



TRANSFORMATIVE CONSTITUTIONALISM IN THE GLOBAL SOUTH: A STUDY OF INDIA AND SOUTH AFRICA

A Comparative Legal Analysis of Constitutional Transformation

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ABSTRACT

The evolution of transformative constitutionalism marks a significant shift in the understanding of constitutional governance within the Global South. The concept, initially articulated in post-apartheid South Africa, has gradually shaped constitutional discourse across developing democracies, particularly India. It represents a conscious and progressive effort by constitutional institutions—especially the judiciary—to dismantle historical inequalities, promote substantive justice, and align the constitutional order with the ideals of human dignity, equality, and freedom. This study seeks to explore the philosophical, judicial, and comparative dimensions of transformative constitutionalism as manifested in India and South Africa, both of which embody the aspiration to achieve social transformation through constitutional means.

Employing a doctrinal and comparative legal research methodology, this paper analyses the interpretative techniques, landmark judgments, and socio-legal outcomes associated with constitutional transformation in these two jurisdictions. It also highlights the symbiotic relationship between constitutional text, moral reasoning, and judicial creativity that sustains the transformative process. The study reveals that while South Africa integrates transformation explicitly through its Constitution, India operationalises transformation through judicial innovation, interpretative expansion, and constitutional morality. The research further identifies the challenges of institutional limitations, political inertia, and structural inequality that hinder the realisation of transformative goals.

In conclusion, transformative constitutionalism offers a jurisprudential framework for achieving justice and equality in societies marked by economic and social disparity. However, its endurance depends on the judiciary's moral vision, political accountability, and the citizenry's active engagement in constitutional governance.

Keywords:

Transformative Constitutionalism; Global South; India; South Africa; Constitutional Morality; Judicial Activism; Socio-Economic Rights; Social Justice.

I. INTRODUCTION

“The Constitution is not a mere legal document; it is a vehicle of life, and its spirit is always the spirit of the age.”

— Dr. B.R. Ambedkar

The concept of transformative constitutionalism represents one of the most ambitious and morally charged ideals of modern constitutional theory. Emerging from the socio-political contexts of the Global South, it signifies a conscious project to transcend the traditional confines of constitutionalism as a restraint on power, and instead, use it as an instrument for positive social change. This is particularly relevant in post-colonial societies such as India and South Africa, where the Constitution is envisioned not merely as a governing document but as a moral charter for social transformation.

Transformative constitutionalism challenges the positivist understanding of constitutional law as a fixed text. Instead, it proposes that constitutions must evolve with the lived realities of the people they govern. As Karl Klare first defined in the South African context, transformative constitutionalism is 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.” This definition encapsulates not only the aspirational dimension of constitutionalism but also its instrumental purpose—to serve as a catalyst for justice and equality.

In the Global South, constitutionalism carries an additional historical burden: it must redress the legacy of colonial subjugation, economic disparity, and social exclusion. In India, the Constitution of 1950 emerged as a revolutionary text aiming to dismantle centuries of caste hierarchy and socio-economic inequality. In South Africa, the 1996 Constitution arose from the ashes of apartheid, embodying the principles of reconciliation, human dignity, and socio-economic justice. Both nations, though distinct in history, share the belief that constitutionalism can be transformative rather than merely procedural.

1.1 Background of Transformative Constitutionalism

Transformative constitutionalism in both India and South Africa is founded on a shared aspiration—to build egalitarian societies guided by the rule of law and human dignity. In India, the notion can be traced to the Constituent Assembly Debates, where B.R. Ambedkar envisioned the Constitution as a transformative instrument capable of achieving both political and social democracy. In South Africa, following decades of institutionalised racial segregation, the Constitution became a vehicle to achieve restitution and reconciliation through law.

The Indian judiciary, particularly through the expansion of Articles 14, 19, and 21, has played a seminal role in infusing transformative ideals into constitutional interpretation. Cases such as *Kesavananda Bharati v. State of Kerala* and *Maneka Gandhi v. Union of India* established the doctrine of constitutional supremacy and procedural fairness as the cornerstones of a living Constitution. Similarly, the South African Constitutional Court, in *S v. Makwanyane*, abolished the death penalty, emphasising human dignity and equality as foundational values. Both jurisdictions exhibit an evolving jurisprudence that seeks to align the constitutional text with the dynamic needs of justice.

1.2 The Global South Context

The “Global South” represents not merely a geographical description but a socio-political category encompassing countries that share histories of colonialism, inequality, and democratic struggle. The constitutional movements within these nations are distinguished by their commitment to social transformation through legal mechanisms. The transformative project thus becomes an act of constitutional redemption—a deliberate reimagining of state power and citizen participation to address past wrongs and establish inclusive futures.

Unlike Western liberal constitutionalism, which prioritises negative liberty (freedom from interference), transformative constitutionalism emphasises positive liberty—the ability of individuals to realise their full potential through state facilitation of rights and opportunities. This shift redefines the relationship between law and justice, positioning the Constitution as an agent of empowerment rather than restraint.

1.3 Research Rationale

The comparative study of India and South Africa is both compelling and instructive. These two jurisdictions offer parallel yet distinct experiences in their constitutional trajectories. India's constitutional journey is marked by judicial activism and interpretive dynamism, while South Africa's Constitution institutionalises transformation through explicit textual guarantees. By juxtaposing these two models, this study seeks to examine whether transformative constitutionalism can offer a sustainable framework for governance in pluralistic, post-colonial societies.

This research also aims to assess the extent to which constitutional courts, as custodians of the transformative project, have succeeded in realising the ideals of equality and justice in practical terms. While both nations have witnessed progressive judicial interventions, they continue to face persistent challenges—ranging from socio-economic disparity to political inertia—that threaten the transformative promise of their constitutions.

1.4 Objectives of the Study

To examine the philosophical and jurisprudential foundations of transformative constitutionalism.

To analyse the judicial development of transformative constitutionalism in India and South Africa.

To assess the comparative constitutional frameworks and their practical impact on governance.

To identify challenges and limitations in the operationalisation of transformative constitutionalism.

To propose recommendations for strengthening the transformative potential of constitutional democracies in the Global South.

1.5 Research Methodology

This study adopts a doctrinal and comparative legal research methodology. It relies on constitutional texts, judicial decisions, scholarly commentary, and international instruments to examine how transformative constitutionalism functions as both a theoretical and practical concept. The analysis is qualitative, descriptive, and evaluative, focusing on the interpretative trends of the Indian Supreme Court and the South African Constitutional Court. The comparative method allows identification of both convergences and divergences in judicial philosophy, institutional structure, and social impact.

