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TRANSFORMATIVE CONSTITUTIONALISM AND HUMAN RIGHTS: EVALUATING THE ROLE OF THE INDIAN JUDICIARY

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“The judiciary is the guardian of the Constitution and the sentinel on the qui vive to protect the fundamental rights of the people.”

- Justice P N Bhagwati

ABSTRACT:

The judiciary occupies a significant position in the constitutional framework of India, acting as the sentinel of democracy and the protector of human rights. The Constitution of India guarantees a broad spectrum of fundamental rights under Part III, which largely correspond with internationally recognized human rights norms. However, the effective realization of these rights depends substantially on judicial interpretation, enforcement, and innovation. Over the decades, the Indian judiciary has played a transformative role in expanding the scope of human rights through judicial review, public interest litigation, and purposive interpretation of constitutional provisions, particularly Article 21.

Through landmark judgments, the courts have recognized several unenumerated rights such as the right to livelihood, right to health, right to clean environment, right to privacy and rights of marginalized and vulnerable groups. This paper critically examines the role of the Indian judiciary in the promotion and protection of human rights, highlighting its contribution through constitutional interpretation, protection of civil liberties, enforcement of socio-economic rights, and alignment with international human rights standards. It also analyses judicial challenges and emphasizes the need for a balanced, proactive, and people-centric judiciary to strengthen human rights jurisprudence in India.

Keywords: Judiciary, Human Rights, Constitution of India, Article 21, Judicial Review, Public Interest Litigation, Constitutionalism, Constitution Morality

I. Introduction

The Constitution of India was framed not merely as a governing charter but as an instrument of profound social transformation. Emerging from colonial rule and entrenched social hierarchies, the Constitution sought to reconstruct Indian society through democratic governance, fundamental rights, and socio-economic commitments. Unlike classical liberal constitutions that primarily restrain state action, the Indian Constitution embeds a transformative vision designed to dismantle inequality and institutionalize dignity. Granville Austin famously characterized it as a “social revolution” in legal form.¹ The transformative ambition of the Constitution has found its most dynamic articulation through judicial interpretation, particularly in various decisions of the highest Court of India.

Transformative constitutionalism can be understood as an interpretive philosophy that views constitutional provisions as living commitments to substantive justice rather than static textual commands. It recognizes that constitutional adjudication must respond to evolving social realities while remaining anchored in foundational principles. The judiciary has operationalized this philosophy by expanding the scope of fundamental rights, harmonizing them with Directive Principles, and invoking constitutional morality to protect marginalized groups. Through doctrines such as the basic structure principle and expansive readings of Article 21, the Court has positioned itself as a guardian of transformative justice.

Yet, the judicial embrace of transformative constitutionalism has generated debate. Critics argue that the Court has occasionally exceeded its institutional role, entering the arena which is conventionally retained for executive and legislative decision-making.² Others defend judicial assertiveness as necessary in a polity marked by structural inequality and periodic democratic failure. The tension between transformation and restraint lies at the heart of contemporary constitutional discourse.

This article evaluates the Indian judiciary’s role in advancing human rights through transformative constitutionalism. It examines doctrinal developments from the basic structure doctrine to privacy and socio-economic rights jurisprudence. It also interrogates normative concerns regarding democratic legitimacy and institutional competence. The central argument advanced here is that while the judiciary has significantly enriched

India's human rights landscape, transformative constitutionalism must remain disciplined by constitutional structure, principled reasoning, and democratic dialogue.

II. The Basic Structure Doctrine and the Constitutionalization of Judicial Review

The emergence of transformative constitutionalism in India cannot be understood without examining the doctrine of basic structure. The crisis of the late 1960s and early 1970s in the constitution, marked by conflicts between Parliament and the judiciary over land reform and property rights, evolved in the landmark decision of *Kesavananda Bharati Case*.³ A thirteen-judge bench confronted the question of whether Parliament's amending power under Article 368 was unlimited. By the majority of 7:6, the Court observed that, the Parliament possesses extensive power to amend the provisions of the Constitution, it cannot change the basic structure which is inherent in the constitution.

This doctrine does not contain any specific list of subjects; instead, it identified certain principles—such as Constitutional supremacy, democratic form of government, separation of powers, secularism and the power of judicial review—as beyond the reach of amendment. The decision fundamentally altered the balance between Parliament and the judiciary. It elevated constitutional supremacy above parliamentary sovereignty and positioned the Court as the ultimate guardian of constitutional identity.

