



Transformative Constitutionalism in India: A Review of Judicial Activism, Restraint and the Social Justice Project (1973–2025)

Kavita Ajay Joshi, Lalit Singh

Graphic Era Hill University, Bhimtal

Corresponding author: kavitaajayjoshi@gmail.com

Abstract

With judicial interpretation that alternates between audacious activism and moderate restraint, India's Constitution functions as a dynamic instrument of social justice. This paper analyses that trajectory through Transformative Constitutionalism Theory (TCT), read in conjunction with Ambedkar-inspired Social Justice Jurisprudence and the Living Constitution doctrine (anchored in *Kesavananda Bharati v. State of Kerala*, 1973). A doctrinal analysis of 13 Supreme Court cases from 1973 to 2025 reveals three broad phases: the Public Interest Litigation-driven activist wave that expanded rights for the marginalized (*Vishaka v. State of Rajasthan*, 1997; *Navtej Singh Johar v. Union of India*, 2018), and a post-2014 period of partial judicial restraint that seeks to check overreach while renegotiating the boundaries of transformative interpretation (*Shayara Bano v. Union of India*, 2017; *State of Jammu & Kashmir v Union of India*, 2023). The central claim is that the Court's oscillation doctrinal does not reflect incoherence but a strategic recalibration of transformative constitutionalism in a deeply hierarchical, plural polity.

Keywords: Transformative Constitutionalism Theory (TCT), Judicial Activism, Judicial Restraint, Social Justice Jurisprudence, Living Constitution, Public Interest Litigation (PIL), Basic Structure Doctrine, Article 21 Rights.

1. Introduction

The Indian constitutional project is not only a fixed plan of the governance but also a powerful moving engine of social change. The Constitution is based on the vision of substantive equality of Dr. B. R. Ambedkar to correct the deep-seated caste, class, gender and religious hierarchies [1]. The Supreme Court has been oscillating between activist and restraining styles of interpretation since the 1970s, validated in diverse registers of constitutional morality.

In this paper, that oscillation is placed as part of Transformative Constitutionalism Theory (TCT), which views constitutions as structural change facilitators as opposed to procedural frameworks that are neutral in their character[2]. Using 13 major Supreme Court cases in 1973-2025, the discussion demonstrates how the Court has dealt with Article 21, the Basic Structure and socio-political rights at the margins through the application of TCT-inspired reasoning, Social Justice Jurisprudence and the Living Constitution doctrine [3]. The main thesis is that constitutionalism of India is not either activist or restrained, a field of transformative interpretation that is strategically changing according to the consciousness of the Court about its own validity and it is also restrained by the scope of judicial authority[4].

2. Conceptual framework

The paper is based on a doctrinal approach that will necessitate examining ratio decidendi of cases in thirteen Constitution Bench and landmark Supreme Court cases between 1973 and 2025. The opinions of majority are given priority but where it is considered important, concurring and dissenting opinions are also looked into.

2.1 Methodology and Selection of cases (1973-2025)

The study uses a doctrinal approach since it analytically examines 13 major Supreme Court decisions between 1973 and 2025. The cases chosen include three phases of constitutional change, namely post-Emergency expansion of rights, structural intervention by the PIL, and institutional recalibration after 2014. The sample is purposive and is meant to include three broad phases.

2.2 Transformative Constitutionalism of India.

Transformative Constitutionalism (TCT) considers the constitution as a source of radical social change, rather than a disinterested system of distribution of powers [5]. This vision is echoed in the Indian context by the need of the Court to impose constitutional morality over the caste based social morality as demanded by Ambedkar [6]. New theory insists this vision be interpreted alongside the institutional practice and socio-political context of the Court [7].

In *The Future of Indian Constitutionalism: Ambedkar, Transformative Constitutionalism and the Judicial Role*, Upendra Baxi views the Indian Constitution as a weak constitutionalism where the judiciary, although it is formally constrained, becomes a facilitator of social justice [8]. Baxi maintains that transformative constitutionalism in India is dialogic in nature: it occurs through interaction of courts, legislatures, social movements and public sphere [9].

