudence faithfully adhered to this vertical template. Courts expanded the definition of ‘State’ under Article 12 to embrace a variety of state instrumentalities, such as, public sector undertakings, regulatory bodies, and entities substantially funded or controlled by the government. But the fundamental premise remained unchanged as private individual or non-state actor could not be directly subjected to a writ for fundamental rights violations under Article 32 or Article 226.⁴ The private sphere was governed by ordinary law *viz.*, tort, contract, and specific legislation, rather than by the constitutional guarantees of Part III.

This orthodoxy was dramatically unsettled by the Constitution Bench of the Supreme Court in *Kaushal Kishore v. State of Uttar Pradesh*, wherein the majority held that fundamental rights are not merely enforceable against the State but can also be pleaded against private individuals and non-state actors.⁵ This ruling represented a paradigm shift, i.e., a judicial introduction of the doctrine of horizontal application of fundamental rights into Indian constitutional law. While the judgment draws inspiration from comparative constitutional experiences in Ireland, Germany, Canada, the United Kingdom, and the European Union, it raises pressing questions about doctrinal coherence,

² INDIA CONST. pt. III, arts. 12–35.

³ INDIA CONST. art. 12.

⁴ INDIA CONST. art. 32; INDIA CONST. art. 226.

⁵ *Kaushal Kishore v. State of Uttar Pradesh*, (2023) 4 SCC 1 (India).

the structure of constitutional remedies, and the future of the public-private divide in Indian law.

The present paper undertakes a critical appraisal of the Kaushal Kishore ruling. It examines the pre-existing constitutional framework, surveys comparative approaches to horizontal application, analyses the majority and minority reasoning in Kaushal Kishore, and assesses the potential implications of the judgment for Indian constitutionalism. The central inquiry is whether this judicial innovation represents a genuine expansion of rights protection or whether it introduces a doctrinal disarray that may ultimately undermine the coherence of the constitutional scheme.

II. Vertical Application of Fundamental Rights: The Pre-Existing Framework

A. Constitutional Architecture and the Role of Article 12

The concept of ‘State’ is central to the scheme of fundamental rights under the Indian Constitution. Article 12 provides an inclusive definition that covers the Government and Parliament of India at the Union level, the State Governments and Legislatures, and ‘all local or other authorities within the territory of India or under the control of the Government of India.’⁶ This definition, though seemingly straightforward, became the subject of extensive judicial elaboration over the course of decades.

The term ‘other authorities’ in Article 12 was the principal site of interpretive contestation. In *University of Madras v. Shanta Bai*, the Madras High Court adopted the *ejusdem generis* rule to limit the reach of ‘other authorities’ to entities of a governmental character.⁷ This restrictive approach was progressively broadened by the Supreme Court. In *Electricity Board, Rajasthan v. Mohan Lal*, the Court held that ‘other authorities’ includes all bodies created by a statute on which powers are conferred to carry out governmental or quasi-

⁶ INDIA CONST. art. 12 (defining ‘State’ to include ‘the Government and Parliament of India,’ ‘the Government and the Legislature of each of the States,’ ‘all local or other authorities within the territory of India,’ and ‘other authorities under the control of the Government of India’).

⁷ *University of Madras v. Shanta Bai*, AIR 1954 Mad 67 (India).

governmental functions.⁸ The entity need not be engaged in commercial activities; what matters is the statutory creation and governmental character of its functions.

The watershed moment in Article 12 jurisprudence came with *R.D. Shetty v. International Airport Authority of India*, where Justice Bhagwati articulated a multi-factor test for determining whether a body qualifies as 'State', including the extent of governmental control, financial dependence, the governmental or public nature of its functions, whether it enjoys a state-conferred monopoly, and whether it was created by statute.⁹ This was further refined in *Ajay Hasia v. Khalid Mujib Sehravardi*, which consolidated these factors into a holistic test of *deep and pervasive State control*.¹⁰

B. The Privatisation Challenge and the Judicial Response

The liberalisation of the Indian economy from 1991 onwards posed a new challenge to Article 12 jurisprudence. As the State progressively withdrew from direct economic activity and transferred functions to private actors through privatisation, disinvestment, public-private partnerships, and outsourcing; the question arose whether the protection of fundamental rights would contract proportionately.¹¹ The Supreme Court's response was ultimately conservative. In *Zee Telefilms Ltd. v. Union of India*, the Court held that the Board of Control for Cricket in India (BCCI) did not constitute 'State' under Article 12, notwithstanding its *de facto* regulatory monopoly over cricket in India, reasoning that BCCI was a private body neither created by statute nor substantially controlled or funded by the government.¹² Similarly, in *Federal Bank Ltd. v. Sagar Thomas*, the Court reiterated that a private bank, even one

⁸ *Electricity Board, Rajasthan v. Mohan Lal*, AIR 1967 SC 1857 (India).

