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RESEARCH ARTICLE

Legal Traditions and Constitutional Commitments: Understanding Civil and Political Rights Enforcement in National and International Contexts

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ABSTRACT

The constitution of a state is its supreme law, and the inclusion of civil and political rights within it is widely treated as a marker of a state's commitment to human dignity, individual liberty and democratic governance. Yet the mere textual inclusion of a right does not guarantee its practical enforcement, and the extent of protection continues to vary widely across jurisdictions, shaped by socio-cultural context, historical experience and prevailing political ideology. Despite an expanding literature on constitutional bills of rights, most existing comparative accounts either catalogue provisions jurisdiction by jurisdiction or theorise enforcement in the abstract, without connecting the two. Few ask why constitutionally guaranteed civil and political rights achieve markedly different levels of practical enforcement even where the textual guarantees are similar in substance. This article addresses that gap by asking why some constitutional guarantees of civil and political rights translate into effective judicial and institutional protection while others remain largely aspirational. Adopting a doctrinal and functional-comparative method, it examines primary constitutional texts, leading case law and international human rights instruments across four purposively selected jurisdictions, Bangladesh, South Africa, Ireland and Denmark, chosen because they represent contrasting legal families and differing postures toward the incorporation of international law. The analysis finds, first, that the justiciability of a right, rather than its mere textual inclusion, is the strongest predictor of effective enforcement; second, that jurisdictions displaying a 'soft monist' judicial practice within a formally dualist structure, such as Bangladesh, achieve a degree of enforcement flexibility unavailable to strictly dualist systems; and third, that institutional safeguards, independent judiciaries, human rights commissions and ombuds institutions, matter as much as the drafting of the constitutional text itself. The article's original contribution lies in drawing these jurisdiction-specific findings together into a single comparative framework linking constitutional design, incorporation doctrine and enforcement outcomes. It closes by acknowledging the limits of a four-jurisdiction doctrinal study and by proposing avenues for future empirical and quantitative comparative research.

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1. Introduction

1.1. Background and Rationale

The constitutional inclusion of civil and political rights is a crucial and evolving aspect of governance worldwide. At the heart of every democratic society lies the recognition and protection of fundamental civil and political rights, enshrined in constitutions as a shield against the abuse of power and as a means of safeguarding

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individual liberty. This paper examines how a range of countries approach the incorporation of civil and political rights within their respective constitutions.

Constitutions serve as the supreme law of a nation, setting out the fundamental principles that guide its governance and structure, and defining the relationship between the state and its citizens.[2] They establish a framework for the distribution of power and define the rights and freedoms of individuals within society. Civil rights encompass a range of liberties such as freedom of speech, religion and assembly, while political rights include the right to vote, to participate in the political process and to access information.[3] Throughout history, the constitutional inclusion of civil and political rights has been shaped by socio-cultural context, historical events and prevailing political ideology, so that the resulting provisions vary significantly from one country to another, reflecting each nation's particular aspirations and values.

1.2. Research Problem and Questions

That constitutions ought to protect civil and political rights is no longer a contested proposition; it is well established in both constitutional theory and state practice. The more pressing and, until now, under-examined question is why constitutional protection of ostensibly similar rights produces such uneven enforcement outcomes across jurisdictions. Rather than restating the general importance of constitutional rights protection, this article is organized around three specific questions that structure the comparative analysis which follows:

(i) Why are some constitutionally guaranteed civil and political rights enforced more effectively than others, even within the text of a single instrument?

(ii) Why does the successful judicial enforcement of certain rights depend heavily on the institutional character of a state's courts and oversight bodies, while other formally guaranteed rights remain practically dormant?

(iii) Why does a gap persist between constitutional promise and constitutional practice, and does a state's stance on the incorporation of international law, monist, dualist, or a hybrid of the two, affect the size of that gap?

These questions serve as the organizing principle of the article: each comparative case study in Chapter 4 is read against them, and Chapter 5 draws the answers together into a general account of constitutional enforcement.

[2]Md Ekramul Haque, 'The Bangladesh Constitutional Framework and Human Rights' (2011) Dhaka University Law Journal <http://journal.library.du.ac.bd/index.php?journal=DULJ&page=article&op=viewFile&path[]=1661&path[]=1569> accessed 12 July 2026.

[3]ibid.

1.3. Research Gap and Significance

Comparative constitutional scholarship has tended to divide along two lines. One strand catalogues rights provision across constitutions descriptively, without asking why enforcement outcomes differ. A second, more theoretical strand debates enforcement in the abstract, through concepts such as judicial supremacy, constitutional pluralism or legal transplantation, without grounding the discussion in a sustained comparison of specific jurisdictions.[4] What is comparatively scarce is scholarship that connects the two: that uses a defined set of jurisdictions, selected on articulated criteria, to test why constitutional design and incorporation doctrine translate into different enforcement realities.[5] This article's contribution is to close that gap, at least partially, by combining doctrinal description with a comparative framework built around justiciability, incorporation doctrine, and institutional safeguards.

