Edited Collection

Comparative Public Law: Rights, Governance and Justice

An edited collection on rights, constitutional design, public institutions, and comparative justice

---

Prof. (Dr.) V.J. Praneshwaran

Dr. Seema Surendran

Ms. Nirmala R. Harish

CMR School of Legal Studies
CMR University

Published by

Jupiter Publications Consortium

Chennai, India

2026

Imprint and Publication Details

Title	Comparative Public Law: Rights, Governance and Justice
Editors	Prof. (Dr.) V.J. Praneshwaran; Dr. Seema Surendran; Ms. Nirmala R. Harish
Institutional affiliation	CMR School of Legal Studies, CMR University
Publisher	Jupiter Publications Consortium
Address	22/102, Second Street, Venkatesa Nagar, Virugambakkam, Chennai 600 092
Telephone	9790911374 | 9962578190
Email	director@jpc.in.net
Published in	India
Published on	16.04.2026
ISBN	978-93-86388-95-7
DOI	https://www.doi.org/10.47715/978-93-86388-95-7
Price	Rs.450/-

This revised edition presents thirty-one contributions on comparative public law, constitutional structure, rights, governance, and justice.

Preface

Comparative public law offers an important method for examining how constitutional systems respond to recurring questions of authority, liberty, governance, institutional design, accountability, and justice. This volume, *Comparative Public Law: Rights, Governance and Justice*, brings together thirty-one chapters that approach those issues through comparative analysis across multiple jurisdictions, with particular emphasis on India in relation to the United States, the United Kingdom, Canada, Brazil, Germany, France, Norway, Denmark, and South Korea.

Several chapters in this collection are devoted to constitutional structure and public governance. These include studies on national emergency, constitutional asymmetry, unitary and federal forms of government, federalism and sovereignty, and parliamentary and presidential systems. Together, these chapters explore the distribution of power within constitutional frameworks and the continuing tension between unity, diversity, and institutional autonomy.

A second major group of chapters examines constitutional doctrine and institutional arrangements. The volume includes comparative studies on judicial interpretation, judicial review, due process, separation of powers, economic governance, and delegated legislation. Read together, these chapters show how constitutional design operates not only at the level of theory, but also in the practical working of governance, adjudication, and public administration.

The collection also engages deeply with rights, liberties, and criminal justice. Several chapters study the position of victims and accused persons, the human rights of accused persons, the presumption of innocence, juvenile bail, domestic violence, freedom of expression, hate speech, sedition, and fundamental rights. These contributions examine how public law mediates the relationship between individual liberty and state power, particularly in contexts where rights claims intersect with criminal process and public order.

Another important strand of the volume concerns accountability institutions and public integrity. Chapters on the Lokayukta, the ombudsman institution, whistleblower protection, administrative checks and balances, and anti-corruption law consider how legal systems design mechanisms to restrain abuse of power and preserve public trust. These studies highlight the continuing significance of institutional accountability in comparative public law.

The volume further includes chapters on plea bargaining, corporate criminal liability, and the criminalisation of economic offences. These contributions extend the discussion from constitutional structure to the regulation of criminal process and economic misconduct, showing the increasing overlap between public law, governance, and regulatory justice.

Taken as a whole, the chapters in this volume demonstrate that comparative public law is not merely descriptive. It is evaluative and analytical. By placing legal doctrines, institutional choices, and public responses side by side, the collection reveals both shared constitutional concerns and distinct jurisdictional approaches. The result is a body of work that contributes to a fuller understanding of rights, governance, and justice in comparative perspective.

We record our sincere appreciation to all contributors whose chapters have made this volume possible. We also acknowledge the academic support of CMR School of Legal Studies, CMR University, and the publication support extended by Jupiter Publications Consortium.

We hope that this volume will be of value to scholars, teachers, students, researchers, and practitioners engaged in comparative constitutional law, comparative criminal justice, public institutions, and governance studies.

Prof. (Dr.) V.J. Praneshwaran
Dr. Seema Surendran
Ms. Nirmala R. Harish
Editors

About the Volume

Comparative Public Law: Rights, Governance and Justice is an edited academic volume devoted to the comparative study of public law across constitutional systems. The collection brings together thirty-one chapters that examine the relationship between rights, governance, institutional design, accountability, and justice through a sustained comparative method.

The volume is organised around several interrelated themes. A significant group of chapters addresses constitutional structure, including emergency powers, constitutional asymmetry, federalism, sovereignty, unitary and federal forms of government, and parliamentary and presidential systems. Another cluster examines constitutional doctrine and governance through studies of judicial interpretation, judicial review, due process, separation of powers, economic governance, and delegated legislation.

The book also gives substantial attention to questions of rights and criminal justice. These chapters consider the position of victims and accused persons, the human rights of accused persons, the presumption of innocence, juvenile bail, domestic violence, freedom of expression, hate speech, sedition, and fundamental rights in comparative perspective. In doing so, the volume highlights the ways in which public law shapes the interaction between state authority and individual liberty.

A further set of contributions focuses on accountability institutions and public integrity. Chapters on the Lokayukta, the ombudsman institution, whistleblower protection, administrative checks and balances, anti-corruption law, plea bargaining, corporate criminal liability, and the criminalisation of economic offences demonstrate the breadth of comparative public law as a field that extends beyond formal constitutional structure into the practical operation of public power.

The jurisdictions engaged in this collection include India, the United States, the United Kingdom, Canada, Brazil, Germany, France, Norway, Denmark, and South Korea. By placing these legal systems in comparative conversation, the volume seeks to illuminate both common constitutional concerns and differing institutional responses.

Designed for scholars, teachers, researchers, students, and practitioners, this volume offers a broad yet focused contribution to the study of comparative

constitutional law, comparative criminal justice, governance studies, and public institutions.

How to Use This Book

This volume is designed to be read in more than one way. Readers may proceed chapter by chapter in sequence, or they may approach the collection thematically, depending on their research interest.

Those interested in constitutional structure and governance may begin with the chapters on emergency powers, constitutional asymmetry, federalism, sovereignty, forms of government, judicial review, separation of powers, and delegated legislation. Readers concerned with rights and justice may turn first to the chapters on victims and accused persons, human rights of the accused, juvenile bail, domestic violence, freedom of expression, hate speech, sedition, and fundamental rights. Those working on accountability and integrity in public institutions may focus on the chapters dealing with the Lokayukta, ombudsman institutions, whistleblower protection, administrative checks and balances, anti-corruption law, and economic offences.

Each chapter is written as a self-contained study and may be read independently. At the same time, the volume as a whole benefits from comparative reading across chapters, since many of the contributions address related public law concerns from different jurisdictional and doctrinal perspectives.

The table of contents may be used as the primary guide to the volume. Readers using the work for teaching or research may also group chapters under broader themes such as constitutional design, rights and liberties, criminal justice, governance, accountability, and comparative institutions.

This book is intended for scholars, teachers, students, researchers, and practitioners. It may be used as a reference work, a supplementary academic text, or a thematic collection for advanced study in comparative public law.

Glossary

Accused A person against whom an allegation of crime has been made and who is subject to criminal process until guilt is established according to law.

Administrative Accountability The principle that public authorities and administrative bodies must act lawfully, reasonably, fairly, and within the limits of their power.

Anti-Corruption Law The body of law directed toward the prevention, investigation, and punishment of corruption, abuse of office, bribery, and related misconduct in public and private institutions.

Asymmetrical Federalism A federal arrangement in which different states or regions enjoy different constitutional powers, protections, or institutional arrangements.

Basic Structure Doctrine A constitutional principle developed by the Supreme Court of India holding that certain essential features of the Constitution cannot be destroyed or altered even by constitutional amendment.

Bicameralism A system of legislature composed of two houses or chambers.

Checks and Balances Institutional mechanisms through which different organs of government limit, supervise, or restrain one another in order to prevent concentration of power.

Comparative Public Law The study of public law across different jurisdictions in order to understand similarities, differences, and broader constitutional patterns in governance, rights, and institutions.

Constitutional Amendment A formal change made to the text or structure of a constitution in accordance with the procedure prescribed by that constitution.

Constitutional Governance The exercise of public power according to constitutional rules, values, and institutional limitations.

Constitutionalism The idea that government must be limited by law and exercised within a framework of legal authority, accountability, and protection of rights.

Corporate Criminal Liability The principle that a corporation or other legal entity may, in certain circumstances, be held criminally responsible for unlawful conduct.

Delegated Legislation Law made by an authority other than the legislature under powers granted to it by statute.

Democratic Accountability The obligation of public institutions and officials to justify their actions and remain answerable to constitutional bodies, the law, and the public.

Domestic Violence Abuse occurring within domestic or intimate relationships, including physical, emotional, sexual, economic, or psychological harm.

Due Process The requirement that legal proceedings affecting rights, liberty, or property must follow fair, lawful, and regular procedure.

Emergency Powers Special powers that may be exercised by the State during war, armed conflict, rebellion, grave public disorder, or other exceptional situations.

Federalism A constitutional system in which powers are distributed between a central authority and regional units such as states or provinces.

Fundamental Rights Basic rights guaranteed by a constitution and enforceable against the State.

Governance The processes, structures, and principles through which public authority is exercised and public affairs are administered.

Hate Speech Expression that attacks, incites hostility toward, or promotes hatred against individuals or groups on grounds such as religion, race, ethnicity, gender, or similar protected status.

Judicial Interpretation The process by which courts determine the meaning and application of constitutional, statutory, or legal text.

Judicial Review The power of a court to examine the legality or constitutionality of legislative, executive, or administrative action.

Juvenile Bail The grant of temporary release to a child or young person accused of an offence, subject to legal conditions and protective considerations.

Jurisdiction The legal authority of a court, tribunal, or institution to decide matters or exercise power within a defined field.

Lokayukta A statutory ombudsman institution in India established at the state level to inquire into allegations of corruption, maladministration, or abuse of office.

Ombudsman An independent authority established to investigate complaints against public administration and to promote fairness, accountability, and good governance.

Parliamentary System A system of government in which the executive is drawn from and remains accountable to the legislature.

Plea Bargaining A process in criminal law through which the accused and the prosecution reach an agreed resolution, often involving a guilty plea in exchange for reduced charges or sentence.

Presidential System A system of government in which the executive is separately elected and constitutionally distinct from the legislature.

Presumption of Innocence The principle that every person accused of an offence is to be treated as innocent until proven guilty according to law.

Public Integrity The standard of honesty, legality, and ethical conduct expected in the exercise of public office and public power.