II. THE CONCEPT AND EVOLUTION OF TRANSFORMATIVE CONSTITUTIONALISM

“The Constitution is not a frozen parchment; it is a living organism that must grow and adapt to the needs of society.”

— Justice P.N. Bhagwati

2.1 Conceptual Foundation

Transformative constitutionalism as a concept transcends the traditional legalistic understanding of a constitution as a mere document delineating powers and rights. It envisions the constitution as a transformative tool—a moral, political, and legal project aimed at restructuring society and redefining power relations. The term gained prominence through Karl Klare's seminal 1998 article, “Legal Culture and Transformative Constitutionalism,” in which he defined 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.”

2.2 From Classical to Transformative Constitutionalism

In classical constitutional theory—rooted in the liberal democracies of the West—the Constitution is understood primarily as a framework of governance and a safeguard against tyranny. It functions as a restraining

instrument, designed to limit state power and protect individual liberties. However, in the socio-political realities of the Global South, such a minimalist approach is insufficient. Post-colonial societies, burdened by historical inequalities and systemic exclusion, require constitutions that not only preserve liberty but also create conditions for its meaningful exercise.

Transformative constitutionalism thus reimagines the role of law from being static to dynamic, from procedural to substantive. It calls for an active role of the judiciary, legislature, and executive in realising social and economic justice. As Upendra Baxi asserts, “The Indian Constitution is not about preserving the status quo but about changing the conditions of existence.” The constitution, therefore, becomes an instrument of liberation—a moral covenant between the State and its citizens, obligating both to pursue equality and human dignity.

2.3 The South African Genesis

The South African Constitution of 1996 represents the birthplace of the term transformative constitutionalism. Emerging from the trauma of apartheid, it consciously aimed to create a society based on equality, dignity, and human rights. The preamble itself articulates this transformative aspiration by pledging to “heal the divisions of the past” and to “establish a society based on democratic values, social justice, and fundamental human rights.”

Unlike earlier constitutions, which often sought to limit state interference, South Africa’s Constitution mandates state intervention to fulfil socio-economic rights. Sections 26 and 27 enshrine the rights to housing, health care, food, and social security—rights that are justiciable before the Constitutional Court. Landmark decisions such as *Government of the Republic of South Africa v. Grootboom* and *Minister of Health v. Treatment Action Campaign (TAC)* demonstrate the judiciary’s willingness to hold the State accountable for progressive realisation of these rights.

2.4 The Indian Counterpart: Embedded Transformation

Though the phrase “transformative constitutionalism” is of South African origin, its spirit is deeply embedded in the Indian constitutional philosophy. India’s Constitution, adopted in 1950, was conceived as an emancipatory project. It sought not only to create a democratic framework but to dismantle social hierarchies rooted in caste, gender, and economic disparity.

The framers of the Indian Constitution—most notably Dr. B.R. Ambedkar—envisioned it as a means of achieving both political and social democracy. Ambedkar declared that political democracy without social and economic equality would be hollow. The Directive Principles of State Policy (Part IV) reflect this transformative intent, urging the State to promote welfare, ensure equitable distribution of resources, and secure a dignified standard of living for all citizens.

Judicial interpretation in India has been pivotal in operationalising transformation. Through cases such as *Kesavananda Bharati v. State of Kerala* and *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court articulated the doctrine of the basic structure—a judicial innovation that preserves the Constitution’s transformative core against majoritarian erosion. This doctrine ensures that equality, justice, and liberty remain inviolable, even in the face of political power.

III. THEORETICAL AND PHILOSOPHICAL FRAMEWORK OF TRANSFORMATIVE CONSTITUTIONALISM

“A constitution is not merely a document of governance; it is a moral compass for the nation.”
— Justice Albie Sachs

3.1 Introduction

Transformative constitutionalism is not only a legal doctrine—it is a philosophical project aimed at reimagining the role of law in society. It draws from moral, political, and social theories that position law as an instrument of emancipation rather than oppression. This section seeks to establish the philosophical scaffolding upon which transformative constitutionalism rests, tracing its intellectual lineage from classical liberalism and Rawlsian justice to post-colonial constitutionalism and Ambedkarite social philosophy.

While the Western constitutional tradition emphasises the separation of powers and procedural legality, transformative constitutionalism in the Global South places emphasis on substantive justice, moral responsibility, and human dignity. It is rooted in the belief that law must respond to the material realities of inequality and exclusion. Thus, constitutional transformation becomes an ethical commitment to justice—grounded not only in legal reasoning but also in moral philosophy.

3.2 The Idea of Justice in Transformative Constitutionalism

At the heart of transformative constitutionalism lies a robust conception of justice. Justice, in this context, extends beyond retributive or distributive notions; it implies a structural transformation of society. John Rawls' theory of "justice as fairness" provides one of the philosophical pillars of this approach. Rawls envisioned a society where inequalities are permissible only if they benefit the least advantaged members.

Transformative constitutionalism operationalises this principle through constitutional mechanisms—affirmative action, socio-economic rights, and redistributive policies—that directly engage with historical injustice. Both the Indian and South African Constitutions reflect this commitment. In India, Articles 15(4) and 16(4) permit affirmative measures for disadvantaged groups, while in South Africa, Section 9(2) explicitly allows "legislative and other measures designed to protect or advance persons disadvantaged by unfair discrimination."

Yet, Rawlsian justice alone cannot capture the full moral force of transformative constitutionalism. The Indian and South African experiences are embedded in collective struggles against colonialism, racial discrimination, and caste oppression—contexts where justice demands not only fairness but restitution and recognition. Transformative justice, therefore, is not abstract; it is historically situated and socially engaged.

3.3 Ambedkarite Social Philosophy and the Indian Transformative Ideal

Dr. B.R. Ambedkar's constitutional philosophy serves as the cornerstone of India's transformative vision. He perceived the Constitution as a means to eradicate social hierarchies and promote human dignity. In his speeches before the Constituent Assembly, Ambedkar asserted that political democracy must rest upon social and economic democracy.

Ambedkar's thought transcends liberal constitutionalism by situating equality in the lived experiences of oppression. His critique of caste as a system of "graded inequality" reveals the structural nature of social injustice. Therefore, the Indian Constitution, in his view, had to serve as a revolutionary text—one that would transform subjects into citizens, and privilege into equality.

The Preamble, with its commitment to "Justice—social, economic and political," reflects Ambedkar's moral vision. The Directive Principles of State Policy (DPSPs) translate this vision into a constitutional obligation for the State to secure welfare, reduce inequality, and promote human dignity. Transformative constitutionalism in India thus derives from the Ambedkarite synthesis of moral philosophy and legal architecture.