The significance of the study is twofold. Academically, it offers a comparative framework, rather than a single-jurisdiction account, that can be extended to other legal systems and tested against further case studies. As a matter of policy, it identifies concrete institutional design choices (justiciability, independent oversight bodies, and judicial engagement with international human rights norms) that policymakers and constitutional drafters can draw upon when strengthening the practical enforcement of civil and political rights.

1.4. Conceptual Clarification

Because the terms are frequently, and imprecisely, used interchangeably, it is necessary to fix the vocabulary used throughout this article. *Human rights* are the broadest category: entitlements said to be inherent in every person by virtue of their humanity, largely irrespective of domestic legal recognition. *Fundamental rights* and *constitutional rights* are used in this article interchangeably to denote the subset of human rights that a particular constitution has textually entrenched and rendered part of domestic supreme law. *Civil liberties* refer specifically to protections against undue state interference with the individual, for example, freedom of expression, conscience and association, while *political rights* refer to entitlements to participate in the political process itself, such as the right to vote and to stand for public office. Civil and political rights, taken together, form the subject matter of this article and are distinguished, where relevant, from economic, social and cultural rights, which raise distinct questions of justiciability and are addressed only incidentally.

Examples of national constitutions that adopt varying strategies for protecting civil and political rights are examined in this paper, alongside the institutional mechanisms established to enforce them, including independent courts, human

[4]Mark Tushnet, 'The Possibilities of Comparative Constitutional Law' (1999) 108 Yale Law Journal 1225.
[5]Ran Hirschl, 'The Question of Case Selection in Comparative Constitutional Law' (2005) 53 American Journal of Comparative Law 125.

rights commissions and other oversight bodies. The article also addresses the difficulty many states face in enforcing the civil and political rights that their constitutions' guarantee: societal change, technological advancement and global interconnectedness generate new and complex problems that call for constitutional provisions to be re-examined and, where necessary, reinterpreted. For many countries, striking the right balance between individual freedom and national security remains a persistent challenge.

2. Literature Review and Theoretical Framework

2.1. Approaches to the Incorporation of International Law: Monism and Dualism

Every country has its own way of deciding how international law fits within its national legal system. Some prefer a direct method: once a treaty is ratified, it becomes part of domestic law automatically. Others take a more cautious approach, requiring separate implementing legislation before a treaty has any domestic legal effect. The same divide runs through the choice between adopting a comprehensive Bill of Rights that explicitly enumerates individual freedoms, and relying instead on judicial interpretation and evolving societal norms to protect those freedoms. Two competing doctrines describe this divide: monism and dualism.[6]

Monism treats international and domestic law as part of a single legal system: once a treaty is accepted by the government, it becomes part of domestic law directly and requires no further implementing act. Monism assumes that international and domestic law are harmonious, with international norms generally taking precedence over conflicting domestic legislation.[7] Dualism, in contrast, treats international and domestic law as separate systems operating independently of one another: for international law to be enforceable domestically, it must first be formally incorporated through domestic legislation.[8]

The choice between monism and dualism has real consequences for how international law is treated domestically. Monist states have a more direct route for absorbing international law, since ratified treaties automatically form part of their legislation, a feature that may produce a higher level of compliance with international obligations because they are more easily enforced domestically. Dualist states, by contrast, face a more complex process, since separate legislation is required to give domestic effect to a treaty; this can produce delays in implementation and inconsistency in compliance.[9] The choice between the two approaches is generally shaped by a country's legal traditions, its constitutional

[6]Malcolm N Shaw, International Law (9th edn, Cambridge University Press 2021) ch 4.
[7]Madelaine Chiam, 'Monism and Dualism in International Law' (Oxford Bibliographies, 2021) <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0168.xml> accessed 12 July 2026.
[8]ibid.
[9]ibid.

structure, and the willingness of its domestic legal system to accommodate international norms, and some states adopt a blend of both depending on the nature of the treaty in question.

2.2. Bangladesh's Incorporation Practice: Between Dualism and Soft Monism

Bangladesh follows, in broad terms, a dualist approach to the incorporation of international law. Under Article 145A of its Constitution, any international treaty signed by the government must be laid before Parliament.[10] Ratified treaties do not, however, automatically become part of domestic law unless incorporated through separate legislation. Although Bangladesh has ratified numerous international human rights treaties, including the ICCPR and CEDAW, these rights are enforceable in domestic courts only insofar as they are reflected in national law, a clear dualist tendency in which international and domestic law are treated as two distinct systems.

That said, Bangladeshi courts have, in several cases, referred to international instruments, particularly human rights treaties, when interpreting constitutional rights or filling gaps in domestic law. In the ship-breaking case of *Bangladesh Environmental Lawyers Association v Ministry of Shipping*, for instance, the court relied on international treaties to which Bangladesh was not even a party.[11] This suggests that, although Bangladesh's formal orientation is dualist, its courts are edging toward a more monist judicial practice, a soft monism operating within a dualist constitutional structure. This distinction matters for the argument developed later in this article: it is precisely this soft-monist judicial practice, rather than the formal dualist structure, that appears to expand the practical enforcement of rights beyond what a strictly dualist reading of the Constitution would permit.

2.3. Competing Theoretical Debates in Comparative Constitutionalism

Beyond monism and dualism, comparative constitutional scholarship is organized around several further debates that bear directly on the enforcement question posed in this article, and against which the case studies in Chapter 4 are read.

