Celebrating India's Democratic Journey

75 Years of Successful adoption of Constitution

Prof. Dr. Petikam Sailaja
Dr. SM. Azizunnisaa Begum

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Edited by

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Preface

As India completes seventy-five years as a constitutional democracy, the Constitution stands not only as the founding legal document of the Republic but as a living framework through which democratic aspirations, social change, and institutional governance have been continuously negotiated. Celebrating India's Democratic Journey: 75 Years of Successful Adoption of the Constitution emerges from the conviction that this constitutional endurance deserves careful reflection, not as a moment of ritual celebration alone, but as an opportunity for critical engagement with the ideas, institutions, and practices that have sustained the Republic across generations.

The Indian Constitution was adopted in circumstances of extraordinary complexity. Drafted in the aftermath of colonial rule and Partition, it was tasked with governing a deeply plural society marked by linguistic diversity, religious heterogeneity, social hierarchy, and uneven development. That this constitutional experiment has endured for over seven decades without authoritarian rupture or formal abandonment places India in a distinctive comparative position among post-colonial democracies. The chapters in this volume approach this endurance not as an accident of history, but as the outcome of sustained constitutional culture: judicial interpretation, political contestation, institutional performance, and civic engagement working within a shared normative framework.

This edited volume brings together scholars from diverse institutions and disciplinary perspectives to examine the Constitution as both text and practice. The contributions explore foundational questions constitutional supremacy, the "law of the land," federalism, fundamental rights, secularism, and multiculturalism alongside contemporary challenges such as constitutional morality, national security, globalization, digital governance, and artificial intelligence. Several chapters revisit landmark constitutional moments, including amendments and institutional transformations, while others look forward, asking how constitutional values must be reimagined and renewed to meet the demands of the next democratic phase.

A central theme running through the book is that constitutional success does not imply constitutional finality. India's democratic journey has been marked by conflict, crisis, and institutional stress, yet these moments have largely

been mediated through constitutional forms rather than resolved through constitutional abandonment. This capacity for self-correction through courts, legislatures, commissions, elections, and public debate constitutes one of the Constitution's most significant achievements. The essays collected here therefore emphasize both performance and promise: what has worked, what has faltered, and what must be strengthened.

This volume is intended for scholars, students, legal practitioners, and readers interested in constitutional law, political theory, and democratic governance. It seeks to contribute to ongoing conversations about constitutionalism in India by offering rigorous analysis grounded in doctrine, history, and contemporary practice. As India reflects on seventy-five years of constitutional life, this book invites readers to see the Constitution not as a settled inheritance, but as an ongoing democratic project one that demands vigilance, critique, and recommitment if it is to remain worthy of the aspirations with which it was adopted.

- *Prof. Dr. Petikam Sailaja*
- *Dr. SM. Azizunnisaa Begum*

Foreword

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1 EVOLUTION OF INDIA'S LAW OF THE LAND: THE GRUNDNORM

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1.1 Introduction

Seventy-five years after its commencement, the Constitution of India stands not merely as a historical artifact of decolonization but as a living, adaptive framework that has successfully mediated democratic aspirations, social transformation, and constitutional governance in one of the world's most complex plural societies. The endurance of the Indian Constitution over three-quarters of a century reflects not only its textual design but also the sustained constitutional culture that has evolved through judicial interpretation, political practice, and civic engagement. Unlike many post-colonial constitutions that succumbed to authoritarian ruptures or formal obsolescence, India's constitutional order has demonstrated remarkable resilience by accommodating social change while preserving core normative commitments such as the rule of law, separation of powers, fundamental rights, and constitutional supremacy (Austin, 1966; Khanna, 2019). This long constitutional journey underscores the success of adopting a written constitution as the foundational norm of governance, capable of reconciling democratic will with legal constraint. As India commemorates seventy-five years of constitutional functioning, it becomes imperative to revisit foundational jurisprudential questionsparticularly the idea of the Constitution as the "law of the land" not as a static declaration, but as a continuously reaffirmed normative commitment that has sustained democratic legitimacy, institutional stability, and constitutional morality across generations (Basu, 2018; Bhatia, 2021).

The expression "law of the land" has a dual resonance in constitutional thought. It is at once descriptive, referring to the prevailing legal order within a territory, and normative, denoting the supreme juridical authority that confers legality upon all subordinate norms. In a constitutional democracy, "law of the land" is not exhausted by the output of legislatures or the commands of executives; it is the constitutional framework that authorizes institutions, structures

governance, protects rights, and limits state power. The Indian Constitution embodies this idea of higher law by establishing itself as the apex normative instrument from which the legitimacy and validity of all other legal norms are derived (Austin, 1966; Basu, 2018).

To speak of India's Constitution as the "law of the land" is, therefore, to affirm constitutional supremacy: the proposition that every exercise of public power must be justified within the constitutional order and remain bounded by constitutional constraints. This supremacy is neither rhetorical nor merely political; it is juridically operationalized through the institution of judicial review and constitutional remedies that permit courts to test legislation and executive action for conformity with the Constitution (Seervai, 1996). The deeper question, however, is how constitutional supremacy is best understood as a foundational principle of legal validity. The concept of the *Grundnorm* most closely associated with Hans Kelsen offers a jurisprudential explanation for why a constitution functions as the highest norm in a system of hierarchical legal validity (Kelsen, 1967).

This chapter develops the argument that the Indian Constitution is not only the supreme law but also operates as the foundational normative framework India's functional Grundnorm sustained through popular sovereignty, judicial review, and the basic structure doctrine. The analysis proceeds from the meaning of "law of the land" to Kelsen's account of normativity and validity, then to constituent power and popular sovereignty, and finally to the Preamble, judicial recognition, and the basic structure doctrine as reinforcing the Constitution's primacy. The chapter closes by examining contemporary constitutional governance challenges that test the resilience of this foundational norm.

1.1.1 Conceptual Meaning of 'Law of the Land'

In constitutional jurisprudence, "law of the land" denotes the highest authoritative norm that determines what counts as valid law within the polity. It is essential to distinguish this constitutional meaning from ordinary usage. Ordinary legislation is a product of constituted institutions and is valid only within the field of legislative competence and in conformity with constitutional limitations. Executive instructions and administrative directions, while practically influential, do not possess independent constitutional authority; they must be grounded either in statutory authorization or in constitutionally conferred executive power, and they remain reviewable for constitutional compliance (Basu, 2018). Customary practices, even when socially entrenched, cannot override constitutional rights; they may be recognized only to the extent

they do not violate constitutional standards of equality, dignity, and liberty (Austin, 1966).

This conceptual structure reveals a hierarchy. The Constitution stands above ordinary law, and ordinary law stands above executive and administrative action. The Constitution is the legal source that creates institutions and empowers them to act; at the same time, it is the legal restraint that prevents those institutions from acting arbitrarily. Hence, "law of the land" in constitutional democracies is not merely a collection of enforceable rules; it is the foundational normative architecture of legitimacy and legality.

In India, the supremacy of this architecture is reinforced by constitutional remedies. Articles 32 and 226 enable the Supreme Court and High Courts to enforce fundamental rights and assess state action against constitutional standards, thereby institutionalizing the Constitution as the ultimate legal yardstick (Basu, 2018). The result is a legal order in which constitutional legality is not an abstract aspiration but a practical criterion of validity.

1.1.2 Law of the Land in a Constitutional Democracy

Constitutional democracy rejects the notion that the will of any single organ monarch, executive, or parliament is inherently supreme. Instead, it embraces limited government under a higher law. This is the core of modern constitutionalism: power is legitimized through law, and law is legitimized through the constitution (Raz, 1979). A constitution enables democratic governance by creating representative institutions and procedures; simultaneously, it constrains democratic governance by placing certain values and rights beyond ordinary political bargaining. This is not a denial of democracy but a commitment to a richer democratic ideal one that protects minorities, secures dignity, and ensures that majoritarian power remains bounded by rights and the rule of law (Dworkin, 1977).

India's constitutional democracy is particularly value laden. The Constitution is not merely a framework for governance; it is a transformative charter seeking to dismantle historic hierarchies and enable social justice (Austin, 1966). Accordingly, "law of the land" in India cannot be understood only procedurally. It includes substantive commitments to equality, liberty, dignity, and democratic accountability, which guide constitutional interpretation and constrain governance.

1.1.3 Transition from Colonial Legal Supremacy to Constitutional Supremacy

India's constitutional supremacy emerged from a decisive break with colonial legal sovereignty. Under colonial rule, legal authority ultimately traced back to British imperial institutions. Even where local legislative bodies existed, their authority was derivative and subject to imperial supremacy. Independence transformed the basis of validity and legitimacy by relocating sovereignty within the people of India and institutionalizing it through a written constitution (Austin, 1966).

This transition mattered in at least three ways. First, it altered the source of legal authority: laws became valid because they were authorized by the Constitution, not because they were issued under imperial sovereignty. Second, it changed the relationship between state and individual: subjects became citizens, and the Constitution recognized enforceable fundamental rights against the state (Basu, 2018). Third, it constitutionalized the rule of law through judicial review, ensuring that constitutional constraints could be enforced against the political branches (Seervai, 1996).

The shift from colonial supremacy to constitutional supremacy thus created a normatively unified legal system with the Constitution at its apex. In jurisprudential terms, it laid the groundwork for conceptualizing the Constitution as the foundational norm in the hierarchy of legal validity.

1.1.4 Position of the Indian Constitution in the Legal Hierarchy

The Indian legal system is structured as a hierarchy of norms. At the top lies the Constitution, which creates and empowers institutions, allocates legislative competence, and protects rights. Below lie statutes enacted by Parliament and state legislatures, which must remain within constitutional competence and respect constitutional limitations. Below statutes lies delegated legislation and administrative regulation, which must conform both to statutes and to the Constitution. At the bottom are executive directions and administrative practices, which must be authorized by law and compatible with constitutional norms (Basu, 2018).

Judicial review is the mechanism that preserves the integrity of this hierarchy. Courts invalidate laws that violate fundamental rights or exceed legislative competence, and they control executive actions that transgress constitutional limitations. This institutional structure ensures that the Constitution is not merely higher in theory but supreme in practice (Seervai, 1996). It is precisely this functional supremacy that motivates the question: what is the foundational

norm that explains this hierarchy? The answer, at least in Kelsenian terms, is the presupposed Grundnorm that sustains the constitution's validity (Kelsen, 1967).

1.2 The Concept of Grundnorm and Constitutional Supremacy

1.2.1 Hans Kelsen's Theory of Grundnorm

Hans Kelsen's *Pure Theory of Law* conceptualizes law as a system of norms, organized hierarchically. The validity of a norm depends on its creation in accordance with a higher norm authorizing its existence and prescribing its form. This chain of validity would regress infinitely unless it culminates in a presupposed foundational norm the *Grundnorm* which makes the entire legal system intelligible as a unified normative order (Kelsen, 1967). The Grundnorm is not enacted text; it is a methodological presupposition, often expressed as "the constitution ought to be obeyed."

Kelsen's theory is attractive for constitutional analysis because it explains legal validity without relying on moral or theological claims. It provides a structural account of why constitutions function as supreme norms: because the legal system is interpreted through a presupposition that treats the constitution as binding.

1.2.2 Hierarchy of Norms and Legal Validity

The hierarchy of norms is central to Kelsen's account. Lower norms derive validity from higher norms, not simply from coercive force or political authority. In a constitutional order, statutes are valid because the constitution authorizes the legislature and prescribes law-making procedures; administrative actions are valid because statutes and constitutional provisions authorize them; judicial acts are valid because the constitution confers jurisdiction and interpretive authority upon courts (Kelsen, 1967).

Indian constitutional practice strongly reflects this hierarchical structure. Legislative competence is constitutionally defined; statutes outside competence are invalid. Fundamental rights operate as constraints on all state action; laws violating them are void. Administrative action must remain within statutory and constitutional boundaries. These features are comprehensible as expressions of a norm-hierarchy in which constitutional validity structures the entire legal order (Basu, 2018; Seervai, 1996).

1.2.3 Constitutional Supremacy as a Practical Manifestation of Grundnorm

Constitutional supremacy in India can be understood as the practical manifestation of a Grundnorm-like presupposition: that the Constitution is

binding and superior. Courts, legislatures, and executives act "as if" the Constitution is the highest law, and validity claims are assessed accordingly. When courts invalidate statutes or executive actions for constitutional inconsistency, they do more than resolve disputes they reproduce the hierarchy of norms and reaffirm the Constitution's apex status (Seervai, 1996).

Yet the Indian case also reveals that constitutional supremacy is value-laden. The Constitution is not merely a procedural rulebook; it contains substantive commitments to dignity, equality, liberty, and social justice. This gives constitutional supremacy a moral and political dimension, in addition to Kelsen's structural account of validity (Austin, 1966; Dworkin, 1977).

1.2.4 Applicability and Limitations of Kelsenian Theory in India

Kelsenian theory is applicable to India insofar as it illuminates the hierarchy of legal validity and the constitutional ordering of norms. However, it is limited in at least four respects. First, Kelsen's strict separation of law and morality sits uneasily with India's transformative constitutionalism, where constitutional interpretation often invokes dignity, equality, and social justice as guiding ideals (Austin, 1966). Second, Kelsen explains validity, not legitimacy; India's constitutional authority is frequently justified through popular sovereignty and democratic consent. Third, constitutional crises most notably the Emergency demonstrate that constitutional identity can be threatened through formally legal means, motivating doctrines such as basic structure that impose substantive limits on amendment (Kesavananda Bharati v. State of Kerala, 1973). Fourth, India's constitutional adjudication frequently involves balancing competing values, a process that requires normative reasoning not fully captured by Kelsen's positivism (Dworkin, 1977).

Accordingly, Kelsen provides an important lens but not a complete explanation. India's constitutional supremacy is best understood as a hybrid: it has a Kelsenian structure of validity, but it is sustained by democratic legitimacy, constitutional values, and institutional practices.

1.3 Constituent Power and Popular Sovereignty in India

1.3.1 Distinction Between Constituent Power and Constituted Power

Constitutional theory distinguishes between constituent power the authority to create a constitution and constituted power the authority exercised by institutions created under that constitution. Constituent power is foundational and prior; constituted power is derivative and limited. In India, Parliament is a constituted body, and its powers are defined and constrained by the

Constitution. This distinction becomes crucial in understanding the limits on constitutional amendment and the rationale behind doctrines that protect constitutional identity (Seervai, 1996).

1.3.2 Historical Transfer of Sovereignty in India

India's constitutional order rests on the historical transfer of sovereignty from British imperial authority to the people of India. The adoption of the Constitution represented an act of self-constitution an assertion that the people are the source of authority and that the legal order is grounded in a sovereign republican framework (Austin, 1966). This transfer provides not only historical context but normative grounding: the Constitution is supreme because it is the authoritative expression of self-rule.

1.3.3 Role of the Constituent Assembly as an Expression of Popular Will

The Constituent Assembly served as the forum through which constituent power was exercised. Its deliberative process negotiated competing visions liberty and social justice, unity and diversity, state power and rights protection and produced a constitution that was simultaneously enabling and constraining. The Assembly's work established constitutional authority in a historically situated and publicly reasoned process, reinforcing the claim that constitutional supremacy is rooted in the polity's foundational decision (Austin, 1966).

1.3.4 Popular Sovereignty as the Source of Constitutional Authority

Popular sovereignty supports constitutional supremacy by distinguishing between ordinary political mandates and foundational constitutional commitments. Even democratically elected bodies cannot override fundamental constitutional limits because the Constitution embodies the people's higher-order choice about the framework of governance. In this way, popular sovereignty provides a legitimacy rationale that complements Kelsen's validity logic: the Constitution is presupposed as binding not merely because it is at the top of a norm-hierarchy, but because it is understood as the supreme act of the people (Austin, 1966).

1.4 The Preamble as the Normative Foundation of the Constitution

1.4.1 Legal Status of the Preamble

The Preamble has been treated by the Supreme Court as a key to constitutional interpretation and an indicator of constitutional fundamentals. While debates have existed about whether it is enforceable in itself, it is generally accepted as part of the Constitution's interpretive and normative framework, expressing the

aims and identity of the constitutional order (Kesavananda Bharati v. State of Kerala, 1973; Basu, 2018).

1.4.2 Philosophical Values Embedded in the Preamble

The Preamble articulates justice (social, economic, political), liberty (thought, expression, belief, faith, worship), equality (status, opportunity), and fraternity (dignity, unity). These values define India's constitutional identity and guide interpretation. They also reflect the Constitution's transformative mission: to secure democratic freedom while reconstructing a society marked by inequality (Austin, 1966).

1.4.3 Preamble as an Interpretative Tool

The Preamble provides an interpretive compass for courts, particularly where constitutional language is open-textured. It assists in purposive interpretation, ensuring that constitutional provisions are read in light of the overarching values that the Constitution seeks to realize. This strengthens constitutional supremacy by making it a value-guided supremacy rather than a purely formal one (Basu, 2018).

1.4.4 Preamble and the Concept of Grundnorm

If the Grundnorm is understood as the presupposition that the Constitution ought to be obeyed, the Preamble provides the normative content that explains why the Constitution commands authority. It articulates the polity's foundational commitments, thereby connecting the legal hierarchy to substantive constitutional ideals. In the Indian context, therefore, constitutional supremacy has an explicitly value-based core: the Constitution is supreme not merely because it is higher law, but because it embodies the people's commitment to justice, liberty, equality, and fraternity (Austin, 1966; Kelsen, 1967).

1.5 Judicial Recognition of the Constitution as the Grundnorm

1.5.1 Early Judicial Affirmation of Constitutional Supremacy

From early constitutional adjudication, Indian courts affirmed the Constitution's supremacy through the exercise of judicial review. A key moment was the Court's approach to the relationship between fundamental rights, legislative power, and constitutional limits. In A.K. Gopalan v. State of Madras (1950), although the Court adopted a formalistic reading of "procedure established by law," it nonetheless reinforced the principle that legality is constitutionally bounded. Later jurisprudence moved toward a richer rights-based

understanding that strengthened constitutional supremacy as a substantive constraint on state power (Basu, 2018; Seervai, 1996).

1.5.2 Judicial Review as a Mechanism of Grundnorm Enforcement

Judicial review operationalizes the hierarchy of norms by ensuring that lower norms do not displace constitutional requirements. When courts declare unconstitutional laws void, they enforce the Constitution's position as the highest norm. This is the institutional mechanism through which the Constitution's Grundnorm-like status is maintained: legality and validity are continuously measured against the Constitution, and constitutional incompatibility results in invalidation (Seervai, 1996).

1.5.3 Invalidation of Legislative and Executive Actions

Indian courts have repeatedly invalidated legislative and executive measures for violating constitutional rights, exceeding legislative competence, or undermining constitutional structure. This function is central to constitutional supremacy: it prevents constitutional limits from becoming politically negotiable and ensures that constitutional authority remains legally binding (Basu, 2018). Such invalidations also sustain constitutional coherence, preventing fragmentation of the legal system into competing normative orders.

1.5.4 Role of Judiciary in Preserving Constitutional Coherence

Beyond striking down unconstitutional acts, the judiciary preserves constitutional coherence by developing interpretive doctrines that align constitutional provisions with foundational values. Doctrines such as proportionality, reasonableness, and substantive due process (in its Indian evolution) demonstrate how constitutional supremacy is maintained as a principled legal order rather than a mechanical hierarchy (Dworkin, 1977; Basu, 2018).

1.6 Basic Structure Doctrine as Reinforcement of Grundnorm

1.6.1 Evolution of the Basic Structure Doctrine

The Basic Structure Doctrine, articulated in Kesavananda Bharati v. State of Kerala (1973), represents a defining moment in Indian constitutionalism. The Court held that while Parliament has wide power to amend the Constitution under Article 368, it cannot alter the Constitution's basic structure. This doctrine emerged from earlier amendment cases and responded to concerns that formal amendment power could be used to dismantle constitutional identity (Seervai, 1996; Basu, 2018).

1.6.2 Limits on Amending Power of Parliament

By limiting the amending power, the doctrine preserves the distinction between constituent and constituted power. Parliament, as a constituted body, cannot claim unlimited authority to remake the constitutional order. This ensures that constitutional supremacy is not vulnerable to erosion from within through formally valid but substantively destructive amendments (Seervai, 1996).

1.6.3 Protection of Core Constitutional Values

The doctrine protects fundamental constitutional principles such as democracy, rule of law, federalism, judicial independence, and rights-oriented governance. It reinforces the idea that the Constitution's foundational commitments are not merely political choices but constitutional essentials that anchor the legal order (Kesavananda Bharati v. State of Kerala, 1973; Austin, 1966).