Public Law The branch of law governing the State, public institutions, public power, and the relationship between the individual and the State.

Rule of Law The principle that all persons and institutions, including the State, are subject to and governed by law.

Sedition An offence relating to speech, writing, or conduct alleged to incite disaffection, hostility, or resistance against the State or public authority.

Separation of Powers The constitutional distribution of legislative, executive, and judicial power among distinct institutions.

Sovereignty The supreme legal authority of a State within its constitutional and territorial sphere.

Victim A person who has suffered harm, injury, or loss as a result of an offence or wrongful act.

Whistleblower A person who discloses information concerning illegality, corruption, abuse of power, or wrongdoing within an institution.

List of Abbreviations

ADM Additional District Magistrate

AIR All India Reporter

Art. Article

Arts. Articles

BNS Bharatiya Nyaya Sanhita

CJ Chief Justice

CMR CMR University

CrPC Code of Criminal Procedure

CVRA Crime Victims' Rights Act

ECHR European Convention on Human Rights

EU European Union

FIR First Information Report

GA General Assembly

HMICFRS His Majesty's Inspectorate of Constabulary and Fire & Rescue Services

HMCPSI His Majesty's Crown Prosecution Service Inspectorate

ICC International Criminal Court

ICCPR International Covenant on Civil and Political Rights

LL.M. Master of Laws

Lokayukta State Ombudsman Institution

NCRB National Crime Records Bureau

NEA National Emergencies Act

No. Number

SC Supreme Court

SCC Supreme Court Cases

UK United Kingdom

UN United Nations

USA United States of America

USC United States Code

USSC United States Sentencing Commission

USPATRIOT Act Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

v. versus

Vol. Volume

Contributors and Chapters

Chapter Synopses

Chapter 1. National Emergency Implementation and Its Effects: A Study of United States of America and India

Preethi V

In the literature of governance, democracy thrives in the company of stability and peace, which provide the foundation for the enforcement of laws.

Chapter 2. Constitutional Amendments Affecting Asymmetry: A Critical Study

Paul Johnson J

A comparative study engaging constitutional structure, rights, and governance through a focused doctrinal lens.

Chapter 3. Position of Victims and Accused in the Criminal Justice Systems of the USA and UK: A Comparative Study

Rahul Reddy. J

The criminal justice systems of the United States and the United Kingdom are both rooted in the common law adversarial tradition, yet they conceptualise and protect the positions of victims and accused persons in. . .

Chapter 4. Lokayukta as the State Ombudsman in India: A Study with Special Reference to Karnataka and Kerala

Rajpoorani Bharat. T

The Lokayukta was established as an independent State-level ombudsman with the objective of addressing corruption, maladministration, and abuse of power within public administration in India.

Chapter 5. Unitary Form of Government: A Comparative Analysis of India and Brazil

Ravitheja V.K.

This research paper examines the unitary form of government by comparing it with the federal systems of Brazil and India.

Chapter 6. A Comparative Analysis of Judicial Interpretation in Adversarial and Inquisitorial Systems

Razan Fatima Dawood

Judicial interpretation plays an important role in how courts decide cases, but the way

judges interpret law and facts depends greatly on the legal system they work in.

Chapter 7. Separation of Powers in India: A Comparative Constitutional Study

Sana Erum Siddiqui

The doctrine of Separation of Powers is a fundamental principle of constitutional governance, aimed at preventing the concentration of authority and ensuring the protection of individual liberty.

Chapter 8. Whistleblower Protection Laws: A Comparative Analysis of India and the United States

Selvin John

Whistleblowers occupy a unique and often precarious position at the intersection of individual conscience, institutional accountability, and the public interest.

Chapter 9. Federalism and Sovereignty: A Comparative Study of India and U S

Shayestha Tabassum

This study examines the relationship between federalism and sovereignty in a simple and comparative manner.

Chapter 10. Human Rights Approach To Accused Of Crime: A Comparative Study

Syed Suhail K Z

The human rights of those accused of crime still constitutes a cornerstone of constitutional democratic and international legal regime.

Chapter 11. Judicial Review as Constitutionalism's Guardian: India's Basic Structure Doctrine vs. UK's Parliamentary Sovereignty Limits

Saiethi Pravin Phadte

This paper examines how judicial review protects constitutionalism in India and the UK.

Chapter 12. The Ombudsman Institution: A Comparative Study of Norway and Denmark

Sairaab Shafi Shora

The Ombudsman institution is widely regarded as one of the most effective mechanisms for ensuring administrative accountability and protecting citizens' rights in modern democratic governance.

Chapter 13. A COMPARATIVE STUDY OF FUNDAMENTAL RIGHTS IN INDIA AND UK

Sakthi Eswar S

A comparative study engaging constitutional structure, rights, and governance through

a focused doctrinal lens.

Chapter 14. Separation of Powers and Economic Governance: A Comparative study of India and the United Kingdom

Sanjana G L

The doctrine of separation of powers plays a significant role in shaping economic governance within constitutional systems by defining the distribution of authority among the legislature, executive, and judiciary.

Chapter 15. State Responsibility And Domestic Violence: A Comparative Study Of India And UK

Sherlin Jacob

Domestic violence is slowly becoming a human rights violation which is the concern of the State.

Chapter 16. Freedom of Expression in Constitutional Democracies: A Comparative Study of India and the United Kingdom

Shri Sanjay R

The freedom of expression is one of the most vital pillars of democracy.

Chapter 17. Checks and Balances on the Administrative Mechanisms in India and the United States: An Analysis

Sithara

This paper compares the system of checks and balances that govern the administrative power in India and the US which are two democratic nations in different constitutional systems.

Chapter 18. Corporate Criminal Liability: A Comparative Study of India and Germany

Sreetesha Roy Chowdhury

The rise of complex fiscal corruptions has triggered debates around the criminal liability of business houses, specifically in jurisdictions where commercial activity conspicuously moulds financial governance.

Chapter 19. Parliamentary and Presidential Forms of Government: A Comparative Analysis of India and the United States

Suman. M

This research provides a comparative analysis of parliamentary and presidential system of government, examining India and the United States.

Chapter 20. Juvenile Bail in India and the United Kingdom: A Comparative Public Law Analysis

Surabhi S

Bail occupies a crucial position in juvenile justice systems as it directly engages the fundamental right to personal liberty while advancing the rehabilitative objectives of child-centric criminal jurisprudence.

Chapter 21. Federalism: A Comparative Study Between India and Canada

Swathi

The paper compares federalism in India and Canada, examining how these large federal democracies share power between central and regional governments.

Chapter 22. Judicial Review and Due Process Comparative Study of India and USA

Tejaswini D. Naidu

Judicial review and due process constitute foundational principles of constitutional governance, serving as safeguards against the arbitrary exercise of state power.

Chapter 23. Corruption And Legal Challenges - Lokayukta As The State Ombudsman In Rajasthan

Thelma Letitia Dcunha

This paper discusses the position and performance of the Lokayukta as a state-organized ombudsman fighting corruption in Rajasthan.

Chapter 24. Plea Bargaining And Its Effect : A Study Of India And USA

Vega Shree S

In India and the USA, concept has emerged, central practice in resolution of criminal cases through discussion between prosecutor and defence.

Chapter 25. Delegated Legislation as a Tool of Welfare Administration: A Comparative Study of France and India

Vaishnavi R

In the modern era, the "Welfare State" has transitioned from a theoretical ideal to a complex administrative reality.

Chapter 26. Criminalisation of Economic Offences: A Comparative Public Law Analysis of India and the United States

Maddi Vandana Reddy

The rapid expansion of global markets, financial innovation, and technological advancement has significantly increased the scale and complexity of economic offences.

Chapter 27. Plea Bargaining As a Part of Criminal Law System: A Comparative Study of India and UK

Varsha Kiran Prabhu

Plea bargaining has become a vital tool in contemporary criminal justice systems to tackle issues such as trial delays and the growing backlog of criminal cases.

Chapter 28. Freedom of Speech and Hate Speech in India and the USA: A Comparative Analysis

Wasim Abdulla

This comparative study examines the divergent constitutional trajectories of the United States and India regarding the protection of expression and the regulation of hate speech.

Chapter 29. Nobody is Guilty Until Proven. Position of Accused in Criminal Justice System in India: A Legal Study

C. Lalhmangaihzuala

This article examines the fundamental principle of criminal law that no individual shall be deemed guilty until proven and analyses the legal position of the accused within the Indian criminal justice system.

Chapter 30. Corruption As A White-Collar Crime: A Comparative Study Of Anti-Corruption Laws In India And South Korea

Selva Punitha V

Corruption, as a form of white-collar crime, poses a serious threat to democratic governance, economic development, and the rule of law.

Chapter 31. Sedition and Criminal Justice: A Comparative Study of India and United Kingdom

Ziana George

Sedition occupies a controversial position within criminal law, as it directly engages the balance between state security and freedom of expression.

About the Editors

Prof. (Dr.) V.J. Praneshwaran

Director, School of Legal Studies,
CMR University

Prof. (Dr.) V.J. Praneshwaran graduated in Law and then completed LL.M. in Constitutional Law, M.Phil. in Law, and Ph.D. from Bangalore University. After obtaining significant experience in practising law, he decided to pursue his passion for teaching.

With core experience in practising law, client counselling, and teaching, his distinguished experience spans over 23 years. His Ph.D. thesis titled "A Study of Laws Relating to Armed Forces and the Protection of Human Rights in India" reflects his understanding of the need for equal treatment and respect for human rights in disciplined organisations like the Indian Armed Forces.

A committed nation builder, he has consistently contributed to legal literacy, legal education, and legal awareness initiatives at various levels. He also serves as a patron of Legal Aid Trust, a registered NGO.

Dr. Seema Surendran

Professor, School of Legal Studies,
CMR University

Dr. Seema Surendran has over 25 years of teaching experience. She specialises in International Law, Environmental Law, Corporate Law, Intellectual Property Law, and Criminal Law.

She has worked as faculty at Karnataka Lingayat Education Society's Law College, Bangalore; Assistant Professor at Amity Law School, Noida, Amity University Uttar Pradesh; Associate Professor and Associate Dean (Academics) at Vivekananda Institute of Professional Studies, Delhi; and as Principal at Sri Kengal Hanumanthaiah Law College and BMS College of Law, Bangalore.

Presently, she is working as Professor with CMR School of Legal Studies, CMR University, Bangalore. She has attended a number of national and international seminars and has numerous publications to her credit.

