

DOES THE INDIAN CONSTITUTION CARE? PLUGGING IN  
CONSTITUTIONAL SILENCES ON THE ETHICS OF CARE  
THROUGH FUNDAMENTAL RIGHTS

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*Care is a form of labour and a value that is enjoyed by everyone, but have we cared enough about 'care' as a legal concept? In India, the idea of 'care' has primarily been housed in philosophy and gender studies, and has only been engaged with to a certain extent in some strands of legal theory. This has restricted the usage of, and analytical insights from, the concept of 'ethics of care' vis-à-vis the Constitution, and legal jurisprudence more broadly. In this article, we interrogate the silence in the Indian Constitution about the concept of care, and also highlight the forms through which the concept of care can be constitutionally addressed and duly incorporated.*

*The article begins by tracing the notion of 'care' in Indian legal and judicial traditions, critically examining how jurisprudence has engaged with care-related concerns in diverse areas such as family, health, environmental protection, and labour law. The article then evaluates whether the constitutional discourse treats care as a coherent normative value or whether its invocation remains sporadic, inconsistent, or instrumental. Moving from description to normativity, the second section argues for a deeper constitutional anchoring of care, drawing from philosophy, feminism and comparative legal doctrine. It warns of*

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At the outset, this article would not have been possible but for the stimulating discussions that we had in our courses at the University of Oxford. We are very grateful to Professors Sandra Fredman, Jonathan Herring, and Barbara Havelkova, who not only introduced us to the ethics of care but also patiently engaged with us on several of our ideas. We would also like to thank Tanmay Durani and Kunal Khilnani for the research assistance provided by them.

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*the consequential risks of excessive state paternalism disguised as care, while emphasising upon the potential of care to guide responsive and equitable state action. The final section reimagines the architecture of constitutional rights and suggests ways to integrate the ethics of care within existing doctrinal frameworks by exploring the interplay between Fundamental Rights and Directive Principles. Engaging with Sandra Fredman's argument on envisioning care as a constitutional value, the article goes a step further and argues for reconceptualising care not merely as a moral aspiration but as a precept backed by constitutional force. It thus proposes care as a justiciable right that bridges the normative gaps in India's rights jurisprudence and challenges the silence of the Constitution on affective and relational dimensions of care. The article finally concludes that a constitutional right to care ought to be located securely within the Constitution and not be left to the vagaries of the judicial system.*

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## INTRODUCTION

The phenomenon of constitutional silence, which refers to those matters left unaddressed, underdetermined, or altogether absent from constitutional texts, presents a persistent and profound challenge for constitutional law. The need and extent of this challenge have been widely debated. While some scholars believe that constitutional silences offer a

platform for future constitutionalism to be housed,<sup>200</sup> others have stressed upon the need to resolve all constitutional ambiguities.<sup>201</sup> As scholars have observed, constitutional texts are never fully comprehensive; there will always be gaps that must be navigated by constitutional designers, judges, and politicians.<sup>202</sup> In this sense, constitutional silence is not merely the absence of text, but a space where convention, culture, and judicial interpretation must fill the void. This shapes the evolution and application of constitutional principles in ways that may be both unpredictable and transformative.

The Indian Constitution is a document lauded for its detailed elaboration of rights, principles, and duties. Yet, within its expansive framework lies a profound omission: the concept of care. Dixon and Stone outline two forms of invisibility within constitutionalism.<sup>203</sup> The first being conceptual invisibility—where norms exist in jurisprudence, conventions, and unwritten practices.<sup>204</sup> The second form is sociological invisibility—where norms are overlooked due to social blind spots.<sup>205</sup> We submit that care within the Indian constitutional framework satisfies both these axes. It is both conceptually invisible due to the lack of constitutional embeddedness and sociologically invisible as it pertains to gendered, undervalued, and under-recognised forms of labour. It appears that the Indian Constitution’s silence on the justiciability of care is not merely an inadvertent omission but rather the product of a reasoned choice to relegate it to the status of a principle, making it a historical silence that warrants constitutional redress.

This article interrogates this constitutional silence, asking whether the notion of care as an ethical and relational cornerstone has been relegated

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<sup>200</sup> MICHAEL FOLEY, *THE SILENCE OF CONSTITUTIONS: GAPS, “ABEYANCES” AND POLITICAL TEMPERAMENT IN THE MAINTENANCE OF GOVERNMENT* (Routledge, 2013).

<sup>201</sup> Martin Loughlin, *The Silences of Constitutions*, 16(3) INT’L J. CONST. L. 922, 922-935 (2018).

<sup>202</sup> JOHN GARDNER, *CAN THERE BE A WRITTEN CONSTITUTION?*, in Leslie Green & Brian Leiter eds., *OXFORD STUDIES IN PHILOSOPHY OF LAW* (OUP, 2011); Richard Albert & David Kenny, *The challenges of constitutional silence: Doctrine, theory, and applications*, 16(3) INT’L J. CONST. L., 880–886 (2018).

<sup>203</sup> ROSALIND DIXON & ADRIENNE STONE, *THE INVISIBLE CONSTITUTION IN COMPARATIVE PERSPECTIVE*, 5-10 (CUP 2018).

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

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to the periphery of India's legal discourse. While care occasionally appears in judicial reasoning or legislative frameworks, it is treated as a derivative value, tethered to other established rights or principles, rather than being recognised as a stand-alone, singular, coherent and transformative constitutional precept.<sup>206</sup> Scholars have argued that such silences within constitutional texts do not necessarily indicate the lack of meaning or force.<sup>207</sup> We challenge such an understanding and argue that this fragmented treatment constrains care's potential to serve as an animating force for law, policy, and governance - a limitation explored in this article.

The ethics of care, as a constitutional principle, demands more than a passing reference or a derivative status tethered to another substantive second-order fundamental right (for example, the right to care stemming from the right to health as recognised under Article 21). The core argument of this article is that the ethics of care must transcend its current status as an episodic or instrumental value, and instead be embedded as a constitutional precept, either as a standalone fundamental right or derived directly from Article 21. The article calls for recognition of care as a foundational *precept* that enables and obligates affirmative action. By precept, we refer to a tangible, justiciable right or rule that has legal backing, as opposed to a norm, value or principle. In a country as diverse and complex as India, where issues of social justice, gender equity, and public health are pervasive, the absence of an explicit constitutional mandate for care can have far-reaching consequences. It may leave vulnerable populations without recourse, and it may allow governments to sidestep their responsibilities under the guise of textual ambiguity.<sup>208</sup> Thus,

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<sup>206</sup> Ira Chadha Sridhar, *Care – A Thick Concept: Conceptual Significance and Emerging Directions*, IJFAB BLOG (May 15, 2025) <https://www.fabnet.org/post/care-a-thick-concept-conceptual-significance-and-emerging-directions-a-guest-post-by-ira-chadha>.