1.6.4 Basic Structure Doctrine and Constitutional Permanence

The Basic Structure Doctrine can be understood as reinforcing the Constitution's Grundnorm-like permanence. It stabilizes constitutional identity against transient political majorities and ensures that the constitutional order retains continuity across political change. In jurisprudential terms, it strengthens the foundational norm by protecting the conditions under which the Constitution remains the supreme law (Seervai, 1996).

1.7 Contemporary Relevance of Grundnorm in Constitutional Governance

1.7.1 Grundnorm and Separation of Powers

Modern constitutional conflicts often arise from inter-institutional contestation executive expansion, legislative assertions, and judicial oversight. The Grundnorm framework clarifies that no branch is sovereign in itself; each is constitutionally constituted and constitutionally limited. The Constitution remains the higher norm that structures separation of powers and resolves boundary disputes (Basu, 2018).

1.7.2 Federalism and Constitutional Supremacy

Centre–State disputes over legislative competence, fiscal control, and administrative authority demonstrate that federalism is a constitutionally mediated arrangement. Constitutional supremacy ensures that federal conflicts are resolved not through raw political power but through constitutional standards that preserve the constitutional distribution of authority (Seervai, 1996).

1.7.3 Fundamental Rights and Normative Authority

The expansion of rights jurisprudence particularly dignity-based interpretations shows constitutional supremacy operating as a normative authority rather than a mere hierarchy. Rights adjudication forces the state to justify restrictions through constitutional standards of proportionality, reasonableness, and legitimacy, reaffirming that constitutional norms govern state action in substance as well as form (Dworkin, 1977; Basu, 2018).

1.7.4 Challenges to the Grundnorm in the 21st Century

Contemporary governance presents new stressors: populist constitutional narratives, executive dominance, frequent constitutional amendments, and technological governance (including surveillance and algorithmic decision-making). These pressures can blur constitutional boundaries and test institutional autonomy. The Grundnorm framework remains relevant because it emphasizes constitutional fidelity as the criterion of legitimacy: even democratically supported governance must remain constitutionally bounded. At the same time, the resilience of the constitutional order depends on institutional independence and constitutional culture, not only on doctrinal statements (Austin, 1966; Raz, 1979).

1.8 Conclusion

1.8.1 Synthesis of Constitutional Supremacy and Grundnorm

This chapter has argued that India's "law of the land" is best understood as the Constitution's supreme normative authority, sustained by a hierarchical structure of validity and a foundational presupposition of constitutional obedience. Kelsen's Grundnorm theory helps explain how legality is structured through norm hierarchy, while India's constitutional practice supplies the institutional mechanisms judicial review, constitutional remedies, and structural doctrines that operationalize constitutional supremacy (Kelsen, 1967; Seervai, 1996).

1.8.2 The Constitution as the Enduring Law of the Land

The Indian Constitution's supremacy reflects not only a legal hierarchy but also a democratic and moral foundation grounded in popular sovereignty and articulated through the Preamble's values. It is thus the enduring law of the land: the source of institutional authority and the limit upon institutional power, binding all state action within a normative constitutional framework (Austin, 1966; Basu, 2018).

1.8.3 Linkage with Subsequent Constitutional Developments

Understanding the Constitution as the apex norm and functional Grundnorm provides the conceptual basis for subsequent chapters. The themes of local adaptation, philosophical foundations, multicultural constitutionalism, federal experimentation, and rights evolution all presuppose the Constitution's foundational authority. Each later development whether interpretive, institutional, or reformist derives its legitimacy from the constitutional order established as the supreme law of the land.

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2 ADAPTATION TO LOCAL CHARACTERISATION

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2.1 Introduction

India's constitutional achievement is frequently described in terms of breadth, ambition, and endurance. Yet the animating reason for the Constitution's success over seventy-five years is not merely its textual comprehensiveness or its celebrated catalogue of rights; it is the Constitution's capacity to be *Indian* in its operative imagination while remaining recognisably constitutional in global terms. The Constitution that came into force on 26 January 1950 did not arise as a mechanical importation of foreign institutional models. It emerged as an exercise in contextual constitutionalism: a deliberate process of adapting broadly shared constitutional ideas to the historically specific conditions of a post-colonial society marked by mass poverty, profound social stratification, and extraordinary linguistic, religious, and cultural plurality (Austin, 1966; Khosla, 2020). In this sense, India's democratic journey now spanning three-quarters of a century should be celebrated not as an accident of institutional survival, but as the product of a constitutional design that understood the difference between copying constitutional forms and cultivating constitutional legitimacy.

This chapter advances a central claim: the Indian Constitution's endurance is best explained by its *adaptive localisation*. The framers selectively borrowed institutional principles and structures from comparative constitutional experience, but consistently reworked them to meet local imperatives of integration, social justice, and democratic stability (Austin, 1966; Bhargava, 2010; Khosla, 2020). This adaptive approach also continued beyond 1950 through constitutional amendments and judicial interpretation, which at their best functioned as instruments of democratic accommodation rather than as destabilising ruptures (Kesavananda Bharati v. State of Kerala, 1973; Minerva Mills Ltd. v. Union of India, 1980).

2.1.1 Constitution-making beyond mechanical transplantation

Comparative constitutional experience demonstrates that constitutional "borrowing" is not inherently a threat to authenticity; what matters is whether borrowed ideas are translated into the normative and institutional grammar of the society concerned (Watson, 1974; Legrand, 1997; Hirschl, 2014). Legal institutions are not neutral devices that perform identically across contexts. They acquire meaning through social practices, political incentives, administrative capacities, and civic culture. Accordingly, constitution-making in a decolonising society is rarely, if ever, an exercise in mere transplantation. It is an exercise in constitutional *translation* a process of selecting, modifying, and embedding principles into lived social conditions (Hirschl, 2014; Khosla, 2020).

India's Constituent Assembly approached constitution-making with an acute awareness that democratic institutions would have to operate in conditions vastly different from those in which many canonical constitutional models evolved. Parliamentary government, judicial review, federal distribution of powers, and fundamental rights could not simply be placed into the Indian setting and expected to function as they had in Britain, the United States, or Canada. These institutional forms had to be re-engineered to serve the constitutional tasks of nation-building, integration, and social transformation after Partition and colonial rule (Austin, 1966).

2.1.2 India's post-colonial condition and the demand for localisation

The demand for localisation was not theoretical. It was a democratic necessity created by the material and social realities of independence. A constitutional democracy that begins its life amidst widespread deprivation and low literacy confronts a fundamental paradox: it must rely on citizen participation while simultaneously needing to build the social conditions that make participation meaningful (Khosla, 2020; Sen, 1999). India's constitutional project was therefore simultaneously political and developmental. It sought to establish representative government and also to authorise a state capable of pursuing social revolution through law (Austin, 1966).

One of the clearest indicators of the magnitude of the challenge is the long-run trend in literacy, which reflects both the initial constraints on democratic participation and the gradual capacity of constitutional governance to expand civic inclusion through welfare commitments. Official statistical compendia based on Census data document the dramatic rise in literacy over the post-independence period (MoSPI, 2016).

Table 2.1

All-India literacy rates by sex (Census years, %)

Census year	Female (%)	Male (%)	Total (%)
1951	8.86	27.15	18.32
1961	15.35	40.40	28.31
1971	21.97	45.96	34.45
1981	29.76	56.38	43.57
1991	39.29	64.13	52.21
2001	53.67	75.26	64.83
2011	64.63	80.88	72.98

Note. Literacy rates for 1951–1971 relate to population aged 5 years and above; rates for 1981 onwards relate to population aged 7 years and above (as reported in the source).

Source. Ministry of Statistics and Programme Implementation (MoSPI), *Women and Men in India 2016*, Table 3.1, based on Census of India/Office of the Registrar General (MoSPI, 2016).

The constitutional significance of such data is not merely descriptive. The constitutional system was designed to function under conditions where formal political equality would coexist with deep inequalities in capability and social power. The Constitution's localisation thus required not only a representative architecture, but also an explicit normative commitment to substantive equality and socio-economic transformation (Austin, 1966; Sen, 1999).

2.1.3 Adaptation as the foundation of constitutional legitimacy

Constitutional legitimacy is not achieved solely through philosophical coherence or textual elegance; it is generated through public acceptance, institutional performance, and the perceived capacity of the constitutional order to respond to collective needs (Fallon, 2005; Krishnaswamy, 2009). In India, adaptation became a foundational source of legitimacy because it enabled democratic continuity in a society facing centrifugal pressures. The Constitution established a framework in which electoral democracy could be normalised across time even as the social preconditions for a participatory polity evolved.

The endurance of electoral participation provides a measurable indication of this stabilising legitimacy. Election Commission data show that voter turnout has

remained substantial across decades, including in moments of political upheaval and institutional stress (ECI, 2025).

Table 2.2

Voter turnout in Lok Sabha elections (%, 1951–2024)

Election year	Voter turnout (%)
1951–52	45.67
1957	47.74
1962	55.42
1967	61.04
1971	55.27
1977	60.49
1980	56.92
1984–85	64.01
1989	61.95
1991–92	55.88
1996	57.94
1998	61.97
1999	59.99
2004	58.07
2009	58.21
2014	66.44
2019	67.40
2024	66.10

Note. The source notes that turnout for 2024 excludes the Surat parliamentary constituency because the election there was uncontested.

Source. Election Commission of India, AN ATLAS | Lok Sabha Elections 2024, Table T28.1 (ECI, 2025).

In a celebratory narrative of seventy-five years, these figures should not be read as mere statistical continuity. They reflect the institutionalisation of

constitutional democracy through adaptation: the translation of universal suffrage and electoral governance into a working practice across a subcontinent-sized polity (Khosla, 2020; ECI, 2025).

2.2 Colonial Legacy and Constitutional Continuity

India's constitutional localisation did not begin from a blank slate. The Constitution inherited colonial legal forms, administrative practices, and institutional routines that shaped the terrain within which the new democratic state would function. The framing project therefore involved a difficult balance: preserving administrative capacity and legal continuity while repudiating authoritarian logics embedded in colonial governance (Austin, 1966; Baxi, 1980).

2.2.1 Administrative inheritance from colonial governance

The colonial state left behind a centralised administrative apparatus characterised by a powerful executive, an entrenched bureaucracy, and a policing and revenue system designed more for control than participation. The post-colonial Constitution retained the idea of a professional civil service and an integrated administrative system, both because governance required capacity and because institutional rupture risked disorder (Austin, 1966). In this respect, continuity was not simply conservative; it was instrumental to the survival of a new democratic regime governing a vast and diverse territory.

At the same time, the Constitution sought to constitutionalise administrative power by binding it to fundamental rights, parliamentary accountability, and judicial review. The creation of constitutional offices and institutions such as an independent Election Commission and a higher judiciary with writ jurisdiction can be read as structural correctives to colonial executive dominance (Constitution of India, 1950/2025; ECI, 2025).

2.2.2 The Government of India Act, 1935 as a structural reference point

No account of India's constitutional adaptation is complete without acknowledging the structural influence of the Government of India Act, 1935. Scholars have long observed that the Act provided a ready framework for federal distribution, provincial administration, emergency powers, and institutional continuity, although it was fundamentally colonial in orientation (Austin, 1966). The Constituent Assembly did not merely copy the Act; it re-purposed structural components within a democratic constitutional order.

The 1935 Act's detailed architecture, including its schedules and distribution of powers, provided an administrative grammar that the framers could adapt to a

sovereign republic (Government of India Act, 1935). The constitutional significance lies in the transformation of purpose: a framework once designed to preserve imperial control could be reconfigured to enable democratic governance, subject to judicially enforceable limitations and representative accountability.

2.2.3 Balancing continuity with constitutional transformation

The retention of colonial-era administrative forms created enduring tensions. Administrative continuity could sustain state capacity, but it could also preserve authoritarian habits, especially in policing, preventive detention, and executive dominance. The Constitution's adaptive response was twofold. First, it constitutionalised power through rights, accountability, and independent institutions. Second, it created a normative architecture especially through the Directive Principles that authorised transformative governance beyond the limited horizons of colonial legality (Constitution of India, 1950/2025; Austin, 1966).

This balance between continuity and transformation is central to the Constitution's celebrated endurance. It allowed India to avoid the administrative collapse that sometimes accompanies decolonisation while still enabling a normative break: the shift from rule *over* the people to rule *by* and *for* the people.

2.3 Borrowed Constitutional Ideas and Indigenous Application

India's Constitution is often described as "borrowed" because it draws upon multiple constitutional traditions. Yet this description is incomplete unless one emphasises how borrowing was accompanied by sustained functional modification. The Indian Constitution is better understood as a comparative compilation *filtered through local imperatives* (Austin, 1966; Khosla, 2020).

2.3.1 Comparative constitutional sources of the Indian Constitution

The Constitution's institutional repertoire reflects comparative study and deliberation rather than imitation. Parliamentary government, federalism, fundamental rights, judicial review, and independent constitutional bodies each have identifiable comparative lineages; but their Indian configuration reflects distinctive design choices shaped by India's history of colonial rule, the trauma of Partition, and the demands of social reform (Austin, 1966; Hirschl, 2014). The Constituent Assembly debates underscore that comparative references served as resources for deliberation rather than as authoritative templates (Constituent Assembly Debates, 1948–1949).

2.3.2 Functional modification of borrowed institutions

The most significant constitutional adaptations appear not in the presence of borrowed institutions but in their *functional recalibration*. Parliamentary government was adopted, but within a written Constitution enforced by courts and structured by a strong catalogue of fundamental rights and constitutional limitations (Constitution of India, 1950/2025). Federalism was adopted, but under conditions that demanded national integration and administrative unity; hence the Constitution created a strong Union with emergency powers and a complex distribution of legislative competence (Austin, 1966).

Similarly, rights were adopted, but not in a purely classical liberal form. The constitutional design embedded rights within a social revolution. Equality would be pursued not only through formal non-discrimination, but also through provisions that authorised affirmative measures and protective discrimination (Constitution of India, 1950/2025; State of Madras v. Champakam Dorairajan, 1951).

2.3.3 Constitutional borrowing without loss of sovereignty

Borrowing does not negate originality; it often demonstrates constitutional confidence. In post-colonial constitution-making, sovereignty is asserted not by refusing comparative influence, but by controlling it by selecting, modifying, and embedding institutions to serve national purposes (Hirschl, 2014; Khosla, 2020). India's constitutional sovereignty is therefore reflected precisely in the manner of borrowing: a plural constitutional inheritance domesticated into an Indian democratic identity. In celebrating seventy-five years, this is an important corrective to simplistic narratives that treat "borrowed" as synonymous with "derivative." India's constitutionalism is original in its *method* a method of adaptation.

2.4 Social Stratification and Constitutional Design

Few constitutional democracies have confronted social stratification as deeply institutionalised as India's caste order. The Constitution's localisation required an explicit confrontation with historically entrenched hierarchies, not only as moral wrongs but also as structural threats to democratic equality (Ambedkar, 1948/1949; Austin, 1966).

2.4.1 Caste, inequality, and constitutional responsibility

Caste-based exclusion was not merely a social practice; it functioned as a system of graded inequality that shaped access to education, labour, land, and dignity. A constitutional democracy committed to political equality could not remain

neutral in the face of such hierarchy without rendering democracy hollow (Austin, 1966; Baxi, 1980). The Constitution therefore imposed constitutional responsibility upon the state to dismantle forms of exclusion that predated the Republic.

The abolition of "untouchability" and its practice in any form (Article 17) exemplifies this constitutional stance: the Constitution did not treat caste oppression solely as a matter of private prejudice; it constitutionalised its eradication as a public obligation (Constitution of India, 1950/2025).

2.4.2 Equality reinterpreted through social justice

The Indian Constitution's equality code cannot be reduced to a prohibition on classification. Its deeper logic is substantive equality. Formal equality alone could not address inherited disadvantages embedded in social structure. Hence the Constitution authorises special provisions for socially and educationally backward classes and for Scheduled Castes and Scheduled Tribes, allowing the state to treat unequal conditions unequally in order to move toward genuine equality (Constitution of India, 1950/2025; Indra Sawhney v. Union of India, 1992).

The early constitutional conflict over reservations illustrates adaptation in action. When the Supreme Court initially constrained certain forms of communal reservation, Parliament responded through constitutional amendment and legislative reform to clarify the constitutional space for affirmative measures (State of Madras v. Champakam Dorairajan, 1951; Constitution (First Amendment) Act, 1951). This dialogue underscores a constitutional system capable of recalibrating equality doctrine to social realities without abandoning constitutional principle (Austin, 1966).

2.4.3 Protective discrimination as constitutional adaptation

Protective discrimination, including reservations in legislatures, public employment, and education, is often portrayed as an exception to liberal equality. In the Indian constitutional context, it is better understood as a localisation of democratic equality an adaptation that treats political inclusion as incomplete unless historically excluded groups gain effective representation and access to opportunity (Austin, 1966; Indra Sawhney v. Union of India, 1992). The legitimacy of such measures is reinforced by their constitutional textual basis and their judicial elaboration, which together attempt to balance inclusion with constitutional constraints (Constitution of India, 1950/2025).

2.5 Linguistic, Religious, and Cultural Pluralism

India's pluralism posed a foundational constitutional problem: how to construct a democratic state that could accommodate diversity without dissolving into fragmentation. The Constitution's answer was not homogenisation but structured accommodation an approach that treated pluralism as a constitutional asset requiring governance mechanisms rather than as an obstacle to be suppressed (Bhargava, 2010; Austin, 1966).

2.5.1 India as a pluralistic constitutional society

The Constitution recognises that India is not a monolingual or monocultural nation-state in the classical European sense. It is a civilisational polity composed of multiple linguistic publics, religious communities, and cultural practices. Consequently, the constitutional aspiration to unity had to be pursued through legal forms of accommodation rather than through assimilationist coercion (Bhargava, 2010). This pluralistic constitutional society required careful calibration of language policy, minority rights, and secular governance.

2.5.2 Language policy and constitutional accommodation

Language was perhaps the most politically volatile marker of identity at the founding, and language policy demanded constitutional compromise. The Constitution's provisions regarding official language and the Eighth Schedule reflect a strategy of accommodation that avoids both forced monolingualism and unstructured multilingualism. Official documentation from the Ministry of Home Affairs notes that the Eighth Schedule was initially framed with 14 languages, later expanded through constitutional amendment to include 22 languages (Ministry of Home Affairs [MHA], 2017). A contemporaneous governmental statement reported in an official Press Information Bureau release similarly recorded the expansion through constitutional amendments (Press Information Bureau, 2004).

The constitutional meaning of this evolution is not simply linguistic. It embodies a constitutional technique: defusing identity conflict through recognition and gradual inclusion, using the Constitution itself as a platform for negotiated belonging. Even the ongoing existence of demands for further inclusion, acknowledged by official documents, illustrates that linguistic identity remains dynamic and that constitutional accommodation is a continuing process rather than a one-time settlement (MHA, 2017).

2.5.3 Religious freedom and non-theocratic secularism

India's secularism is not modelled on a rigid doctrine of strict separation. It is a non-theocratic constitutional order that protects freedom of conscience and religious practice while permitting the state to regulate secular aspects of religious institutions and to pursue social reform (Bhargava, 2010; Austin, 1966). This model reflects adaptation to a society in which religious identities are deeply embedded in social life and where the state must often mediate between religious freedom and constitutional commitments to equality and reform.

The constitutional protection of religious freedom is therefore balanced by the Constitution's transformative horizon. The Indian approach is frequently conceptualised as a form of principled accommodation one that respects religious plurality without surrendering constitutional supremacy or permitting religious domination of public power (Bhargava, 2010). This is a hallmark of localisation: secularism adapted to India's plural conditions rather than imported as an inflexible doctrine.

2.6 Federalism Tailored to Indian Conditions

Federalism in India reflects a constitutional paradox: the Constitution affirms a division of powers, yet constructs a strong centre. This design choice is best understood not as an inconsistency but as a deliberate adaptation shaped by the anxieties of national integration, the memory of Partition, and the administrative needs of development (Austin, 1966).

2.6.1 Reasons for rejecting classical federal models

Classical federalism often presupposes a relatively stable union of constituent units with strong pre-existing identities and administrative capacities. India's founding situation was different. The need to integrate former princely states, manage regional disparities, and consolidate sovereignty after Partition required a constitutional structure that could prevent disintegration while still enabling regional self-government (Austin, 1966). The Constitution's design therefore embeds federalism within an overriding commitment to unity and integrity.