Ms. Nirmala R. Harish

Assistant Professor, CMR School of Legal Studies

Ms. Nirmala R. Harish graduated with a Bachelor of Business Management from Mount Carmel College and an LL.B. from CMR University School of Legal Studies in 2020, securing a Gold Medal. She completed LL.M. specialising in Constitutional Law from CMR University School of Legal Studies.

With over four years of experience as an Assistant Professor, her areas of interest include Criminal Law and Constitutional Law. She has cleared UGC-NET and holds certifications in Child Rights, Data Privacy, and Human Rights.

She has served as a resource person for legal workshops and has presented and published various articles and book chapters in reputed journals.

Contents

Chapter 1

National Emergency Implementation and Its Effects: A Study of United States of America and India

Preethi V

Student, LL.M. (Commercial Law), School of Legal Studies, CMR University, Bengaluru

Abstract. In the literature of governance, democracy thrives in the company of stability and peace, which provide the foundation for the enforcement of laws. However, the dynamics of society sometimes create intermittent trends that require the state to explore the nuances of law in ensuring public welfare. In these high-risk situations, emergency laws provide the state with vital tools that allow for a temporary suspension of the normal rule of law in ensuring public welfare. These laws have been structured to accommodate the varied constitutional requirements of different states in addressing issues of emergency causes, which authorities can invoke them, and the extent of the suspension of rights and freedoms. Emergencies can emanate from natural crises or political crises, which can be attributed to a number of factors. This study analyse national emergency provisions of laws of India, the US, and the UK, with the aim of illustrating the varied approaches taken by these democracies in addressing emergency situations.

Keywords. National Emergency Provisions, Constitution, Government, USA , INDIA

1.1 INTRODUCTION

A state of emergency could be described as "the partial or total suspension of the normal legal regime of a State, accompanied by an increase of governmental authority and, as a consequence, an infringement of citizens' rights, as well as a shift of power within the Government." The above phenomenon seems to create confusion between the different Government branches, which allows the Executive branch to acquire legislative and judicial powers. It is accepted that contemporary States face a variety of critical situations, which are often unpredictable. These situations include pandemics, terrorism, and migration. However, as it is argued that these situations are not entirely unforeseen, it

seems that States are not adequately prepared to face such situations. It is within this context that it is possible to understand the above phenomenon as a natural reaction.

The word "emergency" does not occur in the United States Constitution, nor does it occur in a manner analogous to it. It is, however, obvious that the framers were concerned with the issue of emergencies and developed a constitutional scheme that would address the issue of emergencies in an effective manner, and this can be seen in two ways: the allocation of power to deal with duties that are specifically related to emergencies and the explicit exceptions to the general rules subject to the occurrence of emergencies. The principal statute on emergency powers vested in the President is the National Emergencies Act of 1976, which provides for the termination of national emergencies that have been declared.

In the Indian constitution, the provisions for the emergency require the central government to act as unitary state in the face of a crisis that demands it. The declaration of emergency is made by the President after passing emergency resolution in both Houses of the Indian Parliament. During a debate in assembly Indian federation had unique structure and might change it to centralized in emergency.However, it should not be resorted to except in the last situation lest the federal form of India is threatened.

1.2 MEANING OF EMERGENCY

The word "emergency" refers to a state of affairs that has resulted due to the malfunctioning of the processes of government. It requires urgent attention and action on the part of the government. It is a state of affairs that requires urgent attention and prior warning because it has the potential to cause harm to life and property of the nation. As far as the Indian Constitution is concerned, it is pertinent to note that the provisions that pertain to emergency are such that it is provided that the central government would be granted the power to turn into a unitary government when required, as provided by the Constitution. As far as the USA is concerned, it is pertinent to note that Act of 1976, which was enacted on September 14, 1976, is a constitutional statute that has provided the President of that country with the power to terminate the existence of emergencies that are already in existence. It is pertinent to note that an important facet of the actions that were initiated by President Lincoln to suspend habeas corpus without the consent and authority of Congress in 1861 was that of emergency powers. It was initiated on the basis of an emergency that resulted because of the rebellion by the Confederate States.

This Act vests the President with the power to exercise emergency powers during a crisis, but this is qualified by the observance of constitutional formalities.

The basis of the necessity of this legislation is the sheer volume of legislation that is enacted during emergency that vests President with extraordinary powers. Joint resolution, upon being signed into law, has consequences of rescinding proclamation of emergency. This emergency powers vested by this Act are limitation to 136 powers that are statutorily stated within jurisdiction of congress.

1.3 NATIONAL EMERGENCY IN INDIA

Article 352 speaks about national emergency. "A declaration of a national emergency implies a grave threat to the security of India or any part of the territory of India by reason of invasion or apprehended invasion by any external force or by reason of internal disturbance." It is declared by the President "on the written recommendation of the Council of Ministers of which the Prime Minister is a member." For the declaration of the emergency resolution a majority vote is necessary and declared on account of war, external aggression, or external invasion is referred to as an external emergency, and one declared on account of armed rebellion is referred to as an Internal Emergency in accordance with the Forty-fourth Amendment Act of 1978, replacing the words 'Armed Rebellion' in place of 'Internal Unrest.' India was in a situation where the national emergency was declared for a period:.

- The firstly was declared when the Indo and China war was taking place for a period of six years (October 1962-January 1968). This was done on the ground of external aggression. The Indo-China war came to a conclusion in the year 1962. However, another war took place against Pakistan, which started after declaration of emergency
- The secondly declared due to the war taking place between India and Pakistan. This emergency was from the period of December 1975 to March 1977. This was done on source of external hostility and emergency still in existence even after the war came to a conclusion.
- The thirdly declared before the revocation of the second emergency on the ground of internal unrest. This was the most controversial one. There have been 124 instances of the state of emergencies being declared that resulted in president rule enforced. It was in period of Indira Gandhi's regime that maximum number of rule was imposed. There have been 35 instances of Presidents Rule being imposed in the country under Indira Gandhi's Regime.

1.3.1 Application of National Emergency

When the president is in charge during the National Emergency, the recommendation for the same should be made in writing by the cabinet. Along with this, it should also be passed within a month once passed by both houses .

- In case the Lok Sabha dissolves before the passing of the emergency resolution, the same would be in effect for 30 days after the first LokSabha meeting after the reformation of Lok Sabha. Along with this, it should also be passed by Rajya Sabha.
- In case provision related to the National Emergency passed by both houses the same would be valid for 6 months and would be extendable for indefinite periods after taking approval after 6 months.
- In case the issuance of the extension of the emergency is to be made, the provision should passed by both the houses with majority.

1.3.2 Effects of National Emergency

On Executive

President has authority to direct states on how they should execute their authority. The state government is not abolished rather placed under authority of federal state which has authority to give directions to state govt and necessary to follow.(Article 353(A)).

On Legislature

It continue to function , enact laws, but parliament is empowered to enact laws on state subjects concurrently with the state legislatures, and such laws shall cease to operate after the expiry of six months from the date of revocation of emergency, to the extent of incompetency (Article 353(B)). The life of Lok Sabha may be extended by 1 year at a time by a law of parliament (Article 83(2)), but not exceeding 6 months from the date of revocation of emergency.

On Financial relations

These can be amended with the Presidential Order with the concurrence of both houses of Parliament as soon as possible (Article 354), under Article 268-279 relating to Centre-State financial relations. However cannot be carried after fiscal year in which emergency revoked. President authority to halt that allocation of funds between federal government and states. Any national resource may be used by centre to combat declared emergency.

1.3.3 The Process Of Declaring Emergency

The President may say something on this, and this is already provided for. This, however, can only be done if the President receives a written request from the Cabinet to declare a state of emergency. The declaration emergency has to

be passed with overwhelming majority. It can also be passed with a majority otherwise, plan will be shut down. If the Lok Sabha dissolves or fails to make the emergency management meeting, the Rajya Sabha will push it through in the month after the beginning of the next session. The state of emergency will last for six years from the moment it's declared, unless Parliament decides otherwise. In six months' time, the Legislature has to pass a new interim decision, and this process will keep repeating. In other words, this emergency can last forever.

1.3.4 The Process Of Revoking Emergency

Indian president can declare a new emergency if the situation improves. According to the 44th amendment to the constitution, a minimum of 10 percent of the Lok Sabha party leaders need to present a petition and attend a meeting. This can be rejected or terminated by a simple majority vote. In the event that it is rejected or terminated, the emergency is invalidated.

1.4 NATIONAL EMERGENCY IN UNITED STATES OF AMERICA

Under federal law, the president is vested with considerable powers to address crises, emergencies, or any demands that may arise in the country. It is important to note that the powers vested in the president are not limited to the conduct of wars or military activities. Some of the powers vested in the president are of the "statutory delegation" type and have remained dormant until the President declares a national emergency. The president can draw on these powers to impose martial law, manage production, confiscate property and goods, deploy troops abroad, oversee travel, transport, and communication, etc. Prior to World War I, it was entirely up to the president to utilize these powers as he saw fit. After World War I, the president acquired a large reserve of standby emergency powers. When a state of emergency was declared due to a qualifying situation, these powers took effect. The emergency was sometimes restricted to a particular geographic area, while other times it was unlimited geographically. The nature of the emergency was variable, but there were few limits to the power of the Chief Executive

1.4.1 National Emergency Act of 1976

Section 50 of the US Code codifies Act of 1976. The Act introduced some procedures for the excercising president's emergency power.The Act has been used to justify many emergency declarations. The President has at least 136 different constitutional emergency powers vested in him, which can be implemented in the event of a national emergency declaration. Of these powers, 13 require congressional declaration, but the remaining 123 powers require no further congressional input after the declaration of emergency by the President.

- Title I : When there is a declaration of emergency, all the emergency powers that were taken out of action by various laws are recalled into action, then taken out of action again as necessary.
- Title II: There is a new process for declaring an emergency. If the president fails to renew it, a proclamation of emergency expires after one year. But Congress can stop an emergency with a resolution.
- Title III: When the President invokes emergency powers, they must inform Congress and specify which laws they are invoking.
- Title IV : That gives a quick overview of the President's responsibilities in declaring an emergency.
- Title V : It deals with the repeal of the Act. Under the Act, there have been several emergencies declared by U.S. presidents. Some of them are still active, while others have been terminated.

1.4.2 Provisions of The US Constitution Relating To Emergencies

It is of interest to note that the US Constitution does not specifically define the word "emergency." Nevertheless, some of the US constitutional provisions have referred to emergency or exigent situations. Sec 8 of Article I of the US Constitution has vested some of the powers of the US Congress to deal with emergencies of "war and military affairs" to Declare war, Maintain the navy, Raise and support an army, and regulate the same by rules, Summon the militia to repel invasions, Enforce federal laws, and Suppress insurrections of various form.