<sup>207</sup> REBECCA ANANIAN-WELSH & JONATHAN CROWE, CONSTITUTIONAL SILENCES AND INSTITUTIONAL INTEGRITY. JUDICIAL INDEPENDENCE: CONTEMPORARY CHALLENGES, FUTURE DIRECTIONS 124-140 (Annandale, NSW, Australia: Federation Press, 2016).

<sup>208</sup> Anshul Dalmia, *Neither Leftovers nor Crumbs: Misunderstanding the Right to Food in India*, OXFORD HUMAN RIGHTS HUB (Apr. 17, 2024) <https://ohrh.law.ox.ac.uk/neither-leftovers-nor-crumbs-misunderstanding-the-right-to-food-in-india/>. This piece discusses that the right to food, despite being a recognised right, is not adequately enforced by the government.

drawing from feminist philosophy and comparative and doctrinal constitutional jurisprudence, the article contends that care must be elevated to a legal precept that demands action, accountability, and institutional arrangements.

The article is structured as follows. The first section traces the conceptual foundations of care within legal and philosophical traditions, with particular emphasis on feminist ethics and their application to law. The second section undertakes an empirical examination of Indian jurisprudence, investigating how courts have invoked care across five domains: life and dignity, early childhood development, care-work remuneration, family relations, and ecological stewardship. These judicial trends are assessed against the normative framework outlined earlier, identifying gaps where the absence of an explicit constitutional right to care impedes systemic solutions. The final section offers a forward-looking approach, proposing ways to integrate care into the architecture of constitutional rights and suggesting its placement within Article 21, or as a standalone Fundamental Right. We do not seek to design the exact form of the right and have rather left it open, conditional on the substance of the right being both comprehensive and meaningful.

By weaving together theory, comparative analysis, and doctrinal critique, this article seeks to challenge the silence of the Constitution and argue for a jurisprudential shift that envisions care as a foundational principle of Indian constitutionalism.

## **CONCEPTUAL FOUNDATIONS: THE ETHICS OF CARE WITHIN LAW**

### **A. PHILOSOPHY OF THE ETHICS OF CARE**

Feminist ethics of care began with Carol Gilligan's *In a Different Voice*,<sup>209</sup> which used empirical interviews with adolescents to demonstrate that moral judgement is often expressed through a vocabulary of empathy, context and responsibility rather than the abstract logic of rights and rules privileged by male philosophers such as Kohlberg, Kant and Rawls. Gilligan argued that the "*care perspective*" had been systematically discounted

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<sup>209</sup> CAROL GILLIGAN, *IN A DIFFERENT VOICE* (Harvard University Press, 1982).

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because it was more frequently articulated by girls and women. Nel Noddings extended that intuition in *Caring: A Feminine Approach to Ethics and Moral Education*,<sup>210</sup> building a relational ontology in which the “one-caring” and the “cared-for” are bound in an encounter marked by receptivity, relatedness, and responsiveness. She distinguished “caring-for” (the concrete labour of meeting another’s needs) from “caring-about” (the wider ethical stance that prompts one to take action). Joan Tronto’s *Moral Boundaries: A Political Argument for an Ethic of Care*,<sup>211</sup> and her later article *Beyond Gender Difference to a Theory of Care*,<sup>212</sup> recasts care as a democratic practice, identifying four (initial) normative phases of care with corresponding values: “caring about”—recognising an unmet need in someone, which requires attentiveness; “caring for”—taking up the need as one’s task, which requires responsibility; “caregiving”—performing the labour of caring in a suitable manner, which requires competence; and “care receiving”—evaluation of the task by the recipient, which requires responsiveness. Later on, Tronto added a fifth phase: “caring with”—plurality, communication, trust and respect—which requires solidarity. In her 2013 monograph *Caring Democracy*,<sup>213</sup> Tronto insists that quality care requires structural arrangements such as childcare, elder-care leave, adequate wages that distribute caring labour and resources fairly; personal virtue is therefore necessary but insufficient.

Legal theorists have carried these insights into constitutional discourse. Martha Fineman’s article *The Vulnerable Subject: Anchoring Equality in the Human Condition*<sup>214</sup> uses care theory to argue that universal human vulnerability, not autonomous individualism, should ground equality jurisprudence and restructure state entitlements. Sandra Fredman, in

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<sup>210</sup> NEL NODDINGS, *CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION* (2nd ed., California University Press, 2013).

<sup>211</sup> JOAN TRONTO, *MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE* (1st ed., Routledge, 1993).

<sup>212</sup> Joan Tronto, *Beyond Gender Difference to a Theory of Care*, 12 *SIGNS* 4, 644-663 (1987).

<sup>213</sup> JOAN TRONTO, *CARING DEMOCRACY: MARKETS, EQUALITY, AND JUSTICE* (NYU Press, 2013).

<sup>214</sup> Martha Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 *YALE J. L. FEM.* 1, 8-40 (2008).

*Reversing Roles: Bringing Men into the Frame*,<sup>215</sup> contends that constitutions must secure both breadwinner rights to work and carer entitlements such as parental leave, childcare and elder-care. This would ensure that men and women could share and equalise paid and unpaid labour. Fredman rejects the false binary that treats care as private altruism and work as public productivity; she proposes a relational model in which the State bears positive duties to support care because it is the pre-condition for everyone's capability to participate in society. Jonathan Herring's book *Caring and the Law*,<sup>216</sup> and article *Compassion, Ethics of Care and Legal Rights*,<sup>217</sup> press courts to shift from the language of individual entitlement to that of relational care. Negligence law, family law, and medical law should ask not merely whether a duty of care is owed but how legal rules can cultivate good caring relationships.