2.6.2 Asymmetry and flexibility in Indian federalism

Indian federalism is neither purely symmetrical nor uniformly decentralised. It contains asymmetric arrangements, special provisions for particular regions, and differentiated institutional mechanisms designed to accommodate diversity without sacrificing state coherence (Austin, 1966; Tillin, 2013). Asymmetry

functions as a constitutional tool of inclusion. It enables the Constitution to recognise regional distinctiveness while maintaining an integrated constitutional order. Such mechanisms demonstrate that localisation often requires differentiated solutions rather than uniform rule.

2.6.3 Evolution towards cooperative federalism

The constitutional text is only one component of federal practice. Over time, the working of Indian federalism has evolved through political conventions, intergovernmental bargaining, and institutional experimentation. The trajectory toward cooperative federalism reflects a maturing constitutional culture in which Union and States increasingly engage through negotiation rather than unilateral assertion (Tillin, 2013). This evolution is consistent with the broader theme of this chapter: the Constitution's survival owes much to its capacity to adapt through practice as well as through text.

2.7 Directive Principles as Instruments of Localisation

The Directive Principles of State Policy are frequently misunderstood as merely aspirational statements. In the Indian context, they represent a strategic constitutional adaptation: a method of embedding socio-economic transformation within the constitutional order even when the state lacked the resources to constitutionalise socio-economic rights as immediately enforceable entitlements (Austin, 1966; Sen, 1999).

2.7.1 Socio-economic goals in a developing democracy

In a developing democracy, enforceable civil and political rights may secure political participation, but they cannot by themselves dismantle poverty, illiteracy, and structural inequality. The Directive Principles were designed to guide state policy toward welfare, education, health, and distributive justice, thereby constitutionalising development as a democratic obligation (Constitution of India, 1950/2025; Austin, 1966).

2.7.2 Harmonising liberty with social welfare

The Indian Constitution's originality lies in its attempt to harmonise liberty with social welfare. Fundamental Rights restrain the state, while Directive Principles authorise it to pursue the material conditions that make liberty meaningful for those historically excluded from social power (Austin, 1966; Sen, 1999). This is not an abstract synthesis. It is a localisation of constitutionalism for a society where deprivation could otherwise hollow out democratic citizenship.

2.7.3 Judicial engagement with Directive Principles

Over time, courts have treated Directive Principles as interpretive resources, integrating them into the understanding of rights and state obligations. This judicial engagement is part of India's adaptive constitutionalism: courts have read the Constitution as a coherent project of democratic transformation rather than as a compartmentalised catalogue of isolated provisions (Minerva Mills Ltd. v. Union of India, 1980). The subsequent constitutionalisation of education through amendment and jurisprudence further illustrates the interaction between directive goals and enforceable rights (Constitution (Eighty-sixth Amendment) Act, 2002; Unni Krishnan, J.P. v. State of Andhra Pradesh, 1993).

2.8 Constitutional Flexibility and Amendment Culture

A constitution's endurance depends not only on stability but also on its capacity for principled change. The Indian Constitution was designed with an amendment procedure that allows adaptation without collapsing constitutional identity (Constitution of India, 1950/2025).

2.8.1 The Constitution as an adaptable framework

India's amendment culture reflects the framers' recognition that a democratic society would change rapidly and that rigid constitutionalism could generate either irrelevance or rupture. The amendment procedure enables the constitutional order to absorb social and political transformation through lawful means rather than through extra-constitutional disruption (Austin, 1966).

2.8.2 Amendments as responses to local challenges

Many amendments respond to specifically Indian challenges: land reform, social justice policy, electoral administration, decentralisation through Panchayati Raj, and the periodic recalibration of centre–state relations. Even in contemporary times, official constitutional compilations are periodically updated to incorporate amendments enacted through democratic process, reflecting the living character of the constitutional text (Ministry of Law and Justice, 2025).

The Constitution (One Hundred and Sixth Amendment) Act, 2023, for example, is published in the Gazette and incorporated into updated constitutional editions, reflecting the continued role of amendment as an instrument of constitutional adaptation (Constitution (One Hundred and Sixth Amendment) Act, 2023; Ministry of Law and Justice, 2025).

2.8.3 Limits of adaptation and constitutional identity

Adaptation cannot be limitless if constitutionalism is to remain meaningful. The Supreme Court's basic structure doctrine represents an attempt to reconcile amendment flexibility with constitutional identity by limiting the power of constitutional alteration where it would destroy foundational principles (Kesavananda Bharati v. State of Kerala, 1973; Minerva Mills Ltd. v. Union of India, 1980). In the celebratory arc of seventy-five years, this doctrine can be read as one mechanism through which the constitutional system protects its democratic core even while permitting extensive change.

2.9 Judicial Interpretation as a Tool of Local Adaptation

Judicial interpretation has functioned as a crucial site of constitutional localisation. Courts have repeatedly been required to interpret rights and powers in a society marked by poverty, inequality, and rapid change. The Indian judiciary's most influential interventions often reflect a context-sensitive method: a willingness to interpret constitutional text in light of lived experience and democratic needs.

2.9.1 Context-sensitive constitutional interpretation

Indian constitutional adjudication has frequently moved beyond formalism to engage the social realities underlying disputes. This interpretive posture is visible in the development of procedural protections and the insistence that state power must operate through fairness and reasonableness (Maneka Gandhi v. Union of India, 1978). In conditions where administrative power is pervasive, such interpretive evolution serves as a localisation of rule of law: it translates constitutional liberty into operational safeguards.

2.9.2 Expansion of rights through lived experience

The expansion of rights jurisprudence has often occurred through judicial attention to dignity, livelihood, and social vulnerability. The recognition of livelihood as implicating the right to life is a paradigmatic instance of adaptation: rights were interpreted not as abstract freedoms but as protections that must speak to the material preconditions of human dignity (Olga Tellis v. Bombay Municipal Corporation, 1985). Similarly, the recognition of privacy as a constitutional right reflects the judiciary's attempt to interpret liberty and dignity in light of contemporary realities of surveillance and personal autonomy (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

2.9.3 Courts as mediators between text and society

The judiciary's role in India has not been merely to apply constitutional text but to mediate between constitutional ideals and social change. This mediating function has produced both celebrated innovations and contested expansions. Nonetheless, as an institutional phenomenon, it has contributed to constitutional endurance by enabling the Constitution to remain responsive without constant textual revision (Baxi, 1980; Khosla, 2020). This responsiveness, when disciplined by constitutional principle, is part of what makes India's seventy-five-year democratic journey not merely a story of survival but a story of constitutional maturation.

2.10 Adaptation as the Secret of Constitutional Endurance

2.10.1 Why the Indian Constitution has survived

The Indian Constitution has survived not because it is immune to conflict but because it contains mechanisms for negotiating conflict within constitutional channels. Its endurance reflects a distinctive constitutional temperament: to accommodate diversity through legal forms, to pursue social transformation through a combination of rights and directive commitments, and to refine constitutional meaning through amendment and adjudication (Austin, 1966; Bhargava, 2010; Khosla, 2020). The empirical continuity of democratic practice, including sustained voter participation across decades, provides one outward sign of this deeper constitutional legitimacy (ECI, 2025).

2.10.2 Adaptation without constitutional dilution

Adaptation is often misunderstood as compromise that dilutes constitutional principle. India's experience suggests the opposite: the Constitution's ability to localise constitutionalism strengthened the democratic project by making constitutional ideals governable and socially meaningful. The constitutional order did not merely proclaim equality, liberty, and fraternity; it constructed institutional strategies for realising them in a complex society. In celebrating seventy-five years of successful constitutional adoption and democratic continuity, one therefore celebrates not only the text, but the constitutional craft of adaptation the capacity to be stable without being rigid, and to be transformative without being unmoored.

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3 PHILOSOPHICAL AND IDEOLOGICAL FOUNDATIONS OF THE INDIAN CONSTITUTION

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3.1 Introduction

To celebrate India's democratic journey at the seventy-five-year mark is, at the deepest level, to celebrate the Constitution not merely as a juridical instrument but as a normative charter that has sustained political legitimacy, mediated social conflict, and disciplined state power through publicly justifiable reasons. The Indian Constitution is best understood as a moral-political settlement expressed in legal form: it is simultaneously a blueprint for governance and a statement of collective purposes. Its endurance across crises partitionary violence, insurgencies, authoritarian temptations, and persistent socio-economic inequality derives not only from institutional design but also from the philosophical architecture that informs constitutional interpretation and democratic practice (Austin, 1966; Khosla, 2020; Sathe, 2002).

In the Indian case, the Constitution is "normative" in at least three senses. First, it articulates foundational ideals justice, liberty, equality, fraternity through the Preamble and through a rights-and-duties vocabulary that frames citizenship as a moral status, not merely a legal capacity (Government of India, Ministry of Law and Justice, 2024). Second, it places governance under constitutional discipline by demanding that power be exercised through forms, procedures, and institutions that are publicly accountable. Third, it commits the state to a project of social transformation, rendering constitutionalism inseparable from democratic reform (Baxi, 1985; Sripati, 2007).

3.1.1 Constitution beyond legal text

A constitution may be read narrowly, as a set of commands issued by a sovereign and enforced by courts. Yet such a positivist reading cannot fully account for constitutional authority in a mass democracy. In India, the Constitution derives legitimacy from its claim to represent "We, the People," and from its orientation toward a just social order. This is why the constitutional text repeatedly

performs justificatory work: it identifies not only who governs but why governance is legitimate and what ends it must serve (Khosla, 2020). Even where the Constitution appears technical jurisdiction, finance, emergency powers it is underwritten by moral assumptions about dignity, freedom, and the permissible limits of state coercion (Government of India, Ministry of Law and Justice, 2024; Sathe, 2002).

The framers themselves acknowledged that constitutionalism cannot be reduced to drafting technique. B. R. Ambedkar's speech introducing the Draft Constitution makes explicit that the success of free institutions depends upon the diffusion of "constitutional morality," a cultivated disposition of reverence for constitutional forms combined with a culture of open criticism and lawful dissent (Constituent Assembly Debates, 1948, November 4). This idea is not ancillary; it supplies the ethical grammar for democratic disagreement in a plural society (Habermas, 1992; Khaitan, 2019).

3.1.2 The Indian Constitution as a response to colonialism, inequality, and diversity

The Indian Constitution is a postcolonial founding document. It responds to colonial governance that combined bureaucratic centralization with political subordination, and it seeks to transform a society marked by entrenched hierarchies of caste, gender, and class. The constitutional settlement therefore operates on two planes: it institutes political democracy through representative government and universal citizenship, while simultaneously acknowledging that political equality is fragile in the face of social inequality (Ambedkar, 1949/2024; Austin, 1966).

The Constitution also responds to the problem of diversity: linguistic, religious, regional, and cultural. Its philosophical ambition is not to erase difference but to construct a political unity that can contain difference without coercive assimilation. This is "unity in diversity" not as a slogan, but as a constitutional method: rights protect minorities; federalism accommodates regional aspirations; secularism structures the state's relationship to religion; and constitutional morality provides the ethical horizon for contestation (Bhargava, 2002; S. R. Bommai v. Union of India, 1994).

3.1.3 Constitutional philosophy as the invisible architecture of governance

Constitutional philosophy operates as an "invisible architecture" because it shapes interpretation even when not named. Doctrines such as the basic structure principle, proportionality in rights adjudication, and the interpretive

harmonization between Fundamental Rights and Directive Principles are not mere judicial inventions; they are attempts to preserve the Constitution's identity as a moral-political charter amid social change (Kesavananda Bharati v. State of Kerala, 1973; Minerva Mills Ltd. v. Union of India, 1980). The persistence of these doctrines across decades reflects the fact that constitutional governance in India is not exhausted by electoral competition; it is also a continuing argument about the values that structure public life (Dworkin, 1986; Sathe, 2002).

Table 3.1 below situates this normative project in the scale and deliberative intensity of constitution-making an aspect directly relevant to a seventy-five-year celebration, because democratic legitimacy begins with the seriousness of founding deliberation.

Table 3.1. Deliberative scale of India's Constitution-making

Indicator	Figure	Documentary basis
First meeting of the Constituent Assembly	9 December 1946	Parliament of India information pages on the Constituent Assembly (Rajya Sabha/Lok Sabha)
Time taken from first meeting to adoption	2 years, 11 months, 17 days	Ambedkar's references to Assembly duration
Number of sessions held	11	Parliament of India information pages on the Constituent Assembly
Total sitting days	165	Parliament of India information pages on the Constituent Assembly
Days devoted to clause-by-clause consideration of the Draft	114	Parliament of India information pages on the Constituent Assembly
Membership at inception	389	Parliamentary discussion records on the Constituent Assembly's composition

Membership after Partition (functioning strength)	299	Parliamentary discussion records on the Constituent Assembly's post-Partition composition
Signatories to the handwritten Constitution	284	Parliamentary discussion records referencing the handwritten Constitution's signatories

Source: Rajya Sabha Secretariat, Parliament of India. *Constituent Assembly*; Lok Sabha Secretariat, Parliament of India. *Constituent Assembly*; Parliament Digital Library. *Discussion records on 75 years of the Constitution*; Constituent Assembly Debates (1949).

3.2 Intellectual Origins of Indian Constitutional Thought

3.2.1 Western constitutional traditions and their selective adoption

The Indian Constitution is often described as "borrowed," yet the more accurate description is selective adoption under conditions of historical urgency. Ambedkar explicitly rejects the charge of slavish imitation: borrowing, he argues, is not plagiarism because "nobody holds any patent rights in the fundamental ideas of a constitution" (Constituent Assembly Debates, 1948, November 4). This claim is jurisprudentially significant: it frames constitutional design as a domain of comparative public reasoning rather than nationalist authenticity (Constituent Assembly Debates, 1948, November 4; Sripati, 2007).

The framers drew upon the Government of India Act 1935 for administrative and federal details, while also engaging with parliamentary governance, rights-based constitutionalism, and judicial review. Comparative influences entered not as wholesale transplants but as modular components reworked through local conditions, including mass poverty and social stratification. Historical scholarship on the drafting process emphasizes the role of constitutional advisers and committee reports in mediating comparative materials into a coherent textual scheme (Narayan, 2016; Sripati, 2007).

The philosophical importance of this selective adoption lies in the framers' commitment to democratic legitimacy rather than cultural essentialism. India's founding did not assume that constitutional forms must be "native" to be authoritative; instead, authority was anchored in the promise of a just democratic order. This orientation explains why postcolonial India could adopt

a rights catalogue, an independent judiciary, and constitutional supremacy while simultaneously attempting to transform social relations through affirmative constitutional commitments (Khosla, 2020; Baxi, 1985).

3.2.2 Indigenous political thought, civilisational ethics, and social reform movements

Indigenous political thought appears within the constitutional founding less as an unbroken civilisational continuity than as an argumentative resource contested among the framers. The Assembly debates reveal the presence of competing evaluations of village republicanism, decentralization, and community life. Ambedkar's critique of romanticized village "republics" is instructive: he describes them as sites of "localism" and "communalism," thereby insisting that the Constitution's unit must be the individual citizen rather than the corporate village (Constituent Assembly Debates, 1948, November 4). The philosophical lesson is that indigenous forms were not simply embraced; they were subjected to normative scrutiny under the demand for equal citizenship (Ambedkar, 1936/2014; Constituent Assembly Debates, 1948, November 4).

At the same time, reform movements anti-caste struggles, women's emancipation, labor mobilization, and nationalist anti-colonialism supplied a normative vocabulary of equality and dignity that decisively shaped constitutional ends. The constitutional commitment to abolish untouchability and to authorize special measures for historically oppressed groups must be read against this background: constitutionalism becomes a technology of social repair, not merely political organization (Government of India, Ministry of Law and Justice, 2024; Baxi, 1985).

3.2.3 Synthesis rather than imitation: India's distinctive constitutional reasoning

The Indian Constitution is best characterized as a synthesis of liberal rights, social-democratic commitments, and pluralist accommodations. Its distinctive reasoning emerges from the need to reconcile democracy with deep inequality. In many constitutional orders, individual liberty is the primary organizing value; in India, liberty is constitutionally tethered to equality and fraternity, a linkage Ambedkar makes central to the idea of "social democracy" (Ambedkar, 1949/2024). The philosophical synthesis is therefore internal to the Constitution's text and founding debates: the Constitution presupposes that freedom without social equality risks becoming domination by the few (Ambedkar, 1949/2024; Austin, 1966).

To celebrate seventy-five years of adoption is to recognize that this synthesis has functioned as a durable framework for democratic contestation. The Constitution does not eliminate ideological disagreement; it constitutionalizes disagreement by forcing political projects to justify themselves in the language of public reason, rights, and social justice. This is a principal reason why constitutional democracy, even when strained, remains the default grammar of Indian political life (Sathe, 2002; Baxi, 1985).

3.3 Liberalism and the Idea of Individual Dignity

3.3.1 Classical liberalism and the protection of civil liberties

Liberalism enters the Indian Constitution most visibly through the architecture of rights: equality before law, freedoms of speech and association, and protections against arbitrary deprivation of life and liberty. These guarantees reflect a classical liberal suspicion of unbounded state authority and a commitment to the legal protection of the individual (Government of India, Ministry of Law and Justice, 2024). Yet Indian liberalism is not merely "negative liberty." The Constitution's language of dignity and meaningful life, especially in later constitutional jurisprudence, indicates that liberty is conceptualized as the precondition for a life of value rather than as mere non-interference (Justice K. S. Puttaswamy (Retd.) v. Union of India, 2017).

The philosophical significance of rights protection in India lies in its democratization. Rights are not privileges of property or status; they are entitlements of citizenship. In that sense, the Indian Constitution constitutionalizes a moral equality that precedes social reality, thereby creating a normative standard against which governance and society may be judged. This is why rights discourse becomes central to democratic politics: it supplies a shared language through which marginalized groups can contest domination (Baxi, 1985).

3.3.2 Rule of law, equality before law, and limitations on state power

The rule of law tradition underwrites the Indian constitutional insistence that power must be exercised through general norms, public procedures, and reasons capable of being contested. Equality before law is not merely formal; it is a repudiation of status hierarchies as a basis of governance. The constitutional insistence on legality and judicial enforceability of rights constructs a state that is answerable to law rather than a law that is merely an instrument of state will (Government of India, Ministry of Law and Justice, 2024; Sathe, 2002).

This limitation on state power is central to the celebratory narrative of seventy-five years because it marks the difference between constitutional democracy and majoritarian rule. Electoral victories do not authorize the suspension of constitutional constraints. The continuous reiteration of equality and legality in constitutional adjudication reflects the enduring strength of liberal constitutionalism within India's broader ideological synthesis (Kesavananda Bharati v. State of Kerala, 1973; Sathe, 2002).

3.3.3 Indian adaptation of liberalism in conditions of mass poverty and hierarchy

Indian liberalism is structurally conditioned by the recognition that formal freedoms can be hollow in a society of deprivation. Consequently, the Constitution incorporates limitations on rights (for example, "reasonable restrictions") and simultaneously embeds social justice commitments that aim to make liberty substantively meaningful. This is not an abandonment of liberalism but a transformation of it: freedom is constitutionally tied to the capability of persons to live with dignity, which requires social and economic preconditions (Puttaswamy, 2017; Sripati, 2007).

The resulting constitutional logic is neither purely libertarian nor purely collectivist. It positions rights as constraints on power while allowing democratic government space to pursue redistribution and welfare within constitutional limits. The durability of this arrangement contested, recalibrated, yet enduring has been essential to India's democratic resilience over seventy-five years (Minerva Mills Ltd. v. Union of India, 1980).

3.4 Socialism, Welfare, and Distributive Justice

3.4.1 Constitutional socialism as a commitment to socio-economic transformation

The constitutional commitment to social and economic justice is not incidental. Although the explicit word "socialist" in the Preamble was inserted later, the founding text already contains a social-democratic orientation through the Directive Principles of State Policy and the aspiration to secure justice social, economic, and political (Government of India, Ministry of Law and Justice, 2024). The philosophical core is distributive justice: the state is obligated, as a matter of constitutional principle, to address material deprivation and structural inequality. This transforms the state from a night-watchman into a welfare-oriented constitutional order (Austin, 1966; Sripati, 2007).

The celebratory significance is direct. A constitution that survives for seventy-five years in a vast, unequal society must do more than protect formal freedoms; it must also sustain a moral claim that democratic government can improve the conditions of life. This claim is precisely what constitutional socialism supplies: it legitimizes the democratic state by linking political equality to socio-economic reform (Ambedkar, 1949/2024).

