

PREFACE TO THE EDITION

The forthcoming issue of the **Indian Journal of Jurisprudence and Reviews (IJJR)** brings together a collection of incisive and policy-relevant scholarship addressing some of the most pressing constitutional and regulatory challenges in contemporary India. The contributions in this volume engage critically with themes of digital governance, civil liberties, criminal justice accountability, technological regulation, and fiscal federalism—areas that lie at the heart of India’s evolving constitutional democracy.

A prominent theme in this issue is the regulation of emerging digital and technological domains. The article on cross-border data flows and digital trade examines the tensions between data localization mandates under the Digital Personal Data Protection Act, 2023, competition law enforcement, and international trade obligations. By proposing a risk-based and interoperable regulatory framework, the study highlights the need to balance data sovereignty with innovation and global integration.

The constitutional dimensions of state power are further explored through an in-depth analysis of sedition law under Section 124A of the Indian Penal Code. Revisiting landmark jurisprudence and contemporary democratic standards, the article critically evaluates the compatibility of sedition provisions with Article 19(1)(a) and the broader commitment to free expression in a constitutional republic.

Human rights and accountability form another significant focus of this issue. The examination of custodial torture addresses the persistent gap between constitutional guarantees under Articles 20, 21, and 22 and the realities of enforcement. Through doctrinal and institutional analysis, the study proposes structural reforms aimed at strengthening transparency, accountability, and protection of individual liberty.

Technological governance is revisited in the article advocating a rights-based legal framework for artificial intelligence in India. By grounding AI regulation in constitutional principles of dignity, equality, and privacy, the study argues for algorithmic transparency, impact assessments, and enforceable safeguards that ensure technological progress does not undermine fundamental rights.

Finally, the issue offers a critical examination of Centre–State financial relations in the aftermath of the 15th Finance Commission. By analyzing vertical devolution, conditional grants, and fiscal centralization trends, the article raises important questions about the trajectory of cooperative federalism and the preservation of state autonomy within India’s constitutional structure.

Collectively, the scholarship presented in this issue reflects IJJR’s commitment to rigorous doctrinal analysis, comparative insight, and reform-oriented legal research. The articles not only interpret existing frameworks but also propose thoughtful pathways toward strengthening constitutional governance in a rapidly transforming socio-economic landscape.

We extend our sincere appreciation to the authors and reviewers whose scholarly contributions sustain the intellectual vitality of *IJJR*. We trust that this issue will stimulate meaningful academic dialogue and contribute to the continued evolution of Indian jurisprudence.

Dr.Sangeeta Taak
Chief Editor

CONTENTS

SL. NO	TITLE	AUTHOR	PAGE NO
1	Cross-Border Data Flows and Digital Trade: Challenges For Indian Law	Malavika J	1-4
2	Sedition Laws in India: Constitutional Viability	Binu Mole K	5-7
3	Custodial Torture and Accountability in India	Renuka. K. C	8-11
4	Regulating Artificial Intelligence in India: Need for a Rights-Based Legal Framework	Nithin J R	12-15
5	Federalism Erosion: Centre-State Finances Post-15th Finance Commission	Varsha P, Ch. Venkateswarlu	16-19



INDIAN JOURNAL OF JURISPRUDENCE AND REVIEWS (IJJR)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online:

ISSN Print



Cross-Border Data Flows and Digital Trade: Challenges For Indian Law

Malavika J

Assistant Professor, Kerala Law College, Kerala University, Kerala, India.

Article information

Received: 5th December 2025

Received in revised form: 7th January 2026

Accepted: 9th February 2026

Available online: 2nd March 2026

Volume: 2

Issue: 1

DOI: <https://doi.org/10.5281/zenodo.18831756>

Abstract

The proliferation of cross-border data flows has become integral to digital trade, yet poses significant regulatory challenges for Indian privacy and competition law frameworks. This paper examines the legal complexities arising from the intersection of data localization requirements under the Digital Personal Data Protection Act, 2023, and competition concerns regarding market dominance by Big Tech platforms. Through analysis of recent Competition Commission of India orders and evolving jurisprudence, this paper identifies critical tensions between data sovereignty imperatives and international trade obligations. The study demonstrates that India's current regulatory approach, while protective of domestic interests, may inadvertently create barriers to digital trade and innovation. This paper proposes a balanced framework that harmonizes privacy protection, competition enforcement, and trade facilitation through risk-based data governance mechanisms. The findings suggest that India must adopt internationally interoperable standards while preserving regulatory autonomy to effectively participate in the global digital economy.

Keywords: - Cross-border data flows, Data localization, Digital trade, Market dominance, Competition law

I. INTRODUCTION

Cross-border data flows have emerged as the lifeblood of the contemporary digital economy, facilitating global supply chains, cloud computing services, and international e-commerce transactions valued at trillions of dollars annually (Meltzer, 2019). For India, with its burgeoning digital economy projected to reach \$1 trillion by 2025, seamless data flows are critical for economic growth and technological advancement (MEITY, 2023). However, the unrestricted movement of personal and non-personal data across jurisdictions raises profound concerns regarding national sovereignty, individual privacy rights, and competitive market dynamics.

India's regulatory response has been characterized by a dual emphasis on data protection and competition enforcement. The Digital Personal Data Protection Act (DPDPA), 2023, represents India's most comprehensive attempt to regulate personal data processing, incorporating elements of both the European Union's General Data Protection Regulation and indigenous privacy principles derived from the Supreme Court's landmark *Puttaswamy* decision (*Puttaswamy v. Union of India*, 2017). Simultaneously, the Competition Commission of India (CCI) has increasingly scrutinized Big Tech platforms for allegedly leveraging data advantages to entrench market dominance and exclude competitors (*CCI v. Google LLC*, 2022).

This regulatory landscape creates inherent tensions. Data localization mandates, justified on privacy and security grounds, may conflict with international trade commitments under the World Trade Organization's General Agreement on Trade in Services (GATS) and bilateral agreements (Chander & Lê, 2015). Competition interventions targeting data-driven network effects may inadvertently discourage cross-border data sharing essential for artificial intelligence development and other innovations. These contradictions necessitate a systematic examination of how Indian law can reconcile competing imperatives.

This paper addresses three central questions:

- First, how do data localization requirements under Indian privacy law affect digital trade flows and international commerce?

- Second, what are the competition law implications of cross-border data transfers by dominant digital platforms?
- Third, what legal framework can harmonize privacy protection, competition enforcement, and trade facilitation?

Through doctrinal analysis supplemented by comparative perspectives, this paper proposes a balanced regulatory approach.

II. LEGAL AND REGULATORY FRAMEWORK

India's regulation of cross-border data flows operates through multiple, sometimes overlapping, legal instruments. The DPDPA, 2023, establishes the foundational framework for personal data protection, while sector-specific regulations impose additional constraints. The Competition Act, 2002, as amended, provides the CCI with broad powers to investigate anti-competitive practices involving data (Ministry of Law and Justice, 2023).

The DPDPA adopts a consent-based model for cross-border data transfers, requiring data fiduciaries to obtain explicit consent from data principals before transferring personal data to jurisdictions outside India (Section 16, DPDPA, 2023). This provision grants the Central Government authority to notify 'restricted countries' to which data transfers are prohibited, creating uncertainty for businesses engaged in international operations. The Act further mandates certain categories of data fiduciaries to maintain copies of personal data within Indian territory, though the specific categories remain subject to executive notification.

From a competition law perspective, the CCI has established that data constitutes a valuable economic asset and competitive advantage. In its investigation of Google's practices in the Android ecosystem, the CCI found that user data collected through bundled applications created significant barriers to entry, as competing platforms could not replicate the data advantages accumulated over time (CCI v. Google LLC, 2022). This jurisprudence signals that cross-border data flows by dominant entities may face heightened scrutiny where such flows reinforce market power.

India's international trade commitments present additional complexity. Under GATS Article XIV, India may adopt measures necessary to protect privacy, provided such measures are not arbitrary discrimination or disguised trade restrictions (Burri, 2017). The Regional Comprehensive Economic Partnership, which India declined to join, includes provisions on cross-border data flows that would have constrained data localization measures. India's current negotiating position in bilateral trade agreements emphasizes regulatory flexibility while resisting binding commitments on data flows (Ministry of Commerce, 2023).

III. CROSS-BORDER DATA FLOWS: PRIVACY AND TRADE TENSIONS

Data localization requirements, while ostensibly protective of privacy and national security, create substantial friction in digital trade. Empirical studies estimate that mandatory data localization reduces GDP by 0.7 to 1.7 percent in implementing countries, primarily through increased operational costs for businesses and reduced economies of scale (Bauer et al., 2016). For India, where digital services exports exceeded \$194 billion in 2022, these costs are significant.

The DPDPA's approach differs materially from the GDPR's adequacy framework. While the GDPR permits data transfers to jurisdictions deemed to provide adequate protection through European Commission decisions, India's notification-based restriction mechanism lacks clear standards or procedural safeguards (Greenleaf, 2024). This unpredictability deters foreign investment and complicates compliance for multinational corporations. Indian IT services firms, which rely on cross-border data flows to deliver services globally, have expressed concerns that reciprocal restrictions by trading partners could harm their competitive position.

Moreover, the efficacy of data localization in protecting privacy remains contested. Localization may enhance government access to data for surveillance purposes while doing little to prevent breaches or misuse by private actors (Selby, 2017). The Supreme Court in *Puttaswamy* emphasized proportionality in privacy restrictions, suggesting that blanket localization mandates may not satisfy constitutional scrutiny absent demonstrable necessity (Puttaswamy v. Union of India, 2017).