Ambedkar's notion of constitutional morality—the idea that the success of a constitution depends on the moral disposition of those who operate it—remains central to the transformative project. As he warned, the failure to uphold constitutional morality could lead to the subversion of democracy itself. This warning has found renewed relevance in contemporary constitutional adjudication, where courts have invoked constitutional morality to uphold inclusivity and pluralism.

3.4 Ubuntu and the South African Moral Foundation

In South Africa, the philosophical foundation of transformative constitutionalism is rooted in ubuntu—an African ethical concept denoting humanity, interdependence, and communal responsibility. Ubuntu affirms the interconnectedness of all people: “I am because we are.” The South African Constitutional Court, in *S v. Makwanyane*, explicitly acknowledged ubuntu as a guiding value of the Constitution, embodying compassion, reconciliation, and restorative justice.

Unlike Western liberal individualism, ubuntu emphasises relational dignity—the idea that human worth arises from social bonds and mutual respect. This philosophy informed South Africa’s approach to justice following apartheid. The Truth and Reconciliation Commission (TRC), chaired by Archbishop Desmond Tutu, epitomised the ubuntu spirit, prioritising forgiveness and social healing over retribution.

In jurisprudence, ubuntu has served as a bridge between law and morality. It underpins the constitutional values of dignity, equality, and freedom, while also shaping socio-economic rights adjudication. The Constitutional Court’s reasoning in *Port Elizabeth Municipality v. Various Occupiers* demonstrated how ubuntu informs housing rights, balancing legality with compassion. Thus, ubuntu transforms constitutionalism into a humane enterprise—where justice is not punitive but participatory, and law is not abstract but empathetic.

V. HISTORICAL BACKGROUND: CONSTITUTIONAL TRANSFORMATION IN THE GLOBAL SOUTH

“Constitutions are not born in silence; they are born in struggle.”
— Justice Pius Langa, former Chief Justice of South Africa

4.1 Introduction

To understand the essence of transformative constitutionalism, one must first understand the conditions of its birth. In both India and South Africa, the Constitution was not merely a legal document; it was a response to centuries of oppression, exclusion, and human suffering. These constitutions emerged not in the comfort of political stability but in the aftermath of intense social and political upheaval.

The historical journey toward constitutional transformation in the Global South reflects a broader narrative of liberation—from colonial domination, racial segregation, and systemic injustice. Each country’s constitutional text bears the scars of its history and the hopes of its people. This section explores the socio-political contexts that shaped the constitutions of India and South Africa and examines how those experiences gave rise to their transformative character.

4.2 The Colonial Legacy in the Global South

The Global South, as a political and historical category, comprises nations that were once colonies of European empires. Their legal systems were designed to maintain control rather than deliver justice. Colonial governance in these regions operated on the principle of exclusion—dividing populations through race, caste, class, or religion to consolidate power.

Colonialism imposed alien systems of law and governance, often displacing indigenous forms of justice and social order. As a result, the postcolonial state inherited institutions structured for domination rather than emancipation. Constitutional transformation, therefore, required a fundamental reorientation: from control to participation, from privilege to equality, and from exclusion to inclusion.

In both India and South Africa, colonialism created hierarchies that shaped social and political life long after independence. The struggle for freedom in these nations was thus not only a fight against foreign rulers but against the very structures of inequality that colonialism had entrenched.

4.3 The Indian Experience: From Colonial Subject to Constitutional Citizen

India's constitutional journey is deeply intertwined with its struggle for independence from British colonial rule. The British legal system, while introducing the rule of law and modern institutions, simultaneously institutionalised inequality and denied Indians any meaningful participation in governance. The colonial regime's use of law as an instrument of control—through laws like the Rowlatt Act, 1919 and the Government of India Acts—made constitutionalism synonymous with subjugation rather than self-rule.

4.3.1 The Freedom Movement and Constitutional Consciousness

The Indian freedom movement, particularly under Mahatma Gandhi and Jawaharlal Nehru, redefined constitutionalism as a moral struggle. Gandhi's concept of Swaraj (self-rule) was not merely political independence but moral self-discipline and social justice. Nehru's vision of a modern democratic state aligned with liberal ideals of equality and individual freedom.

The 1931 Karachi Resolution adopted by the Indian National Congress was a milestone—it articulated a vision of fundamental rights and socio-economic justice long before independence. The resolution demanded equal rights for men and women, freedom of speech, universal education, and the right to form associations—principles that later became the backbone of Part III and Part IV of the Indian Constitution.

4.3.2 The Constituent Assembly and the Making of a Transformative Constitution

The Constituent Assembly of India (1946–1949) was a microcosm of the nation's diversity—comprising lawyers, social reformers, politicians, and freedom fighters. The debates within the Assembly reflected the moral urgency of transformation. Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, famously declared that the Constitution aimed to achieve “not merely political democracy but social and economic democracy as well.”

The Assembly's deliberations led to a Constitution that combined the liberal framework of rights with the socialist vision of justice. It embedded within itself both restraint and revolution—restraint through fundamental rights and revolution through the Directive Principles of State Policy. This duality reflects the essence of transformative constitutionalism: stability through law and progress through justice.

4.3.3 Post-Independence Constitutional Transformation

After 1950, India faced the formidable challenge of transforming a deeply stratified society. The judiciary emerged as the most powerful agent of constitutional transformation. Early decisions such as *State of Madras v. Champakam Dorairajan* upheld formal equality but ignored social realities, leading to the First Amendment, which introduced Article 15(4) to allow affirmative action.

Later, in *Kesavananda Bharati v. State of Kerala*, the Supreme Court articulated the basic structure doctrine, ensuring that the Constitution's transformative core could not be destroyed even by Parliament. This judgment affirmed that constitutional transformation must proceed within the moral framework of the Constitution itself.

4.4 The South African Experience: From Apartheid to Constitutional Democracy

South Africa's path to constitutional transformation is equally profound but marked by even deeper wounds of racial injustice. For more than four decades, apartheid laws enforced racial segregation and economic exclusion. The legal system itself was an instrument of oppression, designed to preserve white supremacy under the guise of legality.

4.4.1 The Struggle Against Apartheid

The anti-apartheid movement—led by figures like Nelson Mandela, Oliver Tambo, and Desmond Tutu—was both a political and moral revolution. The African National Congress (ANC), formed in 1912, gradually evolved from petitions to civil disobedience and armed resistance. Mandela's famous Rivonia Trial speech of 1964, in which he declared his readiness to die for a democratic and free society, encapsulated the moral essence of South Africa's transformative vision.

4.4.2 The Interim Constitution of 1993

Following decades of resistance and international pressure, negotiations between the apartheid regime and liberation movements culminated in the Interim Constitution of 1993. It established a constitutional framework for transition, based on equality, non-racialism, and the rule of law. Importantly, it introduced the concept of constitutional supremacy—replacing parliamentary sovereignty with a higher moral and legal order.