The transformative magnitude of *Kesavananda Bharati* judgement presence in its recognition that the ethos of constitutional republican democracy must be protected even from formal constitutional amendments. The Court asserted that certain core values represent the foundational compact between the state and the people. Subsequent cases reinforced this principle. In the case of *Indira Nehru Gandhi v. Raj Narain*,⁴ the Court declared a constitutional amendment as invalid which attempt to immunize the election of Prime Minister from judicial scrutiny. Further the *Minerva Mills Case*,⁵ emphasized on harmonization of Fundamental Rights with Directive Principles of state policy to form a part of the doctrine of basic structure.

The doctrine has been invoked in diverse contexts, including judicial independence and federalism. In *NJAC Case*,⁶ the Court invalidated the Ninety-Ninth Amendment which is trying

to establish the National Judicial Appointments Commission. The majority held that judicial independence constitutes part of the basic structure and cannot be diluted.

While the doctrine safeguards constitutional integrity, it has attracted sustained criticism. Scholars argue that the absence of textual basis renders it judicially created and potentially subjective.⁷ The open-ended nature of “basic structure” allows judicial discretion in identifying inviolable principles. Nevertheless, in a polity that experienced constitutional suspension during the Emergency (1975–77), the doctrine has served as a bulwark against authoritarian encroachment.

The basic structure doctrine thus institutionalizes transformative constitutionalism by ensuring that constitutional amendments cannot undermine fundamental rights and democratic governance. It reflects a vision of the Constitution as a living charter grounded in enduring principles rather than transient political majorities.

III. From Formalism to Substantive Due Process: The Evolution of Article 21

Art. 21 of the constitution provides that no one shall be deprived of his life or personal liberty except according to the procedure established by law. Initially, the Court adopted a narrow interpretation in *A.K. Gopalan v. State of Madras*.⁸ The Court held that so long as a law prescribing procedure existed, deprivation of liberty was constitutionally valid. Fundamental rights were interpreted in isolation, and the Court rejected the incorporation of substantive due process.

This formalistic approach changed dramatically in *Maneka Gandhi v. Union of India*.⁹ Confronted with the impounding of a passport without procedural safeguards, the Court reinterpreted Article 21 to require that any procedure must be “just, fair and reasonable.” It held that Articles 14, 19, and 21 form an interconnected “golden triangle,” thereby integrating equality, freedom, and personal liberty. This doctrinal shift effectively imported substantive due process into Indian constitutional law.

The transformative consequences of *Maneka Gandhi* were profound. Article 21 became a reservoir of unenumerated rights necessary for human dignity. In the case of *Francis*

Coralie Mullin v. Administrator,¹⁰ the Apex Court held that Art. 21 which enshrined the freedom of life includes the right to have a life with dignity and minimum necessities. In *Olga Tellis v. Bombay Municipal Corporation*,¹¹ the right to livelihood was recognized as integral to life. These decisions acknowledged that deprivation of socio-economic conditions undermines substantive liberty.

Environmental rights jurisprudence further expanded Article 21. In *Shree Ram Fertilizer Case of 1987*,¹² it was recognized that Art. 21 also includes right to a pollution-free environment. The development of the rule of absolute liability and the polluter pays principle reflected integration of international environmental norms into domestic law.

The apex of Article 21 expansion occurred in *Justice K.S. Puttaswamy v. Union of India*.¹³ A unanimous nine-judge bench recognized the right to privacy as intrinsic to life and liberty. The Court overruled earlier precedents and grounded privacy in dignity, autonomy, and constitutional morality. The judgment explicitly invoked transformative constitutionalism, affirming that the Constitution must adapt to technological and societal change.

Yet, the elasticity of Article 21 raises concerns. Critics argue that the absence of textual limits allows judicial subjectivity.¹⁴ The counter-argument maintains that constitutional silences must be interpreted purposively to fulfil transformative aspirations. The tension between interpretive creativity and constitutional fidelity remains central to Article 21 jurisprudence.

IV. Public Interest Litigation and Access to Justice

Transformative constitutionalism in India is closely linked with procedural innovation, particularly Public Interest Litigation (PIL). Traditionally, locus standi requirements limited access to courts. The court in *S.P. Gupta v. Union of India*,¹⁵ relaxed standing rules, permitting public-spirited individuals to approach the Court on behalf of disadvantaged groups.

