



TRANSFORMATIVE CONSTITUTIONALISM AND JUDICIAL ACTIVISM IN INDIA: A CRITICAL ANALYSIS OF EXPANDING CONSTITUTIONAL GOVERNANCE

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ABSTRACT

The Indian Constitution wasn't meant only as a legal document, but more like a living tool for social change, to secure justice, liberty, equality and dignity for everyone. Over time, the Indian judiciary, especially the Supreme Court, has had a real and noticeable part in bringing those constitutional aims closer in practice. This happens through transformative constitutionalism and judicial activism. In many cases, the Court has given an expansive interpretation to fundamental rights and constitutional morality, and it has been involved in several socio-political issues involving gender justice, privacy, LGBTQ+ rights, environmental protection, and the idea of individual liberty. Landmark decisions like Navtej Singh Johar v. Union of India, Joseph Shine v. Union of India, Justice K.S. Puttaswamy v. Union of India, and Shayara Bano v. Union of India show an evolving push toward constitutional transformation and more inclusive governance. At the same time, though, the judiciary's increasing involvement in matters that are usually linked with the legislature and the executive has generated intense debate. It has also created intense debate about judicial overreach and about whether it has democratic legitimacy. Critics say that if courts intervene too much, it can throw off the constitutional balance among the organs of the State, and somehow widen judicial power past what the Constitution actually meant. The increasing reliance on the concepts of constitutional morality and progressive interpretation has further led to the discussion concerning the limits of judicial discretion in a constitutional democracy. This article critically examines how transformative constitutionalism relates to judicial activism in India, and then it evaluates how interpretation by the courts has, in practice, helped constitutional governance to broaden out. It also discusses the way constitutional morality comes up as a principle, and it traces how

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landmark judgments have reshaped the whole rights jurisprudence. The journal summarises that even though judicial activism has really strengthened constitutional rights and social justice in India, the legitimacy of transformative adjudication really hinges on holding a careful balance between how the constitution is interpreted and the need for institutional restraint.

Keywords: Transformative Constitutionalism, Judicial Activism, Constitutional Morality, Constitutional Governance, Fundamental Rights.

INTRODUCTION

The Constitution of India was framed not merely as a legal document, but as an instrument meant to bring about social transformation and democratic governance.¹ The framers seemed to envision a constitutional order rooted in justice, liberty, equality, and fraternity, something that could deal with deep-rooted social imbalances and also protect the dignity of people in a real sense². Over time, the Indian judiciary, especially the Supreme Court, has been significant towards constitutional provisions in a way that stretches rights and strengthens core constitutional values. In this whole path, doctrines like transformative constitutionalism and judicial activism have shown up as key parts of Indian constitutional jurisprudence, even if the labels sometimes feel a bit contested.

Now, transformative constitutionalism basically means the Constitution ought to be interpreted progressively, so it can generate social change and real, substantive equality.³ It treats the Constitution like a living, dynamic text that can adjust itself to new and shifting social realities. Instead of locking constitutional interpretation into a narrow textual approach, it pushes courts to advance constitutional morality, human dignity, and inclusive justice. In India, this idea has influenced judicial reasoning in a variety of areas, like privacy, gender equality, sexual autonomy, minority rights and social justice.⁴

Judicial activism has catalysed change in many ways. Despite legislative or executive action being inadequate or inconsistent with constitutional values, the judiciary has gotten involved

¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 50.

² M P Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) 12

³ Karl E Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 *South African Journal on Human Rights* 146, 150.

⁴ Kanad Bagchi, 'Transformative Constitutionalism, Constitutional Morality and Equality: The Indian Supreme Court on Section 377' (2018) 51(3) *Verfassung und Recht in Übersee* 367, 370.

by purposively and liberally interpreting constitutional provisions. Cases like *Navtej Singh Johar v. Union of India*,⁵ *Joseph Shine v. Union of India*⁶ and *Justice K.S. Puttaswamy v. Union of India*⁷ show how the interpretation of the constitution in modern India extends the boundaries of individual liberty, privacy, equality and dignity. All of these cases show the judiciary's commitment to evolving the principles of the Constitution as society progresses.

