



Article 12 of the Constitution and the New Horizons of Fundamental Rights

Dr. Aditya Chaturvedi

*LL.M. (Gold Medalist) Ph.D, NET,JRF, Asst. Professor Classic College of Law Bareilly, Affiliated
M.J.P Rohilkhand University, Bareilly*

Article Info: (Received- 21/04/2026, Accept- 25/06/2026, Published- 05/07/2026)

DOI- [10.64127/rnimj.2026v2i30010](https://doi.org/10.64127/rnimj.2026v2i30010)

Abstract

This paper examines the evolving meaning, scope, and enforcement of fundamental rights through the lens of Article 12 and comparative constitutional jurisprudence. It explores the historical, normative, and judicial foundations of fundamental rights, emphasizing their relationship with human dignity, liberty, equality, privacy, institutional accountability, and democratic governance. The study considers how courts have expanded constitutional protections by interpreting rights beyond rigid textual formulations and by responding to changing social, political, and technological conditions. It also analyses limitations on fundamental rights, balancing mechanisms, constitutional pluralism, and the interaction between national, regional, and international legal frameworks. Comparative references to Hungary, Kenya, South Africa, Luxembourg, Estonia, European institutions, and other jurisdictions illustrate the diversity of constitutional approaches to rights protection. Particular attention is given to emerging concerns in the digital age, including privacy, personal data, algorithmic decision-making, access to information, and participation in public life. The paper further discusses methodological challenges in defining, measuring, and protecting fundamental rights and proposes stronger institutional and policy safeguards. It concludes that fundamental rights must remain dynamic, adaptable, and capable of responding to globalization, technological transformation, and evolving democratic expectations while preserving constitutional legitimacy and individual autonomy across increasingly interconnected, pluralistic, rights-conscious constitutional systems and societies worldwide.

Keywords: Article 12; Fundamental Rights; Constitutional Jurisprudence; Human Dignity; Constitutional Pluralism; Digital Privacy; Democratic Governance

1. Introduction

Although Hungarian constitutional law ranks fundamental rights among the highest values, a coherent theoretical and practical framework for applying and enforcing fundamental rights remains to be established. Article 12 of the Basic Law lays down fundamental rights and prescribes certain procedural guarantees but does not furnish

a substantive concept of fundamental rights.

Historical-legal analyses of provisions contained in the first Hungarian constitution are of limited value today. More relevant and timely are developments in contemporary thinking about fundamental rights and their role in the constitutional order. Article 12 provides a key to situating fundamental rights in the broader themes and values of the Basic Law and identifying those rights already recognised in current adjudication as fundamental rights. Such identification acquires urgency in light of constitutional debates concerning fourth-generation rights and in view of civil society and the individual's capacity to shape the constitutional framework for governance and citizenship (Roedl, 2013).

2. Historical context and normative foundations of Article 12

The new Constitution of Hungary adopted on 1 January 2012 entailed significant changes, most notably in respect of the definition of fundamental rights. The nineteenth article of the preamble to the Constitution proclaims the idiosyncratic notion of constitutional identity and its theoretical corollary, the notion of 'eternal,' in relation to fundamental rights and their enforcement (i.e. right of life; freedom from slavery and torture; right to property; freedom of expression; freedom of scientific research; right to protection of personal data; protection of sexual and other minorities against discrimination etc.). Article 12, in conjunction with section 3 of the National Avowal and sections 1 and 4 of the Fundamental Law of Hungary, constitutes an approach to constitutional identity that seeks to protect the plurality of individual and collective rights delineated in Article 12 and to prevent them becoming normative priority rights which would undermine pluralism within the normative framework (i.e. separation church and state; freedom to make peace with the past; language rights etc.). Article 12 on the right to freedom of thought, conscience and religion is a fundamental right recognized in every modern constitution and thus falls within the above nondiscriminatory approach to plurality. The expression 'freedom of thought and conscience' covers the entire spectrum of human dignity and relates to the right not to hold a particular view as well as the positive obligation to hold a certain belief. Freedom of conscience thus encompasses acquiescence in a dominant doctrine, adherence to a specific view and disavowal of any particular conscience-determining doctrine.