2.3 Social Justice Jurisprudence and the equity-vision of Ambedkar.

Social Justice Jurisprudence in India requires formal equality to be accompanied by substantive redistribution as a way of redressing historical injustice [10]. Articles 15 and 16 affirmative action *State of Kerala v. N.M. Thomas* (1976); and *Indira Sawhney v. Union of India* (1992) has been conceptualised as a method of fulfilling constitutional pledges of substantive equality [11].

Social Justice Jurisprudence, in the TCT frame, goes beyond the reservations of socio-economic rights, gender justice and identity rights [12]. A Court role in this perception is to enforce the existing text and at the same time to interpolate it to rectify caste, gender and class structures of disadvantage [13].

2.3.1 Living Constitution and the Basic Structure.

According to the doctrine of the Living Constitution the Court may interpret constitutional text as adapting to altering social, economic and technological circumstances [14] In *Kesavananda Bharati v. State of Kerala* (1973), the Court formulated the Basic Structure Doctrine in which it stated that Parliament cannot amend the Constitution to annihilate its identity [15]. In *Maneka Gandhi v. Union of India* (1978), the court had reinterpreted the restrictive *A.K. Gopalan* interpretation of Article 21 and declared that the procedure laid down by law had to be just, fair and reasonable, thus imposing natural-justice and humane dignity terms on individual liberty [16].

This living of the Constitution is the one that works in parallel with the Basic Structure concept: the Court is purported to protect the transformative core of the Constitution, but also re-interprets it to meet the new social realities [17].

Methodology and selection of cases (1973-2025)

The study uses a doctrinal approach since it analytically examines 13 major Supreme Court decisions between 1973 and 2025 [18]. The sample is purposive and is meant to include three broad phases:

The initial post-Emergency, rights-increasing period;

The PIL-driven activist wave;

The retrenchment and the judicial circumspection of 2014.

Among the important examples there are:

- 1) *Kesavananda Bharati v. State of Kerala* (1973);
- 2) *Maneka Gandhi v. Union of India* (1978);
- 3) *S.P. Gupta v. Union of India* (1982);
- 4) *Bandhua Mukti Morcha v. Union of India* (1984);
- 5) *M.C. Mehta v. Union of India* (1987);
- 6) *Olga Tellis v. Bombay Municipal Corporation* (1985);

- 7) Unni Krishnan v. State of Andhra Pradesh (1993);
- 8) Vishaka v. State of Rajasthan (1997);
- 9) PUCL v. Union of India (2001);
- 10) Justice K S Puttaswamy v Union of India (2017) 10 SCC 1.
- 11) Navtej Singh Johar v. Union of India (2018);
- 12) Shayara Bano v. Union of India (2017);
- 13) State of Jammu & Kashmir v. Union of India (2023).

The cases are analyzed on their appeal to TCT-style argument, application of the Basic Structure frame and the extent of Article 21-based rights [19].

3. Phases

3.1. Phase I: Judicial activism and expansion of Article 21 (PIL).

Since 1980s, the Court adopted Public Interest Litigation (PIL) as a means through which it could directly respond to the rights of the marginalized [20]. In S.P. Gupta v. Union of India (1982), the Court eased the rules of standing allowing public spirited individuals and the non-governmental organizations to represent the poor, victims and incarcerated to litigate on their behalf [21].

In Bandhua Mukti Morcha v. Union of India (1984), bonded labour was considered as infringement of Articles 21 and 23, which activated state binding on the need to identify, remit and rehabilitate bonded workers [22]. In Judicial Activism in India: Transgressing Borders and Enforcing Limits, S P Sathe referred to this as a paradigmatic instance of the Court employing broad constitutional explanations to tear down a structural type of exploitation[23].

Such PILs as the M.C. Mehta series (since 1987) interpret the right to life clause in Article 21 as a right to the clean and healthy environment [24]. In Olga Tellis v. Bombay Municipal Corporation (1985) established that the right to livelihood is part of the right to life, which restricted the state in evicting the pavement dwellers and the slum dwellers without due process [25]. In Unni Krishnan v. State of Andhra Pradesh (1993), the Court interpreted the right to basic education as an Article 21 right and subsequently brought to bear through the legislature by the Right of Children to Free and Compulsory Education Act, 2009 [26].