PIL democratized constitutional litigation. Courts addressed bonded labour, prison reforms, child labour, and environmental degradation. In *Bandhua Mukti Morcha v. Union of India*,¹⁶ the Court treated letters as writ petitions and directed state action to eradicate bonded labour. In *People's Union for Civil Liberties v. Union of India*,¹⁷ the right to food

was judicially enforced through continuing mandamus.

The procedural flexibility of PIL enabled the Court to respond to systemic injustice. However, over time, concerns emerged regarding misuse and judicial overreach. Courts occasionally ventured into policy domains, raising separation of powers concerns.¹⁸ The challenge lies in preserving PIL's emancipatory potential while preventing institutional overextension.

V. Gender Justice and Sexual Minorities

Transformative constitutionalism has been instrumental in advancing gender and sexuality rights. In *Vishaka Case*,¹⁹ the Apex Court framed guidelines against sexual harassment of women at workplace, relying on international conventions. This proactive approach filled legislative gaps and affirmed substantive equality.

In *NALSA v. UOI*,²⁰ Supreme Court recognized transgender persons as a third gender and also affirmed their self-identification. The decision grounded its reasoning in dignity and autonomy.

In *Navtej Singh Johar Case*²¹ decriminalization of consensual same-sex relations was upheld by partially struck down Section 377 of IPC. The judgment emphasized constitutional morality over societal prejudice and reaffirmed equality and dignity.

These decisions reflect the judiciary's transformative commitment to marginalized communities. However, social resistance and uneven implementation reveal structural limits. Transformative constitutionalism must therefore operate in dialogue with democratic institutions and civil society.

VI. Socio-Economic Rights, Directive Principles, and the Judicialization of Welfare

The transformative ambition of the Indian Constitution is reflected not only in the text of Part III but equally in the Directive Principles of State Policy contained in Part IV. Although Article 37 declares that Directive Principles are non-justiciable, it simultaneously affirms that they are fundamental in the governance of the country. The constitutional design thus

envisioned a state committed to social and economic transformation. The judiciary's interpretive project has increasingly blurred the rigid divide between enforceable rights and aspirational directives.

The integration of Directive Principles into fundamental rights jurisprudence gained momentum after *Maneka Gandhi*. In *Minerva Mills Ltd. v. Union of India*, Court emphasized upon the harmonization of Part III and Part IV of constitution as a part of the basic structure doctrine.²² The Court rejected the view that Directive Principles could override fundamental rights, instead asserting that the Constitutional principle lies upon the balance between liberty and social justice. This interpretive stance laid the groundwork for converting socio-economic aspirations into judicially enforceable entitlements.

The right to education exemplifies this evolution. The court in the case of *Mohini Jain v. State of Karnataka*, declared that the right to education flows directly from Article 21 and is essential to the realization of dignity.²³ The judgment invalidated capitation fees and held that access to education cannot be determined solely by economic capacity. Although *Mohini Jain* was later refined in *Unni Krishnan v. State of AP*,²⁴ Apex Court reaffirmed that education of children till the age of fourteen years constitutes a part of fundamental right. Parliament subsequently enacted the Eighty-Sixth Constitutional Amendment, inserting Article 21A and thereby constitutionally entrenching the right to education. The dialogic interaction between judicial pronouncement and legislative action demonstrates the dynamic character of transformative constitutionalism.

The right to food litigation further illustrates judicial engagement with socio-economic rights. In *People's Union for Civil Liberties v. Union of India*, the Supreme Court converted governmental welfare schemes into enforceable entitlements.²⁵ Through continuing mandamus, the Court monitored implementation of food distribution and mid-day meal schemes. The decision represented a shift from declaratory judgments to structural remedies. Courts assumed supervisory roles to ensure executive compliance with constitutional commitments.

Similarly, the *Paschim Banga Khet Mazdoor Samity v. State of WB*, ordered that, provide timely medical treatment in government hospitals is part of Right to Life and failure in this violates Article 21.²⁶ The judgment imposed affirmative obligations upon the state to

develop adequate healthcare infrastructure. These decisions collectively reflect a welfare-oriented expansion of constitutional rights.