⁹ *R.D. Shetty v. International Airport Authority of India*, AIR 1979 SC 1628 (India).

¹⁰ *Ajay Hasia v. Khalid Mujib Sehravardi*, AIR 1981 SC 487 (India), *Id.* at ¶ 14 (articulating 'deep and pervasive State control' as the governing test).

¹¹ For a comprehensive account of the liberalisation process and its constitutional implications, see Upendra Baxi, *The (Im)Possibility of Constitutional Justice: Seismographic Notes on Indian Constitutionalism*, in *INDIA'S LIVING CONSTITUTION: IDEAS, PRACTICES, CONTROVERSIES* 31 (Zoya Hasan et al. eds., 2002).

¹² *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649 (India).

performing public functions, could not be regarded as ‘State’ under Article 12.¹³

These decisions underscored the limits of judicial expansion of Article 12 and confirmed the irreducibility of the state/non-state distinction in Indian constitutional law. As privatisation deepened, constitutional scholars and civil society actors raised concerns about the resulting lacunae in rights protection, particularly, in the domains of employment, education, healthcare, and housing, where private actors now wield enormous power over individual lives. It was against this background that the question of horizontal application of fundamental rights acquired renewed urgency.¹⁴

III. Horizontal Application of Fundamental Rights: Comparative Perspectives

A. Germany: The *Drittwirkung* Doctrine

The doctrine of horizontal application of fundamental rights finds its most sophisticated articulation in German constitutional law through the concept of *Drittwirkung* (literally, ‘third-party effect’). The Federal Constitutional Court (*Bundesverfassungsgericht*) in the landmark *Lüth* judgment introduced the concept of the ‘objective value order’ (*objektive Wertordnung*), holding that fundamental rights constitute not merely subjective defensive rights against state power but also an objective value system that radiates throughout the entire legal order, including private law relationships.¹⁵ Under the German model, horizontal effect operates indirectly: courts are required to interpret private law provisions in conformity with constitutional values. Private actors are thus subjected to fundamental rights norms through the mediation of private law, rather than being directly bound by the constitution. This model of ‘indirect horizontal effect’ (*mittelbare Drittwirkung*) has influenced

¹³ *Federal Bank Ltd. v. Sagar Thomas*, (2003) 10 SCC 733 (India).

¹⁴ See generally SUDHIR KRISHNASWAMY, *DEMOCRACY AND CONSTITUTIONALISM IN INDIA: A STUDY OF THE BASIC STRUCTURE DOCTRINE* 145–62 (2009) (discussing the limits of judicial expansion of Article 12 in the post-liberalisation period).

¹⁵ *Lüth*, *Bundesverfassungsgericht* [BVerfGE] 7, 198 (1958) (Ger.).

constitutional jurisprudence across the globe and was explicitly acknowledged in the *Kaushal Kishore* judgment.¹⁶

B. Ireland and the United Kingdom

Irish constitutional law presents a more direct approach. In *Meskeel v. Córas Iompair Éireann*, the Irish Supreme Court recognised that constitutional rights could be enforced directly against private individuals in appropriate circumstances, particularly where the private party's conduct would violate the plaintiff's constitutional right to an extent that the ordinary law provides no adequate remedy.¹⁷ The position in the United Kingdom is shaped by the Human Rights Act 1998 (HRA), which incorporated the European Convention on Human Rights into domestic law.¹⁸ Section 6 of the HRA makes it unlawful for 'public authorities', a category that includes courts, to act incompatibly with Convention rights. Courts are thus required, as public authorities, to develop the common law in a manner consistent with Convention rights even in disputes between private parties. This model of indirect horizontal effect through judicial development of common law has been applied in cases such as *Campbell v. MGN Ltd.*, where privacy rights were enforced against a media corporation.¹⁹

C. Canada and the European Union

Canadian constitutional law has largely rejected direct horizontal application of the Charter of Rights and Freedoms. In *Dolphin Delivery Ltd. v. Retail, Wholesale and Department Store Union*, the Supreme Court of Canada held that the Charter does not directly apply to purely private litigation, though courts are obligated as organs of the state to develop the common law consistently with Charter values.²⁰ The European Union's approach to horizontal application is complex and evolving. The Charter of Fundamental Rights of the European Union, which became legally binding with the Treaty of

¹⁶ Stephen Gardbaum, *The 'Horizontal Effect' of Constitutional Rights*, 102 MICH. L. REV. 387, 393–401 (2003), Id. at 401–10.