During this step the Court directly refers to Kesavananda Bharati (1973) and Maneka Gandhi (1978) to find the authority in which purposive interpretation is based on context[27].

3.2. Phase II: Gender, sexuality and the fringes of decency.

In Vishaka v. State of Rajasthan (1997), the Court interpreted the right against sexual harassment in the workplace to the article 21 and 14 without any specific legislation [28]. The decision is indicative of a TCT-oriented action: the Court considers the Constitution as requiring protective action to women in places where the vulnerability of social norms and the lack of legislation perpetuates structural vulnerability[29].

In Navtej Singh Johar v. Union of India (2018) resoundingly struck down Section 377 of the Indian Penal Code, 1860, to the extent that they made same-sex relations between consenting adults a crime, as violating constitutional values of dignity, autonomy and pluralism [30]. The Court in another significant decision stated that the right to privacy was a natural aspect of Article 21 and freedoms of Article 19 and reiterated the Living Constitution approach [31].

The totality of such decisions shows that the Courts see through the lens of transformative center of Constitution the need of protection of intimate non-traditional identities and expansion of rights based on Article 21 in the face of the encroaching state action [32].

3.3. Phase III: Post 2014 restraint- Shayara Bano

In *Shayara Bano v. Union of India* (2017), the Court ruled triple talaq unconstitutional, while also signaling the need for judicial caution. It highlighted the significance of judicial restraint in intervening with personal-law regime for completing overhauling it, without comprehensive legislative review [33]. In this case, the Court balances transformative values—gender justice and equality—against the interests of separation-of-powers, and recommends, over the long term, constitutional reform initiated by Parliament, rather than by isolated judicial statements.

4. Activism vs. restraint within Transformative Constitutionalism

Across 1970–2025, the Court's oscillation between activist and restrained modes is not doctrinal incoherence but a strategic recalibration of transformative constitutionalism in a deeply hierarchical, plural polity [34]. Judicial activism—through PIL, expansive Article 21 readings and the Basic Structure—has advanced social inclusion, environmental justice and gender equality. Restraint comes into play in politically sensitive domains such as personal law and federal re-organisation, where the Court is wary of appearing to substitute its own vision for majoritarian democratic politics.

5. Supplementary Illustrations of Transformative Constitutionalism (2024–2025)

In *Anshuman Singh Rathore v. Union of India* (2024) [35] the Allahabad High Court, struck down the U.P. Board of Madarsa Education Act, 2004, as being contrary to the secular nature of the Constitution (Basic Structure), 14, 21 and 21-A. The High Court noted that education under the Act was not of sufficient quality and also not universally available because it did not provide the modern subjects like science and mathematics at the same level as regular schools. The ruling ordered the admission of students to mainstream schools, which is a TCT-oriented thinking of substantive equality and educational equity of the marginalized children. The decision was overturned by Supreme Court in *Anjum Kadari v Union of India* (2024)[36]. In the appeal, the court largely upheld the Act, keeping its provisions intact with the exception of the ones addressing higher education degrees. This result shows a strategic legal reorientation, set by the goal of educational equity to disadvantaged students, and autonomy of the law and its rules. It is a good example of how the Court exercised caution in applying TCT principles when the institutional competence and policy implications must be restrained.

In *State of Tamil Nadu v. Governor of Tamil Nadu*, (2025) [37]—The Supreme Court propounded that the constitutional doctrine of federalism and parliamentary democracy, on which the authority of the gubernatorial meddling in state functioning was highlighted. The Court restricted the powers of the Governor in terms of hindering the state operations so that the office can not be misused with politicized interests. This case represents TCT-informed institutional prudence where transformational constitutional values or democratic governance, and the rule of law are pursued and limits to judicial and executive power are taken into account. All these examples show that the Indian constitutionalism, being guided by the Transformative Constitutionalism Theory, works as a conditional generator of social change.

Concluding Remarks

The upshot is that Indian constitutionalism, through TCT-inspired interpretation, functions as a limit-conditioned engine of social change: the Court pushes the boundaries of rights and equality in some phases, and retreats to a more cautious, institutionally modest posture in others, always negotiating the tension between transformative ambition and constitutional restraint.

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