

THE CONCEPT OF TRANSFORMATIVE CONSTITUTIONALISM VIS-À-VIS INDIAN JUDICIARY WITH SPECIAL REFERENCE TO ENVIRONMENTAL CONSTITUTIONALISM: AN ANALYTICAL STUDY

Abstract

It took 166 days for constituent assembly to draft the constitution of India with lot of struggles and deliberations on how the document would determine a person's basic rights and how the powers of the Government should be. There was many visions and goals were discussed. Since we adopted the Constitution of India it has played a crucial role in transforming the country. The term transformation connotes bringing a change. The author in this article shall explain transformative Constitutionalism in Indian Judiciary by analyzing the landmark cases “I.C. Golaknath & Ors vs State of Punjab & Anrs (1967), R C Cooper v Union of India(1970), Madhav Rao Jivaji Rao Scandia v Union of India(1971), Kesavananda Bharati v. State of Kerala (1973), Mumbai Kamghar Sabha v. Abdul Bha(1976), Indira Nehru Gandhi vs Shri Raj Narain & Anr (1975), and Maneka Gandhi vs Union of India on 25 January, 1978”.¹ Furthermore, arthor shall also examines the challenges and limitations faced by the judiciary in pursuing transformative constitutionalism in the context of environmental issues. It evaluates the effectiveness of judicial interventions in addressing environmental concerns and fostering sustainable development.

Keywords: Constitutionalism, Transformative Constitutionalism, Constitution of India, Constituent Assembly and Indian Judiciary.

Author

Saptarni Raha
Student, LLM 1ST Year, 2ND
Semester
Brainware University
saptaparniraha475@gmail.com

I. INTRODUCTION

Transformative Constitutionalism seeks to bring about societal change by instilling the principles of liberty, equality, and fraternity in the social order, aligning with the objectives of the Indian Constitution. It emphasizes the paramount importance of constitutional morality and recognizes the immutability of the constitution's basic structure. Justice Chandrachud defines transformative constitutionalism as the integration of values such as liberty, equality, fraternity, and dignity into the fabric of society. It is a crucial and necessary process that defines the essence of democracy and the constitutional framework within it. The aim of this transformation is to uphold equality and liberty in society. Constitutionalism, in essence, entails limiting the government's power and defining these limitations based on their authority. Thus, transformative Constitutionalism can be understood as the infusion of the values of liberty, equality, and fraternity into the social order.

II. ORIGIN OF TRANSFORMATIVE CONSTITUTIONALISM

In 1608, King James I of England asserted his authority to personally decide any legal case. However, Chief Justice Coke objected, stating that cases should be adjudicated in a court of law according to the established legal and customary practices of England. The king responded by suggesting that being subject to the law would be treasonous. In turn, Coke emphasized that the king should be subject to God and the law, rather than being subject to any individual. This exchange exemplified the affirmation of judicial power and the rule of law over arbitrary decisions by the sovereign, laying the foundation for judicial activism during the 1600s. Subsequently, in the case of *Marbury v. Madison*, it was established that judicial review does not imply the superiority of the judiciary over the legislative branch. Instead, it recognizes that the power of the people, as expressed in the Constitution, surpasses both branches of government. The intentions of the people take precedence over the intentions of their representatives.²

III. CONCEPT OF TRANSFORMATIVE CONSTITUTIONALISM

Transformative constitutionalism is a legal theory that focuses on how constitutionalism can drive social change and protect human rights. It arose as a response to the limitations of traditional constitutionalism, which mainly aimed to restrict government power and safeguard individual rights.

In contrast, transformative constitutionalism places greater importance on the constitution's role in promoting social justice and bringing about societal transformation. It recognizes the constitution's significance in addressing historical injustices, promoting equality, and advocating for marginalized groups.

² Arjun Philip George, Zeenia S, Activist Judiciary and transformative constitution, International Journal of law and management(ijmh), Vol 2,ISSUE 4, 1-12(July 28, 2023,12:20 pm) <https://www.ijlmh.com/wp-content/uploads/2019/10/Activist-Judiciary-and-Transformative-Constitution.pdf>

According to the theory, the constitution should not only establish a framework for governance but also act as a catalyst for social progress. This involves acknowledging and safeguarding citizens' socio-economic rights.

In practice, transformative constitutionalism involves using constitutional provisions to advance social change through judicial interpretation, legislative action, and government policies. It also necessitates active involvement from civil society and other stakeholders in shaping and implementing constitutional reforms.