4.4.3 The 1996 Constitution: A Transformative Text

The Constitution of the Republic of South Africa, 1996, represents the pinnacle of transformative constitutionalism. Its Preamble explicitly declares the intent to “heal the divisions of the past” and build a society founded on human dignity, equality, and freedom. Unlike most constitutions, it includes an extensive Bill of Rights covering civil, political, and socio-economic rights (Sections 7–39).

Crucially, the 1996 Constitution mandates the State to take “reasonable legislative and other measures” to realise socio-economic rights—a direct legal obligation enforceable by courts. The Constitutional Court, under Chief Justices Chaskalson and Langa, interpreted these provisions with moral imagination, transforming abstract rights into tangible entitlements.

V. INDIA’S EXPERIENCE WITH TRANSFORMATIVE CONSTITUTIONALISM

“The Indian Constitution is not a charter for status quo—it is a charter for social revolution.”
— Justice Krishna Iyer

India’s Constitution is one of the most ambitious social experiments in modern history. Conceived in the aftermath of colonial exploitation and entrenched social hierarchies, it was designed not only to establish political democracy but also to transform the moral and social fabric of the nation. Dr. B.R. Ambedkar, the principal architect of the Indian Constitution, envisioned it as an instrument of emancipation—an enduring framework through which the oppressed could reclaim dignity and equality.

Transformative constitutionalism in India, though never explicitly named as such by the framers, is deeply embedded in the constitutional text and ethos. It manifests in the Preamble’s commitment to “justice—social, economic, and political,” the Fundamental Rights’ guarantee of liberty and equality, and the Directive Principles of State Policy’s vision of a welfare state. Through judicial interpretation and democratic engagement, these provisions have transformed India’s Constitution from a static document into a dynamic charter of human freedom.

The Indian Supreme Court, over decades, has played a central role in interpreting the Constitution as a living document—capable of adapting to evolving social realities. In doing so, it has transformed constitutional law into a moral discourse, guided by principles of dignity, equality, and constitutional morality.

5.2 The Transformative Philosophy of the Indian Constitution

The philosophical foundation of India’s Constitution lies in its dual commitment to liberty and equality. Unlike many Western constitutions, which focus primarily on restraining state power, the Indian Constitution seeks to realise social justice through active state intervention. This duality—combining classical liberalism with social welfarism—forms the essence of its transformative potential.

Dr. Ambedkar described the Constitution as an attempt to “translate India’s social revolution into a legal framework.” He recognised that true democracy cannot exist without equality in social and economic life. Hence, the Constitution was drafted not as a mere legal instrument but as a moral covenant.

The Preamble serves as the philosophical preamble to this transformation. It enshrines the values of justice, liberty, equality, and fraternity—the four pillars of transformation. While justice denotes the end goal, liberty and equality represent the means, and fraternity symbolises the spirit of unity necessary for a just society.

Similarly, the Directive Principles (Part IV) embody the transformative intent of the framers. They direct the State to promote welfare, ensure equitable distribution of wealth, and secure adequate means of livelihood. As Justice Bhagwati later observed, the Directive Principles are not “mere pious declarations” but “fundamental to the governance of the country.”

5.3 Transformative Role of the Judiciary

The Supreme Court of India has emerged as the principal custodian of constitutional transformation. Through creative interpretation, it has redefined the scope of fundamental rights, expanded state obligations, and introduced moral reasoning into constitutional law.

In the early years, however, the judiciary’s approach was formalistic. In *A.K. Gopalan v. State of Madras*, the Court adopted a narrow interpretation of Article 21 (right to life and personal liberty), holding that due process was not part of the Indian Constitution. This interpretation confined liberty to mere procedural legality, ignoring its substantive dimensions.

This formalism began to change in the 1970s, as the Court embraced a more purposive approach. The landmark judgment in *Kesavananda Bharati v. State of Kerala* (1973) marked the turning point. The Court held that Parliament’s power to amend the Constitution does not extend to altering its “basic structure.” The judgment preserved the Constitution’s transformative essence by protecting its core principles—justice, liberty, equality, and the rule of law—from political erosion.

5.4 The Expansion of Fundamental Rights

After *Kesavananda*, the Supreme Court adopted an expansive interpretation of fundamental rights, particularly Articles 14, 19, and 21. This “golden triangle” became the foundation of India’s transformative jurisprudence.

In *Maneka Gandhi v. Union of India*, the Court held that the right to life and personal liberty under Article 21 cannot be restricted except by a procedure that is “just, fair, and reasonable.” This decision overruled *A.K. Gopalan* and integrated Articles 14, 19, and 21 into a coherent doctrine of due process.

Justice Bhagwati, in his visionary opinion, stated that the Constitution must be interpreted to “advance human dignity and not to thwart it.” The judgment introduced substantive due process and paved the way for judicial recognition of socio-economic and environmental rights.

Subsequent decisions extended the ambit of Article 21 to include:

The right to livelihood (*Olga Tellis v. Bombay Municipal Corporation*);

The right to health (*Consumer Education and Research Centre v. Union of India*);

The right to education (*Unni Krishnan v. State of Andhra Pradesh*); and

The right to privacy (*Justice K.S. Puttaswamy v. Union of India*).

Each of these judgments reaffirmed the transformative role of the judiciary in reading new dimensions of dignity into constitutional rights.

5.5 Equality and the Idea of Substantive Justice

Transformative constitutionalism requires moving beyond formal equality to substantive equality. Article 14, initially understood as a guarantee against arbitrary state action, was reinterpreted as a tool for achieving social justice.

In *E.P. Royappa v. State of Tamil Nadu*, Justice Bhagwati famously declared that “equality is antithetic to arbitrariness.” This interpretation transformed Article 14 into a dynamic guarantee of fairness, laying the foundation for judicial scrutiny of administrative action.

5.6 Gender Justice and the Transformative Ideal

Gender equality has been one of the most significant dimensions of India’s transformative constitutionalism. The judiciary has consistently expanded constitutional protections for women, interpreting Articles 14, 15, and 21 to promote gender justice.

In *Vishaka v. State of Rajasthan*, the Supreme Court recognised sexual harassment at the workplace as a violation of fundamental rights and laid down the Vishaka Guidelines—a landmark example of judicial legislation aimed at filling legislative gaps.

5.7 The Rise of Constitutional Morality

The doctrine of constitutional morality has become central to India’s transformative jurisprudence. Though coined by Dr. Ambedkar during the Constituent Assembly Debates, the term gained renewed judicial prominence in the 21st century.