The President, as provided by Article II, Sec 2 of the US Constitution, is the Commander in Chief of the army and navy of the US. The President is also Commander in Chief of the militia of the US when it is called into active service , The President has the duty to see that all laws are faithfully executed, as provided by Article III, Sec 3 of the US Constitution. The federal government is required by Article IV, Sec 4 of the US Constitution to protect each state from invasion and from domestic violence.

While these clauses may not specifically provide for an emergency, they certainly provide support for some of the core principles of the emergency laws, which are designed to protect the nation and states from various perils such as invasion, war, uprising, domestic violence, and so on. Most often, the only method to deal with these perils is to declare a state of emergency in the state in question. There are provisions in place to protect the citizens, however. The writ of habeas corpus, for example, is not suspended, except in the case of invasion or insurrection when the safety of the population requires it. Moreover, except

in cases where the offense was committed in the land or naval forces, or in the Militia while they were actually serving during a time of war or public danger, nobody can be held accountable for a capital offense unless they have been indicted by a grand jury. Moreover, a state can go to war only if it has either been invaded or there is an immediate threat that is too serious to be postponed.

1.5 CASE LAWS

1.5.1 Adm Jabalpur V. Shivkant Shukla (1976)

This judgment, which was given during the Emergency of 1975-77, is best known under the name of the Habeas Corpus, the SC had to give a ruling on the question of whether the citizens of the country had the right to move the court and obtain the release of persons who had been illegally detained during a period when citizen fundamental rights had been suspended. In majority of the judges had held that during the Emergency period, no citizen had the right to file writ of habeas corpus, and therefore the government had the right to detain persons illegally. This judgment had been dissented from only by one member of the SC held that the right to life and liberty is natural right and cannot be suspended under any circumstances a fact which had been recognized in the fourty forth Amendment, which had protected Articles 20 and 21 of the Constitution from being suspended during the Emergency

1.5.2 Youngstown Sheet & Tube Co. V. Sawyer

The SC, although restricting the president discretionary authority during emergency situations, also recognized the discretionary power of the President during emergency situations. It is because of this that Act of 1976 was passed, which placed checks and balances on president authority and event took in 2011 terrorist attacks and the aftermath of these events also played an important part in the formulation of emergency regulations in the USA. President Bush declared a state of emergency, and joint resolution was passed by Congress that enabled the President to use all necessary and appropriate force to prevent further attacks.. It is because of this that regulations were passed, including the USA PATRIOT Act, which enabled surveillance, wiretapping, the acquisition of business and financial information, and acquiring information regarding suspects. It is because of this that security has been enhanced at borders, but there has also been a disruption of numerous terrorist plans, which has resulted in criticism of the infringement of civil liberties, including the harassment of innocent immigrants.

1.6 CONCLUSION

In circumstances of US and India, a comparative study on the subject would reflect the similarity and dissimilarity between the constitutional provisions and the actual implementation thereof. While the US places great emphasis on checks and balances through judicial and congressional oversight, the Indian system has historically given a certain amount of freedom to the executive, although recent changes and interpretations have attempted to curb the excesses thereof. In both systems, the provisions related to emergencies reflect harmony between personal liberties and national securities. The study reflects that the provisions related to emergencies, although constitutional, reflect the propensity to undermine democratic values in the absence of checks and balances.

References

1. Mehta A, 'Rethinking the Federal Emergency Powers Regime' (2023) 75 Journal of Law and Public Policy 80.
2. Chandrachud A, Republic of Rhetoric: Free Speech and the Constitution of India (1st edn, 2017).
3. Amar AR, America's Constitution: A Biography (1st edn, 2005).
4. Narrain A, India's Undeclared Emergency: Constitutionalism and the Politics of Resistance (1st edn, 2020).
5. Balaji A, 'India's Phantom Federalism: Protecting States from Encroachment' (2024) 6 Journal of Indian Law and Society 74.
6. 'Can Supreme Court Direct Imposition of Financial Emergency? Constitutional Contours in Light of COVID-19' SCC Online Blog (13 April 2020).
7. Noorani AG, 'The Judiciary and the Bar in India During the Emergency' (1978) 20 Journal of the Indian Law Institute 112.
8. Bhatia G, Offend, Shock, or Disturb: Free Speech Under the Indian Constitution (1st edn, 2016).
9. Austin G, Working a Democratic Constitution: A History of the Indian Experience (1st edn, 2000).
10. Prakash G, Emergency Chronicles: Indira Gandhi and Democracy's Turning Point (1st edn, 2019).
11. Seervai HM, Constitutional Law of India: A Critical Commentary (1st edn, 1983).

12. 'Judicial Emergency' LiveLaw https://www.livelaw.in/judicial-emergency accessed 10 October 2025.

13. Malik MA, 'Changing Dimensions of Federalism in India: An Appraisal' (2019) 2 ILI Law Review 85.

14. Khosla M, The Indian Constitution (1st edn, 2012).

15. Singh MP, 'Federalism, Democracy and Human Rights: Some Reflections' (2005) 47 Journal of the Indian Law Institute 362.

16. Dhavan R, 'Publish and Be Damned-The Contempt Power and Constitutional Restraints' (1979) 21 Journal of the Indian Law Institute 66.

17. Balganesh S, 'Fundamental Rights During a Proclamation of Emergency' (2000) 12 National Law School of India Review 70.

18. Devidas T, 'Rule of Law in a State of Emergency' (1990) 2 National Law School Journal 58.

19. Bhandari V, 'Protecting Citizens from the State Post Puttaswamy' (2018) 14 Socio-Legal Review 58.

20. Sinha Y, 'How and Why the Indian Constitution May Test Positive for Vagueness' (2023) 16 NUJS Law Review 58.

Chapter 2

Constitutional Amendments Affecting Asymmetry: A Critical Study

Paul Johnson J

2.1 Introduction

The Constitution of India is widely regarded as a flexible and dynamic document designed to accommodate the country's vast diversity. India is not only geographically large but also culturally, linguistically, and historically complex. In order to manage these differences within a single constitutional framework, the framers of the Constitution adopted a unique model of federalism that includes both symmetrical and asymmetrical features. One of the most important aspects of this system is the concept of constitutional asymmetry, which allows certain states or regions to enjoy special provisions that differ from those applicable to the rest of the country.Asymmetrical provisions were introduced to address the specific historical, cultural, and political circumstances of certain regions. Some areas had distinct identities, tribal governance systems, or prior agreements with the Indian Union at the time of integration. To ensure that these regions felt secure within the national framework, the Constitution granted them special protections and administrative arrangements. These provisions were intended to maintain unity while respecting diversity.Over time, however, the constitutional structure has not remained static. Various constitutional amendments have influenced the nature and scope of asymmetrical provisions in India. Some amendments were introduced to strengthen regional autonomy and protect local traditions, while others modified or reduced these special arrangements in response to changing political and administrative needs. As a result, the relationship between the Union and certain states has evolved significantly since the Constitution came into force.In recent years, debates surrounding asymmetrical federalism have become increasingly prominent. Developments such as the reorganisation of Jammu and Kashmir and the reinterpretation of certain special provisions have raised important constitutional and political questions. Scholars, policymakers, and legal experts continue to discuss whether these changes strengthen national integration or weaken the principle of federal

balance.This study attempts to examine the impact of constitutional amendments on asymmetrical provisions in India. It explores the historical background of these arrangements, analyses major amendments that have affected them, and evaluates their implications for Indian federalism. The objective is to understand whether constitutional asymmetry remains a necessary feature of governance in a diverse country like India.By critically analysing the evolution of these provisions, the study aims to highlight the challenges involved in balancing regional autonomy with national unity. It also seeks to contribute to the broader discussion on how constitutional amendments shape the federal structure of India and influence the distribution of power between the Union and the states.

2.2 Concept of Asymmetrical Federalism in India

Federalism generally refers to a system of governance in which powers are divided between a central authority and regional governments. In many federal systems around the world, states enjoy equal constitutional status and identical powers. This type of arrangement is often described as symmetrical federalism. However, not all federations follow this model. In certain countries, including India, the federal structure incorporates elements of asymmetrical federalism, where some regions are granted special constitutional provisions or powers that differ from those of other states.The concept of asymmetry in the Indian Constitution arises from the recognition that the country's regions differ significantly in terms of culture, history, language, and political circumstances. At the time of independence, several areas had unique administrative arrangements or strong regional identities. The framers of the Constitution believed that a uniform approach to governance might not be suitable for such diverse conditions. As a result, the Constitution incorporated provisions that allowed specific states to enjoy special protections or institutional arrangements.One of the most notable examples of asymmetrical federalism in India was Article 370, which provided special status to the State of Jammu and Kashmir. This provision allowed the state to have its own constitution and limited the application of certain provisions of the Indian Constitution. Similarly, Article 371 and its various sub-clauses grant special provisions to several states such as Nagaland, Mizoram, Sikkim, and Arunachal Pradesh. These provisions protect local customs, land ownership systems, and traditional practices from external interference.The purpose of such asymmetrical arrangements is primarily to accommodate diversity within the constitutional framework. In regions with strong cultural or tribal identities, special provisions help preserve traditional practices and prevent rapid social disruption. They also play a role in maintaining political stability, particularly in areas that have experienced historical conflicts or integration challenges.Another important reason for adopting asymmetrical federalism

is the need to address regional inequalities. Certain states or regions require special development measures or administrative flexibility due to geographical and economic factors. By granting tailored provisions, the Constitution attempts to promote balanced development across the country.Despite its practical advantages, asymmetrical federalism has been subject to criticism. Some scholars argue that special provisions create unequal treatment among states and may encourage demands for further autonomy. Others believe that such arrangements are essential for managing diversity in a country as complex as India.Overall, the concept of asymmetry reflects the pragmatic approach adopted by the Indian Constitution. Rather than imposing rigid uniformity, the Constitution allows flexibility so that governance structures can respond to the specific needs of different regions.