Comparativists have found legal footholds for the argument of integrating care into the legal structures of countries. Canada's Supreme Court in *Fraser v. Canada* interpreted Section 15 of the Charter, i.e., the equality clause, to condemn pension rules that disadvantaged women who took unpaid caring leave; the judgment cites Fredman on structural disadvantage.<sup>218</sup> South Africa's Constitutional Court has relied on the intertwined rights to dignity, housing and parental care (sections 10, 26 and 28 respectively) to order emergency shelter for families in *Government of the Republic of South Africa & Ors. v. Grootboom*,<sup>219</sup> and to require State-supported foster grants in *Khosa v. Minister of Social Development*.<sup>220</sup> In India, the Supreme Court's decision in *Maniben Maganbhai Bhariya v. District*

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<sup>215</sup> Sandra Fredman, *Reversing Roles: Bringing Men into the Frame*, 10(4) INT'L J. L. IN CONTEXT, 442-459 (2014).

<sup>216</sup> JONATHAN HERRING, *CARING AND THE LAW* (Hart Publishing, 2013).

<sup>217</sup> Jonathan Herring, *Compassion, Ethics of Care and Legal Rights*, 13(2) INT'L J. L. IN CONTEXT, 158-171 (2017).

<sup>218</sup> *Fraser v. Canada*, [2020] 3 SCR 113 (Canada).

<sup>219</sup> *Government of the Republic of South Africa & Ors. v. Grootboom & Ors.*, 2001 (1) SA 46 (CC) (South Africa).

<sup>220</sup> *Khosa & Ors. v. Minister of Social Development & Ors.*, 2004 (6) SA 505 (CC) (South Africa).

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*Development Officer, Dahod & Ors.*,<sup>221</sup> affirmed the value of Anganwadi labour. The Court held:

*“Jurisprudence developed by passage of time under Article 21 of the Constitution by this Court underlines the primary importance of early childhood developments. ... A pivotal role is being played by Anganwadi workers and Anganwadi helpers, by taking care of children.”*<sup>222</sup>

Thus, the Court grounded claims for payment of wages for Anganwadi workers within Article 21 (i.e., the right to life) and Article 45 (i.e., provision for early childhood care and education to children below the age of six). Collectively, this literature and jurisprudence transform care from a sentimental trope into a juristic principle: dependence and vulnerability are not deviations from the norm of autonomy but point to a universal human condition. Legal orders must accordingly embed institutional arrangements such as leave, services, and income support, thus making caring relationships possible and equitable.

### **B. CARE AS A CONSTITUTIONAL VALUE – FREDMAN’S INTERVENTION**

Responding to and building on existing scholarship on care, legal scholar Sandra Fredman has proposed an explicitly constitutional turn. In *Care as a Constitutional Value*, she argues that care should “*complement express constitutional commitments to freedom, dignity and equality*”, furnishing a lens through which every branch must ‘pay attention to the value of care’.<sup>223</sup> Drawing on her substantive-equality framework, Fredman examines how “*constitutions should be shaped to encompass the foundational value of care in society*”.<sup>224</sup> Constitutionalising care, from her perspective, would correct the false binary that pits productive and reproductive labour against

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<sup>221</sup> *Maniben Maganbhai Bhariya v. District Development Officer, Dahod & Ors.*, (2022) 16 SCC 343 (India).

<sup>222</sup> *Id.* J. Rastogi at ¶ 24, 33.

<sup>223</sup> Sandra Fredman, *Care as a Constitutional Value*, 22 INT’L J. CONST. L. 3, 741-771 (2024).

<sup>224</sup> *Id.*

one another by recognising that both are foundational to individual capability and democratic participation. Fredman also highlights how embedding care as a constitutional value can enable the judiciary to do many things: weave care into equality law, and hold the state accountable for saying that caring was too costly. In short, Fredman's model thus seeks to transpose insights from the ethics of care about dependency and relational justice into the interpretation of constitutional and legislative provisions, thereby converting what is often treated as a moral aspiration into a justiciable standard for evaluating state action.

The literature traced above thus furnishes both a vocabulary and a normative template to enable us to weave care as a legal value into hard law. Yet it remains an open question whether these ideas can be repositioned into a constitutional order in India that, unlike South Africa or Canada, does not yet acknowledge care in its justiciable text and has historically relegated socio-reproductive labour to the Directive Principles. Fredman's claim that care can operate as a *constitutional value* therefore demands an empirical test: *do Indian courts already treat care as a pervasive interpretive principle despite its textual absence, or does the absence of an explicit right confine care to a derivative, contingent status?*

The next section undertakes that test. By tracing how Indian courts have invoked care across five doctrinal sites (life and dignity, early-childhood development, care-work remuneration, family relations and ecological stewardship), we can observe both the reach and the limits of value-based reasoning. Each cluster of cases is read through the lens supplied by section I: Do judges identify vulnerability and relationality as constitutional foundations? Do they impose duties on the state relating to caring for its citizens? Last, and crucially, how does the absence of a justiciable right to care affect the courts' abilities to adjudicate upon ad-hoc statutory or welfare schemes? The answers generated in section II will provide the evidentiary basis for section III's normative claim: that the ethical architecture sketched by the scholars above cannot achieve full constitutional traction in India until care is elevated from an aspirational value to an enforceable norm.

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### MAPPING CARE IN INDIAN JURISPRUDENCE

The preceding section situated care within a normative framework that treats vulnerability, dependence, and relational labour as constitutive features of the human condition and, therefore, legitimate objects of constitutional concern. Yet, that ambition may find challenges within the textual landscape of the Indian Constitution. Save for the lone (and non-justiciable) reference in Article 45,<sup>225</sup> care is neither enumerated as a right nor expressly identified as a value that can claim parity with dignity or equality. This constitutional silence is not a merely semantic omission; it is a doctrinal void. Where the text is silent, adjudication becomes the principal venue through which any constitutional meaning for care can be constructed, contested, or, indeed, foreclosed.

To interrogate the practical impacts of this silence, the article now adopts a doctrinal-mapping methodology. The exercise proceeds from the premise that judicial decisions operate as additions to the constitutional text, filling the void through interpretive adjudication. Mapping those decisions across discrete sites allows us to measure the extent to which courts have (a) recognised care-related claims and (b) endowed such claims with normative force, notwithstanding the absence of an explicit textual basis.

By systematically analysing five clusters of case law (medical and dignitary claims, early-childhood development, recognition of unpaid labour, family-law entitlements, and ecological stewardship), section II undertakes an evidence-based audit of how far adjudication has compensated for the constitutional silence on care and where it has fallen short. The ensuing analysis will, in turn, furnish the empirical basis for Section III's argument: that India cannot achieve a coherent, rights-based care regime without elevating care to a justiciable Constitutional precept.