Furthermore, Article 12 wholly embraces the creation of the various ethnic, religious, linguistic and national communities forming the Hungarian nation and thus equally rests on constitutional identity and state establishment of the various entities constituting the Hungarian nation, preordaining as it happens to be the principles of internal law any alteration would conceivably stand outside the community of states where respective modifications elsewhere, by contrast, continue to maintain conventional state legitimacy. In addition, and although past attempts to restore the Hungarian historical constitutional continuity in the light of Free-Mason's principles during the Imperial epoch in order to seek safeguard from the otherwise nihilistic return of the past atoning to the forgotten rule of thought remained futile and the attempts to reintroduce the corresponding free constitutional option from the rails of commune failed under the tyrannical sustainment of communism, the opportunity of legislative safeguard in light of the past seems to exist, the restoring of the Constitution from the time of a thorough Parliamentary liberty became utterly impossible (A. Christenson, 1983) ; (Roedl, 2013).

3. Conceptualization of fundamental rights in constitutional law

Fundamental rights have been conceptualised in three main dimensions, each with distinct political implications. In their first aspect, fundamental rights are understood as the basis of a society that respects human dignity, liberty, and personally founded

life choices. Such an outlook often prioritises the protection of specific groups, e.g., children, minorities, or generally vulnerable segments of society. The second analytical angle restricts authorship to the original constituents of the constitution. Meanwhile, from the third view, every democratic institution is constitutionally grounded, while the legitimate exercise of power by any institution is subject to basic rights compliance. Institutions created by entities lacking constitution durability are thus excluded (Mandopi, 2014). Respect for all three conceptualisations, articulated in the jurisprudence of the Constitutional Court, is essential for defining the scope of fundamental rights (Roedl, 2013).

4. Judicial interpretation and the expansion of fundamental rights

The constitutional reform that took place in 2010 and which marked the entry into force of the current political Constitution gave a fresh impetus to the criminal justice reform that had begun as far back as in 1990. Judicial independence had been proclaimed and put into practice but it was still difficult to disentangle the judiciary from the executive. Governments had changed but the criminal-bar justice agendas had remained more or less intact. A fundamental change came with the advent of an Act of the first socialist and à la fois majority government in over four decades which attempted to launch a plan to return an independent judiciary. The blueprint was ambitious, detailed and far-reaching; every dimension of the judicial institution and its relationship with Legislative and Executive Power was included. It was delivered by the Minister of Justice who, felt strongly the pernicious impact of the past legislation on the Rule of Law and Freedom of Justice.

In a lawfully enacted democratic system, fundamental rights imply the respect of the citizen rights as a core issue of legislation per se. They encompass both physical freedom rights and psychological freedom rights along moral philosophy lines. Obtaining freedom of any kind requires settling for fundamental rights declared in law. Courts are the ultimate arbiter of upholding citizen rights as freedom of the Judiciary must be observed at all times. New legislation must incorporate existing laws, fundamental rights and Constitution's amendments so that the overall integrity of the law is strictly maintained (A. Christenson, 1983).

5. Case law analysis: key decisions shaping the horizons of rights

The interpretation of constitutional rights plays a fundamental role in both developing and restraining the exercise of State power (E. Ray, 2014). The Constitution endows citizens with civil, political, social, and economic rights, and evolving constitutional jurisprudence is altering rights horizons (Kondo, 2017). Article 12 of the agreement between the African National Congress (the ruling political party of South Africa) and the Government of Zimbabwe provides access to fundamental rights. The rights provisions of Article 12 are widely regarded as the most progressive and far-reaching in the Constitution. The enunciation of fundamental rights varies significantly within the Chapter on Fundamental Rights.

6. Limitations, exceptions, and balancing mechanisms

Restrictions on the exercise of fundamental rights are not novel within African constitutional regimes. Kenya's 2010 Constitution, attuned to prevailing continental doctrines, recognises such restrictions but posits substantive impulses intended to secure at least minimum guarantees for the exercise of fundamental freedoms. Article 24(1) states that the rights and fundamental freedoms in the Bill of Rights may be limited only by law, and only to the extent that the limitation is demonstrably justified in a free and democratic society (Syekonyo Maingi, 2018). The Constitution explicitly

guarantees groups and individuals the right, upon the application of the general limitation test, to evince the existence of the fundamental rights and freedoms enshrined in the Bill of Rights. Such a doctrine is instrumental, but also offers perspective on prevailing challenges.