Yet, the judicialization of socio-economic policy raises institutional competence concerns. Courts lack expertise in budgetary allocation and administrative management. Critics argue that structural remedies may produce unintended consequences or distort policy priorities.²⁷ Furthermore, judicial enforcement of welfare rights without corresponding fiscal planning risks symbolic compliance rather than substantive transformation. The legitimacy of transformative adjudication in this domain depends upon measured intervention and institutional dialogue.

VII. Environmental Constitutionalism and Intergenerational Equity

Environmental jurisprudence constitutes another pillar of transformative constitutionalism. Although the Constitution does not explicitly recognize a fundamental right to environment, Art. 48A and Art. 51A(g) enshrined duties upon the state and its citizens to safeguard the environment, which has been integrated into Article 21 by the supreme court in numerous cases.

In *Subhash Kumar v. State of Bihar*, Right to life includes the right to enjoy pollution-free air and water was recognized by the Supreme Court.²⁸ This principle was elaborated in a series of *M.C. Mehta* cases addressing industrial pollution, vehicular emissions, and hazardous industries. The Court developed the doctrine of absolute liability, departing from English common law principles articulated in *Rylands v. Fletcher*.²⁹ Absolute liability reflects a uniquely Indian adaptation, imposing stringent responsibility upon enterprises engaged in hazardous activities.

Further precautionary principle and the polluter pays principle, both were formally adopted in *Vellore Citizens' Welfare Forum v. Union of India*.³⁰ The Court characterized sustainable development as part of customary international law and integrated it into domestic constitutional interpretation. By recognizing intergenerational equity, the judiciary extended the scope of rights protection beyond present claimants to future generations.

Environmental adjudication demonstrates both the strengths and limits of transformative

constitutionalism. On one hand, judicial intervention compelled regulatory reform and heightened environmental awareness. On the other hand, inconsistent enforcement and tension with developmental imperatives reveal structural challenges. In *Narmada Bachao Andolan v. Union of India*, the Court prioritized developmental considerations over displacement concerns, reflecting a more deferential stance.³¹ The oscillation between activism and restraint underscores the delicate balance inherent in environmental governance.

VIII. Constitutional Morality and the Protection of Minorities

Doctrine of constitutional morality has emerged as a central normative anchor in transformative adjudication. Although early references appeared in constitutional debates, judicial articulation gained prominence in recent decades. Constitutional morality demands adherence to the values embodied in the Constitution rather than prevailing social conventions.

In the landmark case of *Navtej Singh Johar v. Union of India*, Court emphasized that constitutional morality should prevail over societal morality.³² The judgment located dignity, equality, and autonomy within the transformative promise of the Constitution. Similarly, in *Sabarimala case*, the majority held that barring of women from entry into temple violates constitutional guarantees.³³ The Court reasoned that religious freedom cannot be invoked to perpetuate discrimination inconsistent with constitutional morality.

The invocation of constitutional morality strengthens minority protection by insulating fundamental rights from majoritarian prejudice. However, it also invites critique. Detractors argue that constitutional morality may become a vehicle for judicial subjectivity if not tethered to textual and structural analysis.³⁴ The challenge lies in articulating principled standards that distinguish constitutional values from personal moral convictions.

Transformative constitutionalism requires that courts engage in transparent reasoning grounded in constitutional text, history, and structure. Moral reasoning must be disciplined by interpretive methodology. Only then can constitutional morality serve as a legitimate instrument of transformation rather than a source of controversy.

IX. Democratic Accountability, Judicial Independence, and Institutional Limits

The expansion of judicial power through transformative constitutionalism inevitably raises questions of democratic accountability. The Indian judiciary enjoys significant authority, including power of judicial review over constitutional amendments. The legitimacy of this authority depends upon adherence to principled reasoning and institutional restraint.

The NJAC decision reaffirmed judicial independence as part of the basic structure.³⁵ By invalidating the Ninety-Ninth Amendment, the Court preserved the collegium system of judicial appointments. Proponents view the decision as essential to protecting human rights from political interference. Critics contend that it entrenched opacity and limited democratic participation in appointments.³⁶ The debate illustrates the tension between independence and accountability.

Judicial review of economic policy further tests institutional boundaries. In *Balco Employees' Union v. Union of India*, the Court acknowledged that economic decisions fall primarily within executive competence unless manifestly arbitrary.³⁷ Such deference reflects awareness of institutional limitations. Transformative constitutionalism must therefore distinguish between rights adjudication and policy formulation.