3.4.2 Directive Principles of State Policy as instruments of social justice

The Directive Principles are constitutionally declared "fundamental in the governance of the country," even while being non-justiciable in the classical sense (Government of India, Ministry of Law and Justice, 2024). Their philosophical function is twofold. They provide a moral compass for legislative and executive action, and they reframe constitutional interpretation by authorizing courts to read rights in light of social justice commitments. This interpretive relationship between Parts III and IV reflects a distinctive constitutional theory: rights and welfare are not adversaries but complementary constitutional goods (Minerva Mills Ltd. v. Union of India, 1980).

This arrangement embodies a democratic ethic. Transformative goals are not entrusted exclusively to courts; they are primarily placed within democratic politics, while constitutional adjudication supplies boundaries and interpretive guidance. The result is a constitutional structure that invites continuous political contest over welfare and redistribution without collapsing into authoritarian planning or laissez-faire neglect (Sathe, 2002).

3.4.3 Democratic socialism and the rejection of authoritarian economic control

Ambedkar's constitutional vision rejects both laissez-faire indifference and authoritarian socialism. In his concluding address, he explicitly notes that critics from communist and socialist positions sought constitutional guarantees for revolutionary economic transformation or absolute rights without limitation, and he resists both demands by defending parliamentary democracy and constitutionally mediated change (Ambedkar, 1949/2024). This defense is philosophically important: it grounds socio-economic transformation in democratic legitimacy and constitutional methods rather than in dictatorship or extra-constitutional rupture (Baxi, 1985).

The longevity of India's constitutional democracy reinforces Ambedkar's caution. Social justice pursued through constitutional means has permitted reform while maintaining political stability. Even when democratic socialism

remains incomplete, its constitutional presence has ensured that redistribution and welfare remain legitimate democratic aspirations rather than discretionary charity. That normative continuity is central to celebrating seventy-five years of constitutional adoption (Government of India, Ministry of Law and Justice, 2024).

3.5 Gandhian Philosophy and Ethical Constitutionalism

3.5.1 Moral politics, decentralisation, and non-violence as constitutional values

Gandhian philosophy emphasizes ethical self-rule, non-violence, and moral responsibility in political life. Within constitutionalism, Gandhian influence is less about institutional form than about ethical orientation: politics is not merely struggle for power but a domain of moral obligation. The constitutional project resonates with this ethical ambition insofar as it requires public power to be exercised under norms of justice and public justification (Austin, 1966). At the same time, the framers did not convert Gandhi's vision into a radically decentralized constitutional state; instead, they crafted a central parliamentary democracy while leaving decentralization as an aspirational directive (Government of India, Ministry of Law and Justice, 2024).

This selective incorporation illustrates a broader philosophical pattern: the Constitution is a site of moderated ideals. Gandhi's moral politics survives constitutionally as a constraint on violence and a commitment to participatory self-government, rather than as an immediate blueprint for dismantling centralized sovereignty (Constitution of India, Art. 40; Government of India, Ministry of Law and Justice, 2024).

3.5.2 Village self-governance, trusteeship, and participatory democracy

The constitutional directive to organize village panchayats expresses an aspiration toward participatory democracy and local self-governance (Government of India, Ministry of Law and Justice, 2024). Philosophically, this reflects the belief that democracy is not exhausted by periodic elections; it requires institutions of participation and deliberation closer to everyday life. Gandhian trusteeship an ethic of social responsibility attached to property and power does not appear as enforceable doctrine, yet its influence may be traced in the Constitution's welfare orientation and in the idea that economic power must be constrained by social obligations (Austin, 1966).

Yet Gandhian decentralization is constitutionally complicated by Ambedkar's powerful critique of village life as a site of caste oppression. The Constitution therefore negotiates between two ethical claims: participation requires local institutions, but equality requires protection against local domination. This tension is not a flaw; it is an example of ideological accommodation, one of the reasons the Constitution has remained adaptable over seventy-five years (Constituent Assembly Debates, 1948, November 4).

3.5.3 Gandhian ideals in Part IV and their contemporary relevance

Gandhian ideals persist constitutionally through the Directive Principles' focus on rural welfare, public health, and the organization of social and economic life in a manner consistent with dignity. Contemporary constitutional debates about decentralization, participatory governance, and community-based development repeatedly return to these principles, demonstrating that Gandhian constitutionalism functions as a continuing ethical resource rather than a completed institutional program (Government of India, Ministry of Law and Justice, 2024).

3.6 Ambedkarite Constitutionalism and Social Democracy

3.6.1 Social justice as the foundation of political democracy

Any serious account of the philosophical foundations of the Indian Constitution must place Ambedkar at the center, not only as chair of the Drafting Committee but as the principal theorist of social democracy in the Indian constitutional context. Ambedkar's concluding speech insists that political democracy is unsustainable without social democracy: "Political democracy cannot last unless there lies at the base of it social democracy" (Ambedkar, 1949/2024). He defines social democracy as a way of life recognizing liberty, equality, and fraternity as inseparable principles (Ambedkar, 1949/2024).

This is not rhetorical flourish; it is a constitutional theory of stability. Ambedkar warns that constitutional democracy may retain its form while losing its substance, devolving into dictatorship if social contradictions remain unresolved. Thus, the Constitution's moral project is the dismantling of graded inequality and the production of fraternity as a civic sentiment conditions necessary for democratic endurance (Ambedkar, 1949/2024). The relevance to a seventy-five-year celebration is immediate: India's democratic survival vindicates the constitutional aspiration while simultaneously confirming the urgency of Ambedkar's warning about persistent inequality (Parliament Digital Library records on 75 years of the Constitution).

3.6.2 Constitutional safeguards for historically oppressed communities

Ambedkarite constitutionalism is structurally committed to substantive equality. The Constitution abolishes untouchability and authorizes affirmative measures for disadvantaged groups, thereby rejecting the liberal fiction that identical treatment suffices in unequal conditions. These safeguards are not concessions; they are expressions of the constitutional principle that citizenship must be made real for communities historically excluded from equal status (Government of India, Ministry of Law and Justice, 2024).

The philosophical logic here is remedial and structural. Equality is not only a formal relation between individuals and the state; it is also a reorganization of social power. By constitutionally recognizing historical oppression and authorizing special measures, the Constitution treats the democratic state as responsible for correcting structural injustice. This approach aligns with broader theories of transformative constitutionalism in the Global South, where constitutions are tasked not simply with limiting power but also with reconstructing society (Sripati, 2007).

3.6.3 Law as an instrument of emancipation and structural correction

Ambedkar's constitutional thought treats law not as a neutral arbiter but as an instrument of emancipation. The Constitution supplies remedies and institutional pathways through which the oppressed may contest power. At the same time, Ambedkar insists on constitutional methods: in his concluding address, he famously urges that democracy in India must "hold fast to constitutional methods" and abandon extra-constitutional agitation when constitutional avenues exist, warning that such methods become a "Grammar of Anarchy" (Ambedkar, 1949/2024).

This insistence has deep philosophical implications for India's democratic endurance. It ties social transformation to legal-democratic procedures, thereby attempting to convert conflict into constitutional contestation. Later developments in public interest litigation and social action litigation may be read as institutional responses to this ambition: they represent efforts to make constitutional promises accessible to those excluded from ordinary political and legal power (Baxi, 1985). In a celebratory register, one may say that India's constitutional democracy has succeeded insofar as struggles for dignity have increasingly been articulated in constitutional terms, even as the material realization of dignity remains incomplete (Baxi, 1985; Government of India, Ministry of Law and Justice, 2024).

3.7 Nationalism, Unity, and Constitutional Patriotism

3.7.1 Inclusive nationalism versus ethnic or religious nationalism

The Constitution embodies an inclusive nationalism grounded in citizenship rather than ethnicity or religious identity. Its nationalism is political: loyalty is owed to constitutional principles and democratic institutions rather than to a singular cultural identity. Ambedkar warns explicitly against placing "creed above country," linking constitutional survival to civic loyalty and pluralist restraint (Ambedkar, 1949/2024).

This constitutional nationalism is a critical ideological foundation of India's democratic journey because it supplies unity without demanding homogeneity. It enables democratic disagreement within a shared political identity. In this sense, constitutional patriotism the idea that citizens identify with the constitutional order and its values provides a philosophical account of national unity suitable to a diverse society (Habermas, 1992; Bhargava, 2002).

3.7.2 Unity in diversity as a constitutional objective

Unity in diversity is operationalized constitutionally through rights, federal accommodations, and protections for cultural and religious freedom. The philosophical claim is that democratic unity must be compatible with plural forms of life. The Constitution's approach does not eliminate conflict; it seeks to manage conflict through rights and institutions, preventing difference from becoming domination (Government of India, Ministry of Law and Justice, 2024).

3.7.3 Citizenship, fraternity, and loyalty to constitutional values

Fraternity is a distinctive constitutional value because it links equality and liberty to solidarity. Ambedkar argues that without fraternity, liberty and equality would require coercive enforcement and could not become a natural course of social life (Ambedkar, 1949/2024). This is a philosophical claim about democratic culture: constitutional democracy depends upon civic virtues, not only institutional rules. Over seventy-five years, India's constitutional story can thus be read as an ongoing effort to cultivate fraternity through law, education, and democratic practice, even amid recurring social conflicts (Parliament Digital Library records on 75 years of the Constitution).

3.8 Secularism as a Constitutional Principle

3.8.1 Indian secularism: principled distance rather than strict separation

Indian secularism differs from strict separationist models. Its constitutional logic is to secure equal respect and freedom of religion while permitting state intervention for social reform and to prevent religious domination. This approach has been theorized as "principled distance," a model that allows contextual engagement rather than wall-like separation (Bhargava, 2002).

This framework becomes crucial in a multi-faith democracy. If the state were entirely indifferent to religion, it could fail to protect vulnerable individuals within religious communities; if it were religious, it would violate equality. Indian secularism navigates between these extremes, making it a foundational ideological condition for democratic stability (S. R. Bommai v. Union of India, 1994).

3.8.2 Religious freedom, reform, and state intervention

The Constitution guarantees freedom of conscience and the right to profess, practice, and propagate religion, but it also authorizes regulation on grounds such as public order, morality, health, and social welfare and reform (Government of India, Ministry of Law and Justice, 2024). This structure reveals a philosophical choice: religious freedom is protected as an aspect of dignity and autonomy, yet it is not permitted to override equality and public reason. The constitutional order thus treats religion as compatible with democracy only when consistent with the equal status of citizens (Bhargava, 2002; Government of India, Ministry of Law and Justice, 2024).

3.8.3 Judicial interpretation of secularism and its evolving meaning

The Supreme Court has repeatedly articulated secularism as a foundational feature of the constitutional order, linking it to the basic structure doctrine. In *S. R. Bommai*, the Court's reasoning emphasizes that democracy, secularism, and constitutional governance are intertwined, and that the misuse of constitutional powers that undermines secularism threatens constitutional legitimacy (S. R. Bommai v. Union of India, 1994).

This jurisprudence has philosophical significance for the seventy-five-year narrative: it demonstrates that constitutional democracy in India is not value-neutral. The state is constitutionally committed to a pluralist moral order, and courts are institutionally tasked with protecting that order against majoritarian and sectarian capture.

3.9 Constitutional Morality as a Governing Ethos

3.9.1 Meaning and origin of constitutional morality

The concept of constitutional morality enters Indian constitutional thought most authoritatively through Ambedkar. In his 1948 address, he draws upon Grote's account of constitutional morality as reverence for constitutional forms combined with open speech and lawful criticism, emphasizing that such morality is indispensable for free government (Constituent Assembly Debates, 1948, November 4). He then adds a decisive Indian inflection: "Constitutional morality is not a natural sentiment. It has to be cultivated" (Constituent Assembly Debates, 1948, November 4).

Philosophically, constitutional morality is an ethic of restraint and justification. It demands that political actors treat constitutional procedures and rights not as obstacles to be circumvented but as the very conditions of legitimate rule. This ethic is central to celebrating seventy-five years because it explains how democratic institutions can survive intense disagreement: the Constitution provides forms through which disagreement becomes political contest rather than civil conflict (Ambedkar, 1949/2024; Constituent Assembly Debates, 1948, November 4).

3.9.2 Tension between popular morality and constitutional values

The need for constitutional morality arises precisely because popular morality may conflict with constitutional values, especially in matters of equality, dignity, and minority rights. Constitutional morality thus functions as a counter-majoritarian ethic: it affirms that constitutional rights cannot be extinguished by social prejudice or political popularity. Indian constitutional jurisprudence has explicitly employed constitutional morality to justify rights-protective outcomes in contexts where majoritarian sentiment may be hostile (Navtej Singh Johar v. Union of India, 2018; Indian Young Lawyers Association v. State of Kerala, 2018).

This tension is not anti-democratic; it is intrinsic to constitutional democracy. Democracy is not only the rule of numbers but the governance of a political community under public principles that treat persons as free and equal. Constitutional morality supplies the normative logic through which India's democracy remains more than electoral majoritarianism (Habermas, 1992; Bhargava, 2002).

3.9.3 Role of courts and institutions in enforcing constitutional morality

Courts play a distinctive role by translating constitutional morality into enforceable doctrine. Yet constitutional morality cannot be judicialized entirely; it must be institutionalized through legislative deliberation, administrative legality, and civic education. Ambedkar's own worry is that democracy can be retained "in form" while giving way to dictatorship "in fact" if institutions and citizens abandon constitutional methods (Ambedkar, 1949/2024). Thus, constitutional morality is best seen as a distributed responsibility of constitutional institutions and citizens alike a conceptual bridge between constitutional text and democratic culture (Sathe, 2002).

3.10 Transformative Constitutionalism in the Indian Context

3.10.1 Constitution as an agent of social change

Transformative constitutionalism treats the constitution as a vehicle for restructuring social relations rather than merely limiting state power. In India, this orientation is visible in the constitutional commitment to abolish caste-based oppression, to secure social and economic justice, and to establish democratic governance for a diverse population. Comparative scholarship locates India among constitutional orders that assign the constitution an explicitly transformative mission (Sripati, 2007).

This transformative ambition is integral to the celebratory theme. The success of constitutional adoption over seventy-five years is not only survival; it is also the continuous capacity of the Constitution to serve as a language of emancipation for groups historically denied dignity. Even when transformation remains incomplete, the Constitution's normative horizon continues to reorder political expectations and democratic claims (Baxi, 1985).

3.10.2 Progressive interpretation and expansion of rights

Indian constitutional practice has often expanded rights through interpretation, especially by reading dignity into the meaning of life and liberty. The Supreme Court's articulation of privacy and autonomy as dimensions of dignity illustrates the interpretive movement from narrow legality to substantive constitutional values (Puttaswamy, 2017). This development is philosophically consistent with the founding insistence that democracy must be more than procedure: it must be a moral order that respects persons as ends in themselves (Constituent Assembly Debates, 1948, November 4).

At the same time, transformative interpretation remains contested because it raises questions about democratic legitimacy and institutional competence. The philosophical challenge is to ensure that progressive interpretation is anchored in constitutional text, structure, and values rather than in purely judicial will. Indian constitutional theory has therefore evolved through a continuous argument about how courts can act as guardians of constitutional morality without displacing democratic deliberation (Sathe, 2002; Baxi, 1985).

3.10.3 Balancing transformation with democratic legitimacy

The Indian Constitution provides a model of transformation through democratic methods rather than revolutionary rupture. Ambedkar's insistence on constitutional methods, coupled with the Directive Principles' placement of socio-economic change largely within political processes, reflects a commitment to democratic legitimacy even in pursuit of justice (Ambedkar, 1949/2024; Government of India, Ministry of Law and Justice, 2024). The long arc of constitutional governance suggests that this balance always imperfect has been central to the Constitution's survival and to the democratic credibility of transformative projects.

3.11 Philosophical Consensus and Constitutional Compromise

3.11.1 Negotiation, disagreement, and consensus in constitution-making

The Constitution is a product of deliberative compromise rather than ideological uniformity. Constituent Assembly records demonstrate repeated negotiation over federalism, minority safeguards, social reform, and the balance between executive authority and democratic accountability. This compromise is itself a democratic virtue. In the debates, democracy is explicitly described as "accommodation," underscoring that the Constitution institutionalizes disagreement rather than eliminating it (Constituent Assembly Debates, 1949, November 23).

Such compromise is not merely historical; it is a structural explanation for endurance. A constitution that represents only one ideological camp may fracture under changing political conditions. By contrast, India's Constitution contains within it multiple moral vocabularies liberal, socialist, Gandhian, Ambedkarite thereby permitting successive generations to pursue political projects without abandoning constitutional legitimacy (Khosla, 2020; Sathe, 2002).

3.11.2 Plural philosophies within a single constitutional framework

Plural philosophies coexist in the Indian constitutional framework through textual techniques. Rights protect individual liberty; Directive Principles pursue distributive justice; secularism structures religious pluralism; and federalism manages regional diversity. This plurality is not incoherent so long as it is oriented by the Preamble's normative trinity of justice, liberty, and equality, and by fraternity as the affective condition of democratic unity (Government of India, Ministry of Law and Justice, 2024; Ambedkar, 1949/2024).

To show how this plurality becomes legally operational, Table 3.2 maps the principal ideological streams to constitutional provisions and interpretive anchors.

Table 3.2. Ideological streams and their constitutional expression

Ideological stream	Normative emphasis	Textual sites	Interpretive anchors
Liberal constitutionalism	Individual liberty, legality, equality	Preamble; Arts. 14, 19, 21; remedy structure in Part III	Rights-dignity reasoning in *Puttaswamy* (2017)
Social-democratic constitutionalism	Distributive justice, welfare state	Part IV; Arts. 38-39, 41, 46; constitutional justice language in Preamble	"Harmony" between Parts III & IV in *Minerva Mills* (1980)
Gandhian ethical constitutionalism	Participation, decentralization, moral governance	Art. 40; Part IV's social welfare directives	Founding debates on village/self-rule tensions (CAD, 1948)
Ambedkarite social justice	Substantive equality, anti-caste emancipation, social democracy	Arts. 15-17; equality provisions; anti-untouchability; social justice directives	Ambedkar's "social democracy" and "constitutional methods" (CAD, 1949)

Secular constitutionalism	Religious freedom with reform and equality	Arts. 25-28; equality provisions	Secularism as foundational feature in *S. R. Bommai* (1994)
Constitutional morality	Rule-bound democratic contestation, dignity against prejudice	Preamble; institutional constraints; equality-dignity framework	"Constitutional morality… must be cultivated" (CAD, 1948); invoked in *Navtej* (2018) and *Sabarimala* (2018)

Source: Government of India, Ministry of Law and Justice. (2024). *The Constitution of India (As on 1 May 2024)*; Constituent Assembly Debates (1948, November 4; 1949, November 23-25); *S. R. Bommai v. Union of India* (1994); *Justice K. S. Puttaswamy (Retd.) v. Union of India* (2017); *Navtej Singh Johar v. Union of India* (2018); *Indian Young Lawyers Association v. State of Kerala* (2018).

3.11.3 Endurance of the Constitution through ideological accommodation

Ideological accommodation is not a weakness but a condition of constitutional longevity in plural societies. India's Constitution has endured because it supplies a shared framework within which liberals can argue for rights, social democrats for redistribution, decentralists for local governance, and pluralists for secular equality without requiring the abandonment of constitutional legitimacy. This is why, even after profound political changes, constitutional language remains central to claims-making, judicial reasoning, and democratic debate (Baxi, 1985; Sathe, 2002).

From the vantage point of seventy-five years, one may thus interpret the Constitution's success as the success of a particular moral method: a commitment to adjudicating social conflict through constitutional forms rather than through violence or authoritarianism. That method, as Ambedkar insisted, demands not only institutions but cultivated constitutional morality a lesson that remains foundational to India's democratic future (Ambedkar, 1949/2024; Constituent Assembly Debates, 1948, November 4).

3.12 Conclusion

The philosophical and ideological foundations of the Indian Constitution explain why its seventy-five-year journey is not merely a tale of textual persistence but

a story of normative resilience. Liberal commitments to dignity and legality, social-democratic aspirations for distributive justice, Gandhian ethical impulses toward participatory self-rule, Ambedkar's insistence on substantive equality and social democracy, and a distinct model of secular pluralism together constitute the Constitution's moral grammar. This grammar has enabled India to remain a "reasonably stable democracy" even amid recurrent challenges, precisely because democratic conflict has largely been channelled into constitutional argument and institutional practice (S. R. Bommai v. Union of India, 1994).