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<sup>225</sup> INDIA CONST., art. 45; Jwalika Balaji & Anshul Dalmia, 'Caregivers as nation builders', DECCAN HERALD (Aug. 15, 2025) <https://www.deccanherald.com/opinion/caregivers-as-nation-builders-3681653>.

**A. ARTICLE 21 AS A PORTAL TO STATE-FACING DUTIES OF CARE**

The Court first constitutionalised medical attention in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*:

*“Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state... Article 21 imposes an obligation on the State to safeguard the right to life of every person.”*<sup>226</sup>

Subsequent benches folded maternal health into the same guarantee. In *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, the Delhi HC linked nutritional schemes, reproductive care and the right to food, underscoring “*the indivisibility of basic human rights as enshrined in the Constitution*” and held that no pregnant woman may be “*turned away from a Government health facility.*”<sup>227</sup> These rulings echo Fredman’s reference to Constitutional human rights obligations to “*respect*” and “*protect*” medical care-related duties. In these instances, care was framed as a positive, state-facing obligation flowing from an expanded interpretation of the right to dignity rooted within the right to life under Article 21. However, the outcome of all these cases depended on Article 21’s life-and-dignity test rather than on a separate right to care.

**B. EARLY CHILDHOOD CARE CONSTRUED THROUGH ARTICLE 21—A AND 45**

When the Supreme Court decided *Maniben Maganbhai Bhariya v. Dahod DDO*, it reframed the Integrated Child Development Scheme as an entitlement:

*“ICDS scheme is... a means of protecting the rights of children under six—including their right to nutrition, health and joyful learning... ‘Socialised childcare’ also contributes to the liberation of women... ICDS deserves far greater attention in public policy since it acts as*

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<sup>226</sup> *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, 1996 SCC (4) 37 (India).

<sup>227</sup> *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, 2010 SCC OnLine Del 234 (India).

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*an institutional mechanism for realization of child and women rights.*<sup>228</sup>

The Supreme Court once again only grounded Anganwadi workers' claims as derived from Articles 21, 21-A and 45. However, the reasoning was not an individualistic reasoning of the right to life for the child alone. The Court's reasoning echoed the basis of Tronto's *caring-with* phase, as the Court spoke about how care-labour led to the entanglement and realisation of both women's and children's rights. This judgement thus implicitly nodded to the importance of taking a relational perspective in policy making—if we want our children to be taken care of, fed nutritiously, and nursed to pink health, we must ensure adequate compensation to the women who are their caregivers.

### C. VALUING UNPAID AND PRECARIOUS CARE LABOUR

In maintenance litigation, the Court has begun to monetise invisible household work. *Rajnesb v. Neha* required family courts to account for years of caregiving when awarding alimony:

*“If the wife... had to give up her employment opportunities to look after the needs of the family... this factor would be required to be given due importance.”*<sup>229</sup>

Similarly, in the motor-accident case of *Shiv Kumar v. Gainda Lal*, the bench revised compensation by recognising a 25-year-old homemaker's economic contribution, adding future prospects.<sup>230</sup> In *Kirti v. Oriental Insurance Co*, the Supreme Court held as follows:

*“One category of nonearning victims that Courts are often called upon to calculate the compensation for are homemakers.”*

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<sup>228</sup> Maniben Maganbhai Bhariya v. District Development Officer, Dahod & Ors., (2022) 16 SCC 343 (India).

<sup>229</sup> Rajnesb v. Neha, AIR 2021 SC 569 (India).

<sup>230</sup> Shiv Kumar v. Gainda Lal, (2022) 14 SCC 342 (India).

*The sheer amount of time and effort that is dedicated to household work by individuals, who are more likely to be women than men, is not surprising when one considers the plethora of activities a housemaker undertakes. A housemaker often prepares food for the entire family, manages the procurement of groceries and other household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much more. In rural households, they often also assist in the sowing, harvesting and transplanting activities in the field, apart from tending cattle. However, despite all the above, the conception that housemakers do not “work” or that they do not add economic value to the household is a problematic idea that has persisted for many years and must be overcome.”<sup>231</sup>*

These decisions reflect the reasoning of scholars such as Martha Fineman,<sup>232</sup> who call for economic support and compensation for care providers; however, these decisions do so in a piecemeal manner, anchored in tort and personal law doctrines. This makes outcomes inconsistent and unpredictable.

#### D. CARE AS THE DETERMINANT OF FAMILY LAW ENTITLEMENTS

Custody and guardianship jurisprudence increasingly privileges actual caregiving over formal status. In *Githa Hariharan v. RBI*, the Court interpreted Section 6 of the Hindu Minority and Guardianship Act,<sup>233</sup> and held that a mother becomes the natural guardian whenever the father is “absent” from day-to-day care, reasoning that:

*“While both the parents are duty bound to take care of the person and property of their minor child ... the mother can act as natural guardian ... even during the life-time of the father, who would be*

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<sup>231</sup> Civil Appeal Nos. 19-20 of 2021 (India).

<sup>232</sup> Martha Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL'Y & L. 1, 13-30 (2000).

<sup>233</sup> Hindu Minority and Guardianship Act, § 6, No. 32, Acts of Parliament, 1956 (India).

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*deemed to be 'absent' ... where the minor is in the exclusive care and custody of the mother.*<sup>234</sup>

For elder care, *Ashwani Kumar v. Union of India* connected Article 21 dignity to material support,<sup>235</sup> relying on the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007*.<sup>236</sup>

*"The right to live with dignity is, in effect, a part of the right to life as postulated in Article 21 ... Such a right would be rendered meaningless if an aged person does not have the financial means to take care of his basic necessities."*<sup>237</sup>

*"There is a need to continuously monitor ... geriatric care. ... The only available solution is a continuing mandamus ... to ensure that the rights of the people are respected, recognised and enforced."*<sup>238</sup>

These cases foreground relational dependence but again draw on derivative rights and statutes.