The legal uncertainty is compounded by the absence of implementing rules under the DPDPA. Critical issues including the definition of 'restricted countries,' specific data categories subject to localization, and exemptions for intra-group transfers remain unresolved. This regulatory vacuum forces businesses to adopt overly conservative compliance strategies, potentially foregoing beneficial cross-border collaborations (Kazim et al., 2023).

IV. COMPETITION LAW DIMENSIONS OF DATA FLOWS

The competition law analysis of cross-border data flows involves two distinct concerns: exclusionary conduct by dominant platforms and merger control in data-driven markets. The CCI's orders in Google Android and WhatsApp demonstrate evolving enforcement priorities (CCI v. Meta Platforms, 2023).

In the Google Android matter, the CCI found that Google leveraged its dominant position in app stores to impose requirements that app developers share user data, which Google then utilized across its ecosystem to strengthen network effects. The Commission held that such data aggregation practices constitute abuse under Section 4 of the Competition Act, particularly where they create barriers to market entry (CCI v. Google LLC, 2022). This precedent implies that cross-border data transfers facilitating such aggregation may face regulatory challenge.

The proposed amendments to the Competition Act introduce ex-ante regulations for 'Systemically Important Digital Enterprises' (SIDEs), which would restrict certain data practices including data portability limitations and interoperability refusals (Competition Amendment Bill, 2023). These provisions, inspired by the EU Digital Markets Act, could significantly affect how global platforms structure their data flows involving Indian users.

However, competition intervention in data markets presents analytical challenges. The traditional framework of defining relevant markets and assessing market power based on price effects fits poorly with zero-price digital services where

data serves as consideration (Ohlhausen & Okuliar, 2015). The CCI has begun to develop methodologies accounting for quality degradation, innovation suppression, and attention markets, but jurisprudence remains nascent (Poddar & Ghosh, 2023).

A further complication arises from the tension between competition enforcement and data protection. Remedies such as mandatory data sharing, intended to reduce entry barriers, may conflict with privacy principles limiting data processing and transfers. The CCI has acknowledged this tension but has not articulated clear principles for balancing competing values (CCI, 2024). International coordination mechanisms remain underdeveloped, creating risks of contradictory enforcement outcomes.

V. CRITICAL EVALUATION: SHORTCOMINGS AND CONTRADICTIONS

India's current approach to cross-border data governance suffers from three fundamental deficiencies: regulatory fragmentation, inadequate international coordination, and insufficient empirical grounding.

First, the multiplicity of regulatory frameworks creates compliance complexity and legal uncertainty. The Reserve Bank of India's data localization directive for payment systems, the Insurance Regulatory and Development Authority's requirements for insurance data, and the DPDPA's general framework operate independently without clear harmonization mechanisms (RBI, 2018). This sectoral fragmentation contradicts principles of regulatory coherence and proportionality.

Second, India's limited participation in international data governance initiatives isolates it from emerging global standards. The Cross-Border Privacy Rules system under APEC, the OECD Privacy Guidelines, and bilateral adequacy arrangements operate largely without Indian engagement. This isolation may prove counterproductive as trading partners increasingly condition market access on demonstrable data protection standards (Casalini & López González, 2019). The absence of bilateral mechanisms with major partners like the European Union and United States creates uncertainty for cross-border commerce.

Third, policy formulation has proceeded without adequate empirical assessment of costs and benefits. No comprehensive study has evaluated whether data localization measurably improves security outcomes or whether alternative measures such as encryption and breach notification could achieve similar objectives at lower economic cost. Similarly, competition interventions targeting data practices lack rigorous counterfactual analysis of effects on innovation and consumer welfare. Evidence-based policymaking requires systematic collection and analysis of market data, which remains inadequate in the Indian context.

VI. IMPLICATIONS AND RECOMMENDATIONS

Addressing these challenges requires a multi-dimensional reform agenda encompassing regulatory harmonization, international engagement, and institutional capacity building.

First, India should adopt a risk-based approach to data governance that calibrates restrictions to demonstrable harms rather than categorical prohibitions. This framework, advocated by international best practices, would classify data based on sensitivity and impose proportionate controls (UNCTAD, 2021). For instance, anonymized or aggregated data used for business analytics might flow freely, while biometric or health data could face stricter requirements. Such differentiation would reduce compliance costs while preserving protection for genuinely sensitive information.

Second, regulatory coordination mechanisms should be strengthened through establishment of an inter-ministerial body with authority to harmonize data governance policies across sectors. This body could develop unified standards for cross-border transfers, resolve conflicts between privacy and competition objectives, and ensure alignment with international commitments. The model of Australia's Consumer Data Right framework, which integrates privacy protection with competition-enhancing data portability, offers valuable lessons (Treasury of Australia, 2019).

Third, India should pursue strategic engagement with international data governance initiatives. Negotiating adequacy arrangements with the European Union would facilitate data flows with India's largest services export market. Participation in APEC's Cross-Border Privacy Rules system would demonstrate commitment to international standards while preserving domestic regulatory authority. These engagements need not require wholesale adoption of foreign frameworks but rather mutual recognition of substantially equivalent protections.

Fourth, competition law enforcement should develop data-specific analytical frameworks that account for multi-sided markets, network effects, and innovation dynamics. The CCI's proposed Digital Markets Unit should collaborate with international counterparts to develop common methodologies and coordinate investigations of global platforms. Regulatory sandboxes could enable controlled experimentation with data sharing remedies to assess effectiveness before widespread implementation.

VII. CONCLUSION

Cross-border data flows present India with a fundamental policy dilemma: how to protect legitimate interests in privacy and competition while enabling participation in the global digital economy. The current regulatory framework, characterized by data localization mandates and emerging competition interventions, reflects a cautious approach prioritizing sovereignty and control. However, this caution carries substantial costs in foregone economic growth, reduced innovation, and international isolation.

This paper has demonstrated that the tensions between privacy protection, competition enforcement, and trade facilitation are not insurmountable. A risk-based regulatory framework that differentiates data based on sensitivity, coupled with robust institutional coordination and strategic international engagement, can reconcile competing objectives. Such an approach would align with constitutional principles of proportionality established in *Puttaswamy* while positioning India as a credible rule-maker in global digital governance.

The path forward requires political will to resist protectionist pressures and embrace evidence-based policymaking. India's digital economy stakeholders from technology firms to civil society organizations must engage constructively in

shaping balanced regulations. International partners, particularly the European Union and United States, can facilitate this process through technical assistance and mutual recognition frameworks.

Future research should focus on empirical assessment of data governance policies' effects on innovation, investment, and welfare outcomes. Comparative analysis of different regulatory models, from the EU's rights-based approach to Singapore's business-friendly framework, can inform Indian policy development. As artificial intelligence and emerging technologies increase data's economic salience, the need for coherent cross-border data governance will only intensify. India's choices today will shape its digital future for decades to come.

REFERENCES

- Bauer, M., Ferracane, M. F., Kren, J., & van der Marel, E. (2016). *Tracing the economic impact of regulations on the free flow of data and data localization* (ECIPE Occasional Paper No. 2/2016). European Centre for International Political Economy.
- Burri, M. (2017). The regulation of data flows through trade agreements. *Georgetown Journal of International Law*, 48(2), 407–448.
- Casalini, F., & López González, J. (2019). *Trade and cross-border data flows* (OECD Trade Policy Papers No. 220). OECD Publishing.
- CCI v. Google LLC, Case No. 07 of 2020 (Competition Commission of India 2022).
- CCI v. Meta Platforms Inc., Case No. 13 of 2022 (Competition Commission of India 2023).
- Chander, A., & Lê, U. P. (2015). Data nationalism. *Emory Law Journal*, 64(3), 677–739.
- Competition Commission of India. (2024). *Market study on e-commerce in India*. CCI Market Studies Unit.
- Digital Personal Data Protection Act, 2023, No. 22 of 2023, India Code.
- Greenleaf, G. (2024). India's 2023 data protection act: Privacy setback or strategic evolution? *Computer Law & Security Review*, 52, 105932.
- Kazim, E., Denny, D. M., & Koshiyama, A. (2023). AI auditing and impact assessments: Towards a framework for digital regulation in India. *Computer Law & Security Review*, 48, 105790.
- Meltzer, J. P. (2019). Governing digital trade. *World Trade Review*, 18(S1), S23–S48.
- Ministry of Commerce and Industry. (2023). *India's approach to digital trade negotiations*. Department of Commerce.
- Ministry of Electronics and Information Technology. (2023). *India's trillion-dollar digital economy vision*. Government of India.
- Ministry of Law and Justice. (2023). *The Competition (Amendment) Bill, 2023* (Bill No. 131 of 2023). Government of India.
- Ohlhausen, M. K., & Okuliar, A. P. (2015). Competition, consumer protection, and the right (approach) to privacy. *Antitrust Law Journal*, 80(1), 121–156.
- Poddar, P., & Ghosh, S. (2023). Competition law and digital platforms in India: Emerging jurisprudence. *Journal of Antitrust Enforcement*, 11(2), 234–259.
- Puttaswamy v. Union of India, (2017) 10 SCC 1 (Supreme Court of India).
- Reserve Bank of India. (2018). *Storage of payment system data* (RBI Circular No. RBI/2017-18/153).
- Selby, J. (2017). Data localization laws: Trade barriers or legitimate responses to cybersecurity risks? *International Journal of Law and Information Technology*, 25(3), 213–232.
- Treasury of Australia. (2019). *Consumer data right: Overview*. Australian Government Treasury.
- United Nations Conference on Trade and Development. (2021). *Data protection and privacy legislation worldwide* (UNCTAD Policy Brief No. 109).