2.3 Historical Development of Asymmetrical Provisions

The historical development of asymmetrical provisions in India is closely linked to the political circumstances that existed at the time of independence and during the early years of nation-building. When the Constitution was being drafted, India was emerging from colonial rule and integrating numerous princely states and diverse territories into a unified political system. The leaders of the newly independent nation recognized that these regions had different historical backgrounds and administrative systems. As a result, it was necessary to design a constitutional framework that could accommodate these differences without threatening national unity.During the debates of the Constituent Assembly, several members emphasized that India's diversity required a flexible approach to federalism. Some regions, particularly in the northeast, had strong tribal traditions and customary systems of governance. Others, such as Jammu and Kashmir, had unique political arrangements that required special consideration. The framers therefore introduced provisions that allowed these regions to retain certain autonomous features while remaining part of the Indian Union.One of the earliest examples of such an arrangement was Article 370, which governed the relationship between India and Jammu and Kashmir. This provision was introduced as a temporary measure to facilitate the integration of the state while allowing it to maintain a significant degree of autonomy. Under this arrangement, many provisions of the Indian Constitution could be applied to the state only with the concurrence of its government.Similarly, the Constitution included Article 371, which provided special arrangements for several states based on their specific circumstances. Over time, additional clauses were added under this article to address the needs of newly formed states or regions with distinctive social and cultural identities.The development of asymmetrical provisions was also influenced by political agreements and peace settlements. For example, in certain

northeastern states, constitutional protections were introduced as part of efforts to resolve regional conflicts and ensure stability. These provisions recognized the importance of preserving local customs, traditional land ownership systems, and cultural practices.As India continued to evolve, new states were created and administrative boundaries were reorganized. In many cases, constitutional amendments were used to incorporate special provisions for these regions. This process gradually expanded the scope of asymmetrical federalism within the Indian constitutional framework.The historical evolution of these provisions demonstrates that asymmetry was not merely a theoretical concept but a practical response to the complex realities of governance in a diverse country. By allowing different regions to operate under tailored constitutional arrangements, the Indian Constitution sought to achieve a balance between national integration and regional autonomy.

2.4 Major Constitutional Amendments Affecting Asymmetry

Constitutional amendments have played a significant role in shaping the nature and scope of asymmetrical provisions in India. Since the adoption of the Constitution in 1950, several amendments have introduced new special arrangements or modified existing ones in response to changing political and administrative circumstances.One of the most notable examples is the 36th Constitutional Amendment Act, 1975, which led to the full integration of Sikkim into the Indian Union. Through this amendment, Sikkim was granted the status of a state, and Article 371F was inserted into the Constitution. This provision ensured the protection of Sikkim's unique political and social structure by allowing certain existing laws and institutions to continue even after its integration.Another important amendment was the 32nd Constitutional Amendment Act, 1973, which introduced special provisions for the State of Andhra Pradesh. The amendment addressed regional disparities in employment and education by providing safeguards for local residents in matters of public employment and admissions to educational institutions. These measures were intended to reduce tensions arising from regional inequalities within the state.Similarly, the 53rd Constitutional Amendment Act, 1986 inserted Article 371G for the State of Mizoram. This amendment followed the Mizoram Peace Accord and aimed to protect the religious and social practices, customary laws, and traditional land ownership systems of the Mizos. The provision ensures that parliamentary laws affecting these matters cannot be applied to the state without the approval of the state legislature.Another significant amendment was the 55th Constitutional Amendment Act, 1986, which introduced Article 371H for Arunachal Pradesh. This provision granted special powers to the Governor with respect to law and order, reflecting the strategic and security considerations associated with the

region.More recently, major changes occurred in relation to Jammu and Kashmir in 2019, when the special status under Article 370 was effectively removed and the state was reorganized into two Union Territories. Although this change was implemented through a presidential order and subsequent legislation, it significantly altered the asymmetrical constitutional arrangement that had existed for decades.These amendments illustrate how the Constitution has been used as a flexible instrument to address regional concerns. However, they also demonstrate that asymmetrical provisions are not permanent and can evolve over time through legislative and constitutional processes.

2.5 Critical Analysis of Constitutional Amendments

The constitutional amendments affecting asymmetrical provisions in India have generated considerable debate among scholars, legal experts, and political leaders. While some view these amendments as necessary steps to strengthen national unity and administrative efficiency, others believe that they may weaken the federal balance and undermine the autonomy of certain regions.One of the key advantages of asymmetrical arrangements is that they provide a mechanism for accommodating diversity within a unified constitutional framework. In a country with multiple ethnic groups, languages, and cultural traditions, uniform policies may not always be effective. Special provisions allow the government to address local concerns while maintaining overall national integration. In many cases, constitutional amendments have helped resolve regional conflicts by recognizing the unique needs of specific states.However, critics argue that such amendments may create a sense of inequality among states. When certain regions receive special privileges or protections, other states may perceive this as unfair treatment. This can sometimes lead to demands for similar concessions, which may complicate the federal structure and create administrative challenges.Another concern relates to the process by which constitutional amendments are adopted. Since amendments require approval by Parliament, there is a possibility that political considerations may influence decisions affecting federal arrangements. If special provisions are altered without adequate consultation with the concerned states, it may create tensions between the Union and regional governments.The changes related to Jammu and Kashmir in 2019 have intensified these debates. Supporters of the decision argue that it promotes uniformity and strengthens national integration. Critics, however, believe that the removal of long-standing asymmetrical provisions without the consent of the state legislature raises important constitutional questions.Overall, the impact of constitutional amendments on asymmetry depends largely on the context in which they are introduced. While some amendments have successfully addressed regional concerns, others have raised questions about the future of

cooperative federalism in India.

2.6 Conclusion

The concept of asymmetrical federalism has been an integral part of the Indian constitutional framework since the country achieved independence. Recognizing the extraordinary diversity of the nation, the framers of the Constitution designed provisions that would allow certain regions to enjoy special protections and administrative arrangements. These provisions were intended to preserve cultural identities, promote regional stability, and facilitate the integration of diverse territories into the Indian Union.Over the decades, constitutional amendments have played a crucial role in shaping the evolution of these asymmetrical arrangements. Some amendments introduced new provisions to address the specific needs of newly integrated states or regions with distinctive social and cultural characteristics. Others modified existing arrangements in response to changing political and administrative circumstances.The analysis of these amendments reveals that the Indian Constitution is not a rigid document but a flexible framework capable of adapting to new challenges. This flexibility has allowed the country to manage complex regional issues while maintaining a unified political structure.At the same time, the debate surrounding asymmetrical provisions continues to evolve. While such arrangements help protect regional identities, they also raise questions about equality among states and the balance of power within the federal system. Recent developments have highlighted the tension between the objectives of national integration and regional autonomy.Moving forward, any changes to asymmetrical provisions should be approached with careful consideration and broad political consensus. It is important to ensure that constitutional amendments do not undermine the trust between the Union and the states. Instead, they should aim to strengthen cooperative federalism and promote inclusive governance.In conclusion, asymmetrical federalism remains a distinctive feature of the Indian constitutional system. Its success depends not only on the provisions themselves but also on how they are implemented and interpreted over time. By maintaining a balanced approach that respects both diversity and unity, India can continue to uphold the spirit of its Constitution while adapting to the evolving needs of its society

References

1. Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press, 1966).

2. H.M. Seervai, Constitutional Law of India (4th edn, Universal Law Publishing, 1996).

3. D.D. Basu, Introduction to the Constitution of India (LexisNexis, latest edn).

4. M.P. Jain, Indian Constitutional Law (8th edn, LexisNexis, 2018).

5. B. Shiva Rao, The Framing of India's Constitution: A Study (Indian Institute of Public Administration, 1968).

6. Constituent Assembly Debates, Vol. X, discussions on federalism and special provisions for states.

7. Constitution of India, Article 370 (as originally enacted).

8. Constitution of India, Article 371 and its various sub-clauses relating to special provisions for states.

9. The Constitution (Thirty-Second Amendment) Act, 1973, introducing special provisions relating to Andhra Pradesh.

10. The Constitution (Thirty-Sixth Amendment) Act, 1975, integrating Sikkim into the Union of India and inserting Article 371F.

11. The Constitution (Fifty-Third Amendment) Act, 1986, inserting Article 371G relating to the State of Mizoram.

12. The Constitution (Fifty-Fifth Amendment) Act, 1986, inserting Article 371H for Arunachal Pradesh.

13. Louise Tillin, Remapping India: New States and Their Political Origins (Oxford University Press, 2013).

14. Sanjib Baruah, India Against Itself: Assam and the Politics of Nationality (University of Pennsylvania Press, 1999).

15. Supreme Court of India, S.R. Bommai v. Union of India, (1994) 3 SCC 1 - discussing the basic structure and federalism.

16. Supreme Court of India, State of West Bengal v. Union of India, AIR 1963 SC 1241 - discussing the nature of Indian federalism.

17. The Constitution (Application to Jammu and Kashmir) Order, 2019.

18. The Jammu and Kashmir Reorganisation Act, 2019.

19. Subhash C. Kashyap, Our Constitution: An Introduction to India's Constitution and Constitutional Law (National Book Trust, 2011).

20. Upendra Baxi, "Federalism and Constitutional Governance in India," in constitutional law scholarship discussing asymmetrical federal arrangements.

Chapter 3

Position of Victims and Accused in the Criminal Justice Systems of the USA and UK: A Comparative Study

Rahul Reddy. J

Student, LL.M. (Commercial Law), School of Legal Studies, CMR University

Abstract. The criminal justice systems of the United States and the United Kingdom are both rooted in the common law adversarial tradition, yet they conceptualise and protect the positions of victims and accused persons in distinct ways. Historically, both jurisdictions prioritised the accused's fair trial rights, presumption of innocence, legal representation, equality of arms, and protection against coercive interrogation, while relegating victims to a largely marginal, witness-like role. Over the last few decades, however, international victimology, human rights norms, and domestic reform movements have driven a gradual shift toward a more rights-based and participatory understanding of victims' interests. In the United States, the federal Crime Victims' Rights Act of 2004 (CVRA) codifies enforceable rights such as protection from the accused, notice of proceedings, participation through victim impact statements, consultation with prosecutors, and restitution-backed by standing and review mechanisms before federal courts. In England and Wales, by contrast, the primary instrument is the non-justiciable yet normatively significant Code of Practice for Victims of Crime, complemented by mechanisms such as the Victim Personal Statement and institutional service-delivery obligations on criminal justice agencies. For the accused, both systems remain anchored in Article 6 European Convention on Human Rights standards (for the UK) and constitutional due process and fair trial guarantees (for the US), including access to legal assistance and effective participation in proceedings. This paper undertakes a comparative doctrinal and policy analysis of these frameworks, evaluating whether contemporary reforms have achieved a principled balance between robust victims' rights and the foundational protections owed to the accused.