¹⁷ *Meskeel v. Córas Iompair Éireann*, [1973] IR 121 (Ir.).

¹⁸ Human Rights Act 1998, c. 42, § 6 (UK).

¹⁹ *Campbell v. MGN Ltd.*, [2004] UKHL 22 (UK).

²⁰ *Dolphin Delivery Ltd. v. Retail, Wholesale & Dep't Store Union*, [1986] 2 SCR 573 (Can.).

Lisbon (2009), applies primarily to member state action and EU institutions,²¹²² though the Court of Justice has increasingly extended its scope to private relationships in the employment and non-discrimination contexts.

A survey of comparative perspectives reveals that horizontal application is not a monolithic doctrine but a spectrum of approaches ranging from indirect horizontal effect (operating through judicial development of private law) to direct horizontal effect (creating enforceable rights against private actors). Most mature constitutional democracies have adopted indirect horizontal effect as the preferred model, preserving the integrity of the state/non-state distinction while ensuring that constitutional values permeate the entire legal order. The Indian Supreme Court's adoption of the horizontal approach in *Kaushal Kishore* must be assessed against this comparative backdrop.²³

IV. *Kaushal Kishore v. State of Uttar Pradesh*: Facts, Ratio and Analysis

A. Background and Facts

The case of *Kaushal Kishore v. State of Uttar Pradesh* arose from a writ petition filed before the Supreme Court concerning alleged violations of fundamental rights by a Union Minister whose utterances were claimed to be inflammatory and violative of the rights of the victims of a crime.²⁴ The factual matrix presented the Court with the question of whether a fundamental rights violation could be attributed to a private individual holding a public office but acting in a non-official capacity, and whether a writ could lie against such a person.

A Constitution Bench of five judges was constituted to address, inter alia, the following questions:

- (i) *Can a fundamental right be enforced against a private individual?*

²¹ Consolidated version of the Treaty on European Union, Oct. 26, 2012, 2012 O.J. (C 326) 13 (as amended by the Treaty of Lisbon).

²² Charter of Fundamental Rights of the European Union art. 51, Dec. 18, 2000, 2000 O.J. (C 364) 1.

²³ Mark Tushnet, *The Issue of State Action/Horizontal Effect in Comparative Constitutional Law*, 1 INT'L J. CONST. L. 79, 85–92 (2003).

²⁴ *Kaushal Kishore v. State of Uttar Pradesh*, (2023) 4 SCC 1 (India).

(ii) *Does Article 19(2) permit restriction of free speech by private parties?*

(iii) *What is the scope and extent of the right under Article 21 vis-à-vis non-state actors?*

These questions had far-reaching implications for the structural understanding of Part III of the Constitution.²⁵

B. The Majority Opinion:

The majority held that fundamental rights are not merely enforceable against the State but can also be claimed against non-state actors in appropriate circumstances. Drawing on the constitutional text, particularly Articles 17, 23, and 24 which expressly operate against private parties, the majority reasoned that the framers did not intend all fundamental rights to operate exclusively in the vertical dimension.²⁶ The majority relied extensively on comparative jurisprudence, noting that constitutional systems in Ireland, Germany, Canada, the United Kingdom, and the European Union have recognised the horizontal dimension of fundamental rights to varying degrees.²⁷ The Court observed that in an era of globalisation and privatisation, confining fundamental rights to the vertical axis would leave large gaps in constitutional protection, particularly for marginalised sections whose rights are frequently violated by private actors.

The majority also drew support from the transformative vision of the Indian Constitution, which was designed not merely to constrain state power but to remake Indian society by dismantling hierarchies of caste, gender, and class.²⁸ The Court further held that Article 32 was not the exclusive remedy for

²⁵ *Id.* at ¶ 5.

²⁶ INDIA CONST. art. 17 (abolition of untouchability); INDIA CONST. art. 23 (prohibition of traffic in human beings and forced labour); INDIA CONST. art. 24 (prohibition of employment of children in factories).