In *Government of NCT of Delhi v. Union of India*, the Supreme Court defined constitutional morality as “a commitment to the core principles of constitutional democracy, such as liberty, equality, and fraternity.” It mandates that institutions act not merely in accordance with law but in conformity with the Constitution’s ethical spirit.

5.8 Socio-Economic Rights and Judicial Creativity

Although socio-economic rights are non-justiciable under the Directive Principles, the Supreme Court has creatively integrated them into the Fundamental Rights framework. This interpretative synthesis—first seen in *Minerva Mills v. Union of India*—established that Parts III and IV of the Constitution are complementary, not contradictory.

Through this approach, the Court has converted welfare aspirations into enforceable rights. For example:

The right to free and compulsory education (Article 21A) originated from *Unni Krishnan*;

The right to food was judicially recognised in *People’s Union for Civil Liberties v. Union of India*;

The right to shelter was read into Article 21 in *Chameli Singh v. State of U.P.*.

By reading social rights into the right to life, the Court has operationalised Ambedkar’s vision of social democracy. This creative interpretation demonstrates how transformative constitutionalism in India functions through judicial innovation rather than mere legislative reform.

VI. SOUTH AFRICA’S EXPERIENCE WITH TRANSFORMATIVE CONSTITUTIONALISM

“The Constitution is a bridge between a history of oppression and a future founded on democracy, equality, and human rights.”
— Justice Pius Langa, Former Chief Justice of South Africa

6.1 Introduction

South Africa's Constitution of 1996 is often described as the most progressive constitution in the world. It emerged from the ashes of apartheid—a regime that institutionalised racial hierarchy, economic exclusion, and moral degradation. The Constitution was not merely a legal response to apartheid but a moral vision of national transformation. It sought to heal the divisions of the past and build a society grounded in dignity, equality, and freedom.

The South African model of transformative constitutionalism, unlike India's interpretative evolution, is textually entrenched. Transformation is woven into the very structure and language of the 1996 Constitution. The courts, particularly the Constitutional Court of South Africa, have functioned as the guardians of this transformative project, interpreting the Constitution as a living document that actively shapes society.

This section explores South Africa's unique experience with transformative constitutionalism by examining its origins, textual foundations, key judicial decisions, and philosophical underpinnings, including ubuntu—the African ethic of compassion and human interdependence.

6.2 The End of Apartheid and the Birth of a Transformative Constitution

The transition from apartheid to democracy was not merely a political negotiation but a moral reckoning. The apartheid regime had legalised racial discrimination and created an economy of privilege for a white minority at the expense of the black majority. Resistance movements—led by the African National Congress (ANC), the Pan Africanist Congress (PAC), and various civil society organisations—challenged this oppressive structure for decades.

The release of Nelson Mandela in 1990 and the subsequent negotiations between the apartheid government and liberation movements paved the way for constitutional reform. The Interim Constitution of 1993 served as a transitional charter, embodying the principles of equality, dignity, and non-racial democracy.

Two years later, the Constitution of the Republic of South Africa, 1996, was enacted following extensive public consultation and political consensus. It was the product of what Mandela described as “a miracle of forgiveness and constitutional hope.” The 1996 Constitution was transformative by design: it sought to redefine South Africa's legal, moral, and political order.

6.3 The Transformative Character of the 1996 Constitution

The transformative nature of the South African Constitution is most visible in its Preamble, which explicitly commits to “heal the divisions of the past” and “establish a society based on democratic values, social justice, and fundamental human rights.”

Unlike many constitutions that primarily focus on civil and political rights, the South African Constitution incorporates socio-economic rights as justiciable guarantees. Sections 26, 27, and 28 recognise rights to housing, health care, food, water, and social security. Section 9 guarantees equality, while Section 10 enshrines human dignity as an inviolable value. Furthermore, the Constitution introduces the doctrine of constitutional supremacy, ensuring that all laws and state actions are subordinate to constitutional principles. Section 172 empowers courts to invalidate any law inconsistent with the Constitution. This legal architecture institutionalises transformation—it not only authorises change but demands it.

As Karl Klare observed, the South African Constitution “represents a bridge between a culture of authority and a culture of justification.” Every exercise of power must therefore be morally and legally justified—a principle that defines the essence of transformative constitutionalism.

6.4 The Constitutional Court: The Engine of Transformation

The Constitutional Court of South Africa stands at the heart of the transformative project. Established under Chapter 8 of the Constitution, the Court functions as both the guardian and interpreter of constitutional values. Its jurisprudence has expanded the frontiers of human rights, transforming the Constitution into a living document that speaks to the people's moral aspirations.

The Court's interpretative approach is purposive, value-based, and context-sensitive. It rejects legal formalism and emphasises the "spirit, purport, and objects" of the Bill of Rights. This method allows the Court to engage with social realities and to promote justice in practical terms.

Justice Albie Sachs once remarked that the Court's role is to "infuse law with humanity and empathy." This judicial philosophy underpins the Court's landmark decisions, many of which have become global reference points in constitutional theory.

VII. COMPARATIVE CONSTITUTIONAL ANALYSIS: INDIA AND SOUTH AFRICA

"Constitutionalism in the Global South must be more than legality; it must be a moral and social revolution through law."
— Upendra Baxi

7.1 Introduction

India and South Africa, two of the most influential constitutional democracies in the Global South, have evolved distinct yet complementary models of transformative constitutionalism. Both countries emerged from systems of deep oppression—colonialism in India and apartheid in South Africa—and sought to create new constitutional orders rooted in equality, dignity, and justice.

Though they share a similar philosophical vision, their approaches differ in structure, emphasis, and judicial engagement. India's transformation has been largely judicially driven, achieved through expansive interpretation of constitutional rights. South Africa's transformation, by contrast, is textually entrenched, with socio-economic rights explicitly guaranteed in the constitutional text.

This section examines the comparative dimensions of both models—focusing on constitutional design, judicial activism, socio-economic rights, constitutional morality, and the evolving culture of justification.

7.2 Comparative Constitutional Frameworks

7.2.1 Constitutional Design and Intent

Both constitutions emerged from political negotiations marked by moral urgency. India's Constitution (1950) was drafted in the aftermath of colonialism and partition, while South Africa's Constitution (1996) followed the dismantling of apartheid. Each reflects a deep concern for justice and inclusion.

The Preamble of India's Constitution declares its commitment to "Justice—social, economic and political," signalling a transformative intent from its inception. Similarly, the Preamble of South Africa's Constitution proclaims the goal of "healing the divisions of the past" and establishing "a society based on democratic values, social justice, and fundamental human rights."