Overall, it signifies a shift in our understanding of constitutionalism and highlights the constitution's role in promoting social justice and transformation.

IV. THE EFFECT OF TRANSFORMATIVE CONSTITUTIONALISM IN THE ENVIRONMENTAL LAW OF INDIA

Environmental Constitutionalism refers to the inclusion of constitutional protections for the environment, which encompass both rights and responsibilities for the government. The High Court of Gujarat stated that the discharge of pollutants from the factories owned by the petitioners onto public roads or the public drainage system contradicted the constitutional obligation to safeguard the natural environment. Similarly, the High Court of Rajasthan ruled that any individual who disrupts the ecological balance or causes degradation, pollution, or manipulation of natural resources such as air, water, rivers, seas, and other elements violates their fundamental environmental duty. These honorable high courts invoked the fundamental environmental duty to reinforce their directives to the relevant authorities in a writ petition alleging the violation of fundamental duties.

V. ORIGIN ENVIRONMENTAL CONSTITUTIONALISM IN INDIA

The original enactment of the Constitution of India in 1950 did not include any provisions outlining the duties of citizens. In 1947, Sir BN Rau, the constitutional adviser to the Constituent Assembly, presented a Draft Constitution to the Drafting Committee, which included a section on the Duties of Citizenship. However, this section was ultimately omitted. During the debates of the Constituent Assembly in 1948-49, some members proposed the inclusion of citizens' duties, obligations, or responsibilities in the Constitution. Others argued that every right inherently implies and includes a corresponding duty, assuming that citizens would fulfill their duties without explicit mention. Nearly two decades later, in 1969, the Supreme Court acknowledged the existence of constitutional duties of citizens and recognized Part IV of the Constitution, which outlines the Directive Principles of State Policy (DPSP), as the source of these duties. After that The 1976 constitutional amendment in India incorporated the responsibility of citizens to safeguard and enhance the natural environment. This inclusion can be attributed to both internal factors, such as the influence of a charismatic political leader, and external factors, such as their participation in an international environmental conference where the non-binding outcomes played a role.³

³ Lovleen Bhullar, Environmental constitutionalism and duties of individuals in India, journal of environmental law, (July 28, 2023, 12:30 pm) (<https://doi.org/10.1093/jel/eqac010>)

VI. THE JUDICIARY'S INTERACTION WITH THE CONSTITUTIONAL DUTY TOWARDS THE ENVIRONMENT

This section explores how the judiciary's involvement with the constitutional environmental duties of individuals can impact environmental constitutionalism and the objective of environmental protection. It examines judicial practices related to the fundamental environmental duty of citizens in India to provide insights into these aspects. The analysis reveals that the judiciary utilizes the constitutional environmental duties of citizens and the State to interpret the constitutional right to life as encompassing a right to environment or to place limitations on other constitutional rights. Additionally, the judiciary establishes connections between the constitutional environmental duties of citizens and the State, deviating from the original constitutional intent and framework of these provisions. Furthermore, the judiciary expands the scope of the fundamental environmental duty of citizens in two significant ways: by recognizing citizens as duty-bearers alongside the State and by acknowledging the environment and future generations as the corresponding right-holders.⁴

VII. RELATIONSHIP BETWEEN CONSTITUTIONAL ENVIRONMENTAL DUTIES

The constitutional origin and design differentiate the environmental responsibilities of the State (Part IV) from those of citizens (Part IVA). However, the judiciary tends to blur the distinction between the two. An example of this is the High Court of Himachal Pradesh, which acknowledged the similarities between the constitutional environmental duties of citizens and the State. The Supreme Court later recognized that Article 51A (g) was added by Parliament to ensure that citizens uphold the spirit and message of Articles 48 and 48A as a fundamental duty. It was also intended to enhance the realization of the objectives stated in Article 48 and 48A. The Court clarified that while Article 48A focuses on the "environment," Article 51A(g) uses the term "natural environment" which encompasses "forests, lakes, rivers, and wildlife." More recently, certain High Courts have noted that the citizens' fundamental environmental duty aligns with the State's duty outlined in Directive Principles of State Policy (DPSP). Although the judiciary does not elaborate further on these observations, these decisions continue to influence how the fundamental environmental duty is interpreted in judicial rulings.⁵