2.3.1. Constitutional universalism versus constitutional particularism.

Universalist accounts treat civil and political rights as a single, transferable standard that all constitutions should approximate; particularist accounts insist that rights protection must be read against local history, culture and institutional capacity. The comparative case studies below suggest that both perspectives capture part of the picture: the substantive content of the rights compared is

[10]Constitution of the People's Republic of Bangladesh 1972, art 145A.

[11]Bangladesh Environmental Lawyers Association v Ministry of Shipping (Shipbreaking Case), Writ Petition No 7260 of 2008 (High Court Division, Supreme Court of Bangladesh, 2009).

strikingly convergent, while the mechanisms of enforcement are strongly path-dependent on national legal tradition.

2.3.2. Judicial supremacy versus parliamentary supremacy.

Systems built on judicial supremacy (South Africa's Constitutional Court, most clearly) treat the judiciary as the final and binding arbiter of constitutional meaning, including over the legislature. Systems closer to the parliamentary-supremacy end of the spectrum (Denmark, in particular, given the absence of a dedicated constitutional court) rely more heavily on legislative self-restraint and ordinary-court review. Where a jurisdiction sits on this spectrum, this article argues, is a stronger predictor of enforcement outcomes than the wording of its rights catalogue.

2.3.3. Constitutional pluralism, legal transplants and judicial dialogue.

Constitutional pluralism recognizes that a state's constitutional order may coexist with competing normative orders (regional or international) without a single hierarchical solution. Legal transplantation describes the borrowing of constitutional text or doctrine from one jurisdiction by another, while judicial dialogue describes the more informal practice of courts drawing on foreign or international jurisprudence when interpreting domestic rights, as Bangladeshi courts did in the ship-breaking litigation discussed above.

These concepts, taken together, supply the theoretical vocabulary this article uses to move beyond description toward comparative analysis, and each is revisited when the four jurisdictions are compared in Chapter 4.[12]

2.4. Civil and Political Rights: Doctrinal Foundations

Civil and political rights, as established in national constitutions, are the liberties and freedoms that protect individuals from government intrusion and ensure their participation in the political process. They are the foundation of a democratic society, intended to ensure that everyone is treated with dignity, equality and respect, irrespective of race, religion, gender or other characteristics.

The International Covenant on Civil and Political Rights (ICCPR) is an expanded, hard-law version of the 1948 Universal Declaration of Human Rights.[13] 144 states are currently parties to the ICCPR[14] from every geopolitical region of the world, which renders it less susceptible to the criticism that it is founded on a Western, individualistic or otherwise parochial philosophy.[15] The ICCPR tasks the UN Human Rights Committee with monitoring compliance: the Committee receives initial, supplementary and periodic reports from state parties every five years, and enters into public dialogue with state representatives on the human rights situation

[12]Sujit Choudhry (ed), The Migration of Constitutional Ideas (Cambridge University Press 2006).
[13]Universal Declaration of Human Rights, UNGA Res 217A(III) (10 December 1948) UN Doc A/810.
[14]Multilateral Treaties Deposited with the Secretary-General (UN Doc ST/LEG/SER.E/16, 1998).
[15]Dominic McGoldrick, The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights (Clarendon Press 1994) 20.

in their countries.[16] It also receives individual complaints against the state parties to the Optional Protocol and issues views on those complaints[17], and issues general comments on the articles of the Covenant.[18]

Even where the ICCPR has been incorporated into domestic law, reservations or limitations entered by the state party may restrict full implementation of particular rights, or permit derogation in defined circumstances; these reservations must be considered when assessing how far the ICCPR is genuinely reflected in domestic law. The inclusion of civil and political rights in a national constitution is therefore best understood as a powerful, but not, on its own, sufficient, statement of commitment to human rights, individual liberty and democratic governance.

Notwithstanding this progress, challenges persist. Some states continue to face systemic discrimination, censorship and restrictions on political participation, while the rapid advance of technology has introduced new dilemmas concerning digital privacy, surveillance and internet freedom that call for contemporary reinterpretation of existing constitutional guarantees.[19]

3. Research Objectives and Methodology

3.1. Research Objectives

Building on the questions set out in section 1.2, this article pursues three specific, analytical (rather than purely descriptive) objectives:

(a) to identify, across four contrasting jurisdictions, the doctrinal and institutional factors that explain differing levels of enforcement of textually similar civil and political rights;

(b) to test whether a jurisdiction's formal position on monism and dualism, and its actual judicial practice, are reliable predictors of that enforcement outcome; and

(c) to synthesize the jurisdiction-specific findings into a general, transferable framework linking constitutional design, incorporation doctrine and enforcement outcome.

These objectives move the inquiry from a Descriptive-Comparative register, simply explaining what each constitution provides, to an Analytical-Comparative one, in which the provisions are read against the theoretical debates identified in Chapter 2.

3.2. Case Selection and Comparative Method

[16]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 40.

[17]Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 302.

[18]International Covenant on Civil and Political Rights (n 12) art 28.

[19]G De Gregorio and R Radu, 'Digital Constitutionalism in the New Era of Internet Governance' (2022) 30 International Journal of Law and Information Technology 68.