INDIAN JOURNAL OF JURISPRUDENCE AND REVIEWS (IJJR)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online:

ISSN Print



Sedition Laws in India: Constitutional Viability

Binu Mole K

Assistant Professor, School of Legal Studies, CUSAT, Kochi, Kerala, India.

Article information

Received: 6th December 2025

Received in revised form: 10th January 2026

Accepted: 11th February 2026

Available online: 2nd March 2026

Volume: 2

Issue: 1

DOI: <https://doi.org/10.5281/zenodo.18832907>

Abstract

This article examines the constitutional validity of sedition laws in India, specifically Section 124A of the Indian Penal Code, within the framework of democratic governance and fundamental rights. The provision, a colonial-era relic, has faced sustained criticism for its potential to suppress dissent and curtail freedom of speech. Through doctrinal analysis and jurisprudential examination, this paper evaluates the tension between sedition laws and Article 19(1)(a) of the Constitution, which guarantees freedom of speech and expression. The article analyzes landmark Supreme Court decisions, including *Kedar Nath Singh v. State of Bihar* (1962), which attempted to read down the provision to save it from constitutional invalidity. Contemporary challenges to sedition laws are assessed in light of democratic principles, international human rights standards, and recent judicial and legislative developments. The paper concludes that while the State has legitimate interests in protecting national security and public order, the current formulation of sedition law requires substantial reconsideration to align with constitutional values and democratic imperatives.

Keywords: - Sedition Law, Freedom Of Speech And Expression, Article 19, State Of Bihar, Public Order And National Security

I. INTRODUCTION

Section 124A of the Indian Penal Code, 1860, which defines and punishes sedition, stands as one of the most contentious provisions in Indian criminal law. Enacted during British colonial rule to suppress anti-colonial movements, the provision has survived post-independence India despite fundamental constitutional changes that established India as a sovereign democratic republic. The provision criminalizes acts that bring or attempt to bring into hatred or contempt, or excite disaffection toward the government established by law in India through words, signs, or visible representation (Indian Penal Code, 1860).

The constitutional validity of sedition law presents a fundamental tension between state security and individual liberty. Article 19(1)(a) of the Constitution guarantees all citizens the right to freedom of speech and expression, a cornerstone of democratic governance. However, this right is not absolute and is subject to reasonable restrictions under Article 19(2) in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, and incitement to an offense (Constitution of India, 1950). The challenge lies in determining whether sedition laws, as currently formulated and applied, constitute reasonable restrictions or impermissible encroachments upon fundamental freedoms.

This article undertakes a comprehensive examination of sedition laws through constitutional, historical, and jurisprudential lenses. The analysis proceeds through four principal sections: first, the historical evolution and constitutional framework of sedition law; second, the Supreme Court's jurisprudence and interpretive approaches; third, contemporary challenges and critiques; and fourth, the implications for democratic governance and potential reforms.

II. HISTORICAL EVOLUTION AND CONSTITUTIONAL FRAMEWORK

Section 124A was introduced in the Indian Penal Code in 1870, modeled on English sedition law, specifically

designed to suppress nationalist movements against British rule. The provision was strategically deployed against prominent freedom fighters including Bal Gangadhar Tilak, Mahatma Gandhi, and numerous independence activists (Nariman, 2013). The colonial administration utilized sedition charges to criminalize political dissent and suppress anti-imperial discourse.

During the Constituent Assembly debates, significant discussion centered on whether sedition laws should be retained in independent India. While the framers of the Constitution did not explicitly include sedition as a ground for restricting freedom of speech under Article 19(2), they incorporated 'public order' and 'security of the State' as permissible grounds for restrictions. The First Amendment to the Constitution in 1951 added 'public order' as a distinct ground, separate from general law and order, thereby enabling more nuanced restrictions on speech (Bhatia, 2016).

The constitutional framework establishes a three-tier analysis for restrictions on fundamental rights. First, any restriction must be imposed by law; second, it must serve one of the enumerated grounds under Article 19(2); and third, it must satisfy the test of reasonableness. The reasonableness doctrine, developed through judicial interpretation, requires a proportionality assessment between the restriction and the legitimate governmental objective (*Rajagopal Reddy v. State of Tamil Nadu*, 1974).

III. SUPREME COURT JURISPRUDENCE ON SEDITION

The constitutional validity of Section 124A was first challenged in *Romesh Thapar v. State of Madras* (1950), where the Supreme Court held that restrictions on freedom of speech in the interest of public safety were not permissible grounds under the original Article 19(2). This decision prompted the First Amendment, which introduced 'public order' as a constitutional ground for speech restrictions.

The landmark case of *Kedar Nath Singh v. State of Bihar* (1962) represents the Supreme Court's definitive constitutional interpretation of sedition law. The Court upheld the constitutional validity of Section 124A while reading it down substantially. The Court held that sedition is constitutionally valid only when speech or expression has the tendency or intention to create public disorder or incite violence. Mere criticism of government, however strong, does not constitute sedition unless accompanied by incitement to violence or intention to create public disorder. The Court emphasized the distinction between disloyalty to the government and disorder, noting that comments, however strongly worded, expressing disapprobation of government actions without exciting disorder or violence do not constitute sedition.

Subsequent jurisprudence has reinforced the *Kedar Nath* principles. In *Balwant Singh v. State of Punjab* (1995), the Supreme Court acquitted individuals who had raised pro-Khalistan slogans, holding that mere sloganeering without incitement to violence does not constitute sedition. The Court reiterated that to constitute sedition, the words or actions must be judged in the context of their tendency to create public disorder or incite violence.

In *Shreya Singhal v. Union of India* (2015), while addressing internet speech restrictions, the Supreme Court emphasized the importance of distinguishing between advocacy and incitement, discussion and instigation. The Court held that mere discussion or advocacy of a particular cause, however unpopular, cannot be prohibited unless it crosses into incitement to imminent lawless action. This standard, borrowed from American jurisprudence in *Brandenburg v. Ohio* (1969), provides a stringent test for speech restrictions.

IV. CONTEMPORARY CHALLENGES AND CRITIQUES

Despite the Supreme Court's interpretive safeguards in *Kedar Nath Singh*, the application of sedition law in practice has raised substantial concerns. Empirical analysis reveals a troubling pattern of sedition charges being filed against journalists, activists, students, and political dissenters for speech that falls squarely within constitutionally protected expression (Amnesty International India, 2016). The colonial-era provision continues to be invoked against critics of government policies, often without demonstrating the requisite nexus to violence or public disorder.

A critical problem lies in the procedural deployment of sedition charges. The mere registration of a sedition case, even if ultimately dismissed, produces significant chilling effects on free speech. The process itself becomes punishment, as individuals face arrest, detention, social stigma, and substantial legal costs regardless of ultimate conviction rates. Data indicates that conviction rates for sedition are remarkably low, suggesting that the provision is often misused for harassment rather than legitimate prosecution (National Crime Records Bureau, 2019).

The vagueness of terms such as 'disaffection' and 'hatred or contempt' toward government creates interpretive uncertainties that enable subjective and arbitrary application. While *Kedar Nath Singh* attempted to provide clarity, ground-level enforcement often diverges from constitutional standards. Police and lower courts frequently fail to apply the stringent tests mandated by the Supreme Court, resulting in sedition charges for peaceful protests, critical journalism, and academic discourse.

From a comparative constitutional perspective, numerous democratic nations have either repealed or substantially reformed their sedition laws. The United Kingdom, which originally inspired India's sedition provision, abolished its sedition law in 2009 as incompatible with modern democracy. Other Commonwealth jurisdictions including Australia and New Zealand have similarly narrowed or repealed sedition offenses. This international trend reflects growing recognition that sedition laws, even with judicial safeguards, pose structural risks to democratic discourse (Mehta, 2018).

The Law Commission of India, in its 279th Report, recommended that Section 124A be repealed or substantially amended to align with constitutional values. The Commission noted that the provision's colonial origins and potential for misuse outweigh its purported utility in maintaining public order, particularly given the availability of alternative legal provisions addressing violence and public disorder (Law Commission of India, 2018).

V. DEMOCRATIC IMPLICATIONS AND REFORM PROPOSALS

The preservation of sedition law in its current form poses fundamental challenges to democratic governance.

Democracy depends upon robust public discourse, including sharp criticism of governmental actions and policies. The threat of sedition prosecution, even if ultimately unsuccessful, creates a chilling effect that discourages citizens from exercising their constitutional right to criticize the government. This chilling effect undermines the deliberative foundations of democratic governance and distorts the marketplace of ideas essential to democratic accountability.

The distinction between government and State, emphasized in *Kedar Nath Singh*, remains crucial. Democratic theory distinguishes between loyalty to the State (a constitutional and territorial entity) and support for the government (the current political administration). Criticism of government policies or actions should not be conflated with disloyalty to the State or nation. Sedition law, however, risks collapsing this distinction by treating strong criticism of government as potential sedition.

Reform proposals vary in scope and approach. One proposal advocates complete repeal of Section 124A on the grounds that existing provisions of the Indian Penal Code adequately address genuine threats to public order and national security. Offenses such as waging war against India (Section 121), promoting enmity between groups (Section 153A), and unlawful assembly (Section 141-149) provide legal tools for prosecuting violence and public disorder without criminalizing dissent.