However, judicial activism has, to some extent, overstepped the boundaries of the constitution and has led to an absence of the compulsory balance of democratic values. This results in the separation of powers being undermined as courts begin to adjudicate in areas that rightfully belong to the executive and the legislature. The problem of judicial overreach and the balance of democracy, coupled with the problem of the final authority of the courts in constitutional matters, has been the focus of various schools of thought.⁸

Considering all of this, the primary focus of this article is to analyse the impact of judicial activism on the balancing of judicial transformation and democratic values. Within this, the article elaborates on the principle of judicial morality and the interpretative principles adopted by the courts of India.

MEANING AND EVOLUTION OF TRANSFORMATIVE CONSTITUTIONALISM IN INDIA

Transformative constitutionalism is a way of looking at the constitution that helps societies evolve socially, politically, and legally through ongoing change with the constitution as a living document. Traditional or purely textual document interpretations limit the Constitution to its text. Transformative constitutionalism, on the other hand, helps the judiciary fill in the text of the Constitution, bringing about equality, dignity, justice, and inclusion in a democracy. The values of the Constitution provide the framework within which society can be governed. Governance must change with society, but the foundational values of the Constitution should remain unchanged.⁹

⁵ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

⁶ *Joseph Shine v Union of India* (2019) 3 SCC 39.

⁷ *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.

⁸ SP Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002).

⁹ Upendra Baxi, 'Preliminary Notes on Transformative Constitutionalism' in Oscar Vilhena and others (eds), *Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa* (Pretoria University Law Press 2013).

Transformative constitutionalism in South African jurisprudence begins with the South African Constitution, which was created after apartheid. Legal academic Karl Klare describes transformative constitutionalism as the erection, interpretation, and enforcement of a transformative constitution with the intent to change the political and social structures of society through a democratic process.¹⁰ In the South African context, Klare was making extensive use of the doctrine of Transformative Constitutionalism. Although the term “transformative constitutionalism” does not appear in the Indian Constitution, the doctrine has been embraced by the Indian Supreme Court through the interpretation of the Constitution and the strengthening of the Fundamental Rights of the citizenry.¹¹

The Indian Constitution was designed with the purpose of achieving social transformation and addressing Indian society’s structural inequalities through social justice and affirmative action commitments. The Constitution’s transformative goals are evidenced through its provisions on equality, liberty, and dignity. The Indian Constitution is committed to securing a society that is free of social and economic inequalities through the Preamble, the Fundamental Rights (Part III), and the Directive Principles of State Policy (Part IV).¹²

For the period shortly after India's independence, the Supreme Court largely took a formal, and at best, restrictive stance towards the interpretation of the Constitution. Nevertheless, there was a gradual, but significant, evolution in Constitutional jurisprudence with the development of Public Interest Litigation and the expansion of the scope of Article 21 of the Constitution. Within this scenario, the Court began to adopt a more liberal stance in the interpretation of Constitutional rights, particularly with the aim of addressing the rights and issues of the more disadvantaged and marginalised sections of society. The arrival of this consciousness also marked the first steps towards the evolution of a more progressive and transformative Judicial activism of this nature in India.¹³

The Basic Structure Doctrine, which the Supreme Court formulated in the *Kesavananda Bharati* case, marked the beginning of a new era in Indian Constitutional history. With this doctrine, the Supreme Court positioned itself as the protector of the nation’s democracy and the

¹⁰ Karl E Klare, ‘Legal Culture and Transformative Constitutionalism’ (1998) 14 *South African Journal on Human Rights* 146.

¹¹ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019).