This article adopts a doctrinal, functional-comparative method: it compares how different legal systems solve the same functional problem, securing effective protection for civil and political rights, rather than assuming that formally similar rights provisions perform the same function.[20]

Four jurisdictions were purposely, rather than randomly, selected: Bangladesh, South Africa, Ireland and Denmark. This selection was designed to maximize variation along the two variables most relevant to the research questions. First, legal tradition and constitutional structure: Bangladesh (South Asian common law with a codified, tiered rights structure), South Africa (a mixed, transformative constitutional order with an unusually expansive justiciable Bill of Rights), Ireland (a common law jurisdiction with an enumerated-rights constitution shaped by EU membership), and Denmark (a Nordic civil law tradition with a concise, largely unamended nineteenth-century rights catalogue and no dedicated constitutional court). Second, orientation toward international law: the four jurisdictions span the spectrum from Bangladesh's formally dualist but practically soft-monist posture to Denmark's more directly monist-leaning tradition, with South Africa and Ireland occupying intermediate positions. Other legal families, most obviously Islamic law jurisdictions and avowedly socialist constitutional orders, are acknowledged but excluded from the comparative set, since the four selected jurisdictions already generate sufficient variation to answer the research questions within the scope of a single article; their inclusion is identified in Chapter 6 as a direction for future comparative work.

3.3. Sources and Analytical Variables

The primary sources examined are the constitutional texts themselves, the leading constitutional judgments interpreting them, and the relevant international human rights instruments (principally the UDHR, ICCPR and ICESCR). Secondary sources, peer-reviewed journal articles and monographs, are used to interpret and contextualize these primary materials; internet sources are used sparingly and, where possible, only for materials that are themselves primary or official (constitutional texts, treaty texts, and government or United Nations publications). Each jurisdiction is analyzed against five common variables, summarized in Table 1 below: (i) constitutional structure and the form of the rights instrument; (ii) the jurisdiction's approach to the incorporation of international law (monism, dualism or a hybrid practice); (iii) the model of judicial review in place; (iv) the primary mechanism through which civil and political rights are enforced; and (v) the institutional safeguards that support enforcement beyond the courts. These variables operationalize the theoretical framework of Chapter 2 and allow the four case studies in Chapter 4 to be read comparatively rather than in isolation.

4. Comparative Constitutional Analysis

[20]Ran Hirschl (n 42).

4.1. The Relationship Between Constitutions and Civil and Political Rights

The connection between a constitution and civil and political rights is intrinsically intertwined, forming the cornerstone of a just and democratic society.[21] A constitution is a nation's foundational law, defining the framework for government, the distribution of power, and the relationship between the state and its citizens. Civil and political rights are the liberties that protect individuals from unjustified government intrusion and enable them to participate actively in the political system. By incorporating these rights into its constitution, a country commits to treating them as inherent and inalienable, unaffected by transient political majorities or shifting social norms.

Constitutions typically enumerate specific civil and political rights, freedom of speech, religion, assembly, and the right to vote and to participate in political life, and establish the checks and balances needed to prevent the abuse of power by government. Most also create an independent judiciary to interpret and enforce these rights, ensuring they are not violated by the legislative or executive branches. This incorporation reflects a country's principles and its commitment to human rights, while also functioning as a practical tool for social stability, minority protection, and civic participation. The relationship is, in short, symbiotic: a constitution protects civil and political rights, while those rights in turn give the constitution its legitimacy and its connection to the core values of democracy and human dignity.

4.2. An Overview of World Constitutions

Civil and political rights are enshrined in the constitutions of a wide range of countries, reflecting a broadly shared recognition of their importance, even where the drafting technique differs sharply. In India, Article 19 of the Constitution guarantees freedom of speech and expression, peaceful assembly and association, while Article 21 guarantees the right to life and personal liberty, subject to procedure established by law.[22] In Bangladesh, civil and political rights are protected under Article 39, among other provisions, covering freedom of thought, conscience, speech and the press, discussed in greater depth in section 4.3 below.[23] In the United Kingdom, civil and political rights are not codified in a single written constitution but are protected through a combination of statute, common law and international treaty; the Human Rights Act 1998 incorporates the European Convention on Human Rights into domestic law, safeguarding the right

[21]UN Office of the High Commissioner for Human Rights, 'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation' (2006) <https://www.ohchr.org/sites/default/files/Documents/Publications/FAQen.pdf> accessed 12 July 2026.
[22]Constitution of India 1950, arts 19, 21.
[23]Constitution of the People's Republic of Bangladesh 1972, art 39.

to life, freedom of expression and the right to a fair trial.[24] South Africa's Constitution contains a comprehensive Bill of Rights in Chapter 2, guaranteeing equality before the law, the right to life and freedom of expression, discussed further in section 4.4.[25] Germany's Basic Law protects civil and political rights across several articles, including Article 1 (human dignity) and Article 2 (personal freedom). China's Constitution, meanwhile, guarantees freedom of speech, press, assembly and association under Article 35.[26] While national constitutions differ markedly in their specific drafting choices, they generally aim to protect civil and political rights as essential elements of a democratic society, promoting individual freedom, equality and participation in governance.