### E. ECOLOGICAL AND ANIMAL-WELFARE STEWARDSHIP AS A FORM OF COMMUNAL CARE

In *Animal Welfare Board v. A. Nagaraja*, the Supreme Court folded compassion for non-human life into constitutional doctrine, invoking Article 51-A(g),<sup>239</sup> and noting that welfare statutes "*should be liberally construed in favour of the weak and infirm.*" The Court justified striking down contrary regulations by invoking its *parens patriae* role:

*"PCA Act is a welfare legislation ... Court has also a duty under the doctrine of parens patriae to take care of the rights of animals,*

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<sup>234</sup> *Githa Hariharan v. RBI*, AIR 1999 SC 1149 (India) ¶ 16.

<sup>235</sup> INDIA CONST., art. 21.

<sup>236</sup> *Maintenance and Welfare of Parents and Senior Citizens Act, No. 56, Acts of Parliament, 2007* (India).

<sup>237</sup> *Ashwani Kumar v. Union of India*, AIR 2019 SC 1002 (India) ¶ 16.

<sup>238</sup> *Id.* at ¶ 47.

<sup>239</sup> INDIA CONST., art. 51A, cl. (g).

*since they are unable to take care of themselves as against human beings.*<sup>240</sup>

*“Article 51-A(g) states that it shall be the duty of citizens to have compassion for living creatures.”*<sup>241</sup>

Here, attentiveness and responsibility are extended beyond human relationships, yet enforcement still hinges on existing legislative schemes.

Against this backdrop, in a nutshell: Indian courts invoke “*care*” in two distinctive ways: *first*, as a state obligation to provide services that uphold life and dignity, and *second*, as a normative lens to recognise and value relational labour, often unpaid, feminised, and invisible. Yet the doctrine stops short of recognising a free-standing right to care; courts still tether care to second-order fundamental rights (for example, medical care as a facet of the right to health under Article 21) or to welfare statutes (such as the Prevention of Cruelty to Animals Act, 1960). There is no independent recognition of anything akin to a multifaceted right to care and right to be cared for within Article 21. The jurisprudence, therefore, demonstrates both the elasticity of “*care*” within Article 21’s penumbra and the limits of an approach that treats care as derivative rather than autonomous.

The judicial strategy thus validates Fredman’s insight that care can operate as an interpretive principle, yet it simultaneously confirms the shortcomings of such a position: without an explicit constitutional footing in India, care remains derivative, and its enforcement contingent on sympathetic judicial adjudication. Section III will therefore argue that only by embedding a separate right to care within Part III can India move from episodic intervention to a coherent, rights-based care regime.

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<sup>240</sup> Animal Welfare Board of India v. A. Nagaraja & Ors., (2014) 7 SCC 547 (India) ¶ 26.

<sup>241</sup> *Id.* at ¶ 57.

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**THE CONSTITUTIONAL LACUNA – FROM VALUE TO  
PRECEPT**

Fredman suggests that recognising care as an overarching value can replicate the expressive and catalytic functions performed by dignity or equality. Yet, there is a significant obstacle in the Indian context.

Unlike the South African Constitution which places the values of “*human dignity, equality and freedom*” in a *foundational norms* that informs the substance of other rights,<sup>242</sup> any references to values in the Indian Constitution, unless crystallised as a Fundamental Right, are either implicit (in the Preamble),<sup>243</sup> or explicitly non-justiciable (Part IV).<sup>244</sup> Simply recognising care as an important value would therefore probably default to the weaker, directive tier. While Indian courts have shown inventiveness in reading new rights based on DPSPs into Fundamental Rights, they have simultaneously policed the line between Parts III and IV. Without textual relocation, care will continue to be treated as an unenforceable aspiration, subject to executive discretion. Transformative redistribution of care labour requires positive obligations such as adequate public childcare, recognition and support of parental care-giving, elder-care allowances, and caregiver social security that cannot be consistently and coherently commanded by a court unless grounded in a Fundamental Right.

In this section, we further delve into the South African model since the foundational values substantively inform other Constitutional provisions, unlike India. We have chosen South Africa as a comparator for the following reasons: First, the socio-economic conditions prevailing within South Africa and India are similar; and second, there has been robust jurisprudence surrounding the treatment of foundational constitutional values in South Africa, which would be useful to contrast with India. Against this backdrop, we use South Africa as an appropriate comparator from which comparative lessons could be borrowed.

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<sup>242</sup> SOUTH AFRICA CONST., Foundational Clause.

<sup>243</sup> INDIA CONST., Preamble.

<sup>244</sup> *Id.* at Part IV.

### A. THE SOUTH AFRICAN MODEL

The South African Constitution offers a contrasting template because its core values “*human dignity, the achievement of equality and the advancement of human rights and freedoms*” are meant to inform the substance of all the rights and provisions in the Constitution.

Section 1 declares that “*The Republic of South Africa is one, sovereign, democratic state founded on the following values: (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms...*,”<sup>245</sup> and Section 2 makes any law or conduct “*inconsistent with the Constitution*” invalid.<sup>246</sup> Those founding values are not ornamental. While they do not give rise to discrete, enforceable rights, the Constitutional Court in *Minister of Home Affairs v. National Institute For Crime Prevention And The Re-Integration Of Offenders* held that:

*The values enunciated in section 1 of the Constitution are of fundamental importance. They inform and give substance to all the provisions of the Constitution.*<sup>247</sup>

Further, Section 39 of the Constitution commands every court to interpret legislation and develop the common law to “*promote the values that underlie an open and democratic society based on human dignity, equality and freedom.*”<sup>248</sup> The Constitutional Court can invoke these values either implicitly or explicitly while deciding issues. Using these values along with rights, the Court struck down the death penalty in *S v. Makwanyane*,<sup>249</sup> required a reasonable housing programme in *Government of the Republic of South Africa v. Grootboom*,<sup>250</sup> compelled anti-retroviral roll-out in *Minister of Health & Ors v.*

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<sup>245</sup> SOUTH AFRICA CONST., § 1.

<sup>246</sup> *Id.* at § 2.

<sup>247</sup> *Minister of Home Affairs v. National Institute for Crime Prevention and the Re-Integration of Offenders* [2004] ZACC 10 (South Africa) ¶ 21.

<sup>248</sup> SOUTH AFRICA CONST., § 39.

<sup>249</sup> *S v. Makwanyane & Another*, 1995 (3) SA 391 (CC) (South Africa).

<sup>250</sup> *Government of the Republic of South Africa & Ors. v. Grootboom & Ors.*, 2001 (1) SA 46 (CC) (South Africa).