To celebrate India's democratic journey through the lens of constitutional philosophy is therefore to recognize a dual achievement. The first is institutional: a written constitution has provided continuity and constraint. The second is ethical: constitutional ideals have repeatedly supplied standards against which power is judged and to which democratic politics is compelled to respond. The Indian Constitution endures not because it is beyond contestation, but because it makes contestation legitimate only when conducted through constitutional methods. In the coming chapters, this book's commemorative aim celebrating seventy-five years of successful constitutional adoption will be deepened by examining how these philosophical foundations have shaped multiculturalism, federalism, rights, amendments, and the evolving moral relationship between society and the Constitution itself (Government of India, Ministry of Law and Justice, 2024; Parliament Digital Library records on 75 years of the Constitution).

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4 LIVING DOCUMENT OF MULTICULTURALISM

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4.1 Introduction

To speak of multiculturalism in India as a contingent political choice is to misunderstand both the circumstances of constitution-making and the juridical architecture that emerged from it. India did not become diverse after constitutionalism; rather, constitutionalism in India was compelled to take diversity as its first datum. Linguistic plurality, religious heterogeneity, caste and community structures, regional identities, and distinct modes of life were not episodic deviations from a national "mainstream"; they were the social reality within which the Constituent Assembly had to design a common political order (Austin, 1999; Bajpai, 2011; Khosla, 2020).

It is, therefore, analytically more accurate to treat multiculturalism in India not as an external add-on to a pre-existing nation-state, but as an internal condition of the state's legitimacy. In that sense, multiculturalism is a constitutional necessity: the Constitution had to perform the difficult task of building unity without demanding cultural sameness, and of enabling citizenship without dissolving inherited affiliations (Khilnani, 1997; Mahajan, 1998; Parekh, 2000). In the Indian context, pluralism was not merely to be tolerated. It had to be governed, institutionalised, and rendered compatible with democratic competition, without allowing any one identity to become a monopoly over the meaning of the nation (Bhargava, 2010; Choudhry, 2008).

This chapter is written in the celebratory register that animates the larger project of this book, *Celebrating India's Democratic Journey: 75 Years of Successful adoption of Constitution*, yet the celebration here is not rhetorical. It is jurisprudential and institutional. The Constitution was adopted on 26 November 1949 and came into force on 26 January 1950, thereby inaugurating a constitutional republic tasked with governing one of the world's most internally diverse populations (Press Information Bureau, 2021; MyGov, 2025). The survival and continuity of India's constitutional-democratic order across

decades of social transformation is inseparable from the Constitution's distinctive approach to diversity: not erasure, not forced assimilation, but constitutional accommodation bounded by the normative commitments of equality, liberty, and fraternity (Constitution of India, 1950; Austin, 1999; Khosla, 2020).

A further clarification is necessary. "Multiculturalism" in Western liberal theory is often framed around questions of immigrant integration, group-differentiated rights, and the liberal limits of cultural recognition (Kymlicka, 1995; Taylor, 1992). India's case is structurally different. Indian multiculturalism is primarily civilisational and internal: it concerns communities that are historically rooted within the territory, and whose differences were not produced by recent migration but by long historical processes, including empire, trade, religious reform movements, and colonial governance (Dirks, 2001; Metcalf & Metcalf, 2012; Parekh, 2000). It is also negotiated and institutional: it was not left to informal "tolerance," but translated into constitutional text, federal design, language policy, cultural and educational rights, and special provisions for historically marginalised groups (Bajpai, 2011; Choudhry, 2008).

In India, therefore, the Constitution is "living" not merely because courts interpret it dynamically or because amendments have updated it, but because its multicultural foundations have been continually tested, contested, and renewed through democratic politics, federal bargaining, and constitutional adjudication. The capacity of the constitutional order to absorb diversity-related conflicts, linguistic movements, minority claims, regional aspirations, and struggles over cultural meaning, without systemic constitutional breakdown is among the most significant achievements of India's 75-year constitutional journey (Austin, 1999; Khilnani, 1997; Varshney, 2002).

4.2 India's Plural Social Reality at the Moment of Constitution-Making

4.2.1 Civilisational Diversity and Pre-Constitutional Pluralism

India's pluralism predates the modern state. Long before constitutionalism arrived as a juristic technology of governance, the subcontinent contained multiple religious traditions, linguistic regions, customary legal practices, and community-based institutions (Metcalf & Metcalf, 2012; Sen, 2005). This historical fact matters for constitutional design. A Constitution drafted for a society whose diversity is deep and internally differentiated cannot operate on the assumption, common in certain models of nation-building, that political unity is best achieved through cultural standardisation.

Colonial governance, moreover, did not invent diversity; it reorganised and often reified it. The colonial state's classificatory practices, including censuses and legal codifications, hardened certain identities into administrative categories and political constituencies (Dirks, 2001). The postcolonial Constitution thus inherited not only a diverse society but also a politicised field of difference in which community identities had already been mobilised, sometimes violently, within the late-colonial public sphere (Chatterji, 2007; Jalal, 1994).

The framers' challenge, therefore, was not to create pluralism, but to render pluralism compatible with a single constitutional citizenship. This required two simultaneous moves: the constitutional affirmation of equal membership and the constitutional recognition that equal membership would be unstable if cultural difference were treated as illegitimate or invisible (Bajpai, 2011; Mahajan, 1998).

4.2.2 Partition, Trauma, and the Fear of Cultural Majoritarianism

The trauma of Partition constitutes the inescapable historical background of Indian constitutional multiculturalism. It would be naïve to treat minority safeguards as merely idealistic expressions of liberal tolerance. They were also protective responses to recent catastrophe and to the lived awareness that majoritarian mobilisation can destroy social life as well as constitutional order (Jalal, 1994; Menon & Bhasin, 1998).

Constitution-making took place in the shadow of communal violence, large-scale displacement, and the reconfiguration of political belonging. In these conditions, the fear that democratic majorities might become instruments of cultural domination was not abstract. The Constitution's legitimacy required that those who could plausibly feel vulnerable within electoral majorities, religious minorities, linguistic minorities, and certain regional communities, could nonetheless commit to the constitutional compact (Austin, 1999; Bajpai, 2011).

This is why the constitutional treatment of culture and religion in India is marked by a distinctive duality: robust guarantees of freedom and cultural continuity on the one hand, and explicit authorisation of social reform and equality-enforcing intervention on the other (Constitution of India, 1950, arts. 25-30; Bhargava, 2010). It is an architecture designed to prevent cultural domination without allowing cultural autonomy to become a shield for hierarchy and exclusion.

4.2.3 The Rejection of the Assimilationist Nation-State Model

A homogenising nation-state model would have been politically perilous and morally questionable in India. The Constituent Assembly debates around language, minority rights, and cultural protections reveal recurring anxiety about "unity" being misconstrued as "uniformity" (Constituent Assembly Debates, 1948-1949; Bajpai, 2011).

The language debates offer a particularly vivid illustration. The Assembly confronted strong demands for a singular national language, countered by concerns about domination and alienation in non-Hindi regions (Press Information Bureau, 2017; Constituent Assembly Debates, 1949). The constitutional solution did not fully satisfy any maximalist claim. It instead operationalised a compromise that sought to avoid cultural centralisation while preserving administrative continuity (Constitution of India, 1950, pt. XVII; Austin, 1999). In this compromise one sees a broader constitutional pattern: the rejection of an assimilationist framework in favour of an accommodative structure in which multiple identities could inhabit a shared constitutional space.

4.3 Constitutional Vision of Multiculturalism: Unity Without Homogenisation

4.3.1 Multiculturalism Embedded in Constitutional Text and Structure

The Indian Constitution does not treat diversity as a marginal problem to be managed through isolated exceptions. Rather, multiculturalism is embedded in the constitutional structure itself, visible across fundamental rights, language provisions, federal arrangements, and special protections (Constitution of India, 1950; Austin, 1999; Choudhry, 2008).

At the level of rights, the Constitution protects cultural and educational interests (arts. 29-30), religious freedom (arts. 25-28), and equality (arts. 14-15), while also enabling affirmative and protective measures for historically excluded groups (arts. 15(4), 16(4)). At the level of governance, the federal design allows regional self-rule and political representation to mediate cultural difference, while language provisions recognise multilingual administration rather than enforcing a single national tongue (Constitution of India, 1950, arts. 343-351, 345-347, 350A-350B).

At the level of territorial-cultural autonomy, the Fifth and Sixth Schedules and certain special provisions (including historically asymmetric arrangements) exemplify the Constitution's willingness to use differentiated governance

structures to preserve distinct ways of life and protect vulnerable communities (Baruah, 1999; Constitution of India, 1950, schs. V-VI). The point is not that the Constitution is purely multicultural in every doctrinal sense; rather, that it was consciously designed to ensure that plurality could be politically expressed without threatening constitutional unity.

4.3.2 Equality as Respect for Difference, Not Erasure of Difference

Indian constitutional equality is frequently misunderstood when viewed through a purely formal lens. Formal equality tends to treat difference as suspect: if the law differentiates, it risks discrimination; thus, equality is conceptualised as sameness. Yet in plural societies, sameness can become a vehicle of domination, because it forces minorities to measure themselves by majoritarian norms (Bajpai, 2011; Mahajan, 1998).

The Indian Constitution's approach is more complex. It condemns discrimination, but it does not require the erasure of cultural identity as a condition of equal citizenship. This is visible in the simultaneous presence of anti-discrimination norms and group-protective rights. Article 29 protects the right of any section of citizens with a distinct language, script, or culture to conserve it; Article 30 secures minority rights to establish and administer educational institutions (Constitution of India, 1950, arts. 29-30). These provisions do not "violate" equality; they operationalise equality under conditions of pluralism, where equal membership may require the preservation of difference (Bajpai, 2011; Parekh, 2000).

Constitutional adjudication has repeatedly treated minority protections as integral to constitutional balance rather than as dispensable privileges. The jurisprudence on minority educational institutions, developed through cases such as *T.M.A. Pai Foundation v. State of Karnataka* (2002) and subsequent decisions, illustrates the Court's attempt to reconcile minority autonomy with regulatory frameworks oriented to fairness and public interest (Dhavan, 2008; *T.M.A. Pai Foundation v. State of Karnataka*, 2002).

4.3.3 Fraternity as the Moral Glue of Multicultural Democracy

Among the values associated with Indian constitutionalism, fraternity is often invoked rhetorically and examined least systematically. Yet fraternity is central to the constitutional management of diversity. The Preamble's triad of liberty, equality, and fraternity signals that multicultural democracy is not sustained by law alone; it requires a constitutional culture in which citizens recognise each other as equal members despite difference (Constitution of India, 1950; Khosla, 2020).

B. R. Ambedkar's constitutional thought placed fraternity at the centre of democratic life. In his reflections on constitutional democracy, he treated liberty and equality as unstable without a social ethic that binds citizens into a shared political community (Constituent Assembly Debates, 1949; Rodrigues, 2017). Fraternity, in this sense, is not sentimental unity; it is the civic disposition that makes cultural coexistence possible without coercion.

For a 75-year democratic journey, this dimension is decisive. Institutions can accommodate diversity, courts can adjudicate conflicts, and elections can channel interests; but without a minimal ethic of belonging, multiculturalism degenerates either into fragmentation or into majoritarian coercion. The Constitution's enduring success lies partly in the way its text and institutions continuously educate political actors, however imperfectly, into the discipline of constitutional fraternity.

4.4 Language, Culture, and Constitutional Accommodation

4.4.1 Language Policy and the Avoidance of Cultural Centralisation

Language is among the most politically charged markers of identity, because it connects everyday life with state power: education, administration, employment, and cultural prestige. The Indian Constitution's language regime was shaped by this reality. Rather than declare a single "national" language, the Constitution establishes an official language for the Union while simultaneously permitting multilingual governance through transitional provisions, state autonomy, and special directives (Constitution of India, 1950, arts. 343-351, 345-347).

The intensity of the Constituent Assembly debates on language demonstrates that the framers recognised linguistic pluralism as both a democratic resource and a constitutional risk. Speeches in the debates reveal competing understandings of national integration, some equating it with the elevation of Hindi, others insisting that unity could not be purchased at the cost of linguistic domination (Constituent Assembly Debates, 1949; Press Information Bureau, 2017). The constitutional settlement rejected cultural centralisation not by suppressing Hindi, but by refusing to make linguistic identity a condition of national membership.

The demographic scale of linguistic diversity underscores why a monolingual constitutional order would have been structurally unstable. The Census of India's language classification exercise illustrates the complexity of mother tongues and languages as lived realities rather than neat administrative categories.

Table 4.1: Linguistic Diversity in Census 2011, From Raw Mother-Tongue Returns to Classified Languages

Census 2011 language classification stage	Count
Raw mother-tongue entries (raw returns)	19,569
Rationalised mother tongues	2,843
Classified mother tongues	1,369
Unclassified mother tongues (reported by fewer than 10,000 persons each)	1,474
Languages formed by grouping classified mother tongues	121
Scheduled languages (Eighth Schedule)	22
Non-scheduled languages	99
Mother tongues grouped under scheduled languages	123
Mother tongues grouped under non-scheduled languages	147

Source: Office of the Registrar General & Census Commissioner, India (Language Census, "Concepts and Definitions," Census 2011).

This official classification narrative is constitutionally illuminating. It demonstrates that linguistic diversity in India is not simply a matter of a few major languages; it is a layered continuum of mother tongues and speech communities. A constitutional order that sought to impose a single linguistic identity would have risked turning ordinary linguistic life into a site of political alienation and resistance.

4.4.2 Reorganisation of States and Linguistic Identity

The Constitution's "living" character is visible in the way it absorbed linguistic movements through legal and political reform rather than coercive suppression. The reorganisation of states on linguistic lines, most notably associated with the States Reorganisation Act, 1956, has often been misread as an accommodation that threatened unity. In fact, it functioned as a constitutional safety valve: it redirected linguistic assertion from secessionist temptation into federal reconfiguration within the Union (Austin, 1999; States Reorganisation Act, 1956).

The significance of this move is not merely administrative. It reflects a constitutional philosophy: diversity should have legitimate institutional pathways of expression. When cultural demands can be expressed within

constitutional channels, through federal bargaining, legislative reorganisation, and democratic participation, the constitutional order gains resilience. The alternative is to treat cultural claims as illegitimate, thereby incentivising extra-constitutional forms of mobilisation.

4.4.3 Cultural Autonomy and the Protection of Indigenous Traditions

Multicultural constitutionalism in India is not exhausted by language and religion. It extends to indigenous communities and distinctive modes of life, particularly in scheduled and tribal areas. The Fifth and Sixth Schedules provide governance mechanisms that recognise local institutions and protect community life from disruptive assimilationist pressures (Constitution of India, 1950, schs. V-VI; Baruah, 1999).

The deeper constitutional rationale here is that equal citizenship does not require identical institutional experience. For historically marginalised communities, especially that whose economic and cultural life is tied to land, forest, and customary institutions, formal equality without protective autonomy can translate into dispossession. Constitutional accommodation thus becomes a method of ensuring that democratic inclusion does not become cultural annihilation.

At the same time, the Constitution's protection of indigenous traditions is not a mandate to freeze culture in time. Cultural life is dynamic; constitutional multiculturalism must therefore protect continuity while permitting internal reform. This tension, between cultural preservation and constitutional transformation, will recur throughout this chapter, particularly in the discussion of constitutional morality and judicial balancing.

4.5 Religious Pluralism and the Indian Model of Secularism

4.5.1 Indian Secularism: Equal Respect Rather Than Strict Separation

The Indian Constitution does not adopt secularism in the classical separationist sense associated with certain Western constitutional models. Instead, Indian secularism is often theorised as one of principled engagement: the state maintains a stance of equal respect, intervenes to secure reform and equality, and refrains from endorsing any single religion as the basis of political membership (Bhargava, 2010; Smith, 1963).

This model is anchored in the constitutional text through guarantees of religious freedom and non-discrimination (Constitution of India, 1950, arts. 14-15, 25-28). It has also been constitutionalised through judicial doctrine. The Supreme Court has repeatedly treated secularism as a foundational feature of the

constitutional order, notably in *S.R. Bommai v. Union of India* (1994), where secularism was articulated as part of the Constitution's basic structure (Dhavan, 2008; *S.R. Bommai v. Union of India*, 1994).

The constitutional point is not that religion is banished from public life. Rather, religion is prevented from becoming a basis for state domination. The Constitution thus seeks to protect religious liberty while ensuring that political power remains accountable to constitutional values rather than religious command.

4.5.2 Freedom of Religion and Community Identity

The right to freedom of religion in India is simultaneously individual and associative. It protects conscience and personal belief, but it also recognises that religion is often lived through community institutions and collective practices (Constitution of India, 1950, arts. 25-26). The jurisprudence beginning with *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954) developed the "essential religious practices" approach, attempting, however controversially, to distinguish religious essentials from secular activities subject to regulation (*Shirur Mutt*, 1954).

From a multiculturalism perspective, this doctrinal trajectory reveals both the strengths and vulnerabilities of constitutional accommodation. The strength lies in recognising that communities require institutional space to maintain identity. The vulnerability lies in the risk that courts, by deciding what is "essential," may inadvertently freeze religion into juristically legible forms, thereby shaping religious life through constitutional interpretation (Dhavan, 2008; Mahmood, 2008).

4.5.3 Managing Religious Diversity Without Cultural Domination

India's constitutional arrangement attempts to prevent religious majoritarianism through multiple pathways: rights against discrimination, protections of minority culture and education, electoral democracy with universal adult franchise, and judicial review (Constitution of India, 1950; Austin, 1999). Yet the arrangement also accepts that religious diversity will generate conflict, particularly where personal law, gender equality, and community autonomy intersect.

The Constitution's design here is neither absolutist autonomy nor cultural assimilation. It is, instead, a framework for continuous negotiation, with constitutional morality and fundamental rights functioning as constraints on practices that violate dignity and equality. The judicial discourse around

constitutional morality in recent decades reflects this effort to maintain a plural public sphere without allowing cultural claims to override constitutional commitments (*Navtej Singh Johar v. Union of India*, 2018; *Indian Young Lawyers Association v. State of Kerala*, 2018).

4.6 Minority Rights as Instruments of Constitutional Balance

4.6.1 Conceptual Justification for Minority Protections

Minority rights in India are best conceptualised as stabilising instruments of constitutional democracy rather than dispensations of benevolence. In a majoritarian electoral system, the mere existence of universal suffrage does not guarantee that minorities will feel secure. The constitutional order must, therefore, provide assurances that democratic power will not become cultural domination (Bajpai, 2011; Mahajan, 1998).

The cultural and educational rights of minorities are thus part of the Constitution's architecture of trust. They signal that the Indian nation is not identical with the cultural life of its numerical majority, and that constitutional belonging does not require cultural surrender.

4.6.2 Educational and Cultural Rights of Minorities

Articles 29 and 30 are central to the constitutionalisation of multiculturalism. Article 29 protects the right to conserve a distinct language, script, or culture. Article 30 secures minority rights to establish and administer educational institutions (Constitution of India, 1950, arts. 29-30). The Constituent Assembly debates reveal that these provisions were not accidental; they were debated with explicit attention to the anxieties of minorities and the need to secure cultural continuity within a shared political community (Constituent Assembly Debates, 1948).

The Supreme Court's minority-rights jurisprudence has attempted to define the scope of these protections while also acknowledging the legitimate regulatory interests of the state. The line of cases from *St. Stephen's College v. University of Delhi* (1992) to *T.M.A. Pai Foundation v. State of Karnataka* (2002) demonstrates an effort to protect institutional autonomy without transforming minority rights into vehicles for unaccountable private power (Dhavan, 2008; *St. Stephen's College v. University of Delhi*, 1992; *T.M.A. Pai Foundation v. State of Karnataka*, 2002).

4.6.3 Minority Rights and the Limits of Cultural Autonomy

No constitutional democracy can treat cultural autonomy as absolute. The Indian Constitution places religious freedom under limitations of public order, morality, and health, and explicitly authorises the state to undertake social welfare and reform (Constitution of India, 1950, art. 25(2)). This structure signals that cultural protection is bounded by constitutional morality: where cultural practices violate dignity, equality, or individual freedom, the Constitution claims authority to intervene.

This is not a repudiation of multiculturalism. It is the constitutional insistence that multicultural democracy must remain compatible with the normative equality of persons. In a society where cultural practices can overlap with social hierarchy, constitutional protection of culture cannot become constitutional protection of domination.