¹² Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

¹³ S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002).

instrument of the country's social and economic progress. The Kesavananda Bharati case was the first case in which the Supreme Court of India made a commitment to providing its citizens the right to democracy, with the aid of the social instruments available to the state. It also drastically changed the sculpture of Indian democracy and the nature of Indian jurisprudence. The first and foremost point is that this case made the parliament and the government the guardians and powers of the policies of the state. It also constructed a paradigm in which the Supreme Court became the guardian of Indian social progress.¹⁴

Thereafter, the judiciary increasingly resorted to constitutional morality, dignity and substantive equality while adjudicating matters of individual rights and social justice. The Supreme Court, in *Navtej Singh Johar v. Union of India*, decriminalised consensual same-sex relations and recognised the rights of the LGBTQ+ community as part of the constitutional guarantees of dignity, equality and privacy.¹⁵ Likewise, in *Justice K.S. Puttaswamy v. Union of India*, the Court held privacy to be a fundamental right embedded in the right to life and personal liberty under Article 21.¹⁶

The development of transformative constitutionalism in India is indicative of the judiciary's effort to close the distance between constitutional ideals and social realities. Progressive interpretation has expanded the reach of constitutional protections and strengthened democratic governance. But the trend toward greater reliance on judicial innovation has also raised questions about judicial overreach and the institutional limits of constitutional adjudication. These tensions continue to inform contemporary debates about the role of the judiciary in India's constitutional democracy.¹⁷

JUDICIAL ACTIVISM AND CONSTITUTIONAL INTERPRETATION

Judicial activism means the proactive role played by the judiciary in reading and applying constitutional ideas, not just in a narrow or literal way. In India, this kind of activism has become a noticeable part of how constitutional governance works, especially when the legislature or executive didn't protect constitutional rights and public interests in the way they

¹⁴ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

¹⁵ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

¹⁶ *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.

¹⁷ Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006).

should. By giving broad meaning to constitutional provisions, the courts have helped guard civil liberties, push social justice forward and also strengthen democratic accountability.¹⁸

The rise of judicial activism in India can be linked mostly to the post-Emergency years, when the courts tried to rebuild public trust after being criticised for their too passive role during the Emergency of 1975–1977. After that, the Supreme Court moved toward a more interventionist stance, in particular for cases touching fundamental rights, and also where the state has to answer for its actions. This era also saw the expansion of Public Interest Litigation, which made it possible for socially disadvantaged groups and concerned citizens with public-minded intentions to approach the courts, so constitutional rights could actually be enforced.¹⁹

One of the most significant aspects of judicial activism has been the expansion of Article 21 of the Constitution. At first, in *A.K. Gopalan v. State of Madras*,²⁰ Article 21 was understood in a narrow way. Later on, in *Maneka Gandhi v. Union of India*,²¹ the Court gave it a broader reading. The Court said that the procedure established by law has to be fair, just, and reasonable, not just something formal, and because of that, Article 21 basically became a kind of wellspring for a lot of substantive rights. After this, the judiciary started recognising rights connected with livelihood, education, health, shelter, privacy, and environmental protection too, all of that falling under the scope of the right to life and personal liberty.

Judicial activism also took a major role in advancing social justice and guarding marginalised communities that are marginalized. In *Vishaka v. State of Rajasthan*,²² the Supreme Court framed guidelines to prevent sexual harassment in the workplace, because at that time there wasn't any specific legislation to lean on. Then, in *Olga Tellis v. Bombay Municipal Corporation*,²³ the Court recognised the right to livelihood as an essential part of the right to life. These decisions reflected the judiciary willingness to intervene in areas where legislative action was absent or insufficient.

¹⁸ S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002).

¹⁹ Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 *Third World Legal Studies* 107.

²⁰ *A K Gopalan v State of Madras* AIR 1950 SC 27.

²¹ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

²² *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

²³ *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

The judiciary's activist role became even more visible in cases involving personal freedom, gender justice, and constitutional morality. In *Justice K.S. Puttaswamy v. Union of India*,²⁴ the Supreme Court effectively recognised privacy as a fundamental right under Article 21. Then, in *Navtej Singh Johar v. Union of India*,²⁵ the Court moved to decriminalise consensual same sex relations, while really stressing dignity, equality, and individual autonomy. Similarly, *Joseph Shine v. Union of India*²⁶ struck down the adultery provision, saying it undercut equality and, in a way, treated women as if they were the possession of their husbands.