Alternative reform approaches suggest retaining a narrowly tailored sedition provision that explicitly incorporates the *Kedar Nath* standards into the statutory language. Such reformulation would require demonstration of direct incitement to imminent violence or public disorder, thereby reducing interpretive discretion and preventing misuse. Procedural safeguards, such as requiring high-level authorization for sedition prosecutions or mandatory judicial review before proceeding with charges, could mitigate arbitrary application.

The balancing of security interests with freedom of expression requires recognition that democracy itself constitutes a security interest. A vibrant democracy depends upon citizens' ability to freely criticize government without fear of criminal prosecution. While the State has legitimate interests in maintaining public order and national security, these interests must be pursued through means that minimize infringement upon fundamental rights. The principle of proportionality demands that restrictions be no broader than necessary to achieve legitimate governmental objectives.

VI. CONCLUSION

The constitutional viability of sedition law in India remains contested terrain between legitimate state security interests and fundamental freedoms essential to democratic governance. While the Supreme Court in *Kedar Nath Singh* attempted to reconcile sedition law with constitutional values through interpretive narrowing, the practical application of the provision continues to raise serious concerns about its compatibility with democratic principles and freedom of expression.

The colonial origins of Section 124A, designed explicitly to suppress democratic aspirations, sit uneasily with India's constitutional commitment to democratic governance and fundamental rights. The pattern of misuse, low conviction rates, and chilling effects on public discourse suggest that the provision's costs to democratic values outweigh its purported benefits to public order and national security.

This article concludes that substantial reform is imperative. Whether through complete repeal or fundamental reformulation with stringent procedural safeguards, sedition law must be reconsidered to align with constitutional values and democratic imperatives. Alternative legal provisions adequately address genuine threats to public order and national security without criminalizing dissent. The path forward requires recognizing that robust protection of free speech, including sharp criticism of government, strengthens rather than weakens democratic governance and national security.

As India continues its democratic journey, the retention of colonial-era sedition law represents an anachronism that demands urgent legislative attention. The choice facing Indian democracy is clear: either embrace the full implications of constitutional freedoms by repealing or radically reforming sedition law, or risk perpetuating a legal framework that undermines the very democratic values the Constitution seeks to protect.

REFERENCES

- Amnesty International India. (2016). *Punishing dissent: How sedition law is being misused to silence critics*. Amnesty International.
- Balwant Singh v. State of Punjab, 3 SCC 214 (Supreme Court of India, 1995).
- Bhatia, G. (2016). *Offend, shock, or disturb: Free speech under the Indian Constitution*. Oxford University Press.
- Brandenburg v. Ohio, 395 U.S. 444 (U.S. Supreme Court, 1969).
- Constitution of India. (1950). Government of India.
- Indian Penal Code, Act No. 45 of 1860 (Government of India).
- Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955 (Supreme Court of India, 1962).
- Law Commission of India. (2018). *Hate speech* (Report No. 267). Government of India.
- Mehta, P. B. (2018). Sedition law and free speech: Comparative perspectives. *Journal of Indian Law and Society*, 9(2), 45–68.
- Nariman, F. S. (2013). *India's legal system: Can it be saved?* Penguin Books India.
- National Crime Records Bureau. (2019). *Crime in India*. Ministry of Home Affairs, Government of India.
- Rajagopal Reddy v. State of Tamil Nadu, 4 SCC 67 (Supreme Court of India, 1974).
- Romesh Thapar v. State of Madras, AIR 1950 SC 124 (Supreme Court of India, 1950).
- Shreya Singhal v. Union of India, 5 SCC 1 (Supreme Court of India, 2015).

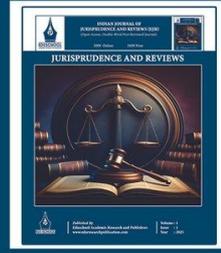


INDIAN JOURNAL OF JURISPRUDENCE AND REVIEWS (IJJR)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online:

ISSN Print



Custodial Torture and Accountability in India

Renuka. K. C

Associate Professor, Department Of Sanskrit Nyaya, Sree Sankaracharya University of Sanskrit, Kalady, Kerala, India.

Article information

Received: 9th December 2025

Received in revised form: 13th January 2026

Accepted: 16th February 2026

Available online: 2nd March 2026

Volume:2

Issue: 1

DOI: <https://doi.org/10.5281/zenodo.18833797>

Abstract

Custodial torture remains a pervasive concern in India despite constitutional prohibitions and statutory safeguards. This article evaluates the effectiveness of legal mechanisms designed to prevent custodial violence and ensure accountability. Examining Supreme Court jurisprudence, statutory provisions under the Code of Criminal Procedure, and institutional frameworks such as the National Human Rights Commission, this study identifies critical gaps between legal theory and implementation. Analysis reveals that while India possesses a robust normative framework including protections under Articles 20(3), 21, and 22 of the Constitution enforcement remains inconsistent due to institutional deficiencies, evidentiary challenges, and a culture of impunity. The article argues that reforming accountability mechanisms requires comprehensive police reforms, mandatory video recording of interrogations, witness protection, and expedited prosecution of custodial crimes. Drawing on comparative jurisdictions and empirical data, this study provides recommendations for strengthening India's legal safeguards against custodial torture while balancing legitimate law enforcement concerns.

Keywords: - Custodial Torture, Article 21, National Human Rights Commission, Police Reforms, Accountability Mechanisms

I. INTRODUCTION

Custodial torture represents one of the most egregious violations of human dignity and constitutional rights in democratic societies. In India, despite explicit constitutional prohibitions and ratification of international conventions such as the United Nations Convention Against Torture (CAT), custodial violence persists as a systemic problem within law enforcement institutions (Narula, 2010). The National Human Rights Commission (NHRC) Annual Report 2022-23 documented 1,731 deaths in police custody and 503 deaths in judicial custody, highlighting the magnitude of this crisis (NHRC, 2023). These statistics represent not merely isolated incidents but symptomatic failures of accountability mechanisms designed to safeguard fundamental rights.

The Supreme Court of India has consistently recognized custodial torture as a violation of Article 21 (right to life and personal liberty) and has developed extensive jurisprudence establishing compensation remedies and procedural safeguards (Nilabati Behera v. State of Orissa, 1993; D.K. Basu v. State of West Bengal, 1997). However, the persistent gap between judicial pronouncements and ground-level implementation raises fundamental questions about the effectiveness of India's legal framework in preventing custodial torture and ensuring accountability for perpetrators.

This article critically evaluates the existing legal safeguards against custodial torture in India, examining constitutional provisions, statutory mechanisms, and institutional frameworks. It analyzes the structural deficiencies that undermine accountability and proposes reforms necessary to bridge the implementation gap.

II. CONCEPTUAL FRAMEWORK AND LEGAL FOUNDATIONS

2.1. Constitutional Safeguards

The Indian Constitution provides multiple layers of protection against custodial torture. Article 20(3) guarantees the right against self-incrimination, Article 21 protects life and personal liberty, and Article 22 ensures rights of arrested persons including legal representation and production before a magistrate within 24 hours (Mathews, 2018). The Supreme Court's

expansive interpretation of Article 21 in *Maneka Gandhi v. Union of India* (1978) established that any deprivation of personal liberty must satisfy requirements of fairness, reasonableness, and non-arbitrariness.

Significantly, the Court has recognized custodial torture as a violation of human dignity that is incompatible with constitutional values. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981), Justice Bhagwati observed that the right to life includes the right to live with human dignity, encompassing protection from torture and cruel, inhuman, or degrading treatment. This interpretative framework provides constitutional foundations for comprehensive safeguards against custodial violence.

2.2. International Law Obligations

Although India has not ratified the Convention Against Torture, it has ratified the International Covenant on Civil and Political Rights (ICCPR), which prohibits torture under Article 7 (Sen, 2017). The Supreme Court has consistently held that international human rights norms form part of domestic law and must inform the interpretation of fundamental rights (*Vishaka v. State of Rajasthan*, 1997). However, India's failure to enact comprehensive anti-torture legislation implementing CAT standards represents a critical gap in its normative framework, despite multiple Law Commission recommendations (Law Commission of India, 2017).

III. EXISTING LEGAL SAFEGUARDS AGAINST CUSTODIAL TORTURE

3.1. Judicial Safeguards: D.K. Basu Guidelines

The landmark judgment in *D.K. Basu v. State of West Bengal* (1997) established comprehensive procedural safeguards to prevent custodial torture. These include mandatory arrest memos, information to family members, right to legal counsel, medical examination within 48 hours, and maintenance of custody records (Muralidhar, 2012). The Court declared these requirements as law under Article 141 and held that failure to comply would constitute contempt of court and entitle victims to compensation.

Subsequently, in *Paramvir Singh Saini v. Baljit Singh* (2020), the Supreme Court expanded these safeguards by mandating video recording of interrogations in serious offenses, recognition that technology can enhance transparency and accountability. However, implementation of these guidelines remains inconsistent across jurisdictions, with compliance varying significantly between states (Human Rights Watch, 2019).

3.2. Statutory Mechanisms Under CrPC

The Code of Criminal Procedure, 1973 (CrPC) provides several safeguards including mandatory medical examination of arrested persons (Section 54), production before magistrate within 24 hours (Section 57), and prohibition of custodial interrogation beyond specified periods (Sections 167 and 309). Section 176(1A), inserted in 2005, mandates judicial inquiry by magistrates into all custodial deaths. These provisions aim to create procedural checks against abuse of police power and ensure judicial oversight of detention (Chandra, 2016).