²⁷ Kaushal Kishore, (2023) 4 SCC 1, at 42–55 (discussing comparative jurisprudence from Ireland, Germany, Canada, UK, and the EU).

²⁸ See B.R. Ambedkar, Speech in the Constituent Assembly (Dec. 17, 1946), reprinted in VII CONSTITUENT ASSEMBLY DEBATES 953 (1949) (describing the Constitution as an instrument of social transformation).

fundamental rights violations, and that ordinary civil courts could also provide relief where private parties violated fundamental rights.²⁹

C. The Minority Opinion and Critique:

The minority opinion raised significant doctrinal objections to the majority's reasoning. The minority noted that Articles 17, 23, and 24 are exceptional provisions that expressly operate against private parties precisely because they represent departures from the general vertical scheme and that these exceptions prove rather than disprove the general rule.³⁰³¹ The minority also questioned the majority's reliance on comparative jurisprudence, pointing out that the constitutional structures and legal traditions of Ireland, Germany, Canada, and the United Kingdom differ materially from the Indian constitutional scheme.³² In particular, the minority emphasised that the Indian Constitution contains a specific and elaborate mechanism for protecting rights against state action, i.e., Articles 32 and 226 and that transplanting doctrines developed in different constitutional contexts without adequate attention to structural differences risked doctrinal inconsistency.³³

Furthermore, the minority observed that the majority's ruling created significant uncertainty regarding the constitutional remedies available for fundamental rights violations by private parties. If a private individual violates one's fundamental right, the appropriate forum and the appropriate remedy remain unclear after *Kaushal Kishore*. Extending horizontal effect without clarifying the remedial framework may create more problems than it solves.³⁴³⁵

²⁹ *Kaushal Kishore*, (2023) 4 SCC 1, at 68–72 (majority opinion per Gavai, J.).

³⁰ *Id.* at ¶¶ 110–135 (Ramasubramanian, J., dissenting).

³¹ *Id.* at ¶ 118 (Ramasubramanian, J., dissenting) ('[T]he specific provisions of Articles 17, 23 and 24 are exceptions that prove the general rule of vertical application, and not the reverse.').

³² *Id.* at ¶¶ 122–129 (Ramasubramanian, J., dissenting) (cautioning against mechanical transplantation of doctrines from different constitutional traditions).

³³ INDIA CONST. art. 32; see also *Romesh Thappar v. State of Madras*, AIR 1950 SC 124, at ¶ 10 (India) (articulating the centrality of Article 32 to the constitutional scheme).

³⁴ H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 318–22 (4th ed. 1993) (discussing the scope and limits of writ jurisdiction under Articles 32 and 226).

V. Doctrinal Implications of the Kaushal Kishore Ruling

A. Erosion of the Public-Private Divide

Perhaps the most far-reaching implication of Kaushal Kishore is the potential erosion of the public-private divide in Indian law. The distinction between public and private, between the realm of the State and the realm of civil society, is foundational not only to constitutional law but to the entire structure of the legal system. Contract law, property law, tort law, family law, and criminal law have all been developed on the assumption that private actors are not directly bound by constitutional rights norms except where the legislature has specifically imposed such obligations. If private individuals are now directly bound by fundamental rights, the legal consequences could be profound. Could a private employer be sued for violating an employee's right to equality under Article 14? Could a private landlord be held liable for denying housing on grounds of religion under Article 15?³⁵ Could a private social media platform be challenged under Article 19 for restricting the free speech of its users? These questions, which were previously governed by ordinary law, now potentially carry constitutional dimensions that fundamentally alter the remedial landscape.

B. Implications for Constitutional Remedies

The expansion of horizontal application raises acute questions about constitutional remedies. Article 32 confers on the Supreme Court a guaranteed right to approach it for enforcement of fundamental rights, a right which Dr. B.R. Ambedkar described as the *heart and soul of the Constitution*. Article 226 confers parallel writ jurisdiction on High Courts. Both provisions have been historically understood to be directed against the 'State' as defined under Article 12.

After Kaushal Kishore, if fundamental rights can be violated by private actors, the question arises whether writs can be issued against private individuals under Articles 32 and 226. While there is historical precedent for writs like habeas corpus and mandamus operating against private persons in specific

³⁵ Kaushal Kishore, (2023) 4 SCC 1, at ¶ 75 (majority observing that 'ordinary civil courts' may also provide relief for fundamental rights violations by private parties).