These examples are illustrative of a broader global pattern rather than exhaustive; the four jurisdictions selected for sustained comparative analysis in this article, Bangladesh, South Africa, Ireland and Denmark, are examined in full in Chapter 4. This overview establishes that constitutional convergence on the substantive content of civil and political rights is considerable; most constitutions surveyed protect a broadly similar core of freedoms. The comparative task that follows is therefore not to catalogue further such provisions, but to examine why, despite this convergence in text, four selected jurisdictions diverge in how effectively those rights are enforced.

4.3. Bangladesh

The drafting of the Constitution of Bangladesh was influenced by the Universal Declaration of Human Rights of 1948, the ICCPR[27] and the International Covenant on Economic, Social and Cultural Rights of 1966[28], each of which had already established a degree of global awareness of the need for human rights protection. While the Constitution does not explicitly mention the UDHR or the UN Charter, it endorses the principles of the UN Charter in Bangladesh's international relations; although Bangladesh did not become a UN member until 1974[29], it had already sought to follow these provisions for the benefit of its people, and it significantly integrated various provisions of the International Bill of Rights across different chapters of the Constitution.[30]

The Constitution addresses human rights in three distinct sections: the Preamble, the chapter on Fundamental Principles of State Policy (FPSP, Part II), and the Fundamental Rights chapter (Part III). The Preamble expresses the state's

[24]Human Rights Act 1998 (UK), incorporating the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221.
[25]Constitution of the Republic of South Africa 1996, ch 2.
[26]Constitution of the People's Republic of China 1982 (as amended 2018), art 35.
[27]International Covenant on Civil and Political Rights (n 12).
[28]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
[29]'Growth in United Nations Membership' (United Nations) <https://www.un.org/en/about-us/growth-in-un-membership> accessed 12 July 2026.
[30]Universal Declaration of Human Rights (n 9).

commitment to protecting fundamental human rights as a goal; Part II contains rights that are not judicially enforceable; and Part III contains the fundamental rights that are subject to judicial enforcement, covering equality before the law, non-discrimination, the right to legal protection, protection of life and personal liberty, safeguards regarding arrest and detention, the prohibition of forced labour, protection during trial and punishment, and the freedoms of movement, assembly, association, thought, conscience, speech, profession, occupation and religion, together with the right to property and the protection of the home and correspondence, and the right to seek redress for any violation of these rights.[31]

All the human rights provisions across these three parts of the Constitution, including the FPSP, have been classified as part of the basic structure of the Constitution, rendering them wholly unamendable under Article 7B. On the analytical variables set out in section 3.3, Bangladesh therefore combines a formally dualist incorporation doctrine (section 2.2) with a justiciable, judicially enforceable Part III and a non-justiciable Part II, a tiered structure that gives its courts real, if bounded, enforcement power, further extended in practice by the soft-monist judicial reasoning illustrated in the ship-breaking case discussed above.

4.4. South Africa

The transformative Constitution of 1996 treated civil and political rights and socio-economic rights alike as central to substantive social and legal justice, political stability and reconciliation among South Africans, and sought to build a new legal culture capable of addressing the socio-economic problems inherited from apartheid.[32] Notable efforts were made to embed socio-economic rights within the Constitution, and the Constitutional Court played a central role in this transformative process.[33] Chapter 2 of the Constitution, the Bill of Rights, sets out these guaranteed rights explicitly, with an initial focus on civil and political rights as a foundational step toward a domestic human rights culture.

The rights to life, dignity and equality were treated as fundamental civil liberties. The Constitutional Court, in *S v Makwanyane*, declared the death penalty unconstitutional, emphasising the state's obligation to uphold human dignity; dignity was treated as the foundation for all other rights in the Bill of Rights[34], and played a significant role in the abolition of capital punishment. Equality, framed as a direct response to the discriminatory legal system of apartheid, aimed

[31]Constitution of the People's Republic of Bangladesh 1972, pts II-III.
[32]Mashele Rapatsa, 'South Africa's Transformative Constitution: From Civil and Political Rights Doctrines to Socio-Economic Rights Promises' (2015) 6 Journal of Social Sciences 175.
[33]Henk Botha, 'Equality, Plurality and Structural Power' (2009) 25 South African Journal on Human Rights 1.
[34]Arthur Chaskalson, 'Human Dignity as a Foundational Value of Our Constitutional Order' (2000) 16 South African Journal on Human Rights 193.

to prohibit unfair discrimination and to address socio-economic inequality, pursuing a substantive rather than merely formal conception of equal treatment.[35] Despite embedding these norms constitutionally, South Africa continues to face substantial challenges in realising the transformative potential of its human rights framework.[36] The concept of transformative constitutionalism, which seeks to entrench unity, reconciliation and socio-economic development, has not fully addressed the deep-rooted socio-economic inequality affecting the majority of South Africans, and the rights framework has not completely displaced historical patterns of disadvantage.[37]

Nevertheless, South Africa's post-1994 rights-based approach to transformation, developed further in cases such as *Hoffmann v South African Airways* and *Kylie v Commission for Conciliation, Mediation and Arbitration*, has made significant strides in entrenching human rights within the constitutional order.[38] On the variables set out in section 3.3, South Africa combines a hybrid incorporation doctrine (dualist for treaty ratification generally, but with a strong interpretive-monist obligation on courts to consider international law when interpreting the Bill of Rights) with the strongest model of judicial supremacy among the four jurisdictions studied, vested in a dedicated Constitutional Court.[39]