Section 330 of the Indian Penal Code (IPC) criminalizes voluntary causing hurt to extort confession, while Section 348 addresses wrongful confinement to extort confession. However, prosecutions under these provisions remain rare, and conviction rates are dismally low, indicating systemic failures in enforcement (Commonwealth Human Rights Initiative, 2018).

3.3. Institutional Mechanisms: NHRC and State Commissions

The Protection of Human Rights Act, 1993 established the National Human Rights Commission (NHRC) with mandate to investigate human rights violations including custodial torture. The Commission's Guidelines on Custodial Deaths and Torture (1993) require mandatory reporting of custodial deaths within 24 hours and suo moto inquiry capabilities (NHRC, 1993). However, the NHRC's effectiveness is limited by lack of enforcement powers, dependence on government cooperation, and inability to investigate incidents beyond one year (Kothari, 2014). State Human Rights Commissions similarly face resource constraints and limited autonomy, undermining their capacity to ensure accountability.

IV. CRITICAL EVALUATION OF EFFECTIVENESS

4.1. Implementation Deficits

Despite comprehensive legal frameworks, implementation remains severely deficient. A study by the Commonwealth Human Rights Initiative (2018) found that D.K. Basu guidelines are violated in approximately 70% of arrests, with arrest memos rarely prepared and family members infrequently notified. Medical examinations, when conducted, are often perfunctory and fail to document injuries properly. The persistent gap between legal mandates and police practice reflects institutional resistance, inadequate training, and absence of effective monitoring mechanisms (Verma, 2020).

Magistrates' failure to exercise oversight responsibilities exacerbates these deficits. Routine mechanical remand orders without meaningful inquiry into custody conditions enable continuation of custodial violence. The Supreme Court's criticism of such practices in *Arnesh Kumar v. State of Bihar* (2014) highlighted that magistrates often function as rubber stamps rather than independent judicial officers safeguarding liberty.

4.2. Structural Impunity and Evidentiary Challenges

Prosecution of custodial torture faces formidable obstacles rooted in structural factors. Section 197 CrPC requirement of sanction for prosecution of public servants creates procedural barriers that delays justice and protects perpetrators (Kumar, 2019). Governments routinely refuse sanction, citing insufficient evidence or claiming acts were performed in discharge of

official duty. This requirement, originally intended to protect officers from frivolous prosecution, has evolved into a shield for impunity.

Evidentiary challenges compound these difficulties. Custodial torture typically occurs in isolation, with police controlling evidence and witnesses. Medical evidence is often compromised through delayed examinations or pressure on doctors. Victims and witnesses face intimidation, making testimony unreliable. The burden of proof on victims, combined with systemic bias favoring police testimony, creates nearly insurmountable barriers to accountability (Amnesty International India, 2016).

4.3. Comparative Perspectives

Comparative analysis with other common law jurisdictions reveals India's accountability deficit. The United Kingdom's Independent Police Complaints Commission provides independent investigation of serious incidents, while the United States employs special prosecutors and federal oversight mechanisms for civil rights violations (Newburn & Reiner, 2012). These jurisdictions demonstrate that effective accountability requires institutional independence, adequate resources, and political will elements largely absent in India's current framework. The failure to establish independent police accountability mechanisms recommended by multiple police reform commissions reflects political resistance to meaningful change (National Police Commission, 1981; Padmanabhaiah Committee, 2000).

V. RECOMMENDATIONS FOR STRENGTHENING ACCOUNTABILITY

First, enactment of comprehensive anti-torture legislation defining torture, establishing criminal liability, and eliminating procedural barriers to prosecution is essential. The Prevention of Torture Bill should be revived with provisions ensuring that torture is non-derogable, establishing command responsibility, and removing sanction requirements for prosecution (Law Commission of India, 2017).

Second, mandatory audio-visual recording of interrogations in all cases should be implemented with tamper-proof systems and penalties for non-compliance. Technology provides verifiable evidence that can simultaneously protect accused persons from torture and shield police from false allegations (Kassin et al., 2010).

Third, establishment of independent police complaints authorities at state and national levels with statutory powers to investigate, prosecute, and impose disciplinary sanctions is crucial. Such bodies must possess financial autonomy, investigative resources, and authority to access police facilities without prior permission (Menon, 2013).

Fourth, witness protection mechanisms must be strengthened to encourage testimony. The existing Witness Protection Scheme (2018) should be given statutory status with adequate funding and robust protection measures including relocation, identity protection, and security arrangements.

Fifth, police training curricula must incorporate human rights education, stress management, and alternative interrogation techniques. Shifting organizational culture from confession-oriented investigation to evidence-based policing requires sustained investment in professional development and accountability systems rewarding ethical conduct.

VI. CONCLUSION

India's legal framework against custodial torture, while normatively robust in constitutional and judicial domains, suffers from critical implementation deficits that perpetuate a culture of impunity. The persistent gap between legal safeguards and ground-level reality reflects systemic failures in institutional accountability, procedural enforcement, and political will. Constitutional guarantees and Supreme Court guidelines remain largely symbolic without fundamental reforms addressing structural impediments to accountability.

Effective reform requires coordinated interventions: legislative action establishing comprehensive anti-torture provisions, technological solutions ensuring transparency, independent oversight mechanisms with enforcement authority, witness protection frameworks, and cultural transformation within police institutions. Only through such multifaceted approach can India bridge the implementation gap and transform its constitutional commitment to human dignity from aspiration into reality. The persistence of custodial torture represents not merely a law enforcement problem but a fundamental challenge to constitutional governance and rule of law that demands urgent and sustained attention from all stakeholders in the criminal justice system.

REFERENCES

- Amnesty International India. (2016). *Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir*. Amnesty International.
- Armesh Kumar v. State of Bihar, (2014) 8 SCC 273 (India).
- Chandra, U. (2016). Liberalism and its other: The politics of primitivism in colonial and postcolonial Indian law. *Law & Society Review*, 50(3), 775–809.
- Commonwealth Human Rights Initiative. (2018). *Police accountability: Too important to neglect, too urgent to delay*. CHRI.
- D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 (India).
- Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608 (India).
- Human Rights Watch. (2019). *Bound by brotherhood: India's failure to end killings in police custody*. Human Rights Watch.
- Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior*, 34(1), 3–38.
- Kothari, J. (2014). The future of national human rights institutions: Effectiveness and the role of the state. In A. S. Heller-Roazen (Ed.), *Human rights in the twentieth century* (pp. 259–285). Cambridge University Press.
- Kumar, R. (2019). Police accountability and reform in India. *Indian Journal of Criminology and Criminalistics*, 40(1), 65–89.
- Law Commission of India. (2017). *Report No. 273: Implementation of the "United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment" through legislation*. Government of India.

- Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).
- Mathews, P. (2018). Constitutional law and the rights of the accused in India. *Delhi Law Review*, 42(2), 112–138.
- Menon, N. R. M. (2013). Police reforms in India: An overview. *Journal of the Indian Law Institute*, 55(3), 351–371.
- Muralidhar, S. (2012). Judicial enforcement of rights in the context of custodial torture. In A. P. Simester et al. (Eds.), *Crime, proof and punishment: Essays in memory of Sir Rupert Cross* (pp. 189–212). Butterworths.
- Narula, S. (2010). India: Impunity for torture continues. *Economic and Political Weekly*, 45(39), 14–17.
- National Human Rights Commission. (1993). *Guidelines on arrest and custodial deaths*. NHRC.
- National Human Rights Commission. (2023). *Annual report 2022–2023*. NHRC.
- National Police Commission. (1981). *Third report*. Government of India.
- Newburn, T., & Reiner, R. (2012). Policing and the police. In M. Maguire, R. Morgan, & R. Reiner (Eds.), *The Oxford handbook of criminology* (5th ed., pp. 806–837). Oxford University Press.
- Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 (India).
- Padmanabhaiah Committee. (2000). *Report of the committee on police reforms*. Government of India.
- Paramvir Singh Saini v. Baljit Singh, (2020) 17 SCC 366 (India).
- Sen, S. (2017). Torture and the law in India. *Asian Journal of Criminology*, 12(4), 285–302.
- Verma, A. (2020). Police and policing reforms in India. In J. W. E. Sheptycki & A. Wardak (Eds.), *Transnational and comparative criminology* (2nd ed., pp. 412–431). Routledge.
- Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India).

Case Law

- Armesh Kumar v. State of Bihar, (2014) 8 SCC 273.
- D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
- Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
- Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
- Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.
- Paramvir Singh Saini v. Baljit Singh, (2020) 17 SCC 366.
- Vishaka v. State of Rajasthan, (1997) 6 SCC 241.



INDIAN JOURNAL OF JURISPRUDENCE AND REVIEWS (IJJR)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online:

ISSN Print



Regulating Artificial Intelligence in India: Need for a Rights-Based Legal Framework

Nithin J R

Research Scholar, School of Law, VELS University, VISTAS, Chennai, India.