³⁶ INDIA CONST. art. 15 (prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth).

circumstances, a general extension of writ jurisdiction to cover all fundamental rights violations by private parties would represent a significant jurisdictional expansion that the text of these provisions may not readily accommodate. The majority's observation that ordinary civil courts can also provide relief does not fully resolve this issue.

C. The Dilemma of Competing Rights:

Horizontal application introduces the complex problem of competing rights. When fundamental rights operate vertically, the rights of citizens are weighed against the interests of the State, and the constitutional framework, including the reasonable restrictions clauses in Articles 19(2) to 19(6) and the doctrine of proportionality, provides a structured framework for adjudication.³⁷ But when rights operate horizontally, the conflict is between the rights of one private party and the rights of another.³⁸ Consider, for example, the tension between the right to equality (Article 14) and the right to property (implicitly protected under Article 300-A).³⁹ A private property owner may have the right to determine whom to rent or sell to, while a potential tenant or buyer may have a right not to be discriminated against on grounds of religion, race, caste, sex, or place of birth under Article 15. When these rights collide, the Constitution, designed for vertical rights relations, provides no clear answer.

D. Impact on Existing Legislative Framework:

It is also necessary to consider how the *Kaushal Kishore* ruling interacts with the existing legislative framework for protecting rights against private parties. Parliament and State Legislatures have enacted a substantial body of anti-discrimination and rights-protective legislation, including the Protection of Civil Rights Act, 1955, the Scheduled Castes and Scheduled Tribes (Prevention

³⁷ INDIA CONST. art. 19(2)–19(6) (enumerating permissible restrictions on fundamental rights); see also *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India) (applying proportionality review to restrictions on fundamental rights).

³⁸ Gardbaum, *supra* note 16, at 428–35 (discussing the ‘competing rights’ problem in horizontal application).

³⁹ INDIA CONST. art. 300A (protecting property rights); see also *Jilubhai Nanbhai Khachar v. State of Gujarat*, AIR 1995 SC 142 (India) (on the post 44th Amendment status of the right to property).

of Atrocities) Act, 1989, the Sexual Harassment of Women at Workplace Act, 2013, and the Rights of Persons with Disabilities Act, 2016.⁴⁰ If fundamental rights are directly enforceable against private parties through constitutional courts, there is a risk of bypassing these legislative frameworks, either rendering them redundant or creating parallel and potentially inconsistent streams of adjudication. Determining the relationship between constitutional and statutory remedies needs to be carefully delineated by subsequent jurisprudence.⁴¹

VI. Assessing the Merit: Rights Brought Home or Welcoming Disarray?

A. The Case for Horizontal Application

There are compelling arguments in favour of the horizontal application of fundamental rights in the Indian context. *First*, the transformative nature of the Indian Constitution argues for an expansive reading. Unlike classical liberal constitutions that were primarily concerned with constraining governmental power, the Indian Constitution was designed to transform a society marked by deep inequalities of caste, class, gender, and religion.⁴² The ‘state action’ doctrine has historically been a tool of formalist reasoning that insulates private oppression from constitutional scrutiny, an outcome inconsistent with the Constitution’s emancipatory vision.⁴³

⁴⁰ Protection of Civil Rights Act, 1955, No. 22, Acts of Parliament, 1955 (India); Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India); Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India); Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016 (India).

⁴¹ Tushnet, *supra* note 23, at 94–100 (discussing the risk of judicial displacement of legislative frameworks through horizontal application).

⁴² GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 75–83 (1966) (describing the transformative character of the Indian Constitution and its departure from classical liberal constitutionalism).

⁴³ Satya Prateek, *Today’s Promise, Tomorrow’s Constitution: ‘Basic Structure’, Constitutional Transformations and the Future of Political Progress in India*, 1 NUJS L. REV. 417, 438–44 (2008).

Second, the increasing privatisation of public functions has dramatically expanded the space for private power to impinge on individual rights. In sectors such as education, healthcare, housing, telecommunications, and banking, private actors now exercise powers that were previously exercised by the State. Limiting constitutional protection to formal state action in this context would leave vast and growing domains of social life beyond the Constitution's reach, to the detriment of those least able to protect themselves through ordinary legal mechanisms.

Third, the specific provisions of Articles 17, 23, and 24 demonstrate that the Constitution's framers were alive to the possibility of rights violations by private parties and were prepared, in specific contexts, to impose constitutional obligations on private actors directly.⁴⁴ These provisions can be read not as isolated exceptions but as manifestations of a broader constitutional commitment to protecting individuals from powerful private actors.

