FROM PARCHMENT TO PROGRESS: INDIA'S HYBRID PATH TO TRANSFORMATIVE CONSTITUTIONALISM

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ABSTRACT

'The Constitution is a living document". This idea captures the essence of transformative Constitutionalism and India's continuing Constitutional journey. The Constitution is far more than a static set of legal laws written on paper; it is a dynamic, evolving framework intended to actively shape and transform society. The Constitution possesses a deeply transformative nature, focusing specifically on reshaping the dynamics between citizens and the government, as well as among individuals themselves. This core mission directly shapes how the document is applied and interpreted over time.

This vision is enshrined in the Indian Constitution, which tries to balance justiciable rights with welfare goals to promote real national development. This paper deals with the transformation of the hybrid system in India from a written text to a catalyst of social change. It highlights the ways in which the courts connected individual rights to the obligations of the state, extended the notion of dignity in law, used public interest litigation to safeguard the interests of marginalised groups and made the state accountable for public welfare.

By comparing India, South Africa, and other transitional democracies, the study reveal that a constitution must evolve with its people. However, judicial action alone cannot change a nation; it requires a combination of political will, strong public institutions, and an active citizenry.

Keywords: Transformative Constitutionalism, Constitutional Morality, Living Constitution, Social Transformation, Hybrid Model

INTRODUCTION

The adoption of India's Constitution on 26 January 1950 marked a significant shift beyond establishing a basic framework for governance. Constitutional historian Granville Austin famously described it as a "vehicle of social revolution"[1]- legal text crafted with the specific goal of transforming a deeply unequal, caste-based, colonial society into an order founded upon justice, liberty, equality, and fraternity. This starting point is vital; it reveals that the framers never intended to create a neutral, static piece of parchment. Instead, they envisioned the document as an active tool to reshape Indian society.

At the same time the Constitution is the supreme law of the land with specific words, articles and procedures that courts must strictly interpret and apply. This dual identity engenders an inherent tension. On the other hand, observers expect judges to follow the words as written, a method legal scholars refer to as textualism or legal formalism. But the general reader expects them to read the text in a manner that furthers its larger transformative purpose. This paper demonstrates how Indian courts navigate this tension through a hybrid approach: a way of balancing literal textualism with a purposive outlook, while blending judicial restraint with calculated activism.

The term "transformative constitutionalism" was originally formulated by the American legal theorist Karl Klare in a 1998 publication titled "Legal Culture and Transformative Constitutionalism." Klare described it as a long-term project of constitutional enactment, interpretation, and enforcement, committed to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction[2]. Crucially, Klare argued not only about what the constitutional text said, but about legal culture the habits, assumptions, and training of judges and lawyers.

Klare's framework has been borrowed and adapted by Indian legal scholars. The most systematic treatment comes from advocate and legal scholar Gautam Bhatia, whose 2019 book, "The Transformative Constitution": A Radical Biography in Nine Acts, examines nine landmark judgments to argue that the Indian Constitution was always meant to transform not just the political status of Indians from subjects to citizens, but also the unequal social

[1] Granville Austin, The Indian Constitution: Cornerstone of a Nation xiii (Oxford University Press, New Delhi, 1966).
[2] Karl Klare, "Legal Culture and Transformative Constitutionalism" 14 South African Journal on Human Rights 146 (1998).

relationships inherited from the colonial and pre-colonial past. Bhatia claims that constitutional interpretation should remain faithful to the text, structure, and history of the Constitution, while treating its commitment to political and social transformation as the organizing principle behind that interpretation.

According to the noted jurist Upendra Baxi, the Indian Constitution is essentially a charter of social justice rather than a document of individual liberties. By way of comparison, he illustrates how the supreme courts of South Africa, Brazil, and India view their constitutional structure as dynamic tools for social development.

A closer focus on the drafting history of the Constitution and on questions of constitutional amendment has been maintained by constitutional historian Madhav Khosla. By emphasizing that transformation was also meant to occur through ordinary legislative and political processes, and not through the judiciary alone, he offers a useful counterweight to purely judgment-centred accounts.

DD Basu opined on Constitutionalism, "constitutionalism necessitates the control over exercise of governmental powers so those powers should not destroy democratic principles on which it is based. These principles include protection of fundamental rights through principles of checks and balance and rule of law. Judiciary must interpret the constitution in such a way so parliament would not wish to legislate contrary to fundamental rights."[3]

A distinctly Indian contribution to this literature is the revival of the phrase 'constitutional morality'. B.R. Ambedkar's speeches to the Constituent Assembly originally birthed this phrase, wherein he cautioned that the discipline of constitutional morality had not yet been mastered by Indians a dedication to constitutional ideals and protocols even when they clash with public sentiment. Justice D.Y. Chandrachud later revitalized this phrase and provided it with fresh doctrinal significance through a sequence of rulings. Most prominent among these are the Navtej Singh Johar v. Union of India[4] and Indian Young Lawyers Association v. State of Kerala[5] cases, where he contended that transforming society rather than protecting the majority's pre-existing values is the true objective of the Constitution. Whether constitutional morality serves as a valid interpretive framework or acts as an open invitation to judicial

[3] D.D. Basu, Shorter Constitution of India 115-16 (Justice A.R. Lakshmanan, Justice Bhagwati Prasad Banerjee & V.R. Manohar eds., 14th ed., 2009).
[4] Navtej Singh Johar & Ors. v. Union of India, AIR 2018 SC 4321.
[5] Indian Young Lawyers Association & Ors. v. The State of Kerala, (2019) 11 SCC 1.

subjectivity remains a subject of ongoing debate among scholars and commentators, given that the phrase lacks a single, stable, textual definition.