So, judicial activism became closely linked with transformative constitutionalism in India. Through purposive, forward-looking constitutional interpretation, the judiciary has been trying to narrow that awkward distance between what the Constitution promises and what society is actually living. Courts have also been reading constitutional clauses with changing democratic principles and human rights standards in mind, which in turn supports constitutional governance and widens access to justice.²⁷

Yet, judicial activism has also attracted quite a lot of criticism. Some critics say that when courts step in too much, it quietly messes with the separation of powers idea, because courts start doing jobs that are traditionally meant for the legislature and the executive branch. This kind of judicial overreach could weaken democratic accountability, too, since judges are not directly elected, or in other words, they are not representatives that the people choose. There are also concerns about how inconsistent judicial reasoning can be, and about how constitutional morality is used in a broad discretionary manner, as a kind of ground for constitutional interpretation.²⁸

Even so, judicial activism remains a rather influential force within Indian constitutional law. The judiciary's involvement has frequently given remedies, especially in cases where legislative or executive institutions didn't protect constitutional rights properly. So, judicial activism ends up being both a mechanism for constitutional change and, at the same time, a topic of ongoing constitutional argument in India.²⁹

²⁴ *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.

²⁵ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

²⁶ *Joseph Shine v Union of India* (2019) 3 SCC 39.

²⁷ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019).

²⁸ Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006).

²⁹ M P Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018).

CONSTITUTIONAL MORALITY AS A TOOL OF TRANSFORMATIVE ADJUDICATION

Constitutional morality has come to play as one of the most influential principles in present-day Indian constitutional jurisprudence. Basically, it points toward sticking to the core values and principles that are already embedded within the Constitution, like liberty, equality, dignity, fraternity, secularism, and the rule of law. But instead of leaning on the prevailing social morality or whatever the majority tends to believe, constitutional morality says interpretation must be steered by the values and hopes that are inside the Constitution itself. In the last few years, the Supreme Court of India has more and more started invoking constitutional morality as a kind of instrument for transformative adjudication and also for safeguarding individual rights.³⁰

The term constitutional morality was first discussed seriously by Dr B.R. Ambedkar during the Constituent Assembly Debates. Ambedkar was of the view that constitutional morality is required so democratic governance can survive, and so constitutional institutions and their values are respected, not just in papers but in practice. Later on, the judiciary gradually stretched this idea, not only as a matter of institutional discipline, but also as an approach for understanding and interpreting fundamental rights and constitutional freedoms.³¹

In *Naz Foundation v. Government of NCT of Delhi*,³² this principle got real judicial attention, specifically when the Delhi High Court tried to sort out constitutional morality from what they called public morality, while dealing with the constitutional validity of Section 377 of the Indian Penal Code. The court held that the contest in more must prevail over popular social morality when constitutional rights are at stake. Later, in *Suresh Kumar Koushal v. Naz Foundation*,³³ its reasoning significantly influenced subsequent constitutional jurisprudence.

After that, constitutional morality also got broader recognition in *Navtej Singh Johar v. Union of India*,³⁴ where the Supreme Court went ahead and decriminalised consensual same-sex relations between adults. The Court pointed out that constitutional morality means

³⁰ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019).

³¹ Constituent Assembly Debates, vol VII, 4 November 1948; B R Ambedkar, *Annihilation of Caste* (Navayana 2014).

³² *Naz Foundation v Government of NCT of Delhi* (2009) 160 DLT 277.

³³ *Suresh Kumar Koushal v Naz Foundation* (2014) 1 SCC 1.

³⁴ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

safeguarding dignity, personal autonomy, and equal citizenship for everyone, not only for people who fit the usual social script. In their view, constitutional rights can't just be denied because some segments of society disapprove, or because majorities get uncomfortable with a particular identity or way of living, and that disapproval alone shouldn't drive the legal outcome.