4.7 Judiciary and the Interpretation of Multicultural Constitutionalism

4.7.1 Judicial Balancing of Diversity and Constitutional Unity

The Indian judiciary has played a significant role in sustaining multicultural constitutionalism through doctrines of balancing, proportionality-like reasoning (even when not labelled as such), and rights-based review. Courts have often faced claims in which cultural identity is asserted against administrative uniformity, or religious freedom against equality, or minority autonomy against regulatory governance (Dhavan, 2008).

A paradigmatic illustration of judicial sensitivity to plural conscience is *Bijoe Emmanuel v. State of Kerala* (1986), where the Supreme Court protected the freedom of conscience of Jehovah's Witness children who declined to sing the national anthem, holding that respectful silence could not be criminalised as disloyalty (*Bijoe Emmanuel v. State of Kerala*, 1986). The constitutional implication is profound: patriotic unity cannot be built by coercing cultural conformity.

4.7.2 Constitutional Morality as a Check on Cultural Absolutism

In contemporary constitutional discourse, constitutional morality has emerged as a doctrinal vocabulary through which courts adjudicate conflicts between social morality and fundamental rights. The concept has deep roots in the Constituent Assembly. Ambedkar invoked "constitutional morality" to emphasise disciplined obedience to constitutional forms combined with freedom of criticism and civic responsibility (Constituent Assembly Debates, 1948).

In recent cases, constitutional morality has been deployed to resist cultural absolutism and to insist that constitutional values, particularly dignity and equality, cannot be displaced by majoritarian social sentiment (*Navtej Singh Johar v. Union of India*, 2018; *Indian Young Lawyers Association v. State of Kerala*, 2018). Whether one agrees with every outcome, the interpretive method reflects a constitutional logic: multiculturalism is viable only when cultural claims are negotiated within constitutional limits rather than asserted as supra-constitutional authority.

4.8 Contemporary Challenges to Constitutional Multiculturalism

4.8.1 Rise of Cultural Nationalism and Identity Politics

The contemporary democratic landscape is marked by intensified identity-based mobilisation, often framed as cultural nationalism. Such mobilisation is not inherently anti-constitutional; democratic politics inevitably engages identity. The constitutional difficulty arises when national identity is defined in culturally exclusionary terms, thereby converting numerical majority into normative entitlement (Jaffrelot, 2021; Varshney, 2002).

The constitutional response cannot be reduced to moral exhortation. It must be institutional: robust rights adjudication, constitutional constraints on state power, and the cultivation of fraternity as a civic ethic. The durability of Indian democracy depends on whether constitutional multiculturalism remains a lived commitment rather than a merely formal arrangement.

4.8.2 Digital Media, Polarisation, and Cultural Fragmentation

Digital communication has restructured the conditions under which multicultural democracy operates. Platforms that enable rapid circulation of political content can strengthen democratic participation, yet they also accelerate misinformation, amplify polarisation, and intensify identity conflicts (Neyazi, 2021; Narayanan et al., 2019).

Empirical research indicates both high reliance on messaging platforms and serious anxiety about misinformation. A cross-national Pew Research Center survey reported that WhatsApp usage in India is substantial, and India is included among contexts where WhatsApp is among dominant platforms (Pew Research Center, 2024). The Reuters Institute's India Digital News Report documents widespread concern about whether online news is real or fake and highlights misinformation as a salient issue in the Indian media ecosystem (Reuters Institute for the Study of Journalism, 2025).

For constitutional multiculturalism, the risk is not only misinformation as such; it is the fragmentation of a shared public sphere into hostile identity-silos. When citizens encounter one another primarily through algorithmically intensified stereotypes, the constitutional ethic of fraternity is strained. The constitutional problem is thus cultural and institutional: sustaining plural democracy requires both rights and a communicative environment in which disagreement does not become dehumanisation.

4.8.3 Migration, Urbanisation, and New Forms of Diversity

Urbanisation and internal migration generate new forms of multiculturalism that do not map neatly onto traditional frameworks of linguistic region or religious community. Cities become spaces where multiple identities cohabit without the stabilising effect of shared local culture. This produces both cosmopolitan possibility and new vulnerability: informal segregation, labour-market exclusion, and cultural anxiety can intensify when diversity is experienced as competition over scarce resources (Khilnani, 1997; Varshney, 2002).

Constitutional multiculturalism must therefore be understood as an evolving project. The Constitution's text cannot anticipate every new form of diversity; its task is to provide principles and institutions capable of governing diversity as it changes shape across generations.

4.9 Multiculturalism as Evidence of the Constitution's Living Character

The Constitution's living character is often discussed in terms of judicial interpretation or formal amendment. Yet multiculturalism offers a more sociologically grounded measure of constitutional vitality: the ability of the constitutional order to absorb difference-related conflict without disintegrating into either authoritarian uniformity or territorial fragmentation.

Linguistic accommodation exemplifies this vitality. The constitutional recognition of languages has expanded over time through amendment, demonstrating that cultural recognition is not frozen at the founding moment but can evolve through constitutional process.

This constitutional evolution is more than symbolic. It illustrates that the Constitution has remained responsive to claims of recognition in a manner that uses legal form rather than extra-constitutional rupture. That, in turn, is a central reason why India's democratic journey can plausibly be celebrated as a story of constitutional success: demands rooted in identity have repeatedly been channelled into constitutional negotiation rather than civilisational conflict.

Religious plurality similarly demonstrates both the magnitude of India's diversity and the stakes of constitutional accommodation. Official census-linked data show that India remains home to multiple large religious communities, including Hindus (79.8%) and Muslims (14.2%), alongside Christians, Sikhs, Buddhists, Jains, and others (Office of the Registrar General & Census Commissioner, India, 2015). The constitutional task has been to ensure that such plurality does not translate into graded citizenship.

Table 4.2: Constitutional Expansion of the Eighth Schedule, From 14 to 22 Scheduled Languages

Constitutional moment / amendment	Languages added	Total scheduled languages after change
Constitution as commenced (1950)	Original set of 14 languages	14
21st Constitutional Amendment (1967)	Sindhi	15
71st Constitutional Amendment (1992)	Konkani, Manipuri, Nepali	18
92nd Constitutional Amendment (effective 2004)	Bodo, Dogri, Maithili, Santhali	22

Source: Press Information Bureau (2004) summary of the Eighth Schedule and subsequent additions.

Multiculturalism, therefore, is not merely one theme among others in India's constitutional narrative. It is a diagnostic of constitutional endurance. Over the decades, the Constitution has functioned as a common language of contestation, allowing communities to argue, demand, and resist not as enemies of the state, but as constitutional actors. This capacity to convert diversity from a centrifugal force into a negotiated constitutional reality is among the most significant achievements of India's constitutional republic across its first 75 years (Austin, 1999; Bajpai, 2011; Khosla, 2020).

4.10 Conclusion

India's constitutional multiculturalism is best understood as an institutional and moral project: it is institutional because diversity is embedded in rights, federal arrangements, and language policy; it is moral because it depends on fraternity

as a civic orientation that makes plural democracy viable. The Constitution's success, celebrated in this book's broader theme of 75 years of constitutional adoption and democratic endurance, rests substantially on the fact that it constitutionalised diversity rather than attempted to eliminate it.

The chapter has argued that Indian multiculturalism differs from many Western theoretical models not because it is less committed to liberty and equality, but because it responds to a different historical condition: a civilisation-state whose plurality is internal, ancient, and politically mobilised. The Constitution's genius lies in creating a shared political identity, constitutional citizenship, without requiring cultural surrender. Yet the chapter has also emphasised that multiculturalism is always unfinished. Contemporary pressures, polarised digital public spheres, sharpened identity politics, and evolving urban diversity, test the Constitution's accommodative capacity.

To celebrate 75 years of the Constitution is, therefore, not to claim that multicultural harmony is complete, but to recognise that the constitutional order has provided a resilient framework for negotiating difference without constitutional collapse. In that recognition lies the deeper meaning of the Constitution as a living document of multiculturalism, one that continues to demand from citizens and institutions alike the disciplined practice of constitutional morality and the sustaining ethic of fraternity.

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5 FEDERALISM: AN INDIAN EXPERIMENT

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5.1 Introduction

5.1.1 Federalism as a method of governing diversity rather than a purely territorial arrangement

Indian federalism is best approached not as a static diagram of territorial competence, but as a constitutional method for governing an exceptionally plural society while sustaining the authority of a single constitutional order. The text itself signals this ambition in the foundational proposition that "India, that is Bharat, shall be a Union of States" (The Constitution of India, 1950, art. 1). The phrase "Union of States" has long been read as more than semantics: it expresses a commitment to political unity that is juridically anchored, even as it constitutionally recognizes statehood as a vital site of democratic self-government (Austin, 1966; Seervai, 1991/1993; Khosla, 2020).

In classical federal theory, federalism often appears as an arrangement between coordinate units, intended primarily to preserve local autonomy against central overreach and to manage geographically defined interests (Wheare, 1951). The Indian Constitution, by contrast, responds to the problem of diversity in at least three interlocking registers: socio-cultural plurality (language, religion, region), developmental disparity (uneven administrative and fiscal capacity), and the aftermath of imperial and Partition-era state formation (Adeney, 2017; Austin, 1966). Federalism therefore becomes a strategy of constitutional integration: it distributes power to secure participation and accountability, but it also concentrates certain powers to prevent disintegration and to enable nation-wide governance in a poor and newly independent polity (Granville Austin's "cooperative federalism" vocabulary is instructive here, though it must be read alongside later scholarship that emphasizes bargaining and contestation as much as cooperation) (Austin, 1966; Tillin, 2016; Arora & Verney, 1995).

To describe Indian federalism as "experimental" is not to suggest improvisation without principle. Rather, the "experiment" consists in how constitutional

design, political practice, and judicial doctrine continuously recalibrate the relationship between unity and diversity. The distribution of legislative subjects under Article 246 and the Seventh Schedule is only the visible architecture; the deeper dynamics emerge through concurrency, fiscal dependence, administrative interpenetration, emergency provisions, and the judiciary's mediating role in federal disputes (The Constitution of India, 1950, arts. 246, 254, 263, 356).

5.1.2 The "Indian experiment" thesis and the book's overarching theme of democratic endurance

This chapter is situated within the overarching theme of this book *Celebrating India's Democratic Journey: 75 Years of Successful Adoption of the Constitution* by treating federalism as one of the Constitution's most strenuous endurance tests. From 26 January 1950 onward, Indian democracy has had to hold together a subcontinent-scale electorate, multiple party systems and regional movements, and significant inequalities of wealth and capability, all while maintaining the legitimacy of constitutional government. The survival of the constitutional order through these pressures cannot be understood without examining the federal design that channels conflict into constitutional forms legislative bargaining, fiscal transfers, intergovernmental councils, and adjudication rather than allowing it to destabilize the polity (Austin, 1966; Bhargava, 2008; Tillin, 2016).

Federalism has been persistently contested in India precisely because it bears the weight of multiple constitutional commitments at once: national integrity, democracy, social transformation, and accountable governance. It is tested when States demand greater autonomy, when the Union asserts national priorities, when fiscal stress intensifies distributional conflict, and when emergencies tempt central dominance (Adeney, 2017; Saxena, 2006). Yet the constitutional system has, for most of the Republic's history, metabolized these conflicts through institutional adaptation rather than constitutional collapse an achievement that is especially noteworthy in comparative perspective among post-colonial democracies (Stepan, 1999; Linz & Stepan, 1996).

5.1.3 Map of the chapter: structure, key debates, and analytical lens

The chapter proceeds from founding imperatives to contemporary pressures. It first explains why India adopted a distinct federal form shaped by Partition, integration, and developmental governance. It then analyzes constitutional architecture: the "Union of States" idea, the distribution of powers, and coordination mechanisms. Subsequent sections examine asymmetry and special arrangements, fiscal federalism (including Finance Commissions and the Goods

and Services Tax), administrative federalism, emergency provisions as stress tests, and the judiciary's role as federal umpire. The chapter then turns to cooperative and competitive federalism in the contemporary phase and concludes by proposing reform directions for the next twenty-five years that seek recalibration without rupture, consistent with the Constitution's demonstrated capacity for democratic endurance (Austin, 1966; Khosla, 2020; Adeney, 2017).

5.2 The Founding Context: Why India Chose a Distinct Federal Form

5.2.1 Partition, integration, and the imperative of a strong Union

The Constitution's federal form was forged in the shadow of Partition and amid the practical challenge of integrating hundreds of princely states into a single constitutional polity (Austin, 1966; Menon, 1956). This context shaped a design that is often described as "holding together" federalism: unlike "coming together" federations formed by a compact among previously sovereign units, India's federation sought to hold together a newly independent and territorially unsettled polity by constitutionally creating States within an indestructible Union (Stepan, 1999; Adeney, 2017).

The textual foundations of this approach are visible not only in Article 1's "Union of States" formulation but also in Parliament's power to form new States and alter existing ones under Articles 2–4, a power not typically found in classical federations in such expansive form (The Constitution of India, 1950, arts. 1–4). Such provisions underscore that the Constitution does not treat States as pre-constitutional sovereigns; rather, it constitutionalizes statehood as a form of democratic governance within a single national constitutional identity (Seervai, 1991/1993; Jain, 2016). The founding generation's concern was not abstract centralization; it was constitutional survival. The fear of fragmentation exacerbated by Partition violence, refugee flows, and the uncertain loyalties of princely administrations made a strong Union appear as the precondition for any meaningful democracy and rights regime (Austin, 1966; Chandra, Mukherjee, & Mukherjee, 2008). The "Indian experiment" therefore begins from a hard political truth: democratic federalism would have to be simultaneously integrative and accommodative in order to endure.

5.2.2 Developmental governance and administrative capacity as drivers of centralisation

A second founding driver of India's federal choices was the developmental condition of the Republic. Constitution-making occurred in a context of mass

poverty, low state capacity, and a perceived need for coordinated economic planning. The institutional history of the early Republic particularly the rise of centralized planning reinforced the belief that development required national coordination of resources and standards, even while democratic legitimacy required meaningful provincial and later state-level participation (Austin, 1966; Rudolph & Rudolph, 1987; Frankel, 2005).

This developmental centralization was never purely technocratic. It intersected with the constitutional allocation of legislative power, the fiscal dominance of the Union, and the administrative architecture of the All-India Services. Together, these elements produced what may be termed a "nationalized" developmental state operating through multi-level governance rather than a neatly separated dual polity (Arora & Verney, 1995; Saxena, 2006). The constitutional point is not that the States were irrelevant; it is that state autonomy was structured within a system that prioritized national integration and distributive development as central democratic objectives (Bhargava, 2008).

5.2.3 Diversity, language, and region: federalism as accommodation

If the Union's strength was a survival strategy, federalism's very presence was an accommodation strategy. India's linguistic diversity, regional identities, and cultural plurality meant that a unitary model risked democratic alienation, whereas federal recognition allowed political aspirations to be expressed through constitutionally legitimate state institutions (Tillin, 2016; Brass, 1994). The reorganization of States on linguistic lines in the 1950s and 1960s is frequently interpreted as a decisive moment of democratic consolidation: instead of treating linguistic demands as threats, the constitutional system absorbed them through legal and political redesign, thereby converting potentially destabilizing identity movements into governable democratic forms (Tillin, 2016; Austin, 1966).

Federalism thus became a language of recognition. The Union remained indestructible, but within it, the State emerged as a critical site where democratic representation could track the social facts of language, region, and culture. This is a central theme in explaining why Indian democracy despite deep diversity has remained constitutionally continuous across seventy-five years.

5.3 Constitutional Architecture of Indian Federalism

5.3.1 "Union of States" and the constitutional meaning of indestructibility

The constitutional meaning of indestructibility in India is rooted in the idea that sovereignty resides in the Constitution, not in any one level of government. The

phrase "Union of States" in Article 1 is therefore often read as a rejection of a treaty-like federal compact. It affirms a single constitutional people, constituted through a foundational act of self-giving ("We… do hereby adopt, enact and give to ourselves this Constitution"), and organized territorially through States for democratic governance (The Constitution of India, 1950, pmbl., art. 1).

Parliament's authority under Articles 2–4 to admit new States and alter existing state boundaries further underscores that statehood is constitutionally created and reorganizable (The Constitution of India, 1950, arts. 2–4). This does not negate federalism; it defines its Indian form. The States are not mere administrative units, but neither are they sovereign equals of the Union. The constitutional design thereby rejects both secessionist sovereignty and homogenizing unitary absolutism, seeking instead a stable middle ground: unity secured by constitutional supremacy, diversity accommodated by state institutions (Seervai, 1991/1993; Khosla, 2020).

5.3.2 Distribution of legislative and executive powers: lists, subjects, and overlaps

The principal architecture of legislative federalism lies in Article 246 and the Seventh Schedule, which distribute subjects among the Union List, State List, and Concurrent List (The Constitution of India, 1950, art. 246). This tri-partite scheme departs from dualist federalism because it constitutionalizes overlap as an instrument of governance. Concurrency is not an accident; it is a constitutional technique enabling the Union and States to legislate in shared domains such as criminal law and procedure, education (historically), forests (after the 42nd Amendment), and social welfare where nationwide standards and local variation must coexist (Jain, 2016; Seervai, 1991/1993).

The constitutional management of overlap is visible in the repugnancy rule under Article 254, which gives priority to Union law over State law in the Concurrent List, subject to the possibility of Presidential assent for certain State laws (The Constitution of India, 1950, art. 254). Moreover, the Union's residuary power under Article 248 strengthens central capacity in domains not enumerated in the State or Concurrent Lists, a feature that differentiates India from some other federations where residuary powers often lie with constituent units (The Constitution of India, 1950, art. 248).

Beyond the lists, the Constitution provides additional routes for Union legislation in State domains under specified conditions: national interest resolutions in the Council of States (Article 249), emergency legislation (Article 250), legislation on State request (Article 252), and implementation of

international obligations (Article 253) (The Constitution of India, 1950, arts. 249–253). These provisions reveal the constitutional logic of Indian federalism: the Union is empowered not as an abstract preference for central dominance, but as a constitutional response to coordination problems in a large, diverse, and developmentally uneven democracy (Austin, 1966; Adeney, 2017).

5.3.3 Institutional mechanisms for intergovernmental coordination

If concurrency generates contestation, institutions of coordination convert contestation into governable practice. The Constitution anticipates intergovernmental coordination through Article 263, which authorizes the President to establish an inter-State Council to inquire into disputes, investigate matters of common interest, and make recommendations for better coordination of policy and action (The Constitution of India, 1950, art. 263). This is a distinctive constitutional move: it recognizes that federal stability requires not merely legal demarcation but also structured dialogue.

In practice, the Inter-State Council was constituted by Presidential Order on 28 May 1990, following the recommendation of the Sarkaria Commission on Centre–State relations (Inter-State Council Secretariat, Government of India, n.d.). The Council's significance lies less in the frequency of its meetings and more in its constitutional symbolism: it affirms that Indian federalism is meant to function through consultation and dispute-management, not solely through litigation or unilateralism.

Administrative coordination is also institutionalized through provisions enabling shared services and common standards. Article 312 authorizes the creation of All-India Services, embedding a distinctive administrative federalism in which senior bureaucratic cadres operate across Union and State levels, stabilizing governance capacity while also provoking recurring debates about state autonomy (Jain, 2016; Saxena, 2006). The constitutional point is that Indian federalism is not a simple separation of governments; it is an interlocking system where coordination is a constitutional necessity.

5.4 Asymmetry and Special Arrangements: Federalism by Differentiation

5.4.1 Asymmetry as a constitutional tool of inclusion

Indian federalism is not symmetrical. While many federations aspire to treat constituent units uniformly, the Indian Constitution accommodates differentiated histories and conditions through special provisions and schedules. Asymmetry functions here as a constitutional tool of inclusion: it

recognizes that equal treatment in form may produce unequal outcomes in substance when regions differ dramatically in geography, security conditions, cultural distinctiveness, and administrative capability (Adeney, 2017; Tillin, 2016).

The Constitution's very openness to creating and reorganizing States, combined with special provisions for certain States under Part XXI (for example, provisions of the "371" series), reflects a pragmatic constitutionalism: it offers tailored arrangements to keep diverse regions within the constitutional mainstream rather than forcing uniformity that might invite alienation (Jain, 2016). This asymmetry should be understood as continuous with the book's broader theme of democratic endurance: the Republic has survived in part because the Constitution has allowed differentiated accommodation without dissolving constitutional unity.