4.5. Ireland

The Constitution of Ireland, Bunreacht na hÉireann, is the supreme law of the Republic of Ireland. Adopted in 1937, it sets out the fundamental principles of governance and forms the bedrock of the country's legal system, with the provisions safeguarding civil and political rights forming the cornerstone of Ireland's democratic framework.[40]

The Constitution addresses the right to life (Article 40.3.1), personal liberty (Article 40.4), equality before the law (Article 40.1), freedom of expression (Article 40.6.1.i), freedom of religion (Article 44.2.1), the right to vote (Article 16.1.1), and a range of other fundamental rights.[41] Article 40.3.1 affirms the inviolability of the right to life and the State's commitment to defending the personal rights of its citizens. Article 40.4 safeguards personal liberty, ensuring no citizen may be deprived of liberty except in accordance with law and due process. Article 40.1 guarantees equality before the law regardless of race, gender, religion or socio-economic status. Article 40.6.1.i protects the liberty of the press

[35]David Bruce, 'Killing and the Constitution: Arrest and the Use of Lethal Force' (2003) 19 South African Journal on Human Rights 430.
[36]Karl E Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 South African Journal on Human Rights 146.
[37]John de Gruchy, 'The Humanist Imperative in South Africa' (2011) 107 South African Journal of Science 1.
[38]Hoffmann v South African Airways 2001 (1) SA 1 (CC); Kylie v Commission for Conciliation, Mediation and Arbitration (2010) 4 SA 383 (LAC).
[39]George W Mugwanya, Human Rights in Africa: Enhancing Human Rights Through the African Regional Human Rights System (Transnational Publishers 2003) 93.
[40]Bunreacht na hÉireann (Constitution of Ireland) 1937, arts 40, 44.
[41]Bunreacht na hÉireann (n 35).

from government interference and censorship, while Article 44.2.1 guarantees freedom of religion, subject to considerations of public order and morality. Article 16.1.1 guarantees the right to vote in elections to Dáil Éireann, the lower house of the Irish Parliament.

On the analytical variables of section 3.3, Ireland is formally dualist, international treaties are not self-executing under Article 29.6 of the Constitution, though this dualism has been substantially qualified for European Union law, which since Ireland's accession has enjoyed direct effect through constitutional amendment. Ireland's model of judicial review sits between the strong judicial supremacy of South Africa and the parliamentary-oriented restraint of Denmark: its High Court and Supreme Court exercise robust constitutional review, but with more deference to the Oireachtas (Parliament) than is typical of the South African Constitutional Court.

4.6. Denmark

The Constitution of Denmark, adopted in 1849 and most recently amended in 1953, is the supreme law of the Kingdom of Denmark, establishing the foundation of its democratic system and the protection of civil and political rights for its citizens.[42]

Article 71 is a foundational provision safeguarding personal liberty.[43] Article 67 guarantees freedom of speech and of the press; Article 68 protects freedom of assembly and association; and Article 72 protects the inviolability of correspondence. Article 29 grants every Danish citizen the right to vote in national elections from the age of 18, while Article 3 establishes that governmental authority derives from the will of the people. Article 32 guarantees freedom of religion, and Article 79 protects the right of recognized minority groups to participate in the political process and to be represented in elected bodies, promoting inclusivity within Denmark's political landscape.

The Constitution of Denmark thus enshrines a robust framework of civil and political rights, consonant with the UDHR, the ICCPR and related treaties, and reflecting the nation's long-standing commitment to democracy, human rights and individual liberty. On the analytical variables of section 3.3, Denmark's incorporation doctrine has traditionally leaned toward monism in principle, though its 1992 statutory incorporation of the European Convention on Human Rights shows that, in practice, even monist-leaning states sometimes take dualist steps for particular treaties. Denmark has no dedicated constitutional court; ordinary courts exercise constitutional review, and enforcement of rights relies more heavily than in the other three jurisdictions on parliamentary self-restraint and on independent oversight bodies such as the Parliamentary Ombudsman.

[42]Constitution of the Kingdom of Denmark (Danmarks Riges Grundlov) 1953.
[43]'Denmark 1953 Constitution' (Constitute Project)
<https://www.constituteproject.org/constitution/Denmark_1953> accessed 12 July 2026.

4.7. Comparative Synthesis

Table 1 and Figure 1 draw together the doctrinal description of sections 4.3 to 4.6 into the comparative framework anticipated in Chapter 3, using the five variables identified in section 3.3.