Similarly, in *Indian Young Lawyers Association v. State of Kerala*,³⁵ constitutional morality was called in to look at why women were kept out of the Sabarimala temple. The Court said that any practice that messes with dignity and equality can't really be sheltered only because it comes from tradition or a religious custom. The decision kind of showed that the judiciary is ready to put constitutional values before discriminatory social habits, even when those habits are longstanding.

The same idea was questioned again in *Joseph Shine v. Union of India*,³⁶ where the Supreme Court invalidated the adultery provision under Section 497 of the Indian Penal Code. The Court reasoned that the provision harmed constitutional promises around equality, dignity, and personal autonomy, because it placed women in a lesser position than their husbands. Morality was used to challenge patriarchal assumptions embedded within the law

The growing dependence on constitutional morality has helped fuel transformative constitutionalism in India. It kind of lets courts read constitutional rights again, in a more progressive spirit, and it also helps them deal with discrimination faced by groups that were pushed aside historically. Because of all that, constitutional morality ends up acting like a strong judicial instrument for pushing real substantive equality, and also for widening the range of constitutional protections.³⁷

However, the doctrine has also attracted criticism. Several critics say constitutional morality does not really have a precise constitutional definition, and that it might hand judges too much freedom in interpretation. Some scholars even suggest that when courts keep leaning on constitutional morality, they may end up turning a judge's own personal inclinations into something that looks like constitutional rule. Then there's another line of concern, that if it's

³⁵ *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

³⁶ *Joseph Shine v Union of India* (2019) 3 SCC 39.

³⁷ Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016).

used too often, democratic decision-making can get weaker, since courts start overriding both legislative choices and the everyday social norms that already exist.³⁸

Despite these concerns, Hansi film morality continues to play a central role in Indian constitutional adjudication. Courts have increasingly treated it as a needed guiding principle for guarding fundamental rights, keeping constitutional ideals intact, and encouraging inclusive constitutional governance. Its rising importance, overall, shows the judiciary's continuing shift toward transformative constitutionalism and toward a rights-based way of interpreting the Constitution in India.³⁹

LANDMARK JUDGMENTS ADVANCING TRANSFORMATIVE CONSTITUTIONALISM

The growth of transformative constitutionalism in India has been really shaped through judicial interpretation, mainly by the Supreme Court. Over several landmark decisions, the judiciary seems to have broadened what constitutional rights mean, while also reinforcing ideas like equality, dignity, liberty and social justice. These rulings show that the Constitution is treated like a living document, something able to answer new social realities, and in that process, safeguard those who are marginalised.⁴⁰

One of the early, almost foundational rulings here is *Kesavananda Bharati v. State of Kerala*.⁴¹ In that matter, the Supreme Court came up with the Basic Structure Doctrine, and basically said that Parliament can't amend the core essentials of the Constitution. The upshot was that constitutional supremacy stayed protected, and also that democratic values, judicial review, secularism, and the rule of law could not be wiped out, even via constitutional amendments. In a sense, this decision strengthened the judiciary's role as guardian of constitutional governance even more.

Another landmark judgment was *Maneka Gandhi v. Union of India*,⁴² and it kind of changed how people read Article 21. The Court said that the procedure that is established by law has to be fair, just, and reasonable, in a real sense. Because of this, the right to life and personal liberty

³⁸ Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006).

³⁹ Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980).

⁴⁰ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019).

⁴¹ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

⁴² *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

got a much wider meaning, and it basically opened the door for recognising various unenumerated rights under Article 21, too. So, it was a big shift away from only focusing on procedural formalism and toward giving substantive constitutional protection that actually matters.