Article information

Received: 11th December 2025

Received in revised form: 15th January 2026

Accepted: 18th February 2026

Available online: 2nd March 2026

Volume: 2

Issue: 1

DOI: <https://doi.org/10.5281/zenodo.18858671>

Abstract

The rapid proliferation of artificial intelligence (AI) technologies in India presents unprecedented challenges to constitutional rights and individual freedoms. While India has emerged as a significant player in AI development and deployment, the absence of a comprehensive legal framework leaves fundamental rights vulnerable to algorithmic decision-making systems. This paper examines the urgent need for a rights-based regulatory framework for AI in India, analyzing the inadequacies of existing legal mechanisms and proposing a constitutional approach grounded in the protection of fundamental rights. Drawing upon comparative analysis of regulatory models from the European Union and recent jurisprudential developments in India, this paper argues that AI regulation must prioritize human dignity, equality, and privacy as foundational principles. The proposed framework advocates for transparent algorithmic accountability, mandatory impact assessments, and enforceable rights of explanation and contestation, ensuring that technological advancement does not compromise constitutional guarantees.

Keywords: - Fundamental Rights, Article 21, Human Dignity, Responsible AI, Impact Assessments, Transparency

I. INTRODUCTION

Artificial intelligence has transformed from a theoretical construct to a pervasive reality that shapes critical aspects of human existence. In India, AI systems increasingly govern decisions affecting employment, credit allocation, criminal justice, healthcare access, and social welfare distribution. The National Strategy for Artificial Intelligence, released by NITI Aayog (2018), envisions AI as a transformative force for economic growth and social development. However, this optimistic vision has not been accompanied by corresponding legal safeguards to protect fundamental rights guaranteed under the Constitution of India.

The constitutional framework established by the founding fathers did not anticipate algorithmic governance. Yet, the principles enshrined in Part III of the Constitution particularly the rights to equality (Article 14), life and personal liberty (Article 21), and freedom of speech and expression (Article 19) remain relevant and must be interpreted expansively to address digital age challenges. The Supreme Court of India's landmark judgment in *Justice K.S. Puttaswamy v. Union of India* (2017) recognized privacy as a fundamental right, creating constitutional foundations for data protection. However, the decision's implications for AI governance remain underexplored in Indian jurisprudence.

This paper contends that India requires a comprehensive, rights-based legal framework for AI regulation that goes beyond sectoral approaches and data protection measures. The argument proceeds in four parts:

- First, examining the current regulatory landscape;
- Second, identifying fundamental rights challenges posed by ai;
- Third, proposing a rights-based framework grounded in constitutional principles; and fourth, offering specific recommendations for legislative and institutional reform.

II. THE CURRENT AI REGULATORY LANDSCAPE IN INDIA

India's approach to AI regulation remains fragmented and reactive. The Digital Personal Data Protection Act, 2023

(DPDPA) represents the most significant legislative intervention in digital governance, yet it addresses AI tangentially rather than comprehensively. While the DPDPA establishes principles for data processing, it does not specifically regulate algorithmic decision-making or impose obligations on AI systems that make consequential decisions affecting individuals (Srikrishna Committee, 2018).

NITI Aayog's Responsible AI Strategy (2021) offers ethical principles for AI development, emphasizing safety, reliability, equality, inclusivity, privacy, security, and transparency. However, these remain advisory rather than legally enforceable standards. The absence of statutory backing renders these principles aspirational, lacking mechanisms for implementation, compliance monitoring, or remedy for violations.

Sectoral regulations provide limited oversight in specific domains. The Reserve Bank of India established a committee in December 2024 to develop a Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREE-AI) in financial services. Similarly, the Ministry of Electronics and Information Technology has proposed frameworks for responsible AI deployment in government services. Yet these sectoral approaches create regulatory gaps, particularly for AI applications in critical areas such as employment, education, and criminal justice, where algorithmic decisions can profoundly impact fundamental rights (Srikanth, 2023).

III. FUNDAMENTAL RIGHTS CHALLENGES POSED BY AI

AI systems threaten constitutional rights in multifaceted ways. The right to equality under Article 14 faces particular vulnerability. Algorithmic bias, often embedded in training data reflecting historical discrimination, can perpetuate and amplify existing inequalities (Barocas & Selbst, 2016). Studies have documented discriminatory outcomes in AI-driven hiring platforms, credit scoring systems, and predictive policing tools. The Supreme Court's expanded interpretation of Article 14 to prohibit arbitrary state action in *E.P. Royappa v. State of Tamil Nadu* (1974) demands scrutiny of algorithmic decision-making for arbitrary or discriminatory outcomes.

The right to privacy, now recognized as fundamental in *Puttaswamy* (2017), encompasses informational privacy, decisional autonomy, and dignity. AI systems that process vast quantities of personal data for behavioral prediction and profiling threaten all three dimensions. The Court's four-fold test for privacy invasion legality, legitimate aim, proportionality, and procedural safeguards provides a constitutional framework for evaluating AI deployments (Bhatia, 2019).

Article 21's guarantee of life and personal liberty extends to various unenumerated rights including the right to livelihood, human dignity, and fair procedure. Automated decision-making in employment, particularly algorithmic hiring and performance evaluation systems, implicates livelihood rights. The lack of transparency in algorithmic processes denies individuals fair procedure a core Article 21 requirement articulated in *Maneka Gandhi v. Union of India* (1978). Human dignity, central to the constitutional vision, faces erosion when individuals become subjects of opaque algorithmic classifications and predictions beyond their understanding or control.

IV. COMPARATIVE PERSPECTIVES: THE EU AI ACT AS A MODEL

The European Union's Artificial Intelligence Act (2024) offers valuable insights for India's regulatory framework. The Act adopts a risk-based approach, categorizing AI systems by their potential impact on fundamental rights and safety (European Parliament, 2024). High-risk AI systems those affecting employment, education, law enforcement, and essential services face stringent requirements including transparency obligations, human oversight, accuracy standards, and cybersecurity measures.

Particularly relevant for India is the Act's prohibition of AI systems that manipulate human behavior, exploit vulnerabilities, or enable social scoring by public authorities. These prohibitions recognize that certain AI applications are fundamentally incompatible with human rights and democratic values (Veale & Borgesius, 2021). The enforcement mechanism, empowering national supervisory authorities with investigative and corrective powers, provides a template for institutional design.

However, India must adapt rather than adopt the EU model. Constitutional context, developmental priorities, and institutional capacities differ significantly. India's federal structure necessitates coordination between Central and State authorities. Resource constraints require graduated implementation timelines. Yet the EU Act's fundamental premise that AI regulation must center on human rights protection resonates with India's constitutional commitments.

V. PROPOSED RIGHTS-BASED FRAMEWORK FOR INDIA

A rights-based AI regulatory framework for India should be anchored in constitutional principles while addressing practical implementation challenges. The framework must establish substantive rights, procedural safeguards, and institutional mechanisms for enforcement.

First, the framework must recognize explicit rights for individuals subjected to AI systems. These include:

- The right to be informed when decisions affecting them are made by AI;
- The right to meaningful explanation of algorithmic decisions;
- The right to human review of consequential automated decisions;
- The right to contest and seek correction of AI-driven outcomes; and
- The right to opt-out of automated decision-making in contexts affecting fundamental rights (Kaminski, 2019). These rights translate constitutional guarantees into actionable protections in the AI context.

Second, AI system developers and deployers must bear obligations ensuring rights protection. Mandatory algorithmic impact assessments should be required for high-risk AI applications, evaluating potential effects on fundamental rights before deployment. These assessments must address bias risks, privacy implications, and fairness concerns, with findings made

accessible to affected communities and regulatory authorities (Reisman et al., 2018). Developers must maintain comprehensive documentation of AI system design, training data, and decision-making logic, enabling meaningful oversight and accountability.

Third, transparency requirements must balance legitimate interests in algorithmic explainability with trade secret protections. The framework should mandate disclosure of:

- Factors and logic underlying automated decisions;
- Data sources and quality measures;
- Known limitations and error rates; and
- Human oversight mechanisms.

This information must be provided in accessible formats, recognizing that technical complexity should not shield AI systems from scrutiny.

VI. INSTITUTIONAL ARCHITECTURE AND IMPLEMENTATION

Effective AI regulation requires robust institutional mechanisms. India should establish an independent AI Regulatory Authority with powers to:

- Develop and enforce technical standards for AI systems;
- Conduct investigations into rights violations;
- Impose penalties for non-compliance;
- Maintain a public registry of high-risk AI systems; and
- Coordinate with sectoral regulators.

The Authority's composition should ensure technical expertise, legal competence, and representation from civil society and affected communities.

Judicial capacity building constitutes another critical element. Courts must develop expertise in adjudicating AI-related rights claims. This requires specialized training programs, appointment of technical experts as assessors, and development of evidentiary standards for algorithmic audits and bias detection. The framework should clarify burden of proof allocation, recognizing that information asymmetries favor AI system operators (Pasquale, 2015).

Public participation mechanisms must ensure affected communities shape regulatory development. The framework should mandate public consultations on proposed AI deployments in government services, establish grievance redressal mechanisms accessible to marginalized populations, and create pathways for civil society oversight of algorithmic systems. India's experience with public interest litigation provides a foundation for innovative procedural mechanisms enabling collective challenges to rights-violating AI systems.

VII. CONCLUSION

The imperative for rights-based AI regulation in India stems not from technophobia but from constitutional fidelity. The transformative potential of AI need not conflict with fundamental rights protection; indeed, sustainable AI innovation requires public trust grounded in robust rights safeguards. The proposed framework seeks to operationalize constitutional principles in the algorithmic age, ensuring that technological advancement serves rather than subverts democratic values.