The legitimacy of judicial transformation ultimately depends upon public trust. Courts must balance courage with humility. Excessive intervention risks backlash and erosion of institutional authority. Conversely, abdication in the face of rights violations undermines constitutional commitments. Sustainable transformation requires equilibrium.

X. Toward a Principled Framework of Transformative Constitutionalism

A coherent framework for transformative constitutionalism in India should incorporate several normative principles. First, interpretive expansion must remain anchored in constitutional text and structure. Judicial creativity cannot substitute for constitutional amendment. Second, proportionality analysis should guide limitations upon rights, ensuring structured reasoning and transparency.³⁸ Third, institutional dialogue between judiciary and legislature must be encouraged. The education cases demonstrate how judicial

decisions can catalyze legislative action.

Fourth, remedies must be sensitive to institutional competence. Structural injunctions should be employed cautiously and with periodic review. Fifth, accountability mechanisms consistent with judicial independence should be strengthened to maintain public confidence.

Transformative constitutionalism is not an invitation to judicial supremacy; rather, it is a commitment to realizing constitutional promises through collaborative governance. The judiciary's role is catalytic, not hegemonic. Its legitimacy flows from fidelity to constitutional values and reasoned justification.

XI. Conclusion

The Indian judiciary has played an indispensable role in advancing human rights through transformative constitutionalism. From the articulation of the doctrine of basic structure to the expansive interpretation of Art. 21, from gender justice to environmental protection, judicial decisions have reshaped constitutional meaning. The Court has often acted as a counter-majoritarian institution protecting marginalized communities and deepening democratic values.

Yet, transformative constitutionalism operates within structural limits. Judicial expansion must remain disciplined by constitutional text, separation of powers, and democratic accountability. The enduring challenge is to sustain transformation without undermining institutional legitimacy.

The future of human rights in India depends upon maintaining this delicate balance. Courts must continue to defend dignity, equality, and liberty while engaging in principled restraint. Transformative constitutionalism, properly understood, is not a doctrine of unbounded judicial activism but a philosophy of constitutional fidelity directed toward social justice. In this sense, the Indian judiciary remains both guardian and participant in the ongoing constitutional transformation of the nation.

- ¹ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* (1966).
- ² See H.M. SEERVAI, *CONSTITUTIONAL LAW OF INDIA* (4th ed.).
- ³ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.
- ⁴ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.
- ⁵ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.
- ⁶ *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.
- ⁷ SEERVAI, supra note 2.
- ⁸ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.
- ⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
- ¹⁰ *Francis Coralie Mullin v. Administrator*, (1981) 1 SCC 608.
- ¹¹ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.
- ¹² *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.
- ¹³ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
- ¹⁴ See T.R. ANDHYARUJINA, *JUDICIAL ACTIVISM AND CONSTITUTIONAL DEMOCRACY* (2002).
- ¹⁵ *S.P. Gupta v. UOI*, (1981) Supp SCC 87.
- ¹⁶ *Bandhua Mukti Morcha v. UOI*, 1984 3 SCC 161.
- ¹⁷ *PUCL v. Union of India*, (2001) 5 SCC 733.
- ¹⁸ See Upendra Baxi, "The Avatars of Indian Judicial Activism," 6 S.C.C. J. 1 (2000).
- ¹⁹ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
- ²⁰ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.
- ²¹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
- ²² *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.
- ²³ *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666.
- ²⁴ *Unni Krishnan v. State of Andhra Pradesh*, 1993 1 SCC 645.
- ²⁵ *People's Union for Civil Liberties v. Union of India*, (2001) 5 SCC 733.
- ²⁶ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37.
- ²⁷ See T.R. ANDHYARUJINA, *JUDICIAL ACTIVISM AND CONSTITUTIONAL DEMOCRACY* (2002).
- ²⁸ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.
- ²⁹ (1868) LR 3 HL 330.
- ³⁰ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.
- ³¹ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.
- ³² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
- ³³ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.
- ³⁴ See Gautam Bhatia, *The Transformative Constitution* (2019).
- ³⁵ *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.
- ³⁶ Id.
- ³⁷ *Balco Employees' Union v. Union of India*, (2002) 2 SCC 333.
- ³⁸ *Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353.