Then, later, Public Interest Litigation kept pushing this transformative way of deciding cases. In *Hussainara Khatoon v. State of Bihar*,⁴³ the Court recognised that the right to a speedy trial is part of Article 21, and it also shed light on the condition of undertrial prisoners. In a similar tone, *Olga Tellis v. Bombay Municipal Corporation*⁴⁴ recognised the right to livelihood as an integral component of the right to life. These are decisions of the court that reflect the judiciary's growing concern for social justice and the rights of vulnerable communities.

The judiciary also played a strong role in gender justice through this transformative interpretation. In *Vishaka v. State of Rajasthan*,⁴⁵ the Supreme Court framed guidelines on sexual harassment at the workplace, even though there was no legislation at that moment. The decision stressed gender equality, dignity, and safe working conditions for women, and it treated protection as something urgent, not optional. Later, those guidelines were used as the groundwork for laws that addressed workplace harassment, and it became a more concrete statutory response.

Transformative constitutionalism shows up in these kinds of issues around privacy, sexual self-rule, and human worth, you know. In *Justice K.S. Puttaswamy v. Union of India*,⁴⁶ the Court unanimously recognised the right to privacy as a fundamental right, under Article 21. And the reasoning basically said that privacy is needed for human dignity, for personal autonomy, and for individual liberty in a constitutional democracy, not just in theory but as a lived reality too.

Then, in *Navtej Singh Johar v. Union of India*⁴⁷ there was a big turning point for LGBTQ+ protection. The Supreme Court went ahead and declared Section 377 unconstitutional, at least insofar as it punished consensual same sex relationships between adults. The Court leaned on constitutional morality, dignity, equality, and inclusiveness, while firmly rejecting discrimination tied to sexual orientation. Many people view this judgment as a transformative

⁴³ *Hussainara Khatoon v State of Bihar* (1980) 1 SCC 81.

⁴⁴ *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

⁴⁵ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

⁴⁶ *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.

⁴⁷ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

step toward equal citizenship and human rights for sexual minorities, even if the path is still complicated.

In a similar vein, *Joseph Shine v. Union of India*⁴⁸ invalidated the adultery provision under Section 497 of the Indian Penal Code. The Court said the rule offended equality and dignity because it treated women as though they were somehow beneath men. Overall, the judgment highlighted the judiciary's ongoing push to undo patriarchal legal arrangements that don't really fit the constitutional idea of values.

In *Indian Young Lawyers Association v. State of Kerala*,⁴⁹ the Supreme Court actually invalidated those restrictions that barred women from entering the Sabarimala temple, based on a particular age group. The Court basically reasoned that exclusionary religious practices can't simply ignore constitutional principles of equality and dignity, you know. In that sense, the decision brought into focus the judiciary's attempt to sort of balance religious freedom with constitutional morality, and also with gender justice, which is a very big theme.

Taken together, these judgments show how much the judiciary has helped with transformative constitutionalism in India. By using a more progressive reading, the Supreme Court has expanded constitutional protections, reinforced democratic ideals, and confronted structural inequalities inside society. Still, at the same time, these rulings also somehow fueled new conversations about judicial activism, the institutional limits of courts, and where exactly we draw the line between constitutional interpretation and democratic governance.⁵⁰

JUDICIAL OVERREACH AND CRITICISM OF TRANSFORMATIVE CONSTITUTIONALISM

Although transformative constitutionalism and judicial activism have helped a lot with the protection of constitutional rights in India, they have also been criticised for their drawbacks. There are worries about judicial overreach, democratic legitimacy, institutional competence, and separation of powers, and these threads really sit at the centre of current constitutional talk, especially as the judiciary's role keeps expanding. Critics say that if courts step in too much, it

⁴⁸ *Joseph Shine v Union of India* (2019) 3 SCC 39.