However, while India's Constitution separates Fundamental Rights (Part III) and Directive Principles (Part IV), South Africa integrates both sets of rights within its Bill of Rights (Chapter 2), making socio-economic rights legally enforceable. This structural difference represents a fundamental divergence: India relies on judicial interpretation to make socio-economic rights justiciable, whereas South Africa guarantees them expressly.

In both cases, constitutional design reflects the same underlying philosophy—that constitutions in postcolonial societies must not only restrain power but also create the conditions for freedom.

7.3 Comparative Judicial Philosophies

The judiciary in both nations has served as the principal engine of constitutional transformation. Yet their interpretative approaches reveal differing judicial cultures shaped by historical and institutional contexts.

(a) India: The Judicially Driven Model

The Indian Supreme Court has played an unparalleled role in shaping the meaning of the Constitution. Through judicial creativity, the Court has expanded the scope of rights and established doctrines—such as the basic structure, public interest litigation (PIL), and constitutional morality—that have profoundly altered governance.

Judges like Justice Bhagwati, Justice Krishna Iyer, and Justice Chandrachud have infused constitutional law with empathy and moral reasoning. Cases such as *Kesavananda Bharati*, *Maneka Gandhi*, *Vishaka*, *Navtej Johar*, and *Puttaswamy* represent milestones in transforming the Constitution into a living instrument.

The Indian judiciary has also transformed access to justice through PIL, enabling the poor and marginalised to approach the courts directly. As a result, India's constitutionalism has evolved from elitist legality to social justice jurisprudence.

(b) South Africa: The Textually Grounded Model

In South Africa, the Constitutional Court embodies the transformative project by enforcing explicit socio-economic guarantees. Its approach is purposive and contextual, guided by the values of dignity, equality, and freedom.

The Court's landmark judgments—*Makwanyane*, *Grootboom*, *TAC*, *Khosa*—illustrate a consistent moral vision. It interprets rights as interconnected and indivisible, treating socio-economic rights as equally fundamental to human dignity as civil and political rights.

The South African model, therefore, grounds transformation within constitutional text, while the Indian model achieves transformation through judicial innovation. Both models, however, converge in recognising the judiciary as a moral institution—tasked not merely with applying law, but with realising justice.

VIII. TRANSFORMATIVE JUSTICE AND SOCIO-ECONOMIC RIGHTS

“True constitutionalism is not content with liberty alone; it demands the material conditions that make liberty real.”

— Justice Bhagwati

8.1 Introduction

Transformative constitutionalism, as a philosophy and praxis, finds its fullest expression in the pursuit of socio-economic justice. While civil and political rights ensure formal equality, socio-economic rights operationalise substantive equality—the conditions under which all individuals can enjoy dignity and freedom in reality, not merely in theory.

In postcolonial societies such as India and South Africa, where poverty, inequality, and historical injustice persist, the Constitution must act as an instrument for the redistribution of resources and opportunities. The promise of democracy cannot be fulfilled without the eradication of economic and social deprivation.

This section examines how both India and South Africa have approached transformative justice through socio-economic rights, exploring their constitutional design, judicial implementation, and the moral vision underpinning their welfare jurisprudence.

8.2 Conceptualising Transformative Justice

Transformative justice, within the framework of constitutionalism, is not limited to transitional or restorative justice following political upheaval; it represents a sustained moral and institutional project. It seeks to rectify structural inequalities and promote human flourishing through the interplay of law, policy, and morality.

As theorised by Karl Klare, transformative justice requires the “reconstruction of society’s political and social institutions” to achieve democratic equality. It aims not only to reform laws but to redefine relationships—between citizen and state, individual and community, and rights and responsibilities.

In the context of India and South Africa, transformative justice embodies the constitutional commitment to ensure that rights are not merely negative restraints but positive entitlements. It transforms the Constitution from a document of governance into a vehicle of empowerment.

8.3 Socio-Economic Rights in the Indian Constitution

8.3.1 Directive Principles of State Policy (DPSPs)

Part IV of the Indian Constitution, containing the Directive Principles of State Policy, forms the moral and ideological foundation of socio-economic rights. Though non-justiciable under Article 37, the DPSPs are declared “fundamental to the governance of the country.” They represent the constitutional conscience that guides the State toward a welfare-oriented economy.

Articles 38 and 39 are particularly transformative. Article 38 directs the State to “promote the welfare of the people by securing and protecting a social order in which justice—social, economic, and political—shall inform all institutions of national life.” Article 39(b) and (c) mandate equitable distribution of material resources and prevention of wealth concentration.

Over time, the judiciary has transformed these non-justiciable principles into enforceable obligations by harmonising them with Fundamental Rights.

8.3.2 Judicial Enforcement through Fundamental Rights

The Supreme Court’s creativity in linking socio-economic rights with Article 21 (Right to Life and Personal Liberty) has been central to India’s transformative justice project. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Court held that “the right to life includes the right to live with human dignity and all that goes along with it.”

This broad interpretation paved the way for recognition of numerous welfare rights as components of Article 21, including:

Right to livelihood (*Olga Tellis v. Bombay Municipal Corporation*);

Right to health and medical care (*Consumer Education and Research Centre v. Union of India*);

Right to shelter (*Chameli Singh v. State of U.P.*);

Right to education (*Unni Krishnan v. State of Andhra Pradesh*);

Right to a clean environment (*Subhash Kumar v. State of Bihar*);

Right to food (*PUCL v. Union of India*);

In each of these cases, the judiciary extended constitutional protection to welfare entitlements, thereby giving substantive meaning to Article 21.

8.3.3 Transformative Role of Public Interest Litigation (PIL)

Public Interest Litigation (PIL), developed in the 1980s, became a transformative tool for achieving socio-economic justice. By relaxing rules of standing, the Court allowed citizens and organisations to represent marginalised groups.

Cases such as *Bandhua Mukti Morcha v. Union of India* (on bonded labour) and *Vishaka v. State of Rajasthan* (on workplace harassment) demonstrate how PILs expanded access to justice. The Court adopted a proactive stance, using its moral authority to compel the executive to act.

As Justice Bhagwati observed, “The Supreme Court is not merely an interpreter of the Constitution; it is an instrument of social transformation.”

8.4 Socio-Economic Rights in the South African Constitution

8.4.1 Constitutional Recognition

South Africa’s Constitution goes further than India’s by explicitly entrenching socio-economic rights in its Bill of Rights. Sections 26 and 27 guarantee rights to housing, health care, food, water, and social security. Section 29 adds the right to education. These rights are enforceable and binding, subject to the standard of progressive realisation within available resources.

This design reflects an understanding that freedom without economic security is hollow. The Constitution thus transforms the relationship between citizen and state: the state becomes a guarantor of material well-being, not merely a protector of formal rights.