VIII. TRANSFORMATIVE CONSTITUTIONALISM IN SOUTH AFRICA

In many parts of Africa, the attainment of independence from colonial rule did not bring about the anticipated freedom, democracy, and prosperity. Instead, the post-colonial era, particularly in the early years, was marked by political instability, military coups, dictatorship, civil unrest, corruption, human rights violations, and widespread suffering. This situation can be likened to George Orwell's "Animal Farm," where the replacement of one oppressor with another occurred. Similarly, when the South African Republic was formed in 1961, ending allegiance to the British Crown, it did not bring significant benefits to the

⁴ IBID, Bhullar

⁵ Ibid, Bhullar

African majority. Instead, it perpetuated and perfected the existing misery under the apartheid regime. South Africa's experience under apartheid shares similarities with the colonial experiences in the rest of Africa, including racial segregation, discrimination, disenfranchisement, dispossession, political exclusion, and socio-economic underdevelopment. Although South Africa's transition from apartheid cannot be considered decolonization in the same manner as the rest of Africa's liberation from European colonial rule, it was a process of liberation from a similar plight. Thus, the transition in South Africa, following the multi-racial elections of 1994, can be compared to the liberation of the rest of Africa, as governance and the power to shape the country's future were now in the hands of a popularly-elected government comprising primarily of the previously marginalized black majority.

IX. THE EVOLUTION OF CONSTITUTIONALISM AND THE PRESERVATION OF RIGHTS IN AFRICA

The pursuit of a balance between anarchy and tyranny has been a central concern in constitutional law and the essence of constitutionalism. The main purpose of constitutions is to establish a framework for the exercise of public power, ensuring that the government is neither weak nor despotic. Constitutionalism, therefore, promotes the idea of a government that is limited by the law, with the constitution holding the highest authority in the legal hierarchy. Fundamental elements of constitutionalism include safeguarding basic rights and freedoms, the separation of powers, an independent judiciary, the review of laws for constitutionality, and regulation of constitutional amendments. However, it is important to note that these elements alone do not guarantee constitutionalism. A crucial aspect of constitutional justice is the provision of a mechanism for citizens to seek legal recourse in courts for constitutional violations and to enforce constitutional obligations. Additionally, constitutionalism requires a commitment from the political elite to respect and abide by constitutional limits, as mere existence of constitutions does not guarantee their meaningful implementation.

In post-colonial Africa, constitutionalism has been a challenging concept to achieve. Scholars have noted the absence of constitutionalism despite the presence of constitutions in many African countries. After gaining independence, numerous constitutions were disregarded by despotic leaders who showed little regard for the rule of law. The early years of independence were marked by the rule of "founding fathers" who considered themselves above accountability and immune to legal challenges. These leaders were idolized and often viewed as being above the law. The presidents of Kenya, such as Jomo Kenyatta and Daniel arap Moi, were revered and believed to have constitutional immunity. Similar situations occurred in Ghana, Zimbabwe, Malawi, Uganda, and Guinea, where charismatic leaders consolidated power, subverted democracy, and weakened institutions through the manipulation, disregard, or amendment of constitutions. This lack of accountability resulted in corruption, political repression, and human rights abuses. Consequently, the blame for failed constitutionalism and the subsequent suffering is often placed on these generations of African leaders and their regimes.

While some post-independence constitutions, like Kenya's, initially established frameworks for multiparty democracy and human rights protection, the subsequent era was

characterized by one-party rule, personal presidential dictatorships, or military juntas. Many post-colonial governments suppressed political opposition and failed to implement significant social, political, and economic reforms. Kenya, for instance, experienced four decades of dominance by the independence party and a complete intolerance of political competition under personal presidential rule. Similar situations arose in Ghana, Zimbabwe, Malawi, Uganda, Guinea, and Nigeria during military rule.

The apartheid regime in South Africa is well-documented for its systemic racial discrimination, marginalization, and dispossession, which were enforced through discriminatory laws. Dissidents faced violence, resulting in tragic consequences such as death, torture, detention without trial, and imprisonment. The following section highlights the failure of courts to effectively uphold constitutionalism and the rule of law during periods of dictatorship and political repression.⁶

X. IN AFRICA, WHEN CONSTITUTIONALISM FALTERS AND HUMAN RIGHTS ABUSES PREVAIL, THE COURTS ASSUME A PIVOTAL ROLE.

In the context of failed constitutionalism and human rights abuses in Africa, courts of law are expected to uphold the rule of law, constitutional principles, and fundamental rights. However, the reality often reveals that the state and its agents, who should be upholding these values, end up violating them due to the inconveniences they pose to those in power. This raises questions about how the courts fulfilled their constitutional responsibilities in the face of despotic and repressive regimes, particularly during the early years of Africa's independence. The courts' response to political repression and human rights abuses by the state in post-colonial Africa varied, but a general pattern emerges: the courts were either ineffective or complicit. Several examples support this claim. For instance, in Kenya, during the era of one-party rule, the judiciary struggled to protect and enforce human rights against a despotic executive.