India stands at a critical juncture. The choices made today regarding AI governance will shape the relationship between technology, rights, and democracy for generations. A comprehensive, rights-based legal framework grounded in constitutional principles, informed by comparative insights, and attuned to India's unique context can position India as a global leader in responsible AI governance. The alternative regulatory drift and reactive measures risks entrenching algorithmic systems that undermine the constitutional vision of justice, liberty, equality, and fraternity. The Constitution's promise cannot be fulfilled if fundamental rights remain vulnerable to the vicissitudes of algorithmic decision-making. Now is the time for legislative and institutional action to ensure that artificial intelligence serves the people of India within a framework that honors their constitutional rights and human dignity.

REFERENCES

- Barocas, S., & Selbst, A. D. (2016). Big data's disparate impact. *California Law Review*, 104(3), 671–732.
- Bhatia, G. (2019). *The transformative Constitution: A radical biography in nine acts*. HarperCollins India.
- Digital Personal Data Protection Act, 2023, No. 22 of 2023 (India).
- E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555 (India).
- European Parliament. (2024). *Regulation (EU) 2024/1689 on Artificial Intelligence*. Official Journal of the European Union.
- Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).
- Kaminski, M. E. (2019). The right to explanation, explained. *Berkeley Technology Law Journal*, 34(1), 189–218.
- Maneka Gandhi v. Union of India, AIR 1978 SC 597 (India).
- NITI Aayog. (2018). *National strategy for artificial intelligence*. Government of India.
- NITI Aayog. (2021). *Responsible AI: Principles for artificial intelligence*. Government of India.
- Pasquale, F. (2015). *The black box society: The secret algorithms that control money and information*. Harvard University Press.
- Reisman, D., Schultz, J., Crawford, K., & Whittaker, M. (2018). *Algorithmic impact assessments: A practical framework for public agency accountability*. AI Now Institute.
- Reserve Bank of India. (2024, December 26). *Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREE-AI) Committee* [Press release].
- Srikanth, K. (2023). Artificial intelligence governance in India: Emerging frameworks and challenges. *Indian Journal of Law and Technology*, 19(1), 1–25.

Srikrishna Committee. (2018). *A free and fair digital economy: Protecting privacy, empowering Indians*. Government of India.
The Constitution of India. (1950).
Veale, M., & Borgesius, F. Z. (2021). Demystifying the Draft EU Artificial Intelligence Act. *Computer Law Review International*, 22(4), 97–112.



Federalism Erosion: Centre-State Finances Post-15th Finance Commission

Varsha P ¹, Ch. Venkateswarlu ²

Research Scholar, School Of Law, Vels University Of Science And Technology, Pallavaram, Chennai, India.

Associate Professor, School Of Law, Vels University Of Science And Technology, Chennai, India.

Article information

Received: 15th December 2025

Received in revised form: 17th January 2026

Accepted: 18th February 2026

Available online: 2nd March 2026

Volume: 2

Issue: 1

DOI: <https://doi.org/10.5281/zenodo.18859556>

Abstract

This article examines whether the 15th Finance Commission's recommendations erode India's federal structure through constitutional and institutional analysis. India's federal architecture, enshrined in Articles 268-293, establishes a framework for Centre-State financial relations with the Finance Commission as the constitutional mechanism under Article 280 to balance vertical and horizontal fiscal distribution. The 15th Finance Commission (2021-2026) introduced significant reforms including reduced vertical devolution from 42% to 41%, performance-based grant conditionalities, and sector-specific earmarking that fundamentally altered the fiscal autonomy of states. This paper analyzes these recommendations against constitutional principles of federalism, examining their impact on state fiscal independence, the proliferation of cesses and surcharges bypassing divisible pool, and the shift toward conditional grants. Through doctrinal analysis and comparative constitutional examination, this research argues that while the 15th Finance Commission's approach responds to legitimate governance concerns, it marks a concerning departure from cooperative federalism toward centralized fiscal control. The article concludes by proposing reforms to restore federal balance while maintaining accountability mechanisms.

Keywords: - Fiscal Federalism, Fifteenth Finance Commission, Cooperative Federalism, Cesses and Surcharges, Conditional Grants, Article 280

I. INTRODUCTION

Federalism in India represents a constitutional compact balancing unity with diversity, centralization with autonomy. The Supreme Court has repeatedly affirmed that federalism is a basic feature of the Constitution (S.R. Bommai v. Union of India, 1994). At the heart of this federal arrangement lies the fiscal relationship between the Centre and States, mediated through the constitutional architecture of Articles 268-293 and operationalized through the Finance Commission established under Article 280. This institution serves as the constitutional mechanism to ensure equitable distribution of financial resources while preserving state autonomy.

The 15th Finance Commission, constituted in November 2017 with recommendations covering 2021-2026, represents a critical juncture in Indian fiscal federalism. Its terms of reference included unprecedented mandates that raised concerns about centralizing tendencies, particularly the requirement to examine "performance-based incentives" and sector-specific grants (Ministry of Finance, 2017). The Commission's final recommendations reduced the states' share in central tax revenue from 42% to 41%, introduced substantial conditionalities, and endorsed continued proliferation of cesses and surcharges that bypass the divisible pool entirely.

This article examines whether these developments constitute erosion of federalism from three analytical perspectives. First, it analyzes the constitutional framework governing Centre-State financial relations and the Finance Commission's role. Second, it critically evaluates the 15th Finance Commission's key recommendations and their operational impact on state fiscal autonomy. Third, it assesses whether these changes align with or deviate from constitutional principles of cooperative federalism. The central argument advanced is that while governance concerns justify performance accountability, the

cumulative effect of reduced devolution, enhanced conditionalities, and unchecked cesses represents a structural shift undermining federal principles.

II. CONSTITUTIONAL FRAMEWORK OF CENTRE-STATE FINANCIAL RELATIONS

2.1. Distribution of Taxing Powers

The Constitution establishes a clear demarcation of taxing powers through the Seventh Schedule. Union List (List I) grants exclusive taxation authority to the Centre over customs duties, corporation tax, taxes on income other than agricultural income, and excise duties on goods manufactured or produced in India except alcoholic liquors for human consumption (Entries 82-92B). State List (List II) provides states with exclusive authority over land revenue, taxes on agricultural income, succession and estate duties, excise on alcoholic liquors, taxes on goods and passengers, and taxes on professions and trades (Entries 45-63). The Concurrent List contains limited taxation entries, primarily confined to stamp duties (Entry 44).

Article 270 embodies the federal principle of revenue sharing by mandating that all taxes levied and collected by the Centre, except those specifically excluded, shall be distributed between the Union and States. The constitutional scheme recognizes that while the Centre possesses superior taxing capacity through access to elastic revenue sources like income and corporation tax, states shoulder substantial expenditure responsibilities particularly in social sectors. The Finance Commission serves as the constitutional mechanism to operationalize this vertical distribution.

2.2. Role and Powers of Finance Commission

Article 280 mandates establishment of a Finance Commission within two years of Constitution's commencement and thereafter every five years. The Commission's constitutional mandate encompasses:

- Distribution of net proceeds of taxes between Union and States and inter se allocation among States;
- Principles governing grants-in-aid to states from Consolidated Fund of India;
- Measures to augment state Consolidated Funds to supplement panchayat and municipality resources; and
- Any other matter referred by the President in the interest of sound finance.

The constitutional design envisions the Finance Commission as an independent, expert body insulated from political pressures (Sarkaria Commission, 1988). Its recommendations, though not binding, carry significant constitutional weight. The Supreme Court has emphasized that Finance Commission recommendations represent 'constitutional wisdom' demanding serious governmental consideration (Bihar v. Union of India, 1991). This institutional architecture reflects the framers' intent to establish an objective mechanism balancing Centre's revenue-raising superiority with states' expenditure responsibilities while preserving federal equilibrium.

III. 15TH FINANCE COMMISSION: KEY RECOMMENDATIONS AND DEPARTURES

3.1. Reduced Vertical Devolution

The 15th Finance Commission reduced states' share in central taxes from 42% to 41%, justified primarily by creation of Union Territory of Jammu and Kashmir requiring direct central transfers (Fifteenth Finance Commission, 2020). This one percentage point reduction, while seemingly marginal, represents substantial absolute revenue given the divisible pool's magnitude. For 2021-22, this amounted to approximately ₹75,000 crores transferred from states collectively to Centre's direct control. The Commission argued this maintains aggregate resource transfer when accounting for grants, but critics contend it fundamentally alters the character of transfers from entitlement-based devolution to discretionary grants.

More concerning is the reversal of progressive devolution trajectory. The 14th Finance Commission's increase to 42% was hailed as strengthening federalism by enhancing unconditional resource transfers (Rao & Singh, 2006). The 15th Commission's reduction, even if contextually justified, establishes precedent for downward revision based on administrative reorganization. This raises fundamental questions about whether Article 270's constitutional mandate can be calibrated based on Union's administrative decisions regarding territory reorganization.

3.2. Performance-Based Conditionalities

The Commission introduced performance-based incentives across multiple sectors including power, implementation of flagship schemes, and incremental compliance. While accountability in public expenditure is constitutionally valid, the extent of conditionalities raises federal concerns. Performance grants totaling ₹3.5 lakh crores over the award period were made conditional on specific outcomes in sectors like elimination of rural poverty, improvement in nutritional outcomes, and progress toward Sustainable Development Goals (Fifteenth Finance Commission, 2020).