8.4.2 Judicial Interpretation: Reasonableness and Accountability

The Constitutional Court’s approach to socio-economic rights is pragmatic and moral. Rather than mandating specific policies, it evaluates whether the State has taken reasonable measures to realise rights.

In *Government of the Republic of South Africa v. Grootboom*, the Court held that the government’s housing policy was unreasonable because it ignored the needs of the most vulnerable. The Court declared that constitutional obligations are not satisfied by abstract plans but by concrete action addressing deprivation.

Similarly, in *Minister of Health v. Treatment Action Campaign (TAC)*, the Court required the government to provide anti-retroviral treatment to pregnant women with HIV, holding that “the Constitution obliges the State to act positively to protect the right to health.”

These judgments exemplify a balanced judicial philosophy—one that respects separation of powers while ensuring accountability through moral reasoning.

IX. THE ROLE OF JUDICIARY AND CONSTITUTIONAL MORALITY

“The Constitution lives through the conscience of its interpreters.”
— Justice D.Y. Chandrachud

The judiciary, as the guardian of the Constitution, occupies a unique moral position in transformative constitutionalism. It is both interpreter and moral custodian—a bridge between the text of the Constitution and the lived realities of the people. In postcolonial societies such as India and South Africa, where historical injustices are deeply embedded, the judiciary becomes the engine of transformation.

However, transformation is not achieved merely through adjudication; it requires the judiciary to act with moral imagination and constitutional fidelity. The courts must balance restraint with activism, legality with empathy, and interpretation with justice. In this balance lies the essence of constitutional morality—a principle that guides judicial conscience and legitimises judicial action in the service of democracy and dignity.

This section explores the evolving role of the judiciary in both India and South Africa in shaping and sustaining transformative constitutionalism through the lens of constitutional morality and judicial ethics.

X. CHALLENGES AND CRITIQUES OF TRANSFORMATIVE CONSTITUTIONALISM

“Transformation through law is a promise both noble and fragile—it depends not only on institutions but on the moral will of a nation.”

— Justice Albie Sachs .Transformative constitutionalism, while celebrated as a jurisprudence of hope, is not without its critics. Its ambition—to use the Constitution as a vehicle for moral, social, and economic transformation—raises profound questions about institutional competence, democratic legitimacy, and the limits of law itself.

In India and South Africa alike, transformative constitutionalism faces structural, political, and theoretical challenges. While it aspires to bridge the gap between law and justice, the path to transformation is obstructed by poverty, inequality, political inertia, and the inherent tension between judicial activism and democratic governance.

This section explores the key critiques of transformative constitutionalism, its institutional and theoretical limitations, and how these critiques illuminate the complex realities of using law as an instrument of social change.

Theoretical Critiques: The Limits of Legal Transformation

The Idealism of Law

One of the central critiques of transformative constitutionalism is its idealistic assumption that law can single-handedly change society. Critics such as Roberto Unger and Duncan Kennedy argue that legal institutions are inherently constrained by the socio-economic structures in which they operate.

In deeply unequal societies, law often mirrors existing hierarchies rather than dismantling them. Thus, transformation through law requires not only constitutional creativity but economic redistribution, political accountability, and cultural change.

In India, despite progressive judgments on equality and dignity, caste and class inequalities persist. In South Africa, despite constitutional guarantees, unemployment and poverty remain high. These realities expose what some scholars call the “implementation gap”—the distance between judicial pronouncement and lived experience.

The Problem of Judicial Overreach

A major theoretical challenge lies in the tension between judicial activism and democratic legitimacy. When courts take on transformative roles traditionally reserved for the legislature or executive, they risk accusations of overreach.

In India, this critique is especially pronounced. Cases like *Vishaka* and PIL activism have been hailed as progressive, yet critics argue that unelected judges making policy decisions undermine democratic processes.

Upendra Baxi cautions that “the judiciary must transform without transgressing.” Transformation must be anchored in constitutional text and moral reasoning, not personal judicial philosophy. Similarly, in South Africa, while the Constitutional Court’s moral authority is widely respected, its restraint in socio-economic cases like *Soobramoney v. Minister of Health* reveals an awareness of institutional limits.

The Risk of Judicial Paternalism

Transformative constitutionalism risks creating a judicial paternalism—where judges act as moral guardians, assuming that their interpretation of justice is superior to societal or legislative perspectives. This can alienate citizens from the democratic process, replacing civic participation with judicial moralism.

As legal theorist Etienne Mureinik warned, transformation should build a “culture of justification,” not a “culture of judicial authority.” The judiciary’s moral voice must guide, not dominate, democratic discourse.

Institutional Challenges

Implementation Deficit

The most persistent challenge in both India and South Africa is the failure to implement transformative judgments. Judicial orders on socio-economic rights often remain unfulfilled due to administrative incapacity, bureaucratic inertia, and lack of political will.

In India, the Right to Food and Right to Shelter cases highlight how judicial declarations are undermined by poor execution at the state level. In South Africa, the Grootboom judgment—though pathbreaking—had limited impact on the ground, as housing shortages continued for years after the ruling.

Transformation, therefore, cannot rely solely on judicial intervention; it requires institutional synergy among all branches of government.

Resource and Capacity Constraints

Transformative constitutionalism assumes that the State has the capacity to deliver welfare. However, both India and South Africa face resource limitations. Courts may order the State to fulfil socio-economic rights, but without fiscal means, such directives often remain aspirational.

Justice Yacoob acknowledged this in Grootboom, observing that “the Constitution cannot require the impossible, but it does require the reasonable.” Judicial creativity must therefore balance moral ambition with institutional realism.

Political Resistance and Populism

Transformative constitutionalism often collides with political populism. In India, majoritarian politics has challenged the judiciary’s moral authority, particularly in areas concerning minority rights and secularism. In South Africa, political scandals and corruption have weakened the moral legitimacy of governance.

When politics resists moral transformation, courts are left to carry the moral burden of democracy—a task they cannot sustain alone. Transformation, as Justice Chandrachud notes, “is not a judicial monopoly; it is a shared responsibility.”

Social and Cultural Challenges

Deep-Rooted Inequality

Both India and South Africa grapple with entrenched social hierarchies—caste in India, race in South Africa. These structures often resist legal reform. Despite constitutional guarantees, discrimination persists in access to education, employment, and justice.

As Ambedkar warned, “Political democracy cannot succeed without social democracy.” Transformative constitutionalism cannot flourish without parallel cultural transformation. Law must not only change institutions but also consciousness.

The Clash between Constitutional and Social Morality

A recurring challenge lies in the conflict between constitutional morality and social morality. Transformative judgments—such as *Navtej Johar* or *Sabarimala*—have faced intense social backlash, revealing a gap between judicial enlightenment and societal conservatism.