The judiciary often avoided making decisions that could upset the President, as seen in the case of *Matiba v Moi*. In this case, an election petition challenging the incumbent President Moi's victory was dismissed based on a technicality—the petitioner had not personally signed the petition as required by the election law. The court disregarded the substantive issues raised and denied the petitioner justice based on this technicality. Similar instances occurred in subsequent elections, where petitions were dismissed due to technicalities, preventing the petitioners from receiving justice.

Another case, *Gibson Kamau Kuria v Attorney-General*, highlights the courts' complicity or helplessness in safeguarding fundamental rights and the rule of law during the one-party era in Kenya. In this case, a human rights defender's passport was confiscated by the government to prevent him from traveling to receive an international award. The High Court dismissed his case, claiming that it could not enforce the right to freedom of movement because the Chief Justice had not established rules to guide the litigation process.

⁶ Eric Kibet, Charles Fombad : Transformative constitutionalism and the adjudication of constitutional rights in Africa, *African Human Rights Law Journal*, (July 28, 2023, 12:34 pm) http://www.scielo.org.za/scieli.php?script=sci_arttex&pid=S1996-20962017000200002

This decision prioritized technicalities over the protection of fundamental rights, despite previous instances where courts had enforced rights without such hindrances. This suggests that the court resorted to technicalities to conveniently avoid challenging the executive, which was determined to frustrate the petitioner.

XI. TRANSFORMATIVE ENVIRONMENTAL CONSTITUTIONALISM: A NEW CONCEPT IN SOUTH AFRICA

Transformative Environmental Constitutionalism combines the concepts of transformative Constitutionalism and environmental Constitutionalism. Environmental Constitutionalism is a recently introduced global concept that recognizes the environment as a subject of constitutional protection. In African environmental law, there should be a shift towards an ecocentric approach when creating laws aimed at conserving biodiversity and addressing global environmental issues. This approach acknowledges the inherent value of all life on Earth, including non-human life, regardless of human perception.

Transformative Environmental Constitutionalism argues that there is a lack of genuine ecocentric legal rights concerning nature, and therefore, we should explore the potential for ecocentric applications in response to the challenges of the Anthropocene era. This perspective suggests a need for a specific approach to "greening the judiciary".⁷

XII. ECO-CENTRIC ENVIRONMENTAL LAWS IN SOUTH AFRICA IN LIGHT OF THE KRUGER CASE

The High Court of South Africa, in its plea for administrative justice law, predominantly adopts a homocentric perspective, neglecting to consider the impact of litigation on rhinos. Consequently, the potential of substantive environmental laws and principles that embrace an ecocentric orientation remains largely unrecognized or overlooked.

XIII. STATEMENT OF WESTERN CAPE HIGH COURT IN KRUGER CASE

Legodi J would have incorporated the NEMA principles into the Kruger project to promote a more environmentally friendly approach. In a legal case regarding the assessment of a coal-fired power station's approval without considering climate change impacts, the Western Cape High Court clarified that the directive principles outlined in NEMA serve as guidelines for all government entities. These principles direct the interpretation, administration, and execution of NEMA, as well as other environmental protection or management laws. Competent authorities must consider these directive principles when evaluating applications for environmental authorization.⁸

⁷ Melanie Murcott, Transformative Environmental Constitutionalism's Response to the Setting Aside of South Africa's Moratorium on Rhino Horn Trade (July 28, 2023, 12:345pm), <https://www.mdpi.com/2076-0787/6/4/84>