⁴⁹ *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

⁵⁰ S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002).

can upset the constitutional equilibrium between the legislature, executive, and judiciary, and that then makes people question how far judicial power can go in a democratic society.⁵¹

Judicial overreach is usually understood as situations where courts go past constitutional limits and start interfering too much in matters that are, in practice, traditionally kept for the legislature or the executive. Now, judicial review is a necessary part of the Indian Constitution, but critics still insist that sometimes the judiciary drifts from constitutional interpretation into something closer to judicial legislation, even policymaking. This criticism is particularly relevant in cases where courts issue detailed administrative guidelines or enter into areas involving governance and public policy.⁵²

One of the major criticisms people make about transformative constitutionalism is the growing discretionary power of judges. And because ideas like constitutional morality, dignity, and transformative interpretation are so wide and flexible, critics argue that judges can quietly slip in personal or subjective values while they're interpreting the Constitution. Unlike statutory interpretation, transformative adjudication often leans on abstract constitutional principles, which may not have clear constitutional definitions, or at least not ones that are easy to point at. Consequently, concerns have been raised regarding inconsistency and unpredictability in judicial reasoning.⁵³

Also, the criticism of judicial activism became noticeable after certain decisions relating to social and religious issues. In *Indian Young Lawyers Association v. State of Kerala*,⁵⁴ critics claimed that the judiciary was overreaching and interfering with religious practices that Articles 25 and 26 say are protected. Those who opposed the judgment said the courts should take a more restrained approach in matters of faith and inherited religious traditions, unless there is an actual, clear constitutional breach. Kinda similar debates came up in cases involving personal laws, and religious customs too.

Another important criticism concerns democratic legitimacy. The legislature is made up of elected representatives who are accountable to the people, while judges are appointed and they are not directly answerable to the electorate. So, critics argue that major social or policy

⁵¹ S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002).

⁵² M P Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018).

⁵³ Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006).

⁵⁴ *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

decisions should be settled first through democratic processes, rather than being pushed by judicial intervention. In their view, excessive judicial activism may quietly weaken parliamentary supremacy, and it can also shrink the place of democratic institutions in constitutional governance.⁵⁵

The judiciary, too, has been criticised for moving into administrative and policy-making spaces through Public Interest Litigation. Over time, courts have issued directions that involve environmental regulation, police reforms, governance mechanisms, education, and public administration. These measures were often framed as a response to governmental inaction. Still, critics say courts may not have the institutional expertise or the administrative apparatus needed to steer through complex policy problems practically.⁵⁶

Also, some scholars claim that transformative constitutionalism can generate a sort of tension between judicial idealism and everyday social realities. Supreme Court-like, progressive pronouncements, by themselves, cannot ensure social transformation unless they are backed by effective legislative follow-through, public awareness, and broader institutional reforms. For instance, even though landmark judgments have recognised rights connected to gender equality, privacy, and LGBTQ+ dignity, significant social discrimination continues, and implementation hurdles remain in practice.⁵⁷

Some critics also say that too much judicial intrusion might slowly chip away at the judiciary's own credibility. When courts keep stepping into politically sensitive disputes, it can, at some point, invite claims that judges are being politicised or showing ideological leanings. Still, judicial legitimacy largely rests on public confidence, neutrality, and a kind of institutional restraint. So, keeping a workable balance between judicial activism and judicial discipline stays key if constitutional governance is going to hold steady.⁵⁸

Even so, supporters of transformative constitutionalism respond that judicial involvement becomes unavoidable when the legislative or executive branches cannot, in any meaningful way, safeguard constitutional rights and the most vulnerable people. In a society that carries structural inequalities and everyday forms of social discrimination, the judiciary often ends up

⁵⁵ H M Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 1996).

⁵⁶ Upendra Baxi, 'The Avatars of Indian Judicial Activism: Explorations in the Geographies of Injustice' in S K Verma and Kusum (eds), *Fifty Years of the Supreme Court of India* (Oxford University Press 2000).

⁵⁷ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019).