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*Treatment Action Campaign*,<sup>251</sup> and insisted on an independent anti-corruption unit in *Glenister v. President of the Republic of South Africa*.<sup>252</sup>

Care therefore enters South African jurisprudence not as a peripheral aspiration but as a direct offshoot of those substantive values which underlie the guarantees embedded in the Bill of Rights. Section 27 guarantees everyone “*the right to have access to health-care services*,”<sup>253</sup> while Section 28 promises every child “*family care or parental care, or appropriate alternative care*.”<sup>254</sup> In *Minister of Health v. TAC* the Constitutional Court anchored the duty to prevent mother-to-child HIV transmission in the need for care of infants and as part of the state’s obligations regarding healthcare.<sup>255</sup> Section 26 promises everyone “*the right to have access to adequate housing*” and obliges the state to take “*reasonable legislative and other measures*” to progressively realise this right.<sup>256</sup> In *Government of the Republic of South Africa & Ors. v. Grootboom*, the Constitutional Court located shelter for destitute families in the inter-locking rights to dignity, housing and parental care, holding that “*Section 26, read in the context of the Bill of Rights as a whole, must mean that the respondents have a right to reasonable action by the state in all circumstances and with particular regard to human dignity*”.<sup>257</sup> In *Daniels v. Scribante* it relied on dignity to oblige a farm owner to permit a tenant’s self-improvements upon an occupied property, holding that “*occupation is not simply about a roof over the occupier’s head, [but rather] occupation that conduces to human dignity and the other fundamental rights*.”<sup>258</sup>

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<sup>251</sup> *Minister of Health & Ors. v. Treatment Action Campaign & Ors.*, 2002 (5) SA 721 (CC) (South Africa).

<sup>252</sup> *Glenister v. President of the Republic of South Africa & Ors.*, 2011 (3) SA 347 (CC) (South Africa).

<sup>253</sup> SOUTH AFRICA CONST., § 27.

<sup>254</sup> *Id.* at § 28.

<sup>255</sup> *Minister of Health & Ors. v. Treatment Action Campaign & Ors.*, 2002 (5) SA 721 (CC) (South Africa) ¶¶ 78, 79, 80, 81.

<sup>256</sup> SOUTH AFRICA CONST., § 26.

<sup>257</sup> *Government of the Republic of South Africa & Ors. v. Grootboom & Ors.*, 2001 (1) SA 46 (CC) (South Africa) ¶ 83.

<sup>258</sup> *Daniels v. Scribante & Anr.*, 2017 (4) SA 341 (CC) (South Africa) ¶ 31.

The values mentioned in the founding clause thus are substantive, they are reflected in fundamental rights as well; thus, courts can require the State to budget, regulate and act on that basis. Thus, if care is conceptualised as a value in South Africa, the Constitutional schema can provide a means for it to strongly enumerate the content of rights-based guarantees. This turns the affective concern of care into potential concrete, enforceable obligations.

## B. THE INDIAN MODEL

As mentioned above, if not crystallised as a fundamental right, Indian constitutional values are either mentioned in the Preamble<sup>259</sup> or explicitly stated in the Directive Principles of State Policy, which are non-justiciable aspirational principles.<sup>260</sup> Simply labelling care as a value would therefore default to the weaker, directive tier.

India's Constitution is famously generous in its length,<sup>261</sup> yet one of the most pervasive and necessary human activities, i.e. care, is nowhere articulated as a fundamental right. The only reference to care within the Indian constitution is in Article 45, which is a Directive Principle of State Policy:

*“45. Provision for early childhood care and education to children below the age of six years.—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”*<sup>262</sup>

Sandra Fredman has recently argued that constitutional silences can be remedied if courts recognise care as a constitutional value that should “*permeate the interpretation of constitutional and other provisions*” and *guide legislative accountability*.<sup>263</sup> While values provide normative guidance, this section contends that recognising care as a constitutional value is insufficient in the current Indian context. India must transform care from a value

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<sup>259</sup> INDIA CONST., Preamble.

<sup>260</sup> *Id.* at Part IV.

<sup>261</sup> Ornit Shani, *The long making of India's Constitution: Letters from the past*, 18(3) INT'L J. CONST. L. 1036-1043 (2021).

<sup>262</sup> INDIA CONST., art. 45.

<sup>263</sup> Sandra Fredman, *Care as a Constitutional Value*, 22(3) INT'L J. CONST. L. 741-771 (2024).

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(Directive Principle of State Policy) into a precept (Fundamental Right) if the Constitution is to bridge its most significant normative gap. By precept, we refer to a tangible, justiciable right or rule that has legal backing, as opposed to a norm, value or principle.

We argue that the main difference between Part III and Part IV pertains to enforceability. Article 37, introducing Part IV, which contains Directive Principles of State Policy states: “*The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.*”<sup>264</sup> The Constituent Assembly accordingly treated Directive Principles as aspirations whose fulfilment depended on future political will and economic capacity, whereas Fundamental Rights were “*a solemn undertaking*” safeguarded by the superior courts.<sup>265</sup> This founding compromise created a hierarchy within the Constitution: values in Part IV supply guidance, but precepts in Part III trigger judicial remedies. Gautam Bhatia argues that Directive Principles are best understood as “*providing the framework of values that structure and constrain the interpretation and construction of fundamental rights.*”<sup>266</sup>

However, we argue that these ‘values’ are qualitatively different from those mentioned in the South African Constitution. Firstly, it is not required that DPSPs are meant to inform the content of fundamental rights or other provisions of the Indian Constitution, contrary to the way Section 1 is interpreted in the South African Constitution. There is also no direction as to when a DPSP is to be judicially invoked, and how it is to be done. Secondly, unlike the handful of values considered most prominent in the South African context, in India, there are far too many DPSPs. They are

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<sup>264</sup> INDIA CONST., art. 37.

<sup>265</sup> INTERIM REPORT OF THE ADVISORY COMMITTEE ON THE SUBJECT OF FUNDAMENTAL RIGHTS, (1947), [https://ia801801.us.archive.org/21/items/dli.iipa.framing.2/Rao.The\\_Framing\\_of\\_India\\_s\\_Constitution\\_Vol\\_2.pdf](https://ia801801.us.archive.org/21/items/dli.iipa.framing.2/Rao.The_Framing_of_India_s_Constitution_Vol_2.pdf); NOTES ON FUNDAMENTAL RIGHTS BY B.N. RAU, (1946) [https://ia801801.us.archive.org/21/items/dli.iipa.framing.2/Rao.The\\_Framing\\_of\\_India\\_s\\_Constitution\\_Vol\\_2.pdf](https://ia801801.us.archive.org/21/items/dli.iipa.framing.2/Rao.The_Framing_of_India_s_Constitution_Vol_2.pdf).