5.4.2 Tribal governance and protective federalism

One of the most normatively significant forms of asymmetry concerns tribal governance and protective arrangements. The Fifth and Sixth Schedules reflect a constitutional recognition that standard state institutions might not adequately protect indigenous communities' land, culture, and self-governance. These schedules embed what may be termed "protective federalism," where territorial autonomy and administrative special regimes are used to secure substantive equality and cultural survival (Bhargava, 2008; Galanter, 1984).

This protective logic also connects federalism with social justice an animating theme of India's constitutional project. By constitutionally differentiating governance for certain areas, the Constitution makes a claim about democratic legitimacy: that legitimacy depends not only on majoritarian representation, but also on safeguarding vulnerable communities against domination by more powerful social and political groups (Galanter, 1984; Austin, 1966).

5.4.3 State reorganisation and the flexibility of territorial federalism

The territorial flexibility of Indian federalism is among its most consequential democratic innovations. Where rigid territorial arrangements often make identity conflicts existential, India's constitutional structure has repeatedly treated territorial redesign as negotiable within constitutional procedure. Parliament's power under Article 3 to alter state boundaries is a legal instrument through which political demands can be processed without constitutional rupture (The Constitution of India, 1950, art. 3).

The linguistic reorganization of States is widely seen as an example of this flexibility at work: the constitutional order survived not by suppressing linguistic movements, but by redesigning territorial units to better align democratic representation with linguistic identity, thus enhancing participation and reducing alienation (Tillin, 2016; Brass, 1994). This adaptive capacity is central to any serious account of why the Constitution has endured for seventy-five years: it demonstrates the ability to accommodate demands for recognition within constitutional channels rather than through extra-constitutional conflict.

5.5 Fiscal Federalism: Money, Responsibility, and Democratic Accountability

5.5.1 The logic of fiscal federalism: revenue capacity versus expenditure responsibility

Federalism is not merely a distribution of legislative subjects; it is a distribution of fiscal power. In India, as in many large democracies, the vertical mismatch between revenue capacity and expenditure responsibility is structurally significant. The Union has broader and more buoyant tax handles, while States carry heavy responsibilities for welfare delivery, public health, education, policing, and local infrastructure (Rao & Singh, 2005; Saxena, 2006).

This mismatch has constitutional consequences. When States depend heavily on transfers, fiscal dependence can translate into policy dependence, reshaping federalism in practice even if formal legislative competence remains intact (Rao & Singh, 2005). Conversely, stable and credible transfer mechanisms can protect democratic accountability by enabling States to govern effectively within their constitutional domain. Fiscal federalism is therefore a core part of the democratic endurance celebrated by this book: it is one of the principal ways the constitutional order converts a potential source of fragmentation into a managed system of solidarity and redistribution.

5.5.2 The Finance Commission and the constitutionalisation of fiscal balance

The Constitution institutionalizes fiscal recalibration through the Finance Commission. Article 280 mandates that the President constitute a Finance Commission at intervals, and the Commission is tasked with recommending the distribution of net proceeds of taxes between Union and States, the allocation among States, and principles of grants-in-aid (The Constitution of India, 1950, art. 280). The mechanism is notable for its periodicity and independence: it constitutionalizes fiscal bargaining by routing it through an expert body whose

recommendations become focal points for intergovernmental negotiation (Rao & Singh, 2005).

A long-run view of vertical devolution illustrates how fiscal federalism has evolved to meet changing democratic expectations. The Eleventh to Fifteenth Finance Commissions progressively recalibrated States' shares in the net proceeds of Union taxes, with a particularly large shift in the Fourteenth Finance Commission's recommendation to raise the States' share to 42 percent (Press Information Bureau, 2015). The Fifteenth Finance Commission maintained vertical devolution at 41 percent for 2021–2026, noting an adjustment associated with the changed status of the erstwhile State of Jammu and Kashmir into Union Territories (Press Information Bureau, 2021).

Table 5.1

States' Share in the Net Proceeds of Union Taxes ("Vertical Devolution") as Recommended by Selected Finance Commissions

Finance Commission	Award period	Recommended States' share in net proceeds of Union taxes	Documentary source (official)
Eleventh Finance Commission	2000–2005	29.5%	Government of India, *Economic Survey 2000–01* (Box on Eleventh FC recommendations)
Twelfth Finance Commission	2005–2010	30.5%	Government of India, Ministry of Finance, Department of Economic Affairs, *Explanatory Memorandum (Twelfth FC)*
Thirteenth Finance Commission	2010–2015	32%	Government of India, Ministry of Finance, Department of Economic Affairs, *Explanatory Memorandum (Thirteenth FC)*
Fourteenth Finance Commission	2015–2020	42%	Press Information Bureau, Ministry of Finance (24 Feb 2015 release)
Fifteenth Finance Commission	2021–2026	41%	Press Information Bureau (5 Feb 2021 release)

Source notes: Eleventh FC share reported as 29.5% in *Economic Survey 2000–01* (Government of India, Ministry of Finance, 2001). Twelfth FC share reported as 30.5% in the Government of India Explanatory Memorandum on action taken (Ministry of Finance, Department of Economic Affairs). Thirteenth FC share reported as 32% in the corresponding Explanatory Memorandum. Fourteenth FC and Fifteenth FC shares reported in official Press Information Bureau releases.

The constitutional significance of Table 5.1 is not merely numeric. These changing shares reflect the evolving democratic expectation that States must have meaningful fiscal capacity to perform constitutionally significant responsibilities, and that the Union's role is as much enabling as commanding. The Finance Commission mechanism has therefore functioned as a stabilizer of the Indian experiment, periodically resetting the fiscal terms of federal cooperation and contestation within a constitutional framework (Rao & Singh, 2005).

5.5.3 GST and the transformation of cooperative fiscal governance

The Goods and Services Tax (GST) represents one of the most significant fiscal-federal transformations since 1950. The Constitution (One Hundred and First Amendment) Act, 2016 inserted Article 279A, which requires the President to constitute a GST Council and specifies its membership, functions, quorum, and voting rules (The Constitution of India, 1950, art. 279A).

The GST Council's design is a constitutionalization of cooperative fiscal governance. Article 279A(2) provides that the Council includes the Union Finance Minister as Chairperson, a Union Minister of State in charge of Revenue or Finance, and the Ministers in charge of Finance or Taxation (or other nominated Ministers) from each State (The Constitution of India, 1950, art. 279A(2)). Article 279A also embeds a distinctive voting architecture: every decision requires not less than three-fourths of the weighted votes of members present and voting; the Union's vote has a weight of one-third, while the collective weight of States is two-thirds (The Constitution of India, 1950, art. 279A(9)).

Table 5.2

Constitutional Design Features of the GST Council (Article 279A)

Design element	Constitutional specification	Federal implication
Constitution of Council	President must constitute GST Council within 60 days of commencement of the 101st Amendment	GST coordination is constitutionally mandated, not optional
Membership	Union Finance Minister (Chairperson); Union MoS (Revenue/Finance); State Finance/Taxation Ministers (or nominated Ministers)	Institutionalizes Union–State partnership in indirect tax governance
Quorum	One-half of total members constitutes quorum	Prevents governance by a narrow subset of governments
Voting threshold	Not less than three-fourths of weighted votes of members present and voting	Ensures high-consensus decisions
Voting weights	Union: one-third; States together: two-thirds	Balances national market integration with State participation
Dispute mechanism	Council must establish a mechanism to adjudicate disputes arising out of recommendations/implementation	Channels fiscal disputes into an institutional pathway rather than unilateral escalation

Source: The Constitution of India, Article 279A (as inserted by the Constitution (One Hundred and First Amendment) Act, 2016).

The GST Council thereby exemplifies the "Indian experiment" in federalism: it aims to integrate a national market while preserving State participation through constitutionally specified bargaining rules. Yet, as with all Indian federal innovations, its meaning is not exhausted by text. The Council has also become a site of negotiation under fiscal stress, raising questions about compensation,

revenue uncertainty, and the balance between national harmonization and State fiscal autonomy (Rao, 2017; Mohit Minerals Pvt. Ltd. v. Union of India, 2022).

In comparative constitutional terms, this model is neither purely centralizing nor purely decentralizing. It is a negotiated fiscal constitution within the broader constitutional order, and it illustrates how India's Constitution sustains democratic governance by institutionalizing cooperation in domains that would otherwise generate destabilizing conflict.

5.6 Administrative Federalism: Services, Policing, and Everyday Governance

5.6.1 All-India services and the federal bureaucracy

Administrative federalism is the everyday infrastructure of the constitutional system. The All-India Services are frequently defended as a mechanism for administrative unity, professionalization, and national standards in governance, especially in a vast polity with uneven state capacity (Saxena, 2006). At the same time, they are periodically contested as instruments through which the Union can shape state administration and priorities, thereby complicating the autonomy promised by a federal structure (Rudolph & Rudolph, 1987).

The constitutional and normative point is that India's federalism is not solely a legislative division but an administratively interlocked system. Such interlocking can stabilize governance and rights protection by ensuring baseline state capacity, but it also demands a mature constitutional culture to prevent administrative integration from becoming administrative domination (Bhargava, 2008; Saxena, 2006).

5.6.2 Policing, public order, and the autonomy-security dilemma

Policing and public order illuminate a recurring tension in Indian federalism: the need for state autonomy in maintaining democratic accountability, and the Union's responsibility to secure national integrity and protect against internal disturbance. The Constitution assigns "public order" and "police" primarily to the State sphere, yet the Union possesses significant coordinating and intervention capacities through intelligence, central forces, and emergency provisions (Jain, 2016).

This domain repeatedly tests the democratic integrity of federalism because coercive power sits close to civil liberties. Excessive central intervention can erode democratic accountability at the state level; inadequate national coordination can permit disorder to spiral and undermine rights and security. The endurance of the Indian experiment has therefore depended on political

restraint, institutional professionalism, and judicial oversight, not merely on textual allocations of competence (Saxena, 2006; S.R. Bommai v. Union of India, 1994).

5.6.3 Welfare delivery and multi-level governance

Modern Indian governance operates through multi-level welfare delivery. Health, education, food security, housing, and social protection frequently involve concurrent or interdependent responsibilities, where Union financing, State administration, and local implementation must converge (Rao & Singh, 2005; Dreze & Sen, 2013). Federalism in practice thus becomes a negotiation over design, funding, monitoring, and accountability across levels.

The constitutional significance is direct: democratic legitimacy is not secured only by elections and rights, but by the state's capacity to deliver constitutionally resonant promises dignity, equality, and social justice in everyday life. Welfare delivery therefore links federalism to the larger democratic story of the Constitution's endurance: intergovernmental cooperation becomes a condition for realizing constitutional values.

5.7 Centralisation Pressures: Emergency Provisions and Constitutional Stress Tests

5.7.1 Emergency powers as a constitutional safety valve

The Constitution contains emergency provisions that substantially alter the federal balance in times of crisis. Article 356, for example, provides that if the President is satisfied that the government of a State cannot be carried on in accordance with the Constitution, the President may issue a proclamation (The Constitution of India, 1950, art. 356). These provisions were framed as safety valves in a fragile post-Partition polity, enabling the Union to respond to constitutional breakdowns and preserve the constitutional order as a whole (Austin, 1966; Jain, 2016).

From a federal perspective, emergency powers sit at the boundary between constitutional preservation and constitutional risk. They may protect the Republic from disorder, but they can also enable central dominance if used opportunistically. The Indian experiment's endurance is therefore inseparable from how emergencies have been interpreted, politically contested, and legally constrained over time (Saxena, 2006; S.R. Bommai v. Union of India, 1994).

5.7.2 Historical experience and constitutional lessons

The history of constitutional practice has shaped the meaning of emergency provisions. The experience of the 1975–1977 Emergency, along with earlier and later uses of Article 356, produced a sustained debate about whether constitutional mechanisms designed for protection were being used for partisan consolidation (Austin, 1999; Sathe, 2002). The constitutional response has not been to eliminate emergency provisions but to develop doctrinal and political constraints, including judicially articulated standards of review and the consolidation of norms against arbitrary central intervention (S.R. Bommai v. Union of India, 1994; Rameshwar Prasad v. Union of India, 2006).

This pattern exemplifies a recurring feature of India's constitutional endurance: the system often learns through crisis. The Constitution's survival is not explained by the absence of stress, but by the capacity of institutions Parliament, courts, political parties, civil society to convert stress into reform and norm-construction rather than collapse (Austin, 1999; Sathe, 2002).

5.7.3 The continuing question: how much Union dominance is compatible with federal democracy

The normative question persists: what degree of Union dominance is compatible with a federal democracy that aspires to genuine state autonomy and local accountability? The Indian Constitution clearly empowers the Union in ways that exceed many classical federations. Yet the democratic legitimacy of such empowerment depends on constitutional culture restraint, justification, and responsiveness rather than mere legal capability (Bhargava, 2008; Khosla, 2020).

In the seventy-five-year story celebrated by this book, federalism has survived not because the Union never dominates, but because constitutional institutions have repeatedly sought to re-anchor dominance in constitutional reasons national integrity, constitutional breakdown, or coordinated development while resisting its transformation into routine central command.

5.8 Judiciary and Federalism: Interpreting the "Indian Experiment"

5.8.1 Judicial review as federal umpiring

In a federation with overlap and contestation, an umpire is indispensable. Indian courts especially the Supreme Court have played this role by adjudicating disputes over legislative competence, interpreting concurrency and repugnancy, and reviewing exercises of extraordinary power. The Court's federal role is

therefore not incidental; it is structurally necessary in a system where political conflict frequently manifests as constitutional conflict (Sathe, 2002; Jain, 2016).

Cases such as *State of West Bengal v. Union of India* (1963) are often cited for articulating the Constitution's "quasi-federal" character, emphasizing the strong Union and the absence of state sovereignty in the classical sense. Later jurisprudence, particularly in the post-Emergency period, complicates any simple label by emphasizing limits on central intervention and by recognizing federalism as intertwined with democracy and constitutional structure (S.R. Bommai v. Union of India, 1994; Kesavananda Bharati v. State of Kerala, 1973).

5.8.2 Doctrinal evolution: from textual federalism to structural federalism

A notable evolution in constitutional doctrine has been the movement from list-centric formalism to a more structural reasoning about federalism's function in constitutional democracy. The "basic structure" doctrine, articulated in *Kesavananda Bharati* (1973), provides a conceptual pathway through which federalism can be treated not merely as a set of textual allocations but as a structural principle that supports democracy, liberty, and limited government (Sathe, 2002; Jain, 2016).

In *S.R. Bommai* (1994), the Supreme Court's scrutiny of Article 356 contributed to an understanding of federalism as a constitutional value that cannot be casually overridden by partisan calculations. The doctrinal significance lies in the Court's insistence that constitutional breakdown cannot be presumed, and that democratic federalism requires real not merely formal respect for state-level representative government (S.R. Bommai v. Union of India, 1994).

5.8.3 Federalism, rights, and democracy: interdependence rather than separation

Indian constitutionalism reveals that federalism and rights are interdependent. Federal diffusion of power can protect rights by preventing the monopolization of authority; at the same time, rights adjudication can reshape federal boundaries when the Court interprets State action or Union action through the lens of constitutional freedoms and equality (Seervai, 1991/1993; Sathe, 2002).

This interdependence is central to the "Indian experiment" thesis. Federalism is not only about States; it is about democratic accountability. It creates multiple sites of political contestation and administrative responsibility, thereby multiplying arenas in which citizens can demand constitutional compliance. In the seventy-five-year democratic journey, this diffusion has often functioned as

a safeguard: when one level falters, another may compensate, and when one institution fails, another may correct.

5.9 Cooperative and Competitive Federalism: The Contemporary Phase

5.9.1 Cooperative federalism as a constitutional practice

Cooperative federalism in India is not merely a slogan; it is an operational necessity emerging from concurrency, fiscal dependence, and administrative interlocking. Institutions such as the Finance Commission, the Inter-State Council under Article 263, and the GST Council under Article 279A exemplify constitutional and quasi-constitutional spaces where cooperation is structured and made repeatable (The Constitution of India, 1950, arts. 263, 279A, 280).

The Fourteenth Finance Commission Press Information Bureau release explicitly framed enhanced devolution and the establishment of NITI as aligned with "the spirit of cooperative federalism," illustrating how fiscal architecture and institutional redesign are understood as mutually reinforcing in contemporary governance discourse (Press Information Bureau, 2015). This institutionalized cooperation is a key reason the constitutional system has endured: it provides mechanisms for bargaining that reduce the incentives for extra-constitutional escalation.

5.9.2 Competitive federalism and the politics of performance

Alongside cooperation, contemporary India has also witnessed a rise in competitive federalism: States compete for investment, reputation, and administrative rankings, and they experiment with policy variation. Competition can strengthen accountability when it incentivizes better governance; however, it can also widen inequality when already-advantaged States attract disproportionate resources (Adeney, 2017; Rodden, 2006).

The constitutional question is how to reconcile competition with solidarity. A federation that celebrates performance must still ensure minimum standards of citizenship and welfare. In the Indian constitutional imagination, this balance is often mediated through transfers, grants, and national schemes that aim to preserve baseline equality while allowing States to innovate (Rao & Singh, 2005; Dreze & Sen, 2013). Competitive federalism is therefore not a departure from the Indian experiment but a contemporary phase within it one that tests whether the Constitution can sustain both innovation and equity.

5.9.3 Urbanisation, migration, and new federal demands

Urbanization and internal migration generate federal questions that were not fully anticipated in 1950. Metropolitan governance frequently requires coordination across municipal bodies, State governments, and Union agencies, especially in domains such as housing, transport, environmental regulation, and public health (Tillin, 2016; Jain, 2016). Migration complicates political responsibility by separating the place of work from the place of political membership and welfare entitlements, thereby raising questions about portable benefits and inter-state coordination.

These pressures reinforce the central theme of this chapter: Indian federalism remains an experiment because the society it governs is dynamically changing. The constitutional success of the last seventy-five years should therefore be read not as closure but as demonstrated capacity for adaptive governance within constitutional form.

5.10 Federalism and the Next 25 Years: Reform without Rupture

5.10.1 Recalibrating Centre–State relations through constitutional culture

Many federal problems are not solved by textual change alone. They require constitutional culture: conventions of consultation, reason-giving, restraint in the use of extraordinary powers, and a shared commitment to democratic accountability at all levels (Bhargava, 2008; Khosla, 2020). If the next twenty-five years are to continue the constitutional success celebrated by this book, reforms must emphasize norm-building alongside institutional redesign.

A mature federal culture treats disagreement as normal and bargaining as legitimate. It also recognizes that the Union's strength must be justified by constitutional purposes rather than partisan convenience, and that States' autonomy must be exercised within constitutional limits that protect rights and the national constitutional order.

5.10.2 Strengthening intergovernmental institutions and dispute resolution

The Constitution already provides tools for coordination most notably Article 263's inter-State Council framework and Article 279A's GST Council design. Strengthening the regularity, transparency, and technical support of such institutions can reduce the tendency to constitutionalize every dispute through litigation or to politicize disagreements as existential conflicts (Adeney, 2017).

Institutional strengthening also requires credible dispute resolution. Article 279A(11) expressly contemplates a dispute adjudication mechanism for GST-related conflicts (The Constitution of India, 1950, art. 279A(11)). The constitutional opportunity here is to develop rule-bound, expert-informed resolution processes that preserve cooperative federalism while acknowledging that fiscal conflict is inevitable.

5.10.3 Democratic deepening through decentralisation and local self-government

Finally, the future of federalism cannot be confined to Centre–State relations. The 73rd and 74th Amendments constitutionalized local self-government, and any robust account of democratic deepening must treat decentralization as a continuation of the federal project rather than a separate theme (Jain, 2016; Manor, 1999).

Decentralization strengthens democracy by bringing governance closer to citizens and by expanding arenas of accountability. It also addresses the new federal demands generated by urbanization and mobility. In this sense, the next phase of the Indian experiment may depend less on dramatic constitutional revision and more on sustained implementation of the Constitution's decentralizing aspirations through fiscal empowerment, administrative capacity building, and clear functional assignment to local bodies (Manor, 1999; Rao & Singh, 2005).

5.11 Conclusion

Indian federalism is an experiment not because it is uncertain in principle, but because it is dynamic in operation. It was designed as a constitutional strategy to govern diversity while preserving unity, shaped by the founding imperatives of Partition, integration, and developmental governance. Its architecture lists, concurrency, residuary powers, intergovernmental councils, fiscal commissions, and emergency provisions creates a system that is simultaneously cooperative and contested (Austin, 1966; Adeney, 2017; Khosla, 2020).