B. The Case Against: Doctrinal and Practical Concerns:

Against these arguments, there are serious doctrinal and practical concerns that the *Kaushal Kishore* majority does not adequately address. The most fundamental objection is structural: the constitutional scheme for enforcement of fundamental rights, comprising Articles 32 and 226, was designed for a horizontal relationship between citizen and state. Extending this scheme to cover private parties without clear textual or structural support creates a mismatch between the right and its remedy.⁴⁵ There is also the concern that horizontal application without a clear doctrinal framework will produce legal uncertainty. Which fundamental rights operate horizontally? All of them, or only some? Does the answer vary with the nature of the private actor, a large corporation versus an individual, or the nature of the right violated? The majority's ruling does not provide clear answers to these questions, leaving their resolution to future litigation.

⁴⁴ INDIA CONST. art. 17; INDIA CONST. art. 23; INDIA CONST. art. 24. *See also* Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802 (India) (enforcing Article 23 directly against private employers).

⁴⁵ *Kaushal Kishore*, (2023) 4 SCC 1, at ¶¶ 130–135 (Ramasubramanian, J., dissenting) (raising concerns about the incompatibility of horizontal application with the existing remedial framework).

A further concern relates to the allocation of decision-making authority between courts and legislature. Determining the extent to which private actors should be bound by constitutional norms is fundamentally a policy question that requires consideration of competing values and interests across a wide range of social domains. This is precisely the kind of question that democratic deliberation, through legislation, is best placed to resolve.

C. A Middle Path: Indirect Horizontal Effect:

The doctrinal difficulties identified above suggest that a model of indirect horizontal effect, analogous to the German and Canadian approaches, may offer a more stable and legally coherent path forward. Under this model, fundamental rights would not create direct constitutional obligations on private parties but would instead constitute objective constitutional values that courts are required to take into account when interpreting and developing private law.⁴⁶ This approach preserves the state and non-state distinction, maintains the integrity of the constitutional remedies framework, respects the role of the legislature in defining rights obligations, and ensures that constitutional values nonetheless permeate the private sphere. It is also consistent with the broader comparative experience, which has largely favoured indirect over direct horizontal effect. Subsequent judicial elaboration of *Kaushal Kishore* that moves in this direction would be constitutionally more defensible than the direct horizontal model apparently endorsed by the majority.⁴⁷

VII. Conclusion:

The Supreme Court's decision in *Kaushal Kishore v. State of Uttar Pradesh* represents a significant, if controversial, development in Indian constitutional jurisprudence. By introducing the horizontal application of fundamental rights, the Constitution Bench has challenged one of the foundational assumptions of the constitutional scheme, the state/non-state distinction, and opened the door to

⁴⁶ Gardbaum, *supra* note 16, at 410–25 (comparing indirect and direct models of horizontal effect and arguing for the superiority of the indirect model).

⁴⁷ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 1168–75 (8th ed. 2018) (surveying post-*Kaushal Kishore* developments and the need for judicial elaboration of the indirect horizontal effect model).

a fundamentally different conception of the relationship between the Constitution and private law.

This paper has argued that while the case for extending constitutional protection beyond the vertical axis is compelling in principle, the manner in which the majority has done so raises serious doctrinal and practical concerns. The erosion of the public-private divide, the uncertainty regarding constitutional remedies, the problem of competing rights, and the risk of displacing legislative frameworks are all significant issues that the ruling does not adequately address. The minority's objections, while not ultimately persuasive in their entirety, correctly identify the structural tensions introduced by the majority's approach. At the same time, to retreat entirely from the horizontal dimension would be to ignore the realities of a society in which private power increasingly shapes the conditions of individual freedom and dignity. The resolution lies not in an all-or-nothing approach but in a careful, incremental development of indirect horizontal effect, allowing constitutional values to permeate private law without directly subjecting private actors to constitutional liability. This approach, which draws on the best of comparative experience and remains sensitive to the structural integrity of the Indian constitutional scheme, offers the most promising path for post-Kaushal Kishore jurisprudence.

The question posed by this paper, whether Kaushal Kishore brings rights home or welcomes disarray, admits of no simple answer. The decision has the potential to do both: to extend constitutional protection to domains previously insulated from it, while simultaneously introducing doctrinal uncertainties that may take decades to resolve. The responsibility now falls on the Supreme Court and the High Courts to elaborate the ruling in a manner that realises its emancipatory potential while preserving the coherence of India's constitutional architecture.