<sup>266</sup> Gautam Bhatia, *Directive Principles of State Policy*, in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION (Oxford University Press 2016).

neither uniformly regarded, nor is there consensus on following all the values enumerated by the DPSPs. In fact, many DPSPs are contested, controversial, and do not expressly reflect consensus either at the level of principle or at the level of operation. For example, the direction in Article 44 to move towards a Uniform Civil Code, and the prohibition mentioned in Article 48 on the slaughter of calves and cows, have routinely attracted debate, criticism and even conflict regarding the underlying norms and their interpretations.<sup>267</sup> Therefore, the DPSP ‘values’ hold diminished authority, normatively and legally, as compared to the treatment of foundational values in the South African constitution.

This position was solidified in the Constituent Assembly Debates themselves. The Constituent Assembly’s debate on Draft Article 29 (now Article 37) exposed an early schism over whether socio-economic guarantees should be cast as binding “*precepts*” or left as vague “*values*.” The Assembly ultimately rejected every amendment: attempts to rename the principles “*fundamental*,” to substitute “*every State*” for “*the State*,” and to strip the non-justiciability clause all failed on division.<sup>268</sup> By adopting Draft Article 29 unchanged, the framers entrenched a bright line between justiciable Fundamental Rights and aspirational Directive Principles, deliberately insulating courts from direct enforcement of welfare goals.<sup>269</sup>

The Supreme Court has also routinely held that DPSPs are not directly enforceable. In *State of Madras v. Champakam Dorairajan*,<sup>270</sup> a communal-reservation order was struck down for violating Article 15(1); the Court held that “*Directive Principles cannot override Fundamental Rights*” because they are “*not enforceable by any court*” (Article 37). In *Minerva Mills Ltd. v. Union of*

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<sup>267</sup> Nivedita Menon, *A Uniform Civil Code in India: The State of the Debate in 2014*, 40(2) FEMINIST STUDIES, PROJECT MUSE 480-486 (2014); Rajeswari Sunder Rajan, *Women between Community and State: Some Implications of the Uniform Civil Code Debates in India*, 18(4) SOCIAL TEXT 55-82 (2000); Shraddha Chigateri, *Negotiating the ‘Sacred’ Cow: Cow Slaughter and the Regulation of Difference in India* in MONICA MOOKHERJI (ed), DEMOCRACY, RELIGIOUS PLURALISM AND THE LIBERAL DILEMMA OF ACCOMMODATION (Springer 2011); Sambaiah Gundimeda, *Debating Uniform Civil Code: the making of Article 44 in the Constituent Assembly of India*, 9(3) INDIAN L. REV., 341-366 (2025).

<sup>268</sup> CONSTITUTIONAL ASSEMBLY DEBATES, Official Report Vol. VII, 1948, Nov. 19, 1951, <https://www.constitutionofindia.net/debates/19-nov-1948/> (India).

<sup>269</sup> *Id.*

<sup>270</sup> *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226 (India).

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*India*,<sup>271</sup> the Court struck down clauses of the 42nd Amendment that gave DPSPs precedence over Fundamental Rights, reiterating that Part III rights are “*transcendental*” whereas DPSPs are “*fundamental in governance but non-justiciable*.”

If care has to be converted from a value to a precept, there are two possible models that we envision- *first*, the DPSP could explicitly be recognised as a fundamental right through judicial interpretation and incorporation. A similar approach has been taken in the case of maternity benefits and maternity care, as will be explained below. *Second*, a DPSP could explicitly be recognised as a fundamental right through a constitutional amendment. This was the approach taken in the case of the right to education. These are two of the more likely routes to ensure justiciability of care as a governing legal principle, but we remain agnostic to the route or to the final form of the right, as long as it is substantially meaningful and can be claimed in courts.

### C. THE PROBLEM WITH PART IV – THE CASE OF MATERNITY BENEFITS

Indian courts have shown inventiveness in reading new rights into Article 21, but they have simultaneously policed the line between Parts III and IV. Without textual affirmation, care will continue to be treated as an unenforceable aspiration, subject to executive discretion.

Uttarakhand illustrates how untenable it is to rely on a DPSP to reach an outcome of constitutionality, or the lack thereof. In 2018, a single-judge bench in *Urmila Masih v. State of Uttarakhand* struck down the second *proviso* to Fundamental Rule 153, which denied paid leave to mothers for a third pregnancy.<sup>272</sup> The judge relied on Section 27 of the Maternity Benefit Act (MBA),<sup>273</sup> and crucially, on Article 42’s Directive Principle promising “*just and humane conditions of work and maternity relief*.”<sup>274</sup> But in 2019, a division

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<sup>271</sup> *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625 (India).

<sup>272</sup> *Urmila Masih v. State of Uttarakhand*, 2018 SCC OnLine Utt 717 (India).

<sup>273</sup> The Maternity Benefit Act, 1961, § 21, No. 53, Acts of Parliament, 1961 (India).

<sup>274</sup> INDIA CONST., art. 42.

bench reversed the ruling, holding that maternity leave is merely a statutory service condition and that the MBA does not automatically override state rules; because Directive Principles are non-justiciable, they said, Article 42 could not sustain a declaration of unconstitutionality.<sup>275</sup>

That doctrinal gap has now narrowed. In May 2025, the Supreme Court, in *K. Umadevi v. Government of Tamil Nadu*, re-read Tamil Nadu's Fundamental Rule 101(a) to allow paid leave for a third child and aligned it with the MBA.<sup>276</sup> More important than the outcome was the route the Court took: it grounded maternity benefits in the constitutional right to reproductive autonomy, recognised firmly in the Supreme Court case of *Suchita Srivastava* as part of Article 21's guarantee of life and personal liberty.<sup>277</sup> By treating paid maternity leave as a logical extension of that fundamental right, the Court moved the debate out of the Directive-Principles arena and into enforceable rights territory.