⁵⁸ Aharon Barak, *Judicial Discretion* (Yale University Press 1989).

functioning as a vital bulwark against majoritarian pressure and arbitrary state conduct. As a result, the argument about judicial activism isn't only about who has authority; it's also about the judiciary's constitutional duty to secure justice, dignity, and constitutional morality.⁵⁹

So, the critique of transformative constitutionalism really keeps pointing to that ongoing strain between constitutional idealism and democratic restraint. Yes, judicial activism has broadened rights and made constitutional safeguards firmer, but it has also brought up harder issues about institutional boundaries, accountability, and how power may be rebalanced in Indian constitutional governance going forward.⁶⁰

CONCLUSION AND SUGGESTION

Transformative constitutionalism, along with judicial activism, has sort of turned into a real defining thing in modern Indian constitutional jurisprudence. By means of progressive interpretation of the Constitution, the Indian judiciary has taken on a key part in widening the reach of fundamental rights, guarding marginalised groups, and also pushing democratic values that actually stick. The Constitution of India, seen as a document meant to transform, has allowed the judiciary to go past a too strict textual reading, and instead press for substantive justice, dignity, fairness, and liberty as lived within society.

The Supreme Court, especially after the Emergency period, started functioning in a more activist manner when it came to constitutional governance. Big, well-known outcomes like *Kesavananda Bharati v. State of Kerala*, *Maneka Gandhi v. Union of India*, *Justice K.S. Puttaswamy v. Union of India*, *Navtej Singh Johar v. Union of India*, and *Joseph Shine v. Union of India* show, in practice, how the way constitutional questions are interpreted has shifted to meet present-day social conditions and human rights worries. From these rulings, the judiciary has, in effect, underlined constitutional morality and put a strong spotlight on the need for an inclusive way of running constitutional governance.

At the same time, the whole expansion of judicial power has, kind of, opened up important constitutional debates. Concerns relating to judicial overreach, democratic legitimacy, separation of powers continue to challenge the boundaries of judicial activism in India. If courts step in too much on legislative questions or policy, it could slowly weaken institutional

⁵⁹ Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016).

⁶⁰ Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980).

equilibrium and democratic accountability. So even if judicial activism is still needed whenever there is governmental inaction, or when constitutional rights are being violated, it has to stay inside the wider idea of constitutional discipline and institutional restraint.

Then there's the doctrine of constitutional morality, which has really shaped transformative adjudication, because it puts constitutional values ahead of popular morality or social prejudice. Still, as courts rely more and more on big constitutional principles, judges have to use them in a careful and reasoned way; it can slide toward arbitrary interpretation. Courts must make sure that constitutional morality is actually grounded in the text, the structure, and the spirit of the Constitution, not in some personal or subjective preferences of the bench.

For transformative constitutionalism to really bring about real social impact, judicial intervention by itself is just not enough. Somehow, meaningful constitutional governance has to rely on cooperation across the legislature, executive, judiciary and also civil society. Parliament should pass progressive legislation that is aligned with the constitutional values, and the executive has to make sure implementation happens properly, including constitutional rights as well as welfare measures. On top of that, public awareness about constitutional principles and rights needs to be boosted, too, so that a kind of constitutional culture can take root within society.

Several measures may further improve the balance between transformative constitutionalism and democratic governance in India:

1. The judiciary should maintain a balance between activism and restraint while exercising constitutional powers.
2. Constitutional morality should be applied carefully with clear constitutional reasoning to avoid excessive subjectivity.
3. Greater institutional coordination between the legislature, executive, and judiciary should be encouraged to ensure effective constitutional governance.
4. Judicial reforms aimed at improving transparency, efficiency, and accessibility should be strengthened to increase public confidence in the justice delivery system.
5. Legal education and constitutional awareness programs should be promoted to cultivate constitutional values and democratic participation among citizens.

In conclusion, transformative constitutionalism has quite a lot reshaped Indian constitutional law, by pushing forward rights-based jurisprudence, and also by bolstering constitutional

governance. Judicial activism has often worked like a needed instrument for guarding constitutional morality, individual dignity, and social justice in India's evolving democracy, even if it sometimes feels a bit controversial. Still, the long-run success of transformative constitutionalism really hinges on keeping an appropriate balance between judicial intervention, democratic accountability, and institutional harmony within the constitutional framework.