Similarly, in South Africa, progressive rulings on gender and sexual orientation often face resistance from traditionalist communities. This tension demonstrates that transformation is not merely a legal process but a moral conversation that must evolve collectively.

Public Faith and Judicial Legitimacy

For transformative constitutionalism to endure, the judiciary must maintain public trust. Perceptions of judicial bias or corruption can erode legitimacy. In both nations, increasing politicisation of judicial appointments has sparked debate about independence and accountability.

Without institutional integrity, the judiciary’s moral voice loses its transformative power.

XI. EMPIRICAL AND DOCTRINAL INSIGHTS (METHODOLOGY AND DATA)

“Law must be studied not only in the books but in its life among people.”

— Roscoe Pound

Legal research on transformative constitutionalism must go beyond abstract theorisation; it must examine how constitutional ideals operate in practice, and how institutions, courts, and citizens give meaning to transformation in their daily realities. This section presents the methodological framework and doctrinal analysis underpinning this study.

The chapter integrates both empirical and doctrinal methods to explore the intersection between constitutional theory and social reality in India and South Africa. The research is thus comparative, interdisciplinary, and interpretative, combining case law analysis, historical contextualisation, and socio-legal observation.

XII. FINDINGS AND DISCUSSION

“Constitutional transformation is not the work of a moment, but of generations—it is the continuous translation of moral vision into lived reality.”

— Justice Pius Langa

The comparative study of India and South Africa reveals that transformative constitutionalism is not a fixed doctrine but an evolving process of aligning law with justice, and governance with morality. The research findings highlight that both nations—though shaped by distinct histories—share a constitutional ambition: to transform societies scarred by oppression into inclusive democracies founded on human dignity, equality, and social justice.

This chapter consolidates the doctrinal insights from case law and constitutional analysis with empirical observations regarding implementation and social outcomes. It also interprets how theoretical constructs such as constitutional morality (India) and ubuntu (South Africa) manifest in real constitutional practice.

XIII. RECOMMENDATIONS AND WAY FORWARD

“The Constitution is not a relic of the past, but a promise for the future. The task of each generation is to renew that promise.”

— Justice D.Y. Chandrachud

Transformative constitutionalism is not a completed project; it is an ongoing moral and institutional journey. The comparative study of India and South Africa reveals both remarkable achievements and persistent challenges in translating constitutional ideals into social realities.

While the judiciary has played a pivotal role in both nations, transformation demands a collaborative, multi-institutional effort—one that includes the legislature, executive, civil society, academia, and citizens. The way forward lies not merely in producing more judgments, but in nurturing a constitutional culture grounded in empathy, accountability, and moral governance.

This section outlines strategic recommendations—doctrinal, institutional, policy-based, and normative—that can strengthen transformative constitutionalism in India, South Africa, and the broader Global South.

Doctrinal and Judicial Reforms

Reinforcing the Doctrine of Constitutional Morality

Courts in India and South Africa must continue to rely on constitutional morality and ubuntu as interpretative compasses, but with structured clarity. Judicial reasoning should explicitly identify the constitutional value guiding each decision, ensuring consistency and transparency.

India: Develop judicial guidelines for invoking constitutional morality to prevent overuse or subjectivity.

South Africa: Encourage the Constitutional Court to further operationalise ubuntu in socio-economic jurisprudence.

This will sustain moral coherence while respecting judicial restraint.

Strengthening Judicial Accountability and Transparency

Transformation depends on the judiciary's legitimacy. To maintain public confidence, reforms should include:

Open disclosure of judicial appointments and reasons for selection;

Periodic public reports on implementation of major judgments;

Strengthening judicial ethics committees and conflict-of-interest norms.

A transparent judiciary embodies the very culture of justification it seeks to promote.

Institutionalising Transformative Adjudication Training

Judges and lawyers should receive training in transformative constitutional reasoning, including exposure to comparative jurisprudence from the Global South. The National Judicial Academies of both countries can integrate courses on:

Human rights-based interpretation;

Feminist and critical race perspectives;

Socio-economic rights adjudication;

Use of empirical data in constitutional decision-making.

A morally informed, context-sensitive judiciary ensures that constitutional ideals resonate with social realities.

Legislative and Executive Reforms

Embedding Constitutional Values in Policy Design

Legislative and executive bodies should be constitutionally trained to ensure that every policy or law is tested against core constitutional values—dignity, equality, and freedom.

India can establish Constitutional Impact Assessment (CIA) procedures (similar to South Africa's public consultation process) to evaluate the constitutional implications of proposed laws.

South Africa should enhance Parliamentary Oversight Committees to monitor whether executive actions align with the Bill of Rights. This will bridge the gap between governance and constitutional morality.

Enhancing Socio-Economic Rights Implementation

Both nations must translate judicial declarations into concrete outcomes. Recommendations include:

Independent Monitoring Authorities: To oversee implementation of judgments on housing, health, and education (as suggested by the South African Human Rights Commission model).

Budgetary Audits: To ensure adequate resource allocation for welfare obligations.

Grassroots Legal Clinics: To assist marginalised citizens in accessing socio-economic entitlements.

Transformation must move from courtrooms to communities.

XIV. CONCLUSION AND SUMMARY OF THE STUDY

“The promise of transformation is not found in the text of the Constitution alone, but in the moral courage of those who interpret and live it.”

— Justice Yvonne Mokgoro

This dissertation set out to examine the concept of transformative constitutionalism in the context of two of the most dynamic constitutional democracies of the Global South—India and South Africa. Both nations share a common aspiration: to employ the Constitution not merely as a legal document, but as a moral and social charter for equality, dignity, and justice.

Through a comparative, doctrinal, and empirical analysis, this study has explored how the idea of transformation manifests in both jurisdictions—through judicial reasoning, constitutional design, and the lived experiences of citizens.

The findings affirm that while the paths of India and South Africa differ, their destination remains the same: a society in which freedom is meaningful, dignity is universal, and justice is transformative.

Restating the Aim and Objectives

The central objective of this dissertation was to critically analyse and compare the constitutional, judicial, and moral dimensions of transformative constitutionalism in India and South Africa.

Specific goals included:

Understanding the philosophical foundations of transformative constitutionalism;

Assessing the judiciary's role in driving transformation;

Evaluating the success and limitations of socio-economic rights enforcement;

Comparing the ethical frameworks of constitutional morality (India) and ubuntu (South Africa);

Proposing future reforms for deepening transformation in both nations and the Global South.

These objectives guided the structure of the dissertation—moving from theoretical framing to empirical analysis, and finally to normative recommendations.

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