Because *Umadevi* roots maternity benefits in Article 21 rather than in unenforceable policy goals, the single-judge reasoning in *Urmila Masih* now has a stronger constitutional footing. Although the Supreme Court stopped short of striking down every two-child ceiling, its affirmation that reproductive choice demands maternity protection gives litigants a powerful tool against such rules in states. Therefore, affirming a value through a Fundamental Right has a strong binding effect and is considered a binding precedent, as opposed to using the interpretive principle route through a DPSP.

#### D. IDEAL SUCCESS – THE LEGISLATIVE ROUTE INTO PART III

Article 45 of the original Constitution consigned free and compulsory education to the Directive Principles, instructing the State to secure

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<sup>275</sup> *State of Uttarakhand v. Urmila Masih*, 2019 SCC OnLine Utt 927 (India).

<sup>276</sup> *K. Umadevi v. Government of Tamil Nadu*, 2025 SCC OnLine SC 1204 (India).

<sup>277</sup> *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1 (India); Jwalika Balaji, *Balance reproductive choices with population policy push*, HINDUSTAN TIMES (June 16, 2025) <<https://www.hindustantimes.com/opinion/balance-reproductive-choices-with-population-policy-push-101750082155660.html>>; Jwalika Balaji, *Two children too many? Expanding maternity benefits to mothers with more than two children in India*, OXFORD HUMAN RIGHTS HUB (July 2, 2025) <<https://ohrh.law.ox.ac.uk/two-children-too-many-expanding-maternity-benefits-to-mothers-with-more-than-two-children-in-india/>>.

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schooling for all children up to fourteen “*within ten years.*” Because Part IV norms are explicitly non-justiciable, this directive lingered for decades as a political aspiration rather than an enforceable entitlement. The Supreme Court altered that position in the early 1990s by reading education into Article 21’s guarantee of life and dignity. It began with *Mohini Jain v. State of Karnataka* (1992), where the Court struck down capitation fees and declared education “*a fundamental right flowing from Article 21*”.<sup>278</sup> This was closely followed by *Unni Krishnan v. State of A.P.* (1993), where a Constitution Bench read the right to education as a fundamental right along with DPSPs; they directed the State to provide free education to every child until the age of fourteen and to expand access “*progressively*” thereafter.<sup>279</sup> Although the Court’s interim solution relied on creative interpretation rather than textual change, it effectively shifted schooling from Part IV’s realm of policy to Part III’s domain of judicially cognisable duties.

Parliament completed the migration through the 86<sup>th</sup> Amendment in 2002, inserting Article 21-A in the Constitution to mandate free and compulsory education for the six-to-fourteen age group. They also amended Article 45 to instead cover early-childhood care (zero to six), and added Article 51-A(k) to impose a corresponding duty on parents and guardians to educate their children.<sup>280</sup> With those changes, the right to education gained full constitutional status. The Right of Children to Free and Compulsory Education Act, 2009 (“*RTE Act*”) fleshed out justiciable standards on infrastructure, pupil-teacher ratios, and a 25% reservation for ‘disadvantaged children’ in private schools.<sup>281</sup> What began in 1950 as an aspirational principle of governance thus solidified, over half a century, into a rights-based enforceable framework.

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<sup>278</sup> *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858 (India).

<sup>279</sup> *Unni Krishnan, JP & Ors. v. State of Andhra Pradesh & Ors.*, AIR 1993 SC 2178 (India).

<sup>280</sup> The Constitution (Eighty-sixth) Amendment Act, 2002 (India).

<sup>281</sup> The Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India).

The lesson of the RTE story is instructive: when Indian constitutionalism converts a fundamental value into a legal *precept*, the shift equips citizens with enforceable claims and reduces the discretion of the state to work towards achieving the goal in question.

Care could thus be recognised as a part of a Fundamental Right by the judiciary—for example, the right to care and be cared for under Article 21. The other option is to incorporate care as a standalone fundamental right through a constitutional amendment. Translating it from a value into a precept is the only sustainable manner in which the ethics of care can be integrated into Indian constitutional law.

### **CONCLUSION: TOWARDS A CARING CONSTITUTION**

This article has traced the concept of care from its theoretical roots in feminist ethics through to its incomplete reception in Indian constitutional doctrine. It showed that Indian courts somewhat gesture toward care in diverse contexts such as health, childcare, household labour, family relations, and animal welfare, yet always by tethering it to allied guarantees such as life, dignity, or equality. That derivative strategy yields a patchwork of contingent protections. Drawing on South Africa as a comparator and on India's own journeys in reproductive rights and the right to education, the article proposed two pathways for doctrinal reform: first, courts could explicitly anchor caregiving entitlements within Part III and recognise care as a fundamental right; second, Parliament could consolidate judicial momentum by inserting a standalone right to care into Part III of the Constitution.

Recognising care at the constitutional level would first confer long-overdue visibility on labour historically relegated to the private sphere. Once designated as a fundamental right, public childcare, elder-care services, and caregiver allowances become legal obligations rather than discretionary state policies or schemes. Litigation could stress the enforceability of justiciable rights, mirroring the way the RTE Act transformed schooling infrastructure from aspiration to enforceable standards.

Second, a constitutional right to care would deepen India's equality jurisprudence by targeting structural discrimination rather than isolated

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prejudice. Because the burdens of unpaid and under-paid care fall disproportionately on marginalised communities, elevating care to constitutional status could help sharpen Articles 14 and 15, obliging legislators to introduce statutory labour, economic, and social-security regimes that redistribute care costs and burdens. In so doing, the State would move firmly beyond formal equality toward substantive equality.

Recognising care must, however, guard against paternalism. Genuine empowerment arises when individuals make choices within supportive and relational networks, not when the State dictates relational norms from above. Judicial and legislative design must therefore balance positive duties to supply resources to carers with respect for the plural ways in which families, communities, and individuals organise their caring relationships.

Constitutional silence is never neutral; it decides whose work counts and whose does not. By elevating care from a normative value to an enforceable fundamental right grounded in dignity and relational autonomy, India can ensure that its constitutional promise of freedom and equality is realised not only in courtrooms but in the everyday lives of those who give and receive care.

### COURTS, UNWRITTEN CONVENTIONS AND THE CONSTITUTION OF INDIA

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**DR. SAYANTANI BAGCHI<sup>1</sup>**

*Constitutional conventions significantly shaped the Constituent Assembly's discourse on the parliamentary form of government especially due to India's prolonged familiarity with British parliamentary institutions. While several British conventions were codified into*

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