Keywords. Victimology, Fair trail, Due process, United States, United Kingdom

3.1 Introduction

Criminal Justice Systems of the United States and the United Kingdom have shared a common law, adversarial tradition; however, their approaches to

treating victims and individuals accused of crimes are distinct. Both systems for many years placed the majority of the focus on the rights of the accused, with emphasis on fair trial and due process, and treated victims primarily as witnesses to be called during the course of the trial. During the past several decades, however, victim movements, international human rights, and criticism of "state-centric" justice have led to a reconsideration of the role of the victim in the criminal process in both the United States and the United Kingdom. The purpose of this paper was to compare how the legal frameworks of the United States and the United Kingdom currently position victims and accused in criminal matters, including comparisons of the formal rights provided to victims and the accused, enforcement mechanisms used to protect these rights, and the practical challenges that exist in protecting them. This paper concluded that although both systems remain committed to placing the accused at the constitutional core of the criminal process, the United States has made significant strides in providing victims with enforceable rights, while the United Kingdom continues to emphasise service standards and institutional duties, and has not developed similar legal remedies to protect victims.

3.2 Conceptual Framework

3.2.1 Who is a Victim?

Modern definitions of the term "victim," which have emerged over the past two decades, generally include an individual who has been directly affected by a crime. The U.S. Crime Victims' Rights Act (CVRA) defines a victim as a person who has been "directly and proximately harmed" by a federal offence. Similarly, in England and Wales, the Victims' Code protects anyone who has experienced physical, emotional or financial harm as a result of a crime, as well as the close family members of an individual who has died as a result of a crime. These definitions illustrate the expansion of the traditional concept of victim from a limited definition based solely on physical injury to a broader definition that includes psychological harm and secondary victims such as grieving families.

3.2.2 The position of the accused

In both systems, the accused remains at the centre of criminal procedure through rights such as the presumption of innocence, the right to legal representation, and the right to a fair trial. In the US, these protections flow mainly from constitutional guarantees in the Bill of Rights, including due process clauses and the right to counsel. In the UK, they are grounded in common law, domestic legislation and the European Convention on Human Rights, especially Article 6 on fair trial.

The key challenge, therefore, is not whether to protect the accused, but how to strengthen victims' participation and protection without undermining these core defence rights.

3.3 Position of victims in the USA

3.3.1 Historical evolution

Victims in the US were largely pushed to the margins during the rise of public prosecution and professional policing, becoming mostly witnesses for the state. From the 1970s onwards, victim rights movements highlighted problems such as secondary victimisation, lack of information, and exclusion from court processes. This led to federal and state reforms, including compensation schemes, victim impact statements, and ultimately the Crime Victims' Rights Act of 2004.

3.3.2 Crime Victims' Rights Act (CVRA)

The CVRA is widely viewed as a turning point in American federal criminal justice. It lists specific rights for victims, including: the right to be reasonably protected from the accused; the right to reasonable, accurate and timely notice of public court proceedings; the right not to be excluded from such proceedings; the right to be heard at key stages, including sentencing and release; the right to proceedings free from unreasonable delay; and the right to full and timely restitution.

A distinctive feature of the CVRA is that it creates a judicial enforcement regime. Victims can assert their rights in federal district courts, and if those rights are denied, they may seek review through petitions for mandamus in the courts of appeals. This gives victims standing and some real leverage, rather than relying only on internal complaints within prosecution agencies.

3.3.3 Practical impact and critiques

Empirical and policy studies suggest that awareness and consistent implementation of the CVRA remain uneven. Some victims still report poor information, limited consultation, and delays, despite formal rights. Critics also worry that victim impact statements and strong participatory rights might push sentencing toward harsher outcomes or compromise neutrality, although courts still retain ultimate control.

Overall, the US model places victims more directly into the legal structure of proceedings, especially at the federal level, while maintaining constitutional protections for the accused.

3.4 Position of victims in the UK (England and Wales focus)

3.4.1 From "forgotten actors" to Victims' Code

In England and Wales, victims were also long described as the "forgotten actors" in the criminal process, with the system mainly focused on the state and the accused. Starting in the 1990s, policy documents such as the Victims' Charters and later the Victims' Code of Practice recognised that victims need information, support and a say in how the case is handled.

The current Victims' Code sets out the minimum standards of service that criminal justice agencies must provide to victims. It includes rights to be treated with respect, to receive timely information about the case, to make a Victim Personal Statement, and to be referred to support services.

3.4.2 Nature of rights and enforcement

Unlike the US CVRA, the Victims' Code is not a directly enforceable statute that creates individual causes of action in court. Instead, it is a binding set of service standards on agencies such as the police, Crown Prosecution Service and probation, with oversight through inspection bodies and political accountability. Recent inspection reports show that agencies sometimes focus on ticking procedural boxes rather than delivering meaningful support, and that compliance with the Code does not always mean victims feel heard or respected.

Victims in England and Wales can complain to the service provider and to oversight bodies, and the government has proposed strengthening duties to comply and improving data on performance, but the model remains more administrative than judicial.

3.4.3 Victim participation

The main formal channel for victim participation is the Victim Personal Statement, which allows victims to explain in their own words how the crime has affected them. This statement can be taken into account at sentencing, though judges retain discretion to ensure fairness to the accused. The system, therefore, offers a voice but not a veto: victims can influence but not control prosecution decisions.

3.5 Position of the accused in the USA and UK

3.5.1 Core fair trial and due process protections

In the United States, the accused benefits from strong constitutional protections, including the right to counsel, the privilege against self-incrimination, and the right to confront witnesses. In the UK, the right to a fair trial is protected by Article 6 of the European Convention on Human Rights and reflected in domestic law and practice. Both systems insist on the presumption of innocence

and the requirement that guilt must be proved beyond a reasonable doubt.

3.5.2 Managing tensions between the victim and the defence rights

Both jurisdictions face the problem of balancing expanded victim rights with the need to avoid prejudicing the accused. For example, victim impact or personal statements must be managed so that they inform sentencing without undermining the objective assessment of evidence at the guilt stage. Courts have generally resolved conflicts by prioritising fair trial guarantees, while still trying to give victims a meaningful voice.

3.6 Comparative analysis

3.6.1 Key similarities and differences

Both systems now recognise that victims are more than just witnesses, and both have tried to improve information, protection and participation. However, the US has gone further in turning these expectations into enforceable rights, while the UK has put more emphasis on how agencies should treat victims day-to-day.

3.6.2 Advantages and concerns

The US approach offers clearer legal remedies when victim rights are ignored, but critics worry about complexity, uneven implementation, and the risk of perceived "victim-driven justice". The UK's service-based model is more flexible and less adversarial, but victims may feel powerless when agencies do not meet the Code's promises, and there is no easy judicial route to enforce them.

For the accused, both systems still put fair trial at the centre, yet there is ongoing debate about whether growing victim participation may, in practice, subtly influence judges, juries or prosecutors in ways that threaten neutrality.

3.7 Conclusion

The comparison shows that the USA and UK have taken different legal routes to strengthen the role of victims, while keeping the traditional protections of the accused largely intact. The US model builds a stronger set of enforceable rights, whereas the UK model focuses on minimum service standards and institutional responsibilities.

For future reform, both systems can learn from each other. The UK could consider giving victims more effective legal remedies, at least in serious cases, while still protecting the accused's fair trial rights. The USA, in turn, might pay more attention to consistent implementation and support services so that rights are meaningful in practice, not just on paper. In both countries, the ultimate goal should be a balanced system that treats victims with dignity, offers them a

genuine voice, and at the same time fully respects the constitutional and human rights of the accused.

References

1. US Department of Justice, 'Crime Victims' Rights Act' (US DOJ, updated 21 July 2016).
2. USC § 3771 (Crime Victims' Rights Act 2004).
3. Edna Erez and others, 'A Comparative Overview of Victims' Rights, Enforcement Models and Outcomes' (SSRN, 2014).
4. Poonam Gupta and Meena Kataria, 'A Comparative Analysis of Victims' Rights in USA, UK and India' (2015) 4(12) Global Journal for Research Analysis.
5. Douglas E Beloof, 'The Third Model of Criminal Process: The Victim Participation Model' (2005) 199 Utah Law Review 289 (discussing CVRA and victim standing).
6. Paul G Cassell, 'Crime Victims' Rights Act: Increasing Awareness, Modifying Complaint Procedures, and Improving Compliance' (US Department of Justice, 2008).
7. US Sentencing Commission, Crime Victims' Rights Primer (USSC 2023).
8. UK Government, Code of Practice for Victims of Crime in England and Wales (Victims' Code) (CP 437, 2020, in force 2021).
9. HMICFRS, HMCPSI and HMCFRS, Meeting the Needs of Victims in the Criminal Justice System (HMICFRS 2024).
10. 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' GA Res 40/34 (29 November 1985).
11. Council of Europe/European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (criminal limb) (updated 2024).
12. Liberty, 'Fair Trials' (Liberty Human Rights, 27 January 2020).
13. Fair Trials, 'The Right to a Fair Trial' (Fair Trials, 18 October 2022).
14. Rekha Kanwal, 'Legal Regime on Victim Compensation in Britain, USA and India' (2025) 15(1) Dehradun Law Review 173.

15. Office for Victims of Crime, 'Understanding Victim Rights' (US Office of Justice Programs, 10 January 2024).

Chapter 4

Lokayukta as the State Ombudsman in India: A Study with Special Reference to Karnataka and Kerala

Rajpoorani Bharat. T

LL.M. (Commercial Law), School of Legal Studies, CMR University, Bengaluru

Abstract. The Lokayukta was established as an independent State-level ombudsman with the objective of addressing corruption, maladministration, and abuse of power within public administration in India. Grounded in the principles of transparency, accountability, and good governance, the institution plays a crucial role in protecting citizens from arbitrary and unfair actions of the State. This paper examines the role and functioning of the Lokayukta as the State Ombudsman in India, with particular reference to the States of Karnataka and Kerala. Adopting a doctrinal and analytical approach, the study examines the constitutional and statutory framework governing the Lokayukta, including its powers, jurisdiction, and procedural mechanisms. Karnataka and Kerala have been selected due to the relatively advanced nature of their Lokayukta institutions and their notable contribution to administrative accountability through jurisprudence and practice. The paper evaluates the effectiveness of the Lokayukta in addressing complaints against public servants, its interaction with the executive, and the institutional and practical challenges that affect its independence and enforcement capacity. By analysing the functioning of the Lokayukta in these two States, the study highlights both the strengths and limitations of the institution. It concludes by emphasizing the need to strengthen the autonomy, authority, and implementation mechanisms of the Lokayukta in order to reinforce its role as an effective instrument of democratic governance in India.