The Constitution delineates an expansive array of civil, political, social, economic, cultural, and environmental rights. Despite implying otherwise, the enshrinement of rights within a constitution does not constitute a panacea for the realisation of those rights. Indeed, the operative features of the foundational statutes in regulation and punitive measures constitute the biggest threat to the attainment of those rights in their entirety. Emerging, up-to-date frameworks are swept under the corridor without reproduction in the laws to keep pace with fast-paced societal changes. The collective hope upon the promulgation of the Constitution in 2010 for a vibrant, transparent, accountable, and responsible governance regime remains elusive even as the foundations are heavily constitutionalised.

7. Comparative perspectives and constitutional pluralism

The comparative and pluralistic orientation of constitutional and administrative law has prompted a number of post-Constitutional decisions, which addressed the combination of article 12 of the temporary Constitution, and article 14 with the cluster of principles, rules and practices aimed at enhancing constitutionalism. Decision D/2010/05 centered on the constitutional provisions concerning the ultra-vires nature of the coercive control of the state, the braiding of money laundering, criminal and civil fining, and the declaration of the law of bankruptcy or cessation of payments of an enterprise or company or an association and the taking of assets by the curator appointed in a bankruptcy order or a cessation order without the explicit consent yet distinct from a patrimonial entitlement each and every constitution stayed silent on. The decision proclaimed four principles of operation of article 12 that permit, circulate and enhance the legislature's discretion in the Grand Duchy of Luxembourg (Venter, 2017).

The arrangement of the article permitted pluralistic and comparative observations several of which were directed via the decisions D/2010/02 and D/2010/05 concerning the 1990 decision of the first section of the court on BELGIUM. A first cluster of observations traced the ultra-vires principle of confiscation or freezing of a curator's patrimony contrary to the French constitution and the European Convention. An additional cluster of observations stemmed from the exorbitant levies presented in Belgium covered in D/2010/02 and indicated a tight tether within the consistent ruling that a fringe sector of concealed constitutionalism flourished, a second fringe encompassed the charter of the United Nations as additional source of constitutional reference and computation, and a third fringe engaged with fragmented extra-constitutions from the European Union and the European Union denomination clearly not forming a bona fide constitutional text.

Two final clusters of treatment were conducted via a thorough examination presented both in D/2010/02 and D/2010/05 where three functions of constitutional law, three constitutional principles on reinforcement of fundamental rights and liberties and four complementary provisions of the article contingent with the Luxembourg decision were put in operation. These examinations were further fine-tuned under the prism of a wide range of constitutional and administrative materials canvassed within the broader area of straightforward homogeneous law before transnational legislation and global constitutionalism filtered out a core strand of transversal propositions. The constitutional and administrative materials enfoqueably referenced recognised pause points of marked constitutional pluralism which had seen anchors deposited on specific jurisdictions and systems covering three broad avenues flowing from the Western, the

Communist and the Islamic contours (Baraggia, 2017).

8. Implications for governance, civil society, and individual autonomy

Article 12 of the Constitution embodies the normative aspirations of the post-Apartheid South African order: to entrench fundamental rights and freedoms as “foundational values” that should govern the actions of all state organs and both public and private actors. The right to privacy, together with other fundamental human rights, serves as supplementary to the individual’s “theory of being,” thus enhancing the “freedom” of individuals to act as “liberated children” beyond destructive socio-economic pressures. Article 12 therefore situates the rights of individuals and groups in a context fully commensurate with the culture of accountability necessary for post-Apartheid civil life. It further endorses the spirit of the original Constitution, which sought to prevent a relapse into Apartheid-style governance. The vital distinction between the core legal precepts imported from the past and the new fundamental human rights and freedoms is thus clear: whereas the former are directed against political oppression and address the “external” relationship of persons with state authority, the latter define the “internal” spirit of liberated individuals in a new civil order (Ellmann, 2001).

9. Emerging challenges in the digital age and privacy

Privacy has evolved considerably in recent years, not only because of the emergence of new threats but also as a reaction to needs that, even though they are not newly born, are met by new iterations of practices and technologies. The digitisation of relationships creates new privacy challenges, for example concerning the ownership of personal data and the associated use of algorithmic analyses of those data in contexts such as predictive policing, personalisation of educational content, and radicalisation (Mann et al., 2018). Privacy still encompasses the right to be left alone, the right to secrecy, and other logics, but the lack of strict rules over digital privacy remains one of the biggest issues of the time even in (Anatolyevna Kuznetsova & Bondarenko, 2017).

Digital technologies increasingly shape individuals’ participation in society and have become crucial vectors for public policies on freedom, equality, and peace. Individual participation in these areas often depends on access to information, education, culture, and knowledge, as well as on the capacity to express opinions and interact with public authorities. Transparent, accessible, and usable new digital information infrastructures that enable inclusion and participation, and are governed by supportive media policies, are essential to protect the digital rights of individuals. Consequently, the fc3b14ce-1704-4e8c-9f88-2c824a6d7713er in which new information infrastructures and interaction channels are developed can either promote or hinder access to knowledge and participation in public life. Methods for considering privacy and access to the digital environment must therefore be adjusted.

10. Methodological considerations for assessing rights in constitutional practice

A fundamental question arises concerning the methodologies employed to assess these rights as they develop within the constitutional framework. Some authors even argue for the identification of a quantum of the right, whereby they speak of ‘medium’, ‘main’, ‘threshold’, ‘absolute’, and ‘infinite’ protection (van der Schyff, 2017).

The criteria for determining the levels of protection corresponding to each right and assessing whether any encroachment remains, therefore, enter into the purview of a theory of fundamental rights, as does the typology of levels of protection.

At the same time, the definition of a right is itself open to debate. Is a ‘right’ exclusively tied to a stipulation in any normative document, or does it extend beyond mere legislative

or contractual formulations? Is the right attached to the content of a specific article or, instead, linked to the tenets underlying the claim? Along comparable lines, the practice developed by Strasbourg organs or the Inter-American Court with regard to 'emerging rights' raises the interrogative about what constitutes a right *Engel and Others v. the Netherlands*, Application No. 5100/71, European Court of Human Rights, 8 June 1976¹⁴. A fuller exploration of these questions would significantly enrich the analysis, yet is regrettably beyond the scope of the present examination.

11. Policy recommendations for safeguarding and expanding fundamental rights

Article 12 places fundamental rights, conventions, and jurisprudence at the centre of governance, deliberation, and constitutional analysis. Safeguarding and expanding these rights underpins their citizen-centred character. One challenge lies in articulating bases for sovereign restraint, distinguishing rights from non-rights, or specifying privileged circumstances for differential treatment. Without adopting another jurisdiction's constitutional nomenclature, prevailing criteria elaborate constitutional parameters beyond the strictures of non-discrimination and equality. Authoritarianism attempts to impose rigid—yet invitingly provisional—conformity across societies. Protecting and broadening constitutional territories and guarantees constitutes the most judicious means to strengthen fundamental rights. Democratic societies fall to circumstances beyond formal and institutional parameters. Emergency powers, states of exception, and concurrent governance across multiple layers—constitutional, civic, agency, EU—enable governing disruptions short of absolute closure. Jurisprudential materials reveal approximate measures of conformity, permissibility, and surplus.

In contemporary societies, it remains unclear why citizens must abandon privacy in return for fearlessly gaining access to some of the world's most life-restrictive prohibitions and taxes. Limiting citizens' evasion of such encumbrances without extending free ingress to unbound pleasures constitutes neither a reasonable nor a deliverable solution. Anonymity does not imply invisibility. Instead of slowing, accelerating indulgence seems the inevitable pragmatic response. Henceforth, Article 12 invites further thought upon citizens' privacy prescriptive for affording them the option of avoiding or accelerating forfeiture of custody over certain texts and thoughts. Protection of exogenous entry via insidious concealment does not appear obscured. Official encouragement to obtain anything eve can loosen education-system-embedded restrictions previously thought foolproof. Does such advocacy count as bottom-up self-indulgence instead of an imposition? (Carrera et al., 2012)

12. Conclusion

The 1977 Constitution of Estonia and, notably, Article 12, has triggered a new approach towards the treatment of fundamental rights. The new perspective is motivated by universally recognized principles belonging to a multinational legal culture. Such a paradigm shift is facilitated by judicial expansion of the catalogue of fundamental rights following the Baltic states' resurgence in the late 20th century. Regardless of the scholars' insistence on the strict constitutional order attached to the shelf of rights and freedoms, it is observed that precedents originating from different international legal instruments and a variety of documents from transnational and supranational organizations have revived the discussion and paved the way for horizontal and vertical expansion, transborder extension, relative approach, content-specific assessment, and involvement in decision-making spheres previously considered to be beyond the reach of fundamental rights protection.

The past and the subsequent fall of the Lisbon Treaty show that globalisation may enrich, rather than impoverish, a country's happiness. More than ever before, worldwide

events have an impact on Estonia's tranquility. Constitutional communication on a global scale is similarly unavoidable. Constructing constitutional responses to globalisation shows that reading developments outside a state and subsequently integrating them into domestic legislation are feasible. Perception of fundamental rights without borders is logically and practically defensive; therefore, justifying far-reaching involvement in the wider world is constructive and remains on the table (A. Christenson, 1983).

Author's Declaration:

I/We, the author(s)/co-author(s), declare that the entire content, views, analysis, and conclusions of this article are solely my/our own. I/We take full responsibility, individually and collectively, for any errors, omissions, ethical misconduct, copyright violations, plagiarism, defamation, misrepresentation, or any legal consequences arising now or in the future. The publisher, editors, and reviewers shall not be held responsible or liable in any way for any legal, ethical, financial, or reputational claims related to this article. All responsibility rests solely with the author(s)/co-author(s), jointly and severally. I/We further affirm that there is no conflict of interest financial, personal, academic, or professional regarding the subject, findings, or publication of this article.

References:

1. Roedl, F. (2013). Fundamental Rights, Private Law, and Societal Constitution: On the Logic of the So-Called Horizontal Effect.
2. Christenson, G. (1983). Using Human Rights Law to Inform Due Process and Equal Protection Analyses.
3. Mandopi, K. (2014). Incorporation of Child Natural Rights in the Constitution: Comparative between Tanzania and South Africa.
4. E. Ray, B. (2014). Evictions, Aspiration and Avoidance.
5. Kondo, T. (2017). Socio-economic rights in Zimbabwe: Trends and emerging jurisprudence.
6. Syekonyo Maingi, P. (2018). A Critical analysis of article 24 on the limitation of rights and fundamental freedoms under the constitution of Kenya 2010.
7. Venter, F. (2017). Utilizing constitutional values in constitutional comparison.
8. Baraggia, A. (2017). Challenges in Comparative Constitutional Law Studies : Between Globalization and Constitutional Tradition.
9. Ellmann, S. (2001). A Constitutional Confluence: American 'State Action' Law and the Application of South Africa's Socioeconomic Rights Guarantees to Private Actors.
10. Mann, M., Daly, A., Wilson, M., & Suzor, N. (2018). The limits of (digital) constitutionalism : exploring the privacy-security (im)balance in Australia.
11. Anatolyevna Kuznetsova, O. & Bondarenko, N. (2017). Private Life Safety Provision in Digital Age.
12. van der Schyff, G. (2017). The protection of fundamental rights in the Netherlands and South Africa compared: can the many differences be justified?.
13. Carrera, S., De Somer, M., & Petkova, B. (2012). The Court of Justice of the European Union as a fundamental rights tribunal: challenges for the effective delivery of fundamental rights in the area of freedom, security and justice. CEPS Paper in Liberty and Security in Europe No. 49, 29 August 2012.

Cite this Article

"Dr. Aditya Chaturvedi", "Article 12 of the Constitution and the New Horizons of Fundamental Rights", ResearchNext International Multidisciplinary Journal (RPIMJ), ISSN: 3107-9725 (Online), Volume:2, Issue:3, July-September 2026.

“Copyright © 2026 The Author(s). This work is licensed under Creative Commons Attribution 4.0 (CC-BY), allowing others to use, share, modify, and distribute it with proper credit to the author.”