⁸ Ibid, Murcott

XIV. ROLE OF INDIAN JUDICIARY (1967-73)

1. **I.C. Golaknath & Ors vs State of Punjab & Anrs (1967):** The Supreme Court, in addressing the Constitutional validity of the 17th Amendment, introduced the concept of "prospective overruling." It concluded that Parliament lacked the authority to amend Part III of the Constitution, which encompasses fundamental rights, with the intention to diminish or curtail them".⁹
2. **R C Cooper v Union of India(1970)¹⁰:** The validity of the Banking Companies (Acquisition and Transfer of Undertakings) Act, popularly known as the Bank Nationalisation Act, was brought into question concerning the legislative authority of Parliament. The Act was deemed unconstitutional primarily due to its unreasonableness, as it imposed restrictions on banks to engage in "non-banking business," effectively rendering them unable to conduct any business at all."
3. **Madhav Rao Jivaji Rao Scindia v Union of India(1971)¹¹:** "The main concern raised was regarding the President's appropriate exercise of power in de-recognizing the princes. The court ruled that, in accordance with Article 53 of the Constitution, the President must exercise the executive power of the Union "in accordance with law." This authority was intended to be utilized to uphold and protect the Constitution rather than undermine it.
4. **Kesavananda Bharati v. State of Kerala (1973):** "In the case of Kesavananda Bharati in 1973, the Supreme Court established that the Parliament possesses the power to amend any provision of the constitution, provided that such amendments do not infringe upon the Basic Structure of the Constitution"¹².

XV. TRANSFORMATION BETWEEN 1975-78

1. **Indira Nehru Gandhi vs Shri Raj Narain & Anr (1975):** "The majority bench emphasized that free and fair elections are an integral part of the Constitution's fundamental framework. Any attempt to deprive the people of India of this right would constitute a significant violation of their rights. The court further determined that the amendment also contravened other essential principles of the Constitution, including the

⁹I. C. Golaknath & Ors vs State Of Punjab & Anrs.(With ... on 27 February, 1967,1967 AIR 1643, 1967 SCR (2) 762, (July 28, 2023, 12:37pm)<https://indiankanoon.org/doc/120358>

¹⁰ Rustom Cavasjee Cooper vs Union of India, 1970,564,1970 SCR (3) 530, (July 28, 2023, 12:37pm) <https://indiankanoon.org/doc/513801/>

¹¹<https://thegallock.com/madhav-jivaji-rao-scindia-v-union-of-india-1970>(July 28, 2023, 12:37pm)

¹²Kesavananda Bharati ... vs State Of Kerala And Anr on 24 April, 1973,<https://indiankanoon.org/doc/257876/>(July 28, 2023, 12:50pm)

rule of law and the principles of natural justice, such as the right to be heard i.e Audi Alteram Partem.”¹³

2. **Mumbai Kamghar Sabha v. Abdul Bha (1976):** “The Supreme Court introduced the concept of judicial activism, albeit without explicitly using the term.”¹⁴
3. **Maneka Gandhi v. Union of India (1978):** “The Supreme Court replaced the "procedure established by law" with the due process clause in Article 21 to limit the absolute power and interference of the Executive with individual freedom ”.¹⁵

XVI. TRANSFORMATION FROM 1978 ONWARDS

1. **Vishakha v.State of Rajasthan(1997):** “The Supreme Court, in its wisdom, has issued guidelines to address and prevent sexual harassment in the workplace. Additionally, the Court has provided a clear definition of sexual harassment.”¹⁶
2. **National Legal Services Authority (NALSA) v. Union of India (2014):** “The Court's role is to grasp the fundamental objective and essence of the Constitution in promoting societal well-being. Our Constitution, akin to the societal laws, is a dynamic entity. It is founded upon factual and social realities that continuously evolve. At times, legal changes anticipate and aim to catalyze societal transformations, while in other instances, legal changes are prompted by the existing social reality.”¹⁷
3. **Navtej Singh Johar vs Union of India (2018):** Under Section 377 of the Indian Penal Code, 1860, consensual or non-consensual sexual conduct between two adults of the same sex was considered a criminal offense. However, the petitioner challenged this section, arguing that it violated Articles 14, 21, and 15 of the Constitution. As a result, Section 377 of the Indian Penal Code was decriminalized.¹⁸

¹³Indira Nehru Gandhi vs Shri Raj Narain & Anr on 7 November, 1975(July 28, 2023, 12:52pm) <https://indiankanoon.org/doc/936707/>

¹⁴Mumbai Kamgar Sabha, Bombay vs M/S Abdulbhai Faizullabhai & Ors on 10 March, 1976,1976 AIR 1455, 1976 SCR (3) 591(July 28, 2023, 12:55pm) <https://indiankanoon.org/doc/191016/>