Keywords. Lokayukta, Ombudsman, Karnataka, Kerala, Corruption, Administrative Accountability, Good Governance

4.1 Introduction

The concept of an Ombudsman represents one of the most significant institutional innovations in modern administrative law. Originating in Scandinavia, the Ombudsman serves as an independent watchdog to investigate complaints

of maladministration and corruption against public officials. In the Indian context, this institution has been adapted and implemented at both the national level through the Lokpal and at the state level through the Lokayukta. The establishment of the Lokayukta in various Indian states reflects a constitutional commitment to upholding the principles of transparency, accountability, and good governance enshrined in the Constitution of India.

India, with its vast population and complex federal structure, faces persistent challenges related to corruption and administrative inefficiency. The Administrative Reforms Commission of 1966 recommended the establishment of an Ombudsman institution to provide citizens with an accessible mechanism for redressal of grievances against public servants.

The Lokayukta institution embodies constitutional values of accountability by investigating allegations of corruption and maladministration against public servants at all levels. The institution operates on the principle that power must be exercised responsibly and those who wield it must be subject to scrutiny.

This research paper undertakes a comprehensive examination of the Lokayukta as the State Ombudsman in India, with specific focus on Karnataka and Kerala. These two states have been selected for comparative analysis due to their pioneering role in establishing robust Lokayukta institutions and their contrasting approaches to implementing the ombudsman model. Karnataka was one of the first states to enact the Lokayukta legislation in 1984, establishing a strong institutional framework that has investigated several high-profile cases of corruption. Kerala enacted its Lokayukta Act in 1999, initially conferring binding powers upon the institution, though recent amendments have sparked significant debate about the dilution of its authority.

The study adopts a doctrinal and analytical methodology, examining the constitutional foundations, statutory provisions, procedural mechanisms, judicial pronouncements, and practical functioning of the Lokayukta in these states. By analyzing the similarities and differences between the Karnataka and Kerala models, the research seeks to identify best practices and areas requiring reform to enhance the effectiveness of the Lokayukta as an instrument of democratic accountability.

4.2 Constitutional and Statutory Framework

4.2.1 Constitutional Foundations

The Constitution of India does not explicitly provide for the establishment of a Lokayukta at the state level. However, the constitutional mandate for such an institution can be derived from several provisions that emphasize accountability, good governance, and the rule of law. Article 14 guarantees equality before the

law, requiring that government officials exercise their powers fairly and without discrimination. Article 21, which protects the right to life and personal liberty, has been interpreted by the Supreme Court to encompass the right to good governance and a corruption-free administration.

Furthermore, Part IV contains the Directive Principles of State Policy, which direct the State to secure a social order promoting welfare. Article 38 mandates securing a social order permeated by justice social, economic, and political. The establishment of institutions like the Lokayukta fulfills these constitutional objectives by ensuring public administration operates with integrity and accountability.

The concept of federalism allows states to legislate within their jurisdiction. The establishment of a Lokayukta falls within state legislative competence, enabling design of institutions suited to specific administrative contexts.

4.2.2 Statutory Framework in Karnataka

Karnataka was a pioneering state in establishing the Lokayukta institution through the Karnataka Lokayukta Act, 1984. The Act was enacted to provide for the appointment and functions of certain authorities for the investigation of administrative action taken by or on behalf of the Government of Karnataka. The Karnataka Lokayukta consists of a Lokayukta and one or more Upa-Lokayuktas, who are appointed by the Governor in consultation with the Chief Justice of the Karnataka High Court, the Chairman of the Legislative Council, the Speaker of the Legislative Assembly, and the Leaders of Opposition in both Houses.

The 2015 amendment expanded eligibility, allowing any High Court Judge with ten years' experience to be appointed as Lokayukta, and five years for Upa-Lokayukta.

Under Section 7, the Lokayukta has jurisdiction over the Chief Minister, Ministers, MLAs, MLCs, and public servants. The institution investigates corruption, favoritism, nepotism, and abuse of power, and possesses suo motu powers to initiate investigations.

Section 12 empowers the institution with the authority to conduct inquiries and investigations. The Lokayukta has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, including the power to summon and enforce the attendance of witnesses, compel the production of documents, receive evidence on affidavits, requisition public records, and issue commissions for examination of witnesses. Additionally, Section 15 grants the Lokayukta contempt powers equivalent to those of a High Court, thereby ensuring that the institution can effectively enforce compliance with its orders.

Upon investigation completion, the Lokayukta submits a report with findings and recommendations. While not legally binding, there is strong expectation of

prompt implementation.

However, challenges to independence persist. In 2016, the government transferred corruption investigative powers to the Anti-Corruption Bureau. This was criticized as undermining independence. Following opposition, amendments were partially rolled back, though concerns remain.

4.2.3 Statutory Framework in Kerala

Kerala enacted the Kerala Lok Ayukta Act in 1999, establishing a Lokayukta institution with a distinctive feature that set it apart from most other states the power to issue binding orders. The Kerala Act provides for the appointment of a Lok Ayukta and an Upa-Lok Ayukta by the Governor in consultation with the Chief Justice of the Kerala High Court, the Speaker of the Legislative Assembly, and the Leader of Opposition.

The jurisdiction of the Kerala Lokayukta extends to the Chief Minister, Ministers, Members of the Legislative Assembly, public servants, and officers of local self-government institutions. The institution can investigate complaints relating to allegations of corruption, maladministration, favoritism, nepotism, and abuse of power. Similar to the Karnataka model, the Kerala Lokayukta possesses suo motu powers to initiate investigations based on credible information without waiting for formal complaints.

The unique and most significant feature of the Kerala Lokayukta Act is contained in Section 14, which originally made the declarations and orders of the Lokayukta binding on the competent authority. Under this provision, when the Lokayukta, after investigation, declares that a public servant is unfit to hold office due to corruption or maladministration, the competent authority was mandated to accept this declaration. This binding nature of Lokayukta orders distinguished Kerala from other states where the ombudsman's recommendations were merely advisory.

In 2013, the Chief Minister resigned following a Lokayukta declaration of unfitness due to corruption allegations. This demonstrated the potential for strong accountability enforcement at the highest levels.

However, political debate intensified around binding powers. In 2022, the government introduced an amendment fundamentally altering Lokayukta orders.

The 2022 amendment to Section 14 changed the provision from "the competent authority shall accept the declaration" to "the competent authority may either accept or reject the verdict of the Lokayukta after giving an opportunity of being heard". This amendment effectively transformed the Lokayukta from a quasi-judicial body with binding powers into an advisory institution whose recommendations could be accepted or rejected by the government after con-

ducting a hearing. The competent authority is required to make a decision within three months, failing which the Lokayukta's declaration is deemed to be accepted.

This amendment has been strongly criticized by legal scholars, opposition parties, and civil society organizations as a dilution of the Lokayukta's powers that undermines the institution's effectiveness in combating corruption. Critics argue that allowing the government to reject Lokayukta findings after providing a hearing creates a conflict of interest, as the executive is essentially sitting in judgment over cases that may implicate its own members.

4.3 Powers and Jurisdiction

4.3.1 Investigative Powers

Both the Karnataka and Kerala Lokayukta institutions possess extensive investigative powers designed to enable effective inquiry into allegations of corruption and maladministration. These powers are quasi-judicial in nature and are modeled on the authority vested in civil courts and judicial tribunals.

The Lokayukta can summon and enforce the attendance of any person and examine them on oath. This power is crucial for gathering testimonial evidence and ensuring that witnesses cannot refuse to cooperate with investigations. The institution can compel the production of documents, records, and files from government departments, public undertakings, and officials. This documentary access is essential for examining the paper trail in cases of financial irregularities and procedural violations.

The Lokayukta can receive evidence on affidavits, requisition public records, and issue commissions for witness examination.

In Karnataka, Section 15 grants contempt powers equivalent to a High Court. Willful disobedience can be punished with imprisonment or fine, ensuring compliance with procedural orders.

4.3.2 Jurisdiction Over Public Servants

The jurisdiction of the Lokayukta extends to a wide range of public functionaries, reflecting the comprehensive nature of the ombudsman system. In Karnataka, the Lokayukta has jurisdiction over the Chief Minister, all Ministers, Members of the Legislative Assembly and Legislative Council, and all categories of public servants employed by the state government or local authorities. This broad jurisdiction ensures that no public official is beyond scrutiny, promoting accountability across all levels of administration.

The Karnataka Act excludes Governor's discretionary powers, foreign affairs, defense, security matters, and judicial functions. Kerala's jurisdiction extends to

the Chief Minister, Ministers, MLAs, government servants, local bodies, aided institutions, and cooperative societies receiving government funding. Both states require the Lokayukta to personally investigate cases involving Chief Ministers or Ministers, while lower-level cases may be delegated to Upa-Lokayukta.

4.3.3 Suo Motu Powers

The suo motu power of the Lokayukta the ability to initiate investigations on its own motion without waiting for formal complaints is a critical tool for proactive governance and accountability. This power enables the Lokayukta to take cognizance of corruption and maladministration based on credible information from any source, including media reports, anonymous complaints, or information gathered during other investigations.

Karnataka's 2015 amendment expanded suo motu powers to investigate all public servants except the Chief Minister, Ministers, and Legislators.

Kerala's Lokayukta has possessed suo motu powers since 1999. The institution can take cognizance of matters from any source and initiate investigations.

Suo motu power is crucial when victims cannot file complaints due to fear, lack of resources, or vulnerability, recognizing that effective enforcement requires institutional initiative.

4.4 Procedural Mechanisms

4.4.1 Filing and Processing of Complaints

The procedural framework governing the filing and processing of complaints is designed to balance accessibility with the need to prevent frivolous or vexatious complaints. In both Karnataka and Kerala, any person can file a complaint with the Lokayukta alleging corruption or maladministration by a public servant within their jurisdiction. The complaint must be in writing and should contain sufficient particulars to enable the Lokayukta to assess whether there are grounds for investigation.

Complaints must be filed within five years in both states, supported by affidavits. The Lokayukta conducts preliminary inquiries to determine if detailed investigation is warranted. Both states impose penalties for false or vexatious complaints, including perjury prosecution.

4.4.2 Investigation Process

Once admitted, the accused receives a copy of the complaint and opportunity to respond, ensuring natural justice principles.

Investigation involves examining witnesses, scrutinizing documents, site inspections, and expert opinions. Public servants must cooperate and provide

information. Both parties have right to legal counsel. Hearings are generally private to protect dignity. The process emphasizes thoroughness and impartiality.