Table 1: Comparative Overview of Constitutional Rights Protection Across Jurisdictions

Jurisdiction	Constitutional Structure	Incorporation Doctrine	Judicial Review Model	Primary Enforcement Mechanism	Institutional Safeguards
Bangladesh	Tiered structure: non-justiciable FPSP (Part II) and justiciable Fundamental Rights (Part III); basic-structure entrenchment	Formally dualist (art 145A); soft-monist judicial practice in leading cases	Supreme Court (High Court and Appellate Divisions) — moderate judicial supremacy	Constitutional writ jurisdiction (art 102)	Independent judiciary; statutory Human Rights Commission
South Africa	Comprehensive, transformative Bill of Rights (ch 2), including socio-economic rights	Hybrid: dualist ratification, interpretive-monist duty on courts (s 39(1)(b))	Constitutional Court — strong judicial supremacy	Direct constitutional litigation and remedies (s 38)	Constitutional Court; Human Rights Commission; Public Protector
Ireland	Enumerated personal rights (arts 40–44) within a common law constitutional order	Dualist (art 29.6); EU law directly effective following constitutional amendment	High Court / Supreme Court — moderate judicial supremacy with deference to Parliament	Constitutional actions and judicial review proceedings	Independent judiciary; Irish Human Rights and Equality Commission
Denmark	Concise nineteenth-century rights catalogue (Grundlov 1849/1953); no dedicated constitutional court	Monist-leaning in principle; dualist step taken for ECHR (1992 incorporation statute)	Ordinary courts — restrained review; parliamentary-supremacy orientation	Ordinary court litigation and parliamentary oversight	Parliamentary Ombudsman; ordinary judiciary

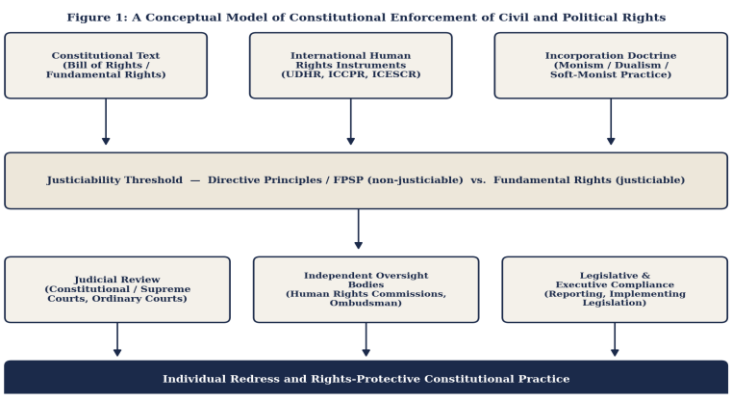


Figure 1 depicts the enforcement pathway common to all four jurisdictions: a right is only as effective as the justiciability threshold, judicial review model and institutional safeguards that stand between its constitutional text and an individual's practical redress.

Read together, Table 1 and Figure 1 support the article's central claim. The four jurisdictions converge substantially on the *substance* of the civil and political rights they protect (section 4.2), yet diverge sharply on the *mechanisms* available to enforce those rights. South Africa's combination of a justiciable Bill of Rights, an interpretive-monist duty and a dedicated Constitutional Court produces the strongest enforcement architecture of the four; Bangladesh's soft-monist judicial practice offers a partial workaround to its formally dualist and tiered structure; Ireland occupies an intermediate position, its enforcement strengthened specifically where EU law applies; and Denmark, despite a monist-leaning general orientation, relies comparatively more on political and ombudsman-based accountability than on constitutional litigation. This pattern directly answers the research questions posed in section 1.2: enforcement effectiveness tracks justiciability and institutional design more closely than it tracks either the wording of the rights text or a jurisdiction's formal monist/dualist label.

5. Challenges and Recommendations

5.1. Challenges to Upholding Constitutional Guarantees

Countries face a range of challenges in upholding constitutional guarantees of civil and political rights, notwithstanding their formal commitment to protecting them. One significant challenge arises from the balance between security and individual freedom: in times of perceived threat to national security, governments may invoke exceptional measures that curtail civil rights, compromising the equilibrium between safeguarding citizens and respecting their liberties.[44]

A further challenge lies in the interpretation and application of constitutional provisions. Courts and legal systems may face genuine complexity in construing the scope and limits of civil and political rights, producing differing rulings and inconsistent enforcement; political pressure, institutional bias or a lack of resources can also hinder effective enforcement, leaving vulnerable populations without adequate protection. Cultural, social and historical context further shapes how rights are perceived, generating disagreement over what counts as a legitimate civil or political right in a given society.

Technological advancement poses further, more novel challenges.[45] In the digital age, questions of online privacy, surveillance and freedom of expression on social media platforms demand fresh legal interpretation and adaptation of constitutional provisions to protect individuals' rights in cyberspace. Access to justice presents a related difficulty: disparities in legal representation, limited awareness of rights, and obstacles within the legal system can prevent marginalized communities from securing redress, perpetuating inequality. Finally, corruption and the abuse of power can undermine the implementation of constitutional guarantees altogether:

[44]H Gonzalo S Fernández, 'The Security Versus Freedom Dilemma: An Empirical Study of the Spanish Case' (2022) 7 Frontiers in Sociology 774485.
[45]De Gregorio and Radu (n 15).

where those in authority violate rights with impunity, public trust erodes and citizens find it harder to seek redress or hold perpetrators accountable.

5.2. Practical Recommendations

To move beyond written promises, states need to take meaningful steps that reflect both the letter and the spirit of their constitutions. Emergency powers should be used responsibly, with clear legal limits on their duration and subject to parliamentary approval and independent judicial review; transparency about such measures allows citizens to understand why, and for how long, their rights are being restricted.