Over seventy-five years, federalism has been repeatedly tested by identity demands, fiscal stress, administrative conflict, and constitutional emergencies. Yet it has remained workable because the Constitution institutionalizes adaptation: territorial reorganization converts identity conflict into legal redesign; Finance Commissions periodically recalibrate fiscal balance; and the GST Council constitutionalizes negotiated harmonization in a national market

(Press Information Bureau, 2015; Press Information Bureau, 2021; The Constitution of India, 1950, arts. 3, 279A, 280).

The constitutional achievement celebrated by this book is therefore not a mere record of endurance. It is an account of how endurance has been produced: by converting the pressures of a vast democracy into constitutional forms of bargaining, representation, adjudication, and reform. Federalism, as an Indian experiment, remains one of the Constitution's most vital instruments for sustaining democratic unity in diversity an experiment that continues, and one whose success will depend on constitutional culture as much as constitutional text.

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6 FUNDAMENTAL RIGHTS: HEART AND SOUL OF THE INDIAN CONSTITUTION

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6.1 Introduction

To commemorate seventy-five years of India's constitutional democracy from the Constitution's commencement on 26 January 1950 to the seventy-fifth anniversary in 2025 any serious celebration must begin with Part III, the catalogue of Fundamental Rights. These rights are not merely ornamental commitments in a founding document; they are enforceable constitutional claims through which the citizen confronts the State as a rights-bearing subject rather than a governed object (Constitution of India, 1950, arts. 12–35; Austin, 1966). The distinctive constitutional wager made in 1950 was that political freedom would be juridically secured, not merely politically promised, and that legality would be made answerable to a deeper ideal of constitutional justice (Baxi, 1985; Sathe, 2002).

Fundamental Rights constitute the constitutional core because they perform three structurally central functions. First, they discipline public power by converting certain moral and political claims liberty, equality, dignity, and non-domination into constitutional limits that bind all organs of State (Constitution of India, 1950, arts. 13, 14, 19, 21). Second, they furnish the language of citizenship: they define what it means to belong to the Republic as a person entitled to reasons, to fairness, and to equal concern and respect (Habermas, 1996; Khaitan, 2019). Third, they anchor democratic legitimacy over time by ensuring that electoral majorities govern within constitutional boundaries, thereby reconciling majority rule with the rule of law and with the constitutional promise of equal civic status (Dworkin, 1977; Khosla, 2020).

No discussion of Part III can ignore the constitutional centrality of enforceability. B. R. Ambedkar famously described the right to constitutional remedies then drafted as Article 25 and finally enacted as Article 32 as the "heart and soul" of the Constitution, precisely because rights without remedies are democratic rhetoric rather than constitutional governance (Constituent Assembly Debates,

1948). This formulation is not a rhetorical flourish; it states a foundational proposition: the Indian Constitution makes courts and constitutional remedies integral to democracy, not external to it.

Within the 75-year narrative of Indian constitutionalism, Fundamental Rights reveal a paradox that is also a democratic achievement. The text has remained recognisably stable, yet its meaning has expanded through interpretation, legislation, social movements, and constitutional amendments. In that sense, Part III is both continuous and developmental: continuous in its commitment to enforceable dignity and equal citizenship, developmental in how that commitment has been judicially elaborated to address changing forms of domination, exclusion, and technological power (Austin, 1999; Bhatia, 2019).

6.2 Historical and Intellectual Genealogy of Fundamental Rights in India

The genealogy of Fundamental Rights is inseparable from the colonial experience of arbitrary power and the nationalist insistence that political freedom must include civil liberty. The freedom struggle did not merely seek transfer of sovereignty; it sought constitutional limitation of governmental power, particularly in response to colonial emergency laws, censorship regimes, and policing practices that treated subjects as administrable populations (Chandra, Mukherjee, & Mukherjee, 1989; Guha, 2007). The demand for entrenched rights was thus both an anti-colonial claim and a design principle for the postcolonial State.

The Constituent Assembly inherited a complex rights vocabulary from multiple sources. The Western constitutional tradition contributed the idea of judicially enforceable civil liberties and rule-of-law constraints. Yet the Indian adoption was neither mechanical nor simply derivative. The Indian rights project was shaped by distinct pressures: mass poverty, caste hierarchy, communal violence, linguistic pluralism, and the urgent need to build a nation-state without sacrificing civic equality (Austin, 1966; Khosla, 2020). Rights, therefore, had to be simultaneously protective and transformative: protective against the State, and transformative against social practices that undermined equal citizenship.

The Constituent Assembly debates demonstrate competing visions of liberty, equality, and social reform. Some members emphasised individual freedom against State intrusion; others feared that rigid rights would obstruct land reform, affirmative measures, and social transformation. The enacted scheme is a constitutional compromise of high sophistication: it constitutionalises civil and political liberties while also embedding limitations (for example, "reasonable restrictions" under Article 19) and complementing Part III with Directive

Principles of State Policy (Part IV) that guide socio-economic transformation (Constitution of India, 1950, arts. 19, 37).

Comparative influences mattered, but Indian innovation is decisive. The very structure of Part III rights plus internal limitation clauses plus remedies was designed as a grammar for adjudication and a discipline for governance. It was also designed as a pedagogical project: to cultivate a rights-bearing citizenry within a newly enfranchised democracy committed to universal adult suffrage from the start (Austin, 1966; Sen, 1999).

6.3 The Architecture of Part III: Rights, Limitations, and Remedies

6.3.1 Rights as structured entitlements: scope, subject, and duty-bearers

Fundamental Rights are not merely moral aspirations; they are structured entitlements. The Constitution begins this architecture by defining the duty-bearer: "the State" under Article 12 includes not only the Government and Parliament but also "local or other authorities" within India or under the control of the Government of India, thereby enabling rights claims against a wide range of public power (Constitution of India, 1950, art. 12). Article 13 then constitutionalises supremacy by declaring void laws inconsistent with or in derogation of Fundamental Rights (Constitution of India, 1950, art. 13).

This architecture has proved critical over 75 years because governance is not exhausted by the formal State. Public power is exercised through statutory bodies, public corporations, regulators, and increasingly through public–private infrastructures. Indian constitutional adjudication has therefore had to confront questions of "State action" and the horizontal effect of rights. The jurisprudence has sometimes expanded the reach of rights through doctrines of instrumentality and public function, and sometimes relied on the State's positive obligations to regulate private power so that rights are meaningful in practice (Basu, 2020; Bhatia, 2019).

6.3.2 The doctrine of reasonable restrictions and the constitutional justification of limits

Indian constitutionalism never treated rights as absolute. Article 19 expressly permits the State to impose "reasonable restrictions" on the enumerated freedoms on specified grounds, such as public order, security, or morality (Constitution of India, 1950, art. 19(2)–(6)). This internal limitation model reflects a normative judgment: democratic governance requires space for rights but also for collectively justified regulation. The doctrinal question, therefore, is

not whether restrictions exist, but when they are reasonable, proportionate, and procedurally fair.

The "reasonable restrictions" framework has been historically shaped by constitutional amendments especially the First Amendment (1951), which recalibrated speech and property-related disputes in the early Republic and by judicial standards developed to prevent rights from being hollowed out by broad claims of security or morality (The Constitution (First Amendment) Act, 1951).

6.3.3 The centrality of Article 32 and constitutional remedies as the "right to rights"

Article 32, guaranteeing the right to move the Supreme Court for enforcement of Fundamental Rights, makes remedies a constitutional entitlement. It is here that Ambedkar's "heart and soul" formulation gains institutional meaning: Part III is designed not simply as a rights catalogue but as a remedial constitution that invites judicial engagement to maintain constitutional supremacy (Constituent Assembly Debates, 1948; Constitution of India, 1950, art. 32).

This choice has been central to India's democratic journey. Over 75 years, the Supreme Court and the High Courts (under Article 226) have functioned as arenas where citizens, social movements, and public institutions contest the meaning of liberty and equality. Even when adjudication has been controversial, the sustained public reliance on courts for rights enforcement evidences a constitutional culture in which legality and democratic legitimacy are co-implicated rather than opposed (Sathe, 2002; Austin, 1999).

6.4 Equality as a Foundational Principle: Articles 14–18

Equality is the constitutional condition of democratic citizenship. Article 14 guarantees equality before the law and equal protection of the laws. In its classical articulation, it rejects arbitrary classification and insists that State action must be justified by relevant differences connected to legitimate objectives (Constitution of India, 1950, art. 14). Article 15 prohibits discrimination on specified grounds, while Article 16 constitutionalises equality of opportunity in public employment (Constitution of India, 1950, arts. 15–16). The abolition of untouchability under Article 17 and the prohibition on titles under Article 18 signal that equality is not merely formal but socially reconstructive (Constitution of India, 1950, arts. 17–18).

In constitutional doctrine, equality has evolved from a relatively formal test of classification to a more demanding standard of non-arbitrariness and reasoned governance. The post-independence decades reveal an increasing judicial

willingness to treat arbitrariness as antithetical to equality and to subject administrative and legislative choices to reason-giving constraints (Seervai, 2013; Sathe, 2002). This doctrinal movement matters in the 75-year narrative because it represents the Constitution's insistence that democracy is not merely periodic voting, but continuous accountability through public reason.

Anti-discrimination guarantees have also had to confront the persistence of caste and gender hierarchy. Here the Constitution's innovation is visible: it authorises affirmative measures through provisions such as Article 15(4) and Article 16(4), reflecting a commitment to substantive equality. The First Amendment's insertion of Article 15(4) is historically significant because it constitutionalised the legitimacy of protective discrimination early in the Republic's life, indicating that equality in India would not be confined to formal non-discrimination but would include redistributive and inclusionary measures (The Constitution (First Amendment) Act, 1951; Austin, 1966).

The jurisprudence on reservations especially around the ideas of backwardness, adequacy of representation, and limits such as the "creamy layer" illustrates the Constitution's balancing act: it must simultaneously correct structural inequality and preserve the integrity of equal citizenship. Over 75 years, this balance has been continually renegotiated through constitutional amendments and judicial doctrine, demonstrating constitutional endurance through contestation rather than through static consensus (Basu, 2020; Khaitan, 2019).

Article 17's abolition of untouchability stands as one of the most radical moral statements of modern constitutionalism. It rejects the legitimacy of social practices that deny civic equality and dignity. The continued legislative and judicial effort to enforce this abolition through penal and protective frameworks illustrates a central lesson of India's democratic journey: constitutional rights are not self-executing moral declarations but governance projects requiring institutional capacity and political will (Baxi, 1985; Sathe, 2002).

6.5 Freedom as Democratic Infrastructure: Article 19 and Allied Liberties

Article 19's freedoms speech and expression, assembly, association, movement, residence, and profession form the infrastructure of democratic participation. Speech, in particular, enables public reason: it is the means through which citizens criticise power, deliberate on policy, and hold representatives accountable. Yet Article 19 also embodies a foundational tension: democracy requires robust freedom, but democratic governance also requires regulation of violence, incitement, and threats to public order (Constitution of India, 1950, art. 19).

The early constitutional years witnessed sharp conflict between civil liberties and state-building priorities. The First Amendment (1951) modified the constitutional balance by expanding permissible restrictions on speech and by responding to judicial decisions that had read Article 19(2) narrowly. This is constitutionally instructive: the Indian rights culture matured through dialogue and conflict among courts, legislature, and public opinion, not through a single institutional voice (The Constitution (First Amendment) Act, 1951; Austin, 1966).

The modern stress points of free speech are not only classical censorship but also the governance of hate speech, disinformation, and protest regulation. A 75-year perspective suggests that each technological epoch reshapes the conditions of freedom. Print and cinema censorship debates have been supplemented by concerns about digital platforms, algorithmic amplification, and the power of the State to regulate communication infrastructures. In such contexts, constitutional doctrine increasingly relies on standards like proportionality, procedural safeguards, and reasoned decision-making to prevent "restriction" from becoming suppression (Bhatia, 2019; Barak, 2012).

6.6 Life and Personal Liberty: Article 21 as a Living Guarantee

Article 21 "No person shall be deprived of his life or personal liberty except according to procedure established by law" has become the constitutional epicentre of India's rights revolution. Its interpretive transformation from formal legality to substantive fairness illustrates how the Constitution has functioned as a living instrument while remaining anchored to text.

6.6.1 From formal legality to substantive due process: the transformation of Article 21

In the early constitutional period, Article 21 was read in a relatively narrow manner, with the consequence that legality could sometimes be treated as sufficient even when procedures were harsh. The watershed came with *Maneka Gandhi v. Union of India* (1978), where the Supreme Court reconceived "procedure established by law" as procedure that is just, fair, and reasonable, and insisted on an integrated reading of Articles 14, 19, and 21 (Maneka Gandhi v. Union of India, 1978).

This doctrinal shift matters for the book's celebratory theme because it demonstrates constitutional self-correction over time. The Constitution's promise is not that injustice will never occur, but that constitutional

interpretation and institutional struggle can re-align governance with constitutional morality and dignity.

6.6.2 Dignity as the constitutional core of life and liberty

Post-*Maneka Gandhi*, the Court increasingly treated dignity as the organising principle of Article 21. Dignity performs two functions: it identifies what is at stake when liberty is restricted, and it frames the State's duties when vulnerability and structural inequality threaten meaningful freedom (Nussbaum, 2011; Baxi, 1985). Rights discourse thus moves from negative liberty freedom from interference to a constitutional concern with conditions of a life worth living.

6.6.3 Right to livelihood, health, education, shelter, and environment: Article 21's rights ecosystem

Article 21's expansion into an ecosystem of derivative rights reflects the Court's engagement with mass deprivation and governance failure. The recognition of livelihood, health, shelter, and environmental protections under Article 21 represents an attempt to constitutionalise minimal conditions of dignified existence (Sathe, 2002; Sen, 1999). This interpretive movement also reflects the interaction between Part III and Part IV: Directive Principles inform the content of dignity, while Fundamental Rights provide enforceability.

The constitutionalisation of education provides a notable example of this trajectory. The Eighty-sixth Amendment inserted Article 21A, guaranteeing free and compulsory education for children in the age group of six to fourteen years, thereby transforming a directive aspiration into an enforceable right (The Constitution (Eighty-sixth Amendment) Act, 2002; Constitution of India, 1950, art. 21A).

6.6.4 Privacy, autonomy, bodily integrity, and informational self-determination under Article 21

In the twenty-first century, the most significant expansion of Article 21 concerns privacy, autonomy, and informational self-determination. In *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), a nine-judge Bench affirmed privacy as a Fundamental Right, grounding it in dignity, liberty, and the conditions of democratic citizenship (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

The subsequent litigation over the Aadhaar framework further illustrates the constitutional challenge of reconciling welfare governance, identity systems, and the risks of surveillance. The Aadhaar judgment demonstrates that the Court is increasingly required to adjudicate "constitutional rights in infrastructural

form," where liberty is threatened not only by direct coercion but by data architectures and administrative compulsion (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2018).

6.6.5 Procedural fairness, proportionality, and state accountability in deprivation of liberty

As rights conflicts grow more complex, procedural fairness and proportionality have emerged as central tools. Procedural fairness ensures that deprivation of liberty is accompanied by reasons, hearings where appropriate, and judicial oversight. Proportionality asks whether restrictions pursue legitimate aims, are suitable and necessary, and strike a proper balance with rights. This turn is jurisprudentially significant: it indicates that India's rights culture increasingly demands a justificatory State, one that governs through public reasons rather than mere assertions of power (Barak, 2012; Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

6.7 Protection Against Arbitrary State Action: Articles 20–22

Articles 20–22 provide the constitutional minimums of criminal justice. Article 20 prohibits ex post facto criminal laws, double jeopardy, and compelled self-incrimination. Article 22 constitutionalises safeguards against arbitrary arrest and detention, including the right to be informed of grounds of arrest and to consult legal counsel, while also permitting preventive detention under specified conditions (Constitution of India, 1950, arts. 20–22).

The coexistence of due process safeguards and preventive detention is among the Constitution's most debated compromises. It reflects the framers' anxiety about security and public order in a fragile new State, but it also exposes a persistent democratic critique: preventive detention authorises deprivation of liberty without ordinary criminal trial safeguards, thereby placing exceptional burdens on constitutional oversight (Seervai, 2013; Sathe, 2002).

The development of custodial rights jurisprudence shows the Constitution's attempt to domesticate coercive power. The guidelines in *D.K. Basu v. State of West Bengal* (1997) represent judicial recognition that formal legality is insufficient when policing practices produce systemic abuse; constitutional governance requires enforceable standards of humane treatment and accountability (D.K. Basu v. State of West Bengal, 1997).

Constitutional amendments have also shaped this terrain. The Forty-fourth Amendment is especially significant because it sought to strengthen protections during emergencies and altered the constitutional approach to rights

suspensions, reflecting lessons drawn from constitutional crises in the 1970s (The Constitution (Forty-fourth Amendment) Act, 1978).

6.8 Freedom of Religion: Articles 25–28 and the Indian Model of Secular Rights

Freedom of religion in India is constitutionally framed as an individual and collective liberty subject to public order, morality, and health, and also subject to the State's power to enact social reform (Constitution of India, 1950, arts. 25–28). This structure reflects an Indian constitutional choice: secularism is not a strict separation of State and religion in the American model; it is closer to a principle of principled regulation, in which the State may intervene to secure equality and reform while also protecting conscience and plural worship (Bhargava, 2010; Basu, 2020).

This constitutional arrangement has generated enduring doctrinal debates, including the judiciary's role in identifying what counts as religious practice deserving protection, and how to reconcile religious freedom with gender equality, non-discrimination, and dignity. The 75-year story here is not one of settled harmony but of constitutional contestation: the Constitution provides a framework for negotiating pluralism without surrendering the commitment to equal citizenship.

6.9 Cultural and Educational Rights: Articles 29–30 as a Pluralist Promise

Articles 29 and 30 protect cultural autonomy and the right of minorities to establish and administer educational institutions (Constitution of India, 1950, arts. 29–30). These provisions are central to India's constitutional design because they operationalise "unity in diversity" not as an abstract slogan but as enforceable legal commitments. In a multilingual and multi-religious society, cultural security is a condition of civic loyalty, and minority rights become instruments of integration rather than fragmentation (Kymlicka, 1995; Austin, 1966).

The jurisprudence on minority institutions demonstrates the Constitution's balancing ethos: the State may regulate in the interest of educational standards and fairness, but it cannot destroy the essential autonomy guaranteed by Article 30. This balance is a recurring theme in India's democratic journey: pluralism is preserved through constitutional accommodation rather than majoritarian assimilation.

6.10 Right Against Exploitation: Articles 23–24 and the Constitutional Ethics of Labour

Articles 23 and 24 constitutionalise a moral condemnation of exploitation. Forced labour, trafficking, and child labour are prohibited not merely as policy concerns but as constitutional wrongs (Constitution of India, 1950, arts. 23–24). The significance of these provisions lies in their insistence that a democratic republic cannot treat human vulnerability as a legitimate basis for economic extraction.

Yet the enforcement of these rights is structurally difficult in conditions of poverty, informality, and weak labour regulation. The constitutional question is therefore not only interpretive but institutional: how can rights be made effective when social and economic structures generate vulnerability? Indian constitutional practice has often responded through public interest litigation and through reading positive obligations into Article 21 and Article 23, thereby converting constitutional condemnation into governance duties (Baxi, 1985; Sathe, 2002).

6.11 Remedies and Judicial Protection: Articles 32 and 226 as Engines of Rights

Article 32 is not merely one right among many; it is the constitutional mechanism that renders the entire rights catalogue meaningful. Ambedkar's characterisation of remedies as the Constitution's "heart and soul" reflects a jurisprudential truth: rights become real when institutions are empowered and compelled to enforce them (Constituent Assembly Debates, 1948; Constitution of India, 1950, art. 32).

Over 75 years, the Supreme Court and High Courts have developed a distinctive remedial culture, including writs, compensation for constitutional torts, continuing mandamus, and structural directions. Public interest litigation expanded standing rules to allow representation of those unable to access courts. This remedial expansion has been celebrated for enhancing access to justice and criticised for risks of judicial overreach. Both perspectives disclose a deeper constitutional reality: in a society marked by inequality, procedural openness can be a condition of substantive rights; yet judicial power must remain tethered to constitutional text, institutional competence, and democratic legitimacy (Baxi, 1985; Sathe, 2002).

6.12 Rights in Conflict: Balancing, Proportionality, and Constitutional Reasoning

Rights conflicts are intrinsic to constitutional democracy. Speech may conflict with public order, privacy with welfare governance, equality with religious autonomy, and liberty with national security. Indian constitutional doctrine addresses such conflicts through a repertoire that includes reasonableness, non-arbitrariness, proportionality, and