Constitutional propriety of such extensive conditionalities merits scrutiny. Article 275 authorizes grants-in-aid "as Parliament may determine," but the Finance Commission's constitutional mandate under Article 280 focuses on distribution principles, not performance management. The shift toward conditionality transforms the Commission's role from objective resource allocator to performance auditor, potentially compromising its constitutional character. Furthermore, performance parameters often reflect national priorities that may not align with state-specific developmental needs, effectively constraining state policy autonomy guaranteed under federal distribution of legislative powers.

3.3. Cesses and Surcharges: Constitutional Bypass

Perhaps the most significant threat to federal finance emanates not from Finance Commission recommendations but

from Centre's increasing reliance on cesses and surcharges exempt from Article 270's divisible pool. The 15th Commission acknowledged that cesses and surcharges constituted 15.8% of gross tax revenue in 2019-20, up from 10.2% in 2011-12 (Fifteenth Finance Commission, 2020). This proliferation directly erodes the effective devolution rate: while nominal devolution is 41%, actual transfer considering the entire tax base (including cesses) is substantially lower.

The Commission recommended restraint in imposing cesses but lacked constitutional authority to enforce limitations. Courts have upheld Centre's power to levy cesses for specific purposes, requiring only that they serve the stated 'objective and revenue be appropriately utilized (Hingir-Rampur Coal Co. v. State of Orissa, 1961). However, the expanding use of cesses for general revenue purposes rather than specific projects subverts Article 270's constitutional scheme. Cess revenues, exceeding ₹3.7 lakh crores in 2020-21, represent resources constitutionally intended for state sharing but legally diverted through nomenclature rather than constitutional amendment (Reddy & Reddy, 2019).

IV. CRITICAL EVALUATION: FEDERAL IMPLICATIONS

4.1. Erosion of Fiscal Autonomy

Fiscal autonomy constitutes the core of federal governance, enabling states to translate their legislative competence into effective policy implementation. The Supreme Court has recognized that fiscal federalism is integral to the basic structure, stating that "financial provisions are the backbone of the federal structure" (S.R. Bommai v. Union of India, 1994). The 15th Commission's recommendations cumulatively undermine this autonomy through three mechanisms.

First, reduced devolution combined with increased conditional grants alters the ratio of unconditional to conditional transfers. States now receive larger proportions through tied grants requiring compliance with central priorities rather than autonomous policy formulation. Second, performance conditionalities impose ex-post compliance burdens, effectively subordinating state policy choices to centrally determined outcomes. Third, unchecked cess proliferation reduces the predictable, constitutional resource base states rely upon for medium-term fiscal planning.

These structural changes contravene the constitutional principle that states are not subordinate administrative units but constituent polities with guaranteed autonomy. The Sarkaria Commission emphasized that fiscal arrangements must ensure states possess "adequate resources to discharge their constitutional functions without being financially dependent on the Centre" (Sarkaria Commission, 1988). Current trends move precisely in the opposite direction.

4.2. Deviation from Cooperative Federalism

Indian federalism, described as "cooperative federalism" by the Supreme Court, requires collaborative governance rather than hierarchical control (State of West Bengal v. Union of India, 1963). The Finance Commission institutionalizes this cooperation by providing an objective mechanism for resource sharing insulated from political negotiations. The 15th Commission's enhanced conditionalities transform this relationship from cooperative to conditional, with Centre using fiscal instruments to direct state policy.

Comparative federal systems illuminate this concern. In mature federations like Canada and Australia, unconditional transfers constitute the primary mechanism for vertical fiscal redistribution, with conditional grants limited to specific national programs requiring cooperative implementation (Watts, 2008). India's trajectory reverses this model, expanding conditionality while constraining unconditional devolution. This risks transforming states into implementing agencies for centrally determined programs rather than autonomous policy laboratories.

4.3. Accountability versus Autonomy Balance

The constitutional challenge lies in reconciling legitimate accountability concerns with federal autonomy. Proponents argue performance-based grants ensure prudent resource utilization, prevent fiscal profligacy, and align state actions with national developmental goals (Government of India, 2020). These concerns possess constitutional validity Article 293 authorizes central control over state borrowing, reflecting constitutional recognition of fiscal discipline needs.

However, accountability mechanisms must remain constitutionally appropriate. The Finance Commission's mandate focuses on equitable distribution, not performance management. The constitutional scheme assigns accountability through democratic processes state electorates evaluate governments' fiscal management through elections. Conditional grants circumvent this democratic accountability by substituting central judgment for electoral assessment. Moreover, performance metrics often reflect capacities rather than efforts, penalizing fiscally weaker states facing structural disadvantages (Chakraborty, 2021).

4.4. Implications for Federal Governance

The cumulative impact of these developments extends beyond immediate fiscal consequences to fundamental constitutional implications. First, the progressive centralization of fiscal authority undermines the constitutional distribution of legislative powers. States possess constitutional competence over vital sectors like health, education, agriculture, and police, yet lack adequate unconditional resources to exercise this competence effectively. This creates implementation deficits in state subjects, eroding federal governance quality.

Second, reduced fiscal autonomy diminishes states' experimental capacity. Justice Brandeis famously described American states as "laboratories of democracy" where innovative policies could be tested (New State Ice Co. v. Liebmann, 1932). Indian states have historically served similar functions Kerala's health model, Gujarat's agricultural development, and Karnataka's technology policy emerged from state-level innovation. Fiscal centralization constrains such experimentation by binding states to centrally prescribed outcomes and methodologies.

Third, the trend poses risks to India's constitutional stability. Federal systems derive legitimacy from balancing unity with diversity, allowing regional aspirations expression through state autonomy while maintaining national cohesion.

Excessive centralization generates centrifugal pressures, as evidenced by growing demands for greater state rights and, in extreme cases, separatist movements. Fiscal federalism's erosion could exacerbate such tensions by denying states meaningful autonomy despite constitutional guarantees.

Fourth, these developments require urgent constitutional attention. While the Finance Commission lacks enforcement authority over cess proliferation, Parliament possesses constitutional power to address this through legislation. The Commission itself recommended considering a constitutional amendment to include cesses in the divisible pool or legally define and limit their scope (Fifteenth Finance Commission, 2020). Such constitutional reforms merit serious consideration to restore federal fiscal balance.

V. CONCLUSION

This analysis reveals that post-15th Finance Commission developments constitute significant erosion of federal fiscal principles, though not irreversible constitutional violation. The cumulative effect of reduced vertical devolution, enhanced performance conditionalities, and unchecked cess proliferation substantially undermines state fiscal autonomy, shifting Indian federalism from cooperative toward centralized control. While individual measures may be contextually justified creation of Jammu and Kashmir Union Territory necessitated some adjustment, and accountability in resource utilization serves legitimate governance objectives their combined impact threatens constitutional federal balance.

The constitutional architecture established by the framers envisioned Finance Commission as an objective mechanism balancing Centre's revenue superiority with states' expenditure responsibilities while preserving federal equilibrium. Current trends deviate from this vision by transforming resource transfers from constitutional entitlements to conditional grants and allowing constitutional bypass through cess proliferation. This transformation is particularly concerning because it occurs not through formal constitutional amendment requiring broad consensus, but through administrative decisions and Finance Commission recommendations lacking rigorous constitutional scrutiny.

Restoring federal fiscal balance requires multifaceted reforms. First, future Finance Commissions should resist pressures for reduced devolution and enhanced conditionalities, recognizing their constitutional mandate focuses on equitable distribution, not performance management. Second, Parliament should legislate definitional boundaries and quantitative limits on cesses to prevent constitutional bypass. Third, constitutional amendment bringing cesses within the divisible pool merits serious consideration. Finally, institutional mechanisms ensuring states' meaningful participation in national fiscal policy formulation perhaps through empowering Inter-State Council or formalizing state consultations in Finance Commission appointment would strengthen cooperative federalism.

The fundamental question is whether India will maintain its federal character through genuine fiscal autonomy or drift toward centralized control contradicting constitutional federal commitments. The answer requires recognizing that federalism is not merely administrative convenience but a constitutional basic structure safeguarding India's unity in diversity. Fiscal federalism constitutes the material foundation enabling this political framework to function effectively. Its erosion, therefore, threatens not just efficiency in governance but the constitutional compact itself.

REFERENCES

- Chakraborty, P. (2021). Balancing fiscal need and macroeconomic stability: COVID-19 context and the Fifteenth Finance Commission. *Economic and Political Weekly*, 56(33).
- Fifteenth Finance Commission. (2020). *Report for 2021–2026*. Government of India.
- Government of India. (2020). *Report of the Fifteenth Finance Commission: Main report*. Ministry of Finance.
- Hingir-Rampur Coal Co. Ltd. v. State of Orissa, AIR 1961 SC 459 (India).
- Ministry of Finance. (2017). *Terms of reference: Fifteenth Finance Commission*. Government of India.
- New State Ice Co. v. Liebmann, 285 U.S. 262 (1932).
- Rao, M. G., & Singh, N. (2006). *Political economy of federalism in India*. Oxford University Press.
- Reddy, Y. V., & Reddy, G. R. (2019). *Indian fiscal federalism*. Oxford University Press.
- Sarkaria Commission. (1988). *Report of the Commission on Centre-State Relations*. Government of India.
- S.R. Bommai v. Union of India, AIR 1994 SC 1918 (India).
- State of Bihar v. Union of India, AIR 1991 SC 814 (India).
- State of West Bengal v. Union of India, AIR 1963 SC 1241 (India).
- Watts, R. L. (2008). *Comparing federal systems* (3rd ed.). McGill-Queen's University Press.