Legal systems should also make constitutional rights more consistent and comprehensible. Vague or outdated language often creates confusion, and this can be addressed through legislation that clarifies how rights should be applied, together with ongoing training for judges and law enforcement officials in fair and modern interpretation. In the digital sphere, states should update their laws to reflect the realities of the internet, including how personal data is collected and how surveillance is conducted, with independent oversight bodies helping to ensure that rights are respected online as much as offline.

Access to justice deserves particular attention: too many people, especially from marginalized communities, are excluded simply because they cannot afford legal assistance or do not understand their rights. Investment in free legal aid, simplified legal processes, and community-level legal awareness would help ensure a fairer chance for all to defend their rights. Corruption and abuse of power remain major barriers, and officials who violate rights must be held accountable through institutions capable of independently investigating misconduct, protecting whistle-blowers, and supporting a free press that can expose wrongdoing without fear.

Building a culture that values human rights is as important as passing laws: this means educating people from school age about their rights and encouraging public debate about justice, fairness and equality, since people who understand their rights and see them respected are more likely to defend them and demand better governance. Finally, states should take their international human rights commitments seriously, participating actively in global and regional review mechanisms, learning from comparable jurisdictions, and implementing the recommendations that flow from those processes. Taken together, these steps help move constitutional guarantees closer to a lived reality for all citizens, rather than remaining ideals confined to the page.

5.3. Towards a General Constitutional Model

The comparative analysis in Chapter 4 suggests a general, transferable proposition: constitutional text alone is a weak predictor of rights enforcement. What determines whether a civil or political right is enforced in practice is the

interaction of three factors: justiciability, the model of judicial review, and the strength of non-judicial institutional safeguards, mediated by whether a jurisdiction's courts are willing, in practice, to draw on international human rights norms regardless of the jurisdiction's formal monist or dualist label. States seeking to strengthen the practical enforcement of constitutionally guaranteed civil and political rights would therefore do well to prioritise justiciability and independent oversight architecture over further textual elaboration of the rights themselves.

6. Conclusion

6.1. Key Findings

This article set out to explain why constitutionally guaranteed civil and political rights are enforced with such varying effectiveness across jurisdictions that, on their face, protect broadly similar rights. Three findings emerge from the comparative analysis of Bangladesh, South Africa, Ireland and Denmark. First, the justiciability of a right, whether it is enforceable through the courts, as opposed to a merely aspirational directive principle, is a stronger predictor of practical enforcement than the substantive wording of the right itself. Second, a jurisdiction's formal position on monism and dualism is an imperfect guide to enforcement outcomes: Bangladesh's soft-monist judicial practice, operating within an officially dualist structure, shows that judicial willingness to engage with international norms can matter more than the formal doctrine a state professes. Third, institutional safeguards beyond the courts, human rights commissions, ombuds institutions and a free press, play a role in enforcement that is at least as significant as constitutional drafting itself.

6.2. Theoretical and Practical Contribution

The article's principal contribution is the comparative framework set out in Table 1 and Figure 1, which connects constitutional design, incorporation doctrine and institutional safeguards to enforcement outcomes across four contrasting legal traditions. Theoretically, this framework offers a bridge between the descriptive cataloguing and the abstract theorizing that, as noted in section 1.3, have tended to characterize the existing literature separately. As a matter of policy, the framework points constitutional drafters and reform-minded legislatures toward concrete institutional choices, justiciability, independent oversight bodies, and openness to international human rights norms, that are more likely to translate constitutional promise into lived practice than further textual elaboration of rights alone.

6.3. Limitations

This study is a doctrinal, four-jurisdiction comparison, and its conclusions should be read with the corresponding limitations in mind. The case selection, while purposefully designed to maximize variation (section 3.2), necessarily excludes other legal families, Islamic law and explicitly socialist constitutional orders in

particular, whose inclusion might qualify or extend the framework proposed here. The analysis is also doctrinal rather than empirical: it draws on constitutional texts and leading case law rather than on systematic data regarding the frequency or outcome of rights litigation, and it cannot, on its own, establish the causal weight of each variable in Table 1 relative to the others.

6.4. Avenues for Future Research

Future work could usefully extend the comparative set to Islamic law and socialist legal traditions, testing whether the enforcement framework proposed here holds beyond the four jurisdictions studied. A complementary empirical study, for example, a quantitative analysis of constitutional rights litigation outcomes across a larger sample of states, could test the relative causal weight of justiciability, judicial review model and institutional safeguards identified qualitatively here. Finally, further research might examine whether the soft-monist judicial practice identified in Bangladesh is replicated in other formally dualist jurisdictions, which would strengthen the claim that judicial practice, rather than formal doctrine, is the more reliable predictor of enforcement outcomes.

As societies continue to evolve and face new challenges, the constitutional inclusion of civil and political rights will remain a dynamic and critical area of focus for governments, policymakers and advocates alike. By learning from comparative experience and maintaining a shared commitment to human rights, states can move closer to constitutional practice that genuinely reflects constitutional promise, and, in doing so, honor the shared aspiration that every individual's right be respected, valued and upheld.