4.4.3 Findings and Recommendations

Upon completion of the investigation, the Lokayukta prepares a detailed report containing findings of fact, legal conclusions, and recommendations for action. In Karnataka, this report is submitted to the competent authority, which may be the Governor, Chief Minister, or the concerned department head depending on the rank of the public servant involved. The report includes specific recommendations regarding disciplinary action, prosecution, recovery of assets, or administrative reforms.

Karnataka's recommendations are not binding, though strong expectation exists for prompt implementation. The competent authority must inform the Lokayukta of action taken.

Kerala's orders were originally binding under Section 14. However, the 2022 amendment made them advisory. The competent authority can now reject findings after hearing, though rejection must be reasoned within three months.

4.5 Effectiveness and Challenges

4.5.1 Achievements

The Karnataka Lokayukta has established itself as one of the most effective ombudsman institutions in India, having investigated numerous high-profile cases of corruption over its nearly four decades of operation. The institution has examined allegations against Chief Ministers, Ministers, senior bureaucrats, and police officers, demonstrating that no public official is immune from scrutiny.

A landmark Karnataka case involved illegal mining operations. The investigation revealed massive irregularities, leading to prosecutions, lease cancellations, and fund recovery. This demonstrated capacity for complex investigations exposing systemic corruption.

The Karnataka Lokayukta has addressed corruption in land allotment, urban planning, and procurement. By investigating citizen complaints, it provides accessible justice and deters misconduct. Its existence serves as a preventive mechanism.

The Kerala Lokayukta gained national prominence for its bold use of binding powers under the original framework of the 1999 Act. The institution investigated several high-profile cases involving Ministers and senior officials, issuing declarations that led to resignations and administrative actions. The 2013 case involving the then Chief Minister marked a watershed moment in Indian

anti-corruption jurisprudence, demonstrating that the ombudsman institution could enforce accountability even at the apex of political power.

The Kerala Lokayukta has been particularly effective in addressing complaints related to maladministration in land revenue matters, municipal services, and public distribution systems. By providing accessible grievance redressal to citizens, especially those from marginalized communities, the institution has strengthened democratic accountability and social justice.

4.5.2 Challenges to Independence

Despite achievements, both institutions face independence challenges. The appointment process involves political authorities. While requiring consultation with judicial officers and opposition leaders, the Governor remains ultimate appointing authority, creating potential for political influence.

Karnataka's reduced removal threshold makes the institution vulnerable to political pressure, reducing security of tenure.

4.5.3 Resource Constraints

Resource constraints limit operational effectiveness. Understaffing causes delays in investigation and case disposal, undermining public confidence.

Government-determined budgets create financial dependence. Inadequate funding affects investigations, infrastructure, technology adoption, and staff capacity-building. Physical infrastructure often lacks adequate space for hearings, secure storage, and public access.

4.5.4 Enforcement Challenges

Karnataka's non-binding recommendations present fundamental challenges. Powerful public servants can use political influence to prevent implementation.

Karnataka has delayed or declined recommendations in politically sensitive cases. Non-implementation diminishes deterrence and erodes public faith.

Kerala's 2022 amendment created similar enforcement challenges. Government discretion to reject findings weakened institutional authority. Critics argue this creates conflict of interest, as the executive reviews decisions affecting its own members.

4.5.5 Coordination with Other Agencies

Coordination with other agencies presents challenges. Prosecution is conducted by government-controlled police and prosecutors, leading to delays or inadequate prosecution in politically sensitive cases.

Disciplinary proceedings are conducted by departmental authorities. The Lokayukta can only recommend action, creating opportunities for delay and

non-implementation.

Karnataka's 2016 transfer of powers to the Anti-Corruption Bureau highlighted tensions between the Lokayukta and executive-controlled agencies.

4.6 Comparative Analysis

4.6.1 Structural Similarities

The Lokayukta institutions in Karnataka and Kerala share several structural and functional similarities. Both are established through state legislation as independent quasi-judicial bodies. Both consist of a Lokayukta and one or more Upa-Lokayuktas appointed through a consultative process involving judicial and legislative authorities. The jurisdiction of both institutions extends to the Chief Minister, Ministers, legislators, and public servants at all levels.

Both institutions possess extensive investigative powers modeled on civil court procedures, including the power to summon witnesses, compel production of documents, and receive evidence. Both have suo motu powers to initiate investigations without waiting for formal complaints. The procedural frameworks in both states emphasize principles of natural justice, requiring that accused persons be given opportunities to respond to allegations.

4.6.2 Key Differences

The key difference relates to binding powers. Kerala originally had binding powers under Section 14, making it among India's strongest ombudsman institutions. Karnataka has always had recommendatory powers.

However, Kerala's 2022 amendment substantially diluted this distinction, moving Kerala closer to Karnataka's model. This raises questions about whether advisory models represent inevitable equilibrium where strong powers threaten executive authority.

Karnataka excludes Chief Ministers, Ministers, and legislators from suo motu investigation. Kerala imposes no such restrictions.

4.6.3 Lessons and Best Practices

Comparative analysis offers important lessons. Both states demonstrate that statutory powers alone are insufficient; effective functioning requires political will, resources, and public support.

Karnataka demonstrates institutional longevity value, maintaining four decades of operational continuity. However, recommendatory powers vulnerability highlights the need for stronger enforcement.

Kerala demonstrates both potential and challenges of binding powers. While binding orders enforce accountability powerfully, they generate political resis-

tance. The 2022 amendment illustrates how statutory provisions can be diluted when political will is lacking.

4.7 Recommendations

Key reforms include: constitutional status to prevent dilution of powers; binding recommendations with appropriate appellate mechanisms through specialized tribunals or High Court benches rather than executive review; financial autonomy by charging budgets on the Consolidated Fund and administrative autonomy in staffing and operations; capacity building through trained investigators, legal officers, and technological modernization including case management systems and online portals; and public awareness programs targeting vulnerable communities with transparent operations through annual reports and case statistics.

4.8 Conclusion

The Lokayukta as the State Ombudsman represents a crucial institutional innovation for promoting transparency, accountability, and good governance in India's federal democracy. The comparative study of Karnataka and Kerala demonstrates both the potential and the challenges of the ombudsman model in the Indian context. Karnataka's long-standing institution has built credibility through consistent functioning and investigation of high-profile cases, though its recommendatory powers limit enforcement effectiveness. Kerala's bold experiment with binding orders showed the potential for strong accountability, but political resistance led to dilution through the 2022 amendment.

The fundamental challenge facing the Lokayukta in both states is the tension between the need for strong, independent accountability mechanisms and the reluctance of the political executive to accept constraints on its power. Legislative amendments that weaken the institution, inadequate resources, delayed implementation of recommendations, and political interference in appointments all reflect this underlying tension.

For the Lokayukta to fulfill its constitutional promise as an effective instrument of democratic governance, comprehensive reforms are necessary. These include providing constitutional status, strengthening enforcement mechanisms with appropriate safeguards, ensuring financial and administrative autonomy, investing in capacity building, and promoting public awareness and participation.

The success of the Lokayukta ultimately depends not merely on statutory provisions but on political will, institutional capacity, and civic engagement. As India continues its journey toward more transparent and accountable governance, strengthening institutions like the Lokayukta is not merely a matter of

administrative reform but a constitutional imperative. The Lokayukta embodies the fundamental principle that in a democratic republic, power must be exercised responsibly and those who wield it must remain answerable to the people.

References

1. Karnataka Lokayukta Act, 1984 (Karnataka Act 4 of 1985).
2. Kerala Lok Ayukta Act, 1999 (Act 8 of 1999).
3. Administrative Reforms Commission. (1966). Report on Problems of Redressal of Citizens' Grievances. Government of India.
4. Lokpal and Lokayuktas Act, 2013 (Central Act 1 of 2014).
5. Annual Report of Karnataka Lokayukta 2023-24. Karnataka Lokayukta, Bengaluru. https://lokayukta.karnataka.gov.in/pdf/AAR2023-24.pdf
6. Annual Report of Karnataka Lokayukta 2022-23. Karnataka Lokayukta, Bengaluru. https://lokayukta.karnataka.gov.in/pdf/AAR2022-23.pdf
7. The News Minute. (2022). Explained: The controversy around proposed amendments to Kerala Lokayukta Act. https://www.thenewsminute.com/kerala/explained controversy-around-proposed-amendments-kerala-lokayukta-160304
8. Kerala Lok Ayukta. (2021). Organisation and Functions. https://www.lokayuktakerala.gov.i
9. The Constitution of India, 1950.
10. Austin, G. (2000). Working a Democratic Constitution: A History of the Indian Experience. Oxford University Press.
11. Karnataka Lokayukta Jurisdiction and Functions. (2023). Studocu. https://www.studocu.com/in/document/kle-university/data-mining/lokayukta-in-karnataka/67078908
12. Karnataka Lokayukta. (2024). Acts and Amendments. https://lokayukta.karnataka.gov.in/l
13. Times of India. (2015). Amended Lokayukta bill brings gloom to institution. https://timesofindia.indiatimes.com/bangalore/amended-lokayukta-bill-brings-gloom-to-institution/articleshow/48323123.cms
14. Drishti IAS. (2019). Lokpal and Lokayukta - Important Institutions. https://www.drishtiias.com/important-institutions/drishti-specials-important-institutions-national-institutions/lokpal-lokayukta

15. Onmanorama (2022). Ordinance to undermine Kerala Lokayukta's powers. https://www.onmanorama.com/news/kerala/2022/01/25/kerala-lokayukta-ordinance-dilute-power.html

16. Legacy IAS Academy. (2022). Dilution of Lokayukta Powers in Kerala. https://www.legacyias.com/dilution-of-lokayukta-powers-in-kerala/

17. Jus Corpus. (2022). Diluting the Powers of Lokayukta by Kerala Government. https://www.juscorpus.com/diluting-the-powers-of-lokayukta-by-kerala-government/

18. BA Notes. (2024). Evolution and Importance of Lokayukta in State Governance. https://banotes.org/admin-system-state-district-levels/evolution-importance-lokayukta-state-governance/

19. The Role of Lokayukta in Karnataka: A Guardian of Accountability. (2024). International Journal of Novel Research and Development. https://www.ijnrd.org/papers/IJNRD2508108.pdf

20. A Critical Study of Working and Functioning of Lokayukta in India. (2024). International Journal of Advanced Research in Science, Communication and Technology. https://ijarsct.co.in/Paper17281.pdf