¹⁵Maneka Gandhi vs Union Of India on 25 January, 1978,1978 AIR 597, 1978 SCR (2) 621(July 28, 2023, 12:57pm),<https://indiankanoon.org/doc/1766147/>

¹⁶Vishaka&Ors vs State Of Rajasthan & Ors on 13 August, 1997,(July 28, 2023, 12:57pm),<https://indiankanoon.org/doc/1031794/>

¹⁷National Legal Ser.Auth vs Union Of India & Ors on 15 April, 2014(July 28, 2023, 1:04pm),<https://indiankanoon.org/doc/193543132/>

¹⁸Navtej Singh Johar vs Union Of India Ministry Of Law And ... on 6 September, 2018,(July 28, 2023, 1:09pm) <https://indiankanoon.org/doc/168671544/>

4. **Joseph Shine vs Union of India (2018):** The previous criminalization of adultery under Section 497 of the Indian Penal Code imposed penalties on men engaging in sexual intercourse with married women without the husband's consent. However, this judgment decriminalized adultery.¹⁹
5. **Indian Young Lawyers Association vs. the State of Kerala (2018):** The petitioner filed a Public Interest Litigation challenging the prohibition on the entry of menstruating women into the Sabrimala temple. It was contended that this restriction violated Articles 14, 15, 17, 25, and 26 of the Constitution. The Supreme Court, in its judgment, granted permission for women of all ages to enter the temple.²⁰
6. **Vineeta Sharma vs Rakesh Sharma (2020):** Both sons and daughters should be granted coparcenary rights, including daughters born prior to the amendment of the Hindu Succession (Amendment) Act, 2005. This ruling reinforces the significance of the right to equality enshrined in Article 14 of the Constitution.²¹
7. **Karnataka Hijab ban case (2022):** Requiring girls to remove their hijabs before entering school invades their privacy, undermines their dignity, and denies them access to secular education, which contravenes Article 19(1)(a), Article 21, and Article 25(1) of the Indian Constitution."²²

XVII. CONCLUSION AND SUGGESTIONS

An activist judiciary plays a crucial role in upholding the "rule of law." However, it is essential that judicial actions and interpretations, even when driven by activism, are firmly grounded in the Constitution. The emergence of principles without a constitutional basis cannot be justified. Therefore, a responsible activist judiciary must give life to the Constitution's provisions, which may otherwise remain dormant. The transformative nature of the constitution contributes to continuous societal progress. India, being a developing country with a pluralistic society encompassing diverse faiths and beliefs, has historically accepted certain forms of discrimination. However, the Indian Constitution guarantees fundamental rights and embodies a set of values that the judiciary is entrusted to safeguard.²³

¹⁹Joseph Shine vs Union Of India on 27 September, 2018<https://indiankanoon.org/doc/42184625/> (July 28, 2023, 1:12pm)

²⁰Indian Young Lawyers Association vs The State Of Kerala on 28 September, 2018(July 28, 2023, 1:14pm)<https://indiankanoon.org/doc/163639357/>

²¹Vineeta Sharma vs Rakesh Sharma on 11 August, 2020(July 28, 2023, 1:19pm)
<https://indiankanoon.org/doc/67965481/>

²²AishatShifavs The State Of Karnataka on 13 October, 2022, (July 28, 2023, 1:25pm)
<https://indiankanoon.org/doc/8682191/>

²³ Supra, philip

THE CONCEPT OF TRANSFORMATIVE CONSTITUTIONALISM
VIS-À-VIS INDIAN JUDICIARY WITH SPECIAL REFERENCE TO
ENVIRONMENTAL CONSTITUTIONALISM: AN ANALYTICAL STUDY

In the realm of transformative constitutionalism, the judiciary holds a crucial position due to its responsibility in interpreting and upholding fundamental rights as mandated by the constitution. In light of this significance, the article argues that judges in the context of transformative constitutionalism need to go beyond mere legal interpretation to achieve the objectives of the law. This entails a psychological shift where judges recognize the high expectations placed upon them and adopt a more confident stance within the framework of governance. To accomplish this, judges must embrace a "rights-friendly jurisprudence," which prioritizes the protection of fundamental rights and be willing to reject deference to political bodies when the law and the Constitution are violated or at risk of violation. Defining the specific characteristics of this "new" judicial attitude required by transformative constitutionalism may prove challenging, but it is an essential shift that must occur and is likely to occupy the attention of judges and commentators for an extended period.