CONCEPTUAL FRAMEWORK

1. Defining Transformative Constitutionalism

"The whole idea of having a constitution is to guide the nation towards a resplendent future. Therefore, the purpose of having a constitution is to transform the society for the better and this objective is the fundamental pillar of transformative constitutionalism. Our Constitution, like the law of the society, is a living organism. It is based on a factual and social realty that is constantly changing. Sometimes a change in the law precedes societal change and is even intended to stimulate it. Sometimes, a change in the law is the result in the social realty." Justice Dipak Misra (former Chief Justice of India).[6]

In its basic sense, a constitution is treated by transformative constitutionalism not as a static contract that simply restricts state authority, but as a dynamic mechanism to improve society. Classical liberal constitutionalism, which prioritizes safeguarding individuals from the state and facilitating an unbiased political system, stands in contrast to this approach. Conversely, a definitive stance is taken by a transformative constitution: the state and its judicial branches are bound by it to proactively advance equality, dignity, and social justice, even if established customs, social hierarchies, or majoritarian views are disrupted in the process.

Transformative constitutionalism is a means of promoting societal change through the embedding of principles such as equality, liberty, fraternity and dignity. The Constitution is designed for the good of the people, which is the Supreme purpose of the Constitution. This can be understood in one sense as the primacy of Constitutional morality over social morality. Another view is that the Constitution's basic structure is deliberately unchangeable, but it evolves to meet changing needs of society. Justice Chandrachud beautifully explains the idea of transformative constitutionalism, showing how it stitches fundamental values like liberty, equality, fraternity and dignity right into the heart of society. It is this constant process of constitutional change that defines and gives content to a real working democracy.

[6] Navtej Johar v. Union of India, (2018) 10 SCC 1

2. The Hybrid Nature of India's Constitutional Model

Instead of borrowing a single model from outside, India evolved its own synthesis of various legal traditions. The Indian system borrowed its structures of legislation and parliamentary processes from Great Britain but altered British concept of legislative supremacy by incorporating judicial review. India adopted from the American constitutional model a codified constitution with justiciable fundamental rights available to citizens for enforcement against the state and the broad scope of judicial review.

India also attached great significance to the reformation of the society because of its own independence movement and the foundational principles. This is clear from the Directive Principles of State Policy, specific constitutional safeguards against untouchability, reservation frameworks, and a Preamble promising to secure social, economic, and political justice for all citizens.

This mixture makes India's constitutional method genuinely hybrid, rather than a straightforward copy of the South African model that first inspired the term 'transformative constitutionalism'. Unlike South Africa, where specific provisions of the 1996 Constitution write out the transformative mandate, a more gradual emergence of India's transformative reading has occurred largely through judicial interpretation of open-ended phrases such as 'life', 'liberty', and 'equality before the law'.

3. Transformative Constitutionalism versus Traditional Liberal Constitutionalism

Traditional liberal constitutionalism, which has its roots in Locke, Montesquieu, and Dicey, treats the constitution as a shield against the state. The core commitments of this philosophy are limited government, separation of powers, protection of negative liberties, formal equality before the law, and judicial restraint. By keeping power in check, the constitution preserves an existing order, and society views courts as neutral umpires rather than agents of social change.

Scholars most closely associate "transformative constitutionalism" with Karl Klare's 1998 article[7] on legal culture in South Africa, a concept that Pius Langa[8] later developed to treat the constitution as a tool for changing society. Klare describes it as a long-term project where

[7] Karl Klare, "Legal Culture and Transformative Constitutionalism" 14 South African Journal on Human Rights 146 (1998).
[8] Pius Langa, "Transformative Constitutionalism", 17 Stellenbosch Law Review 351 (2006).

institutions enact, interpret, and enforce a constitution to move a country toward a more egalitarian, democratic, and inclusive order. Socio-economic rights, substantive equality, and dignity require the state to act positively, and courts take an active role in dismantling entrenched hierarchies such as caste, race, gender, and poverty.

4. Basic Structure Doctrine as The Cornerstone

The Supreme Court first announced the basic structure doctrine in Kesavananda Bharati v. State of Kerala[9], establishing it as the primary principle linking India's textual constitutionalism to its transformative goals. According to this doctrine, although wide powers to amend the Constitution are possessed by Parliament, these powers cannot be used by it to destroy the basic structure-the core identity of the text, which includes fundamental features like judicial review, federalism, secularism, and the rule of law. Transformative constitutionalism relies heavily on this doctrine because the Constitution's foundational commitments are protected by courts from being eroded by ordinary political majorities, thereby assigning a permanent role to the judiciary as the guardian of the Constitution's transformative core.

HISTORICAL AND PHILOSOPHICAL FOUNDATIONS; CONSTITUTION AS PARCHMENT

The initial phase of a constitutional order is represented by the parchment stage, which occurs when a constitution exists primarily as an enacted text. Although paper records its promises of liberty, equality, and social justice, practical force has not yet been given to them by institutions, courts, and society. Rather than serving as an instrument for changing the existing social and political order, the constitution is understood at this stage as a formal legal document that is interpreted literally and applied within that status quo. The early years after 1950 reflect this phase in the Indian context, when a deeply unequal society adopted a progressive Constitution. The text contained commitments to equality, dignity, and social and economic justice, but they had yet to be matched by the legal culture, administrative machinery, and social attitudes. A wide gap separated constitutional promise from lived reality, prompting Dr. Ambedkar to caution that 'constitutional morality' must guide those who work the Constitution for it to succeed.

[9] Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225.

1 . The Constituent Assembly's Vision

Between 1946 and 1949, acute awareness regarding the divide between lived social democracy and formal political democracy was demonstrated by India's framers during the Constituent Assembly debates. B.R. Ambedkar delivered his final address to the Assembly on 25 November 1949[10]; speech observers frequently label the "Grammar of Anarchy."[11] In this address, he warned that an era of contradictions loomed over India: political equality via a one-person, one-vote system would sit alongside deep-seated economic and social inequalities rooted in class and caste. He argued that a foundation of social democracy must support political democracy for it to survive. He defined social democracy as a lifestyle that recognizes liberty, equality, and fraternity together. Pursuing any of these values in isolation, without the others, would merely cause the dominance of the few over the many. Today, scholars widely cite this warning as the philosophical seed of transformative constitutionalism in India, which advances the idea that the moment of adoption did not mark the end of the Constitution's work[12].

2. Early Judicial Conservatism

Interpretation of the Constitution was first embraced by the Apex court, as demonstrated in A.K. Gopalan v. State of Madras[13]. In this case, the Court held that separate, watertight compartments housed the fundamental rights in Part III of the Constitution. Consequently, a law challenged under Article 21 (the right to life and personal liberty) did not also need to satisfy the tests under Articles 14 (equality) or 19 (freedoms). This narrow, textualist approach limited the reach of judicial review during the Constitution's first decades. Colonial-era habits of formal, rule-based reasoning still shaped the legal culture-a situation resembling the conservative legal culture that Klare later worried about in the South African context.

3. The Turning Point: Kesavananda Bharati (1973)

A thirteen-judge bench-the largest ever assembled in the history of the Indian judiciary-

[10] Constituent Assembly Debates, vol. XI, 25 November 1949, p. 972.
[11] B.R. Ambedkar, "Grammar of Anarchy" in Constituent Assembly Debates, vol. XI (Lok Sabha Secretariat, 1949).
[12] Gautam Bhatia, The Transformative Constitution: A Magisterial Inquiry into the Origins of the Law (HarperCollins, 2019).
[13] A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

delivered its judgment in the historic matter of Kesavananda Bharati v. State of Kerala[14] by a narrow seven-to-six majority, marking a crucial turning point. A dispute surrounding land reform laws in Kerala triggered the case, which subsequently evolved into a more profound constitutional inquiry: Did Article 368 grant Parliament the amending power to completely diminish or eliminate fundamental rights?

Ultimately, the Court ruled that the "basic structure" of the Constitution could not be destroyed by Parliament, despite the expansive nature of its amending power. Scholars now view this ruling as a watershed moment. It established that a parliamentary supermajority cannot erase certain permanent constitutional commitments, thereby granting the judiciary enduring authority to shield the Constitution's transformative core from future political majorities.

4. Maneka Gandhi and the 'Golden Triangle' (1978)

Five years later, in Maneka Gandhi v. Union of India[15], the narrow, isolated view point previously established in A.K. Gopalan v. State of Madras[16] was overturned by a seven-judge bench. The case arose after the passport of journalist and politician Maneka Gandhi was impounded by the government 'in the public interest' without her being given a hearing.

It was held by the Court that fairness, justice, and reasonableness must be inherent in the procedure established by law under Article 21. Through this ruling, an American-style due process requirement was effectively read into a phrase that the framers had originally drafted to avoid exactly that idea. Furthermore, the judgment established that the right to equality (Article 14)[17], the right to freedom of speech and expression (Article 19)[18], and right to life and personal liberty (Article 21)[19] are deeply interconnected and cannot be interpreted in isolation- a trinity widely recognised today as the Golden Triangle.

Legal experts widely regard this judgment as the moment an active expansion of rights, rather than a narrow limitation of them, was begun by the Supreme Court. This landmark decision laid the doctrinal foundation for decades of later expansive readings of Article 21, which cover

[14] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.
[15] Maneka Gandhi v. Union of India, AIR 1978 SC 597.
[16] A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
[17] The Constitution of India, 1949, Art.14
[18] The Constitution of India, 1949, Art.19
[19] The Constitution of India, 1949, Art.21

matters ranging from the right to livelihood to the right to a clean environment.

TRANSFORMATIVE TURN: THE PROGRESSIVE SHIFT

1. Shift From Text to Values

During the Progressive Era, judges shifted away from narrow textual interpretations and adopted a method grounded in constitutional principles. Courts began to consider how well statutes measured up to fundamental democratic values, rather than parsing the literal wording of a law. Principles like equality, individual autonomy and human dignity were no longer mere abstract ideals enumerated in the Preamble, they became operational norms to test the validity of laws. Consequently, colonial era legislation was systematically reviewed to ensure it met modern day constitutional benchmarks.

2. Constitutional Morality was prioritized over Social Morality

Under this framework, judges are thought to be obliged to uphold constitutional values even if the majority disagrees. No one shall be subjected to any measures solely on the ground of public opinion, religion or tradition which would deprive him of any of the rights. In this way the counter-majoritarian role of the courts is performed and protection is given to those minorities and persons who cannot win in normal political processes.

In addition, there was an adoption of substantive equality. The concept of equality was expanded beyond uniform treatment. Actual societal effects are now examined by the courts to determine whether a disadvantaged position is maintained for certain groups by a law or practice. Hidden or indirect discrimination, particularly against women and sexual minorities, can be effectively addressed through this method.

3. Supreme Court Judgements

Expanding upon the core legal doctrines established in Kesavananda Bharati v. State of Kerala[20] and Maneka Gandhi v. Union of India[21], the Supreme Court has introduced a series of rulings since the mid-2010s. Legal academics and jurists frequently categorise this specific body of jurisprudence under the framework of transformative constitutionalism. This section

[20] Kesavananda Bharati, supra note 14, at 8.
[21] Maneka Gandhi, supra note 15, at 8.

examines the most important of these as case studies.

i. NALSA v. Union of India - Recognising the Third Gender

The Supreme court acknowledged transgenders as a legally distinct third gender through a landmark 2014 ruling by a two-judge bench in National Legal Services Authority v. Union of India[22]. The Court held that Articles 14, 15, 19, and 21 of the Constitution protect the right to self-identify one's gender. The court directed the central and state governments to consider transgender individuals as a socially and economically backward class for welfare schemes and reservations. For the first time an Indian judgment explicitly recognised a non-binary gender identity, the ruling serves as an early, clear example of the judiciary using the constitutional text to drive social transformation far ahead of legislative action or broader social consensus.

ii. Justice K.S. Puttaswamy v. Union of India - The Right to Privacy

A historic, unanimous ruling by a nine-judge bench in 2017 firmly established that right to privacy constitutes a fundamental right. The Court protected it as an intrinsic part of the right to life and personal liberty under Article 21, weaving it through the other freedoms guaranteed in Part III of the Constitution. Although a challenge to the Aadhaar biometric identity scheme triggered the case, its significance reached far beyond that program[23]. Two earlier decisions that had denied a constitutional right to privacy-M.P. Sharma v. Satish Chandra[24] and Kharak Singh v. State of U.P.[25] -were overruled by the Court. Furthermore, judges laid down a three-part test of legality, legitimate aim, and proportionality to evaluate when the state may restrict privacy. Because several opinions in Puttaswamy recognised that privacy safeguards sexual orientation and decisional autonomy over intimate personal choices, essential doctrinal groundwork was laid for the Navtej Singh Johar decision a year later.

4. Preamble, Fundamental Rights, DPSP as Transformative Tool

Rather than merely limiting state power, the Constitution is treated by transformative constitutionalism as an instrument for changing an unequal society. A hybrid model is utilized by India to achieve this: a push toward change is driven by each of the Preamble, Fundamental

[22] National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438.
[23] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[24] M.P. Sharma v. Satish Chandra, AIR 1954 SC 300.
[25] Kharak Singh v. State of U.P., AIR 1963 SC 1295.

Rights, and Directive Principles of State Policy, but a controlled implementation is maintained by the courts. Expansive interpretations are applied by the judiciary when rights are at stake, whereas a cautious approach is adopted where the building of new legal institutions would be required by social change.

Preamble: The Transformative Vision

The Preamble explicitly articulates the core Constitutional ideas of justice, liberty, equality, and fraternity. The Supreme court initially ruled in the Re: The Berubari Union and Exchange of Enclaves[26] that Preamble was not an integral part of the Constitution. This stance was overturned by Kesavananda Bharati v. State of Kerala[27], which recognised the text as a vital guide to the framers' true intent. Rather than acting as a direct source of enforceable rights, it functions today as an interpretive lens. The direction in which ambiguous text must be read is signalled to the courts by the Preamble; consequently, interpretation brings about transformation, rather than the Preamble acting alone.

Fundamental Rights: The Enforceable Tool

Legal force is given to this vision by Part III, given that rights can be actively enforced by citizens through Articles 32 and 226. The most profound constitutional evolution occurred when the Supreme court expanded the scope of Article 21 in the Maneka Gandhi v. Union of India[28] ruling. In this ruling, the judiciary intrinsically linked the concept of "life and liberty" to principles of fairness, human dignity, and protection against arbitrary state actions. Subsequent rulings were structurally supported by this reading, including NALSA v. Union of India[29] regarding gender identity, Justice K.S. Puttaswamy v. Union of India[30] (regarding privacy, and Navtej Singh Johar v. Union of India[31] where transformative constitutionalism was openly relied upon by the Supreme Court to decriminalize consensual same-sex relations. At this juncture, the hybrid model reaches its most expansive state.

DPSP: The Social-Justice Direction

Although Directive Principles are rendered non-justiciable by (Article 37)[32], goals such as an

[26] In Re: The Berubari Union and Exchange of Enclaves, AIR 1960 SC 845.
[27] Kesavananda Bharati, supra note 14, at 8.
[28] Maneka Gandhi, supra note 15, at 8.
[29] NALSA, supra note 22, at 10.
[30] Justice K.S. Puttaswamy, supra note 23, at 10.
[31] Navtej Johar, supra note 4, at 3.
[32] The Constitution of India, Art. 37

adequate livelihood, equal pay, and minimized inequality are firmly set by them. These principles were ranked below fundamental rights by early judicial decisions like State of Madras v. Champakam Dorairajan[33] . This structural gap was subsequently closed by later courts through the reading of directives into core rights. The right to a livelihood was read into Article 21 by Olga Tellis v. Bombay Municipal Corporation[34], and the exact same pathway for education was carved out by Unnikrishnan J.P. v. State of Andhra Pradesh[35]. In Minerva Mills v. union of India[36] the Supreme court established that maintaining a harmonious balance between Fundamental Rights (Part III) and the Directive Principles of State Policy (Part IV) is a fundamental feature of the Constitution's basic structure. The core of the hybrid concept rests upon this premise: rights and directives are intended by the constitutional framework to work in tandem, rather than compete against one another.

INDIA'S INTEGRATED MODEL

1. Features Distinguishing India's Hybrid Model

Taken together, a consistent, if unstated, method is suggested by the cases discussed above: the constitutional text is interpreted expansively and purposively by Indian courts, especially where fundamental rights are at stake, but caution is exercised by them about compelling Parliament to legislate, or about creating entirely new legal categories that are not clearly supported by the text.

2. Where the Court Moves Purposively

In cases such as Navtej Johar[37], Puttaswamy[38], NALSA[39], and Indian Young Lawyers Association[40], the Court read open-textured phrases such as 'life', 'liberty', 'equality', and 'dignity' broadly, treating them as living commitments. These commitments are capable of protecting groups and interests that the framers of 1950 may not have specifically anticipated, such as transgender persons or LGBTQIA+ individuals. This is a purposive method: the Court does not ask simply what does the words say, but what constitutional value they are meant to

[33] State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.
[34] Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.
[35] Unni Krishnan, J.P. v. State of Andhra Pradesh, AIR 1993 SC 2178.
[36] 4. Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789.
[37] Navtej Johar, supra note 4, at 3.
[38] Justice K.S. Puttaswamy, supra note 23, at 10.
[39] NALSA, supra note 22, at 10.
[40] Indian Young Lawyers Association, supra note 5, at 3.

serve, and reads them accordingly.

3. Where the Court Stays Textually Anchored

In Supriyo @Supriya Chakraborty v. Union of India,[41] the Supreme court did not expand the statutory interpretation of "marriage" to embrace same sex unions. The court also stated that legislature has the authority to modify or change legislative language and it does not come under judicial purview. This distinction, between interpreting open constitutional values purposively and declining to rewrite specific statutory definitions, is a recurring pattern in Indian constitutional law. A genuinely hybrid method, rather than a simple, one-directional trend toward ever more activist judging, is clearly evidenced by this pattern.

4. Constitutional Morality as the Interpretive Bridge

The concept of 'Constitutional Morality' functions as the bridge between these two tendencies. It allows courts to argue that they are not inventing new values from nowhere. Instead, values already present in the constitutional text and its history such as equality, dignity, and fraternity are being applied by them, even against contrary social or religious custom. Because B.R Ambedkar's own speeches in the Constituent Assembly[42] trace this concept back, a textual and historical anchor is given to transformative judgments, even where the original framers could not have predicted the specific outcome, such as decriminalising homosexuality.

5. The Basic Structure Doctrine as a Permanent Anchor

Finally, the basic structure doctrine, functions as a structural guarantee that a determined political majority cannot undo the transformative core of the Constitution, even through the amendment process. This doctrine is itself a hybrid creation: no one can find it anywhere in the constitutional text, yet Indian constitutional law respects and consistently enforces it as one of its most prominent doctrines. This illustrates how India's courts have built transformative protections on top of, rather than instead of, textual interpretation.

6. Strength of Integrated Model

The constitutional framework includes two approaches of rights and governance. Part III[43]

[41] Supriyo @ Supriya Chakraborty & Anr. v. Union of India, (2023) INSC 920.
[42] Constituent Assembly Debates, vol. XI, 25 November 1949, p. 972.
[43] The Constitution of India, Part III.

provides fundamental rights which are enforceable in courts. Part IV[44] contains Directive Principles of State Policy which the State is bound to follow but are not enforceable in courts. Scholars have described this hybrid model as one in which the legal protection of individual liberty and equality is coupled with a broader commitment to social and economic welfare.

The relationship between both parts are the strength of this model. People can be protected by Fundamental Rights against discriminatory or arbitrary State action, while what equality, dignity, and a meaningful life require in practice can be interpreted by courts and lawmakers using Directive Principles. A primary example of this convergence is seen in Olga Tellis v. Bombay Municipal Corporation[45] where the Supreme court expanded the scope of Article 21 by establishing that the right to life inherently encompasses an individual's right to livelihood. Similarly, the judicial interventions in People's Union for Civil Liberties v. Union of India[46] invoked this framework to establish state accountability regarding food security under the purview of welfare jurisprudence. How constitutional rights and social-policy commitments can work together is shown by these cases.

Limits also exist within this model. Rights can be interpreted by courts, and meeting constitutional duties can be required of the State by them, but making every detailed budgetary or policy choice is not something courts are designed for. The hybrid model is strongest when constitutional standards such as dignity, equality, and minimum protection are established by judicial decisions, while the policies needed to meet them are designed and implemented by elected institutions.

JUDICIAL ANALYSIS

1.Public Interest Litigation (PIL)

The practical execution of transformative constitutionalism is deeply rooted in Public Interest Litigation (PIL). Constitutional remedies were opened to marginalized groups which had been left out by ordinary litigation, such as slum dwellers, prisoners, and bonded labourers by liberalizing the locus standi requirement, the judiciary ensured that constitutional ideals of justice and individual dignity transitioned from abstract textual principles into tangible

[44] The Constitution of India, Part IV.
[45] Olga Tellis, supra note 34, at 12.
[46] People's Union for Civil Liberties v. Union of India, (2001) 7 SCALE 484.
(If citing the Writ Petition number specifically: People's Union for Civil Liberties v. Union of India, W.P. (Civil) No. 196 of 2001).

protections for real lives.

The hybrid model is also reflected by PIL. Compliance was monitored and commissions were appointed by the Court using its own procedural power, but Directive Principles were not made directly enforceable by it. Livelihood, health, and humane working conditions were given legal force through an existing right when the Court read these principles into Article 21.

The landmark ruling in Bandhua Mukti Morcha v. Union of India[47]exemplifies this paradigm shift. By reading Articles 21 and 23 together, the litigation dismantled entrenched systems of forced labour and prioritized human dignity. Furthermore, the judiciary relied on Directive Principles (Articles 39) and (Article 42)[48] to substantively define this dignity, establishing the Court as a proactive vehicle for structural reform by mandating the liberation and subsequent reintegration of bonded labourers.

2. Rights Versus Directives

Directive Principles were placed below Fundamental Rights by State of Madras v. Champakam Dorairajan [49]. This balance was corrected in Minerva Mills Ltd. v. Union of India[50], which held that harmony between Parts III and IV forms part of the basic structure and serves as the legal root of the hybrid model. Reviewability of even Ninth Schedule[51] laws on this standard was established by I.R. Coelho v. State of Tamil Nadu[52].

3. Equality

In State of Kerala v. N.M. Thomas[53] the judiciary treated reservation policies as an essential component of substantive equality rather than a mere exception to it. Alongside this , a 50% cap on reservations and the creamy layer principle, were upheld in Indra Sawhney v. Union of India[54]. Additionally, the court addressed gender stereotypes in Anuj Garg v. Hotel Association of India[55], ruling that paternalistic "protective" legislation can inadvertently reinforce gender

[47] Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
[48] The Constitution of India, Art. 42.
[49] Champakam Dorairajan, supra note 33, at 12.
[50] Minerva Mills, supra note 36, at 12.
[51] Constitution of India, Ninth Schedule.
[52] I.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 861.
[53] State of Kerala v. N.M. Thomas, (1976) 2 SCC 310; AIR 1976 SC 490.
[54] Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217; AIR 1993 SC 477.
[55] Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1; AIR 2008 SC 663.

biases.

4. Dignity and Livelihood

The judiciary continuously utilized Article 21 to give binding force to Directive goals. In Hussainara Khatoon v. State of Bihar[56] the right to speedy trials and free legal aid were recognised as Fundamental rights. Right to Life was tied directly to dignity in Francis Coralie Mullin v. Administrator, Union Territory of Delhi[57]. Livelihood was recognized by Olga Tellis v. Bombay Municipal Corporation[58] . Furthermore, access to education was acknowledged as a component of the right to life in Unnikrishnan J.P. v. State of Andhra Pradesh[59].

5. Gender and Personal Law

Significant strides in personal law reform were achieved through judicial interventions. The practice of instant triple talaq was invalidated in Shayara Bano v. Union of India[60], and the adultery law was invalidated in Joseph Shine v. Union of India[61]. The marital rape exception concerning girls aged 15 to 18 was read down in Independent Thought v. Union of India[62]. Women's entry into Sabarimala was permitted by Indian Young Lawyers Association v. State of Kerala[63], though judicial review of religious practices was questioned by a strong dissent.

Parliament was deferred to by Suresh Kumar Kaushal v. Naz Foundation[64] before that ruling was subsequently overruled. Dignity was protected, but the establishment of a right to marry was declined in Supriyo @ Supriya Chakraborty v. Union of India[65]. Overall, rights are read expansively by the Court, while the creation of new legal institutions is left to Parliament.

TRANSFORMATIVE CONSTITUTIONALISM IN PRACTICE

Transformative constitutionalism uses constitutional principles to dismantle social hierarchies and provide meaningful rights. In India, its practical impact is evident in cases concerning

[56] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81; AIR 1979 SC 1369.
[57] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608; AIR 1981 SC 746.
[58] Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545; AIR 1986 SC 180.
[59] Unnikrishnan J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645; AIR 1993 SC 2178.
[60] Shayara Bano v. Union of India, (2017) 9 SCC 1; AIR 2017 SC 4609.
[61] Joseph Shine v. Union of India, (2019) 3 SCC 39; AIR 2018 SC 4898.
[62] Independent Thought v. Union of India, (2017) 10 SCC 800; AIR 2017 SC 4904.
[63] Indian Young Lawyers Association & Ors. v. The State of Kerala, (2019) 11 SCC 1.
[64] Suresh Kumar Kaushal v. Naz Foundation, (2014) 1 SCC 1.
[65] Supriyo @ Supriya Chakraborty & Anr. v. Union of India, (2023) INSC 920.

gender equality, social reform, personal laws, and socio-economic rights. However, this transformation happens gradually. While a court judgment can alter legal standards, effective implementation still relies on legislation, social change, and public institutions.

Enforcing Socio-Economic Rights

Even though socio-economic entitlements lack direct enforceability under Part III as Fundamental Rights, judiciary interpretation has significantly broadened the scope of Article 21. By harmonising it with the Directive Principle of state policy, the judiciary has extended the protection to essential aspects of life including dignity, food, and livelihood . For instance, livelihood was treated as an extension of the right to life in Olga Tellis v. Bombay Municipal Corporation[66]. Similarly, the constitutional importance of basic necessities and food security has been recognized by the Supreme Court.

This strategy allows courts to intervene when basic living conditions are threatened by State action. Nevertheless, institutional capacity remains a concern; while constitutional obligations can be identified and reviewed by courts, welfare programs must still be designed and delivered by governments.

Gender justice

Constitutional principles of equality, non-discrimination, dignity, and personal autonomy have advanced gender justice. In Vishaka v. State of Rajasthan[67], interim guidelines were provided and workplace sexual harassment was recognised by the Court as a violation of women's constitutional rights. The Court, in Joseph Shine v. Union of India[68], rejected a criminal law that treated married women as subordinate. The exclusion of female officers from permanent Army commissions was addressed in The Secretary, Ministry of Defence v. Babita Puniya[69].

Both formal rules and assumptions about women's roles can be challenged by constitutional equality, as these cases show. These judgments also make it clear that gender justice does not stop at legal recognition; institutions must actively implement the law.

[66] Olga Tellis, supra note 34, at 12.
[67] Vishaka and Ors. v. State of Rajasthan and Ors., (1997) 6 SCC 241.
[68] Joseph Shine, supra note 61, at 16.
[69] The Secretary, Ministry of Defence v. Babita Puniya and Ors., (2020) 7 SCC 469.

Personal Laws and Social Reform

Religious freedom, equality, and the State's role in reform are challenged by difficult questions raised by personal laws. A pivotal instance of judicial intervention occurred in Shayara Bano v. Union of India[70] where the court invalidated the practice of instant triple talaq, the bench reasoned that essential religious practices did not protect it. Personal-law debates now include women's equality and protection because of this case.

The Constitution guarantees of equality and dignity thee have to be balanced with freedom of religion and cultural diversity. Transformative approaches ask whether a practice or rule denies equal legal status, but the limits of the Court's role and the social context of reform must be carefully considered through judicial reasoning. The Constitution backs social reform by means of enforceable rights, Directive Principles and provisions for affirmative action. The courts can strike down discriminatory laws, interpret existing protections in light of dignity and equality and require public authorities to adhere to constitutional duties. Their decisions can shape public debate and help steer future legislation.

But judgments cannot do social reform all by themselves. Legislative action, effective administration, access to justice, and changing social attitudes also drivers of enduring change. Thus, the work of courts, lawmakers, public institutions, and citizens in tandem is what unlocks the transformative potential of the Constitution.

COMPARATIVE INSIGHTS

1. South Africa

The state is explicitly committed to social and economic transformation by specific development clauses within South Africa's 1996 Constitution[71], which remains the paradigmatic case of transformative constitutionalism. Nonetheless, a gap between the promise and the practice of transformation has been observed by comparative scholars, who note that South African courts have often exercised greater caution in enforcing socio-economic rights for poorer communities than the transformative rhetoric of the Constitution might suggest.

[70] Shayara Bano, supra note 60, at 16.
[71] The Constitution of the Republic of South Africa, 1996, s. 26.

2. Colombia

By contrast, its transformative[72] mandate in the socio-economic field has been more fully embraced by the Colombian Constitutional Court, according to comparative research. Individuals are allowed to bring rights claims directly and relatively quickly through a specialized petition mechanism known as the tutela, which operates without unsettling the broader separation of powers.

3. Kenya

The South African model of transformative constitutionalism was explicitly drawn upon by Kenya's 2010 Constitution[73], which was drafted partly in response to decades of authoritarian governance and human rights abuses. The analyses of Kenya reveal both the opportunities and constraints of employing constitutional provisions to heal deep-seated historical wrongs. A key challenge highlighted is that shifting from court victories to actual grassroots social reform requires a steady, collaborative effort between the branches of government (judicial, legislative, and executive), which does not always materialize.

Additionally, India's model of transformative constitutionalism diverges significantly from both the Kenyan and South African frameworks in three distinct ways.

4. How India Defined Its Own Constitutional Path

There are three main reasons why India’s approach to transformative constitutionalism is different from South Africa and Kenya. First, the Indian Judiciary developed its transformative framework over time by broadening general constitutional guarantees such as ‘life’ and ‘equality’, rather than on the basis of explicit developmental text. Second, the Indian Constitution was enacted much earlier, in 1950, than that of South Africa (1996) or Kenya (2010), and so modern transformative jurisprudence had to actively dismantle decades of older, rigid precedents such as A.K. Gopalan. Finally, India offered a very distinctive hybrid paradigm to the comparative law of the world. It brings together the basic structure doctrine, which permanently protects the transformative goals, and the constitutional morality doctrine,

[72] See Colombian Constitution 1991, art. 86 (establishing the mechanism of Acción de Tutela for the immediate protection of fundamental constitutional rights).
[73] Constitution of Kenya, 2010, pmbl. (reflecting the transformative mandate to address historical injustices, protect human rights, and establish a democratic state based on the rule of law).

which offers judges a specific ethical framework for deciding individual cases. "No other jurisdiction has quite combined these two ideas in the same way."

CHALLENGES

1. The Execution Gap in Judicial Pronouncements: While the judiciary declares fundamental rights, the executive branch is responsible for enforcement, which often lags significantly. For instance, the guidelines from Vishaka v. State of Rajasthan (1997) took until 2013 to become a formal statute, and the police reforms mandated in the Prakash Singh (2006) case remain only partially implemented by states.

2. The controversy over Judicial Legitimacy: Landmark decisions such as Navtej Singh Johar (2018) promote constitutional dignity and equality, but detractors say that it is inappropriate for unelected judges to decide complex social policies. Moreover, judicial restraint is not consistent, as evidenced by the pending Sabarimala reference case, which erodes the predictability of the legal system.

3. Structural Limitations in Enforcing Directive Principles: Part IV lays down the state's socio-economic objectives, but Article 37 makes them non-justiciable. Courts must rely on indirectly enforcing these goals through the expansive interpretation of Article 21, leaving systemic progress uneven and dependent on specific petitions that reach the court.

4. Ambiguity of Constitutional Morality: The judiciary often uses the doctrine of "Constitutional Morality" to justify progressive rulings. But, the concept has no fixed legal definition, leaving a risk that a judge's personal philosophy might override democratic consensus.

CONCLUSIONS AND SUGGESTIONS

India's hybrid model is a constitution written on rights, a parliamentary democracy and a basic structure enforced by the judiciary. This model has delivered real transformation: Article 21 has been extended to include privacy and dignity, and has decriminalised consensual same-sex relations and adultery. But this transformation is due largely to judicial activism, episodic actions and subsequent compliance. Constitutions evolve from parchment to progress when transformation is driven by institutions, public participation and measurable outcomes, not just judgements. The next step should therefore be a transition from judicial transformative

constitutionalism to shared transformative constitutionalism with clear responsibilities to be borne by the courts, the legislature, the executive and citizens alike.

SUGGESTIONS

1. Constitutional Compliance Board :This autonomous, legally mandated agency will monitor how landmark judicial rulings are executed. It will deliver regular progress audits directly to lawmakers to ensure transparency.

2. Transformative Impact Evaluations (TIE) : Before major legislation can be passed, drafts must include a rigorous review detailing how the proposed law shapes public freedom, social equity, and state policy goals-similar to how we evaluate ecological risks before building infrastructure.

3. Phased Execution Metrics for State Policy: Drawing inspiration from South African jurisprudence, judges will no longer demand instant enforcement of socioeconomic rights. Instead, the government will be legally required to submit realistic, structured timelines showing how they plan to achieve these goals over time.

4. Streamlined Constitutional Hearings: Major constitutional questions will be scheduled, argued and decided on tight deadlines to prevent institutional delays from the legal system.

5. Deliberative Citizens' Forums **:** Structured, evidence-based public assemblies will deliberate on contested questions of constitutional morality to provide the courts with a democratic reference point.

“Transformative constitutionalism in India succeeds only when the burden of transformation is shared by courts, legislature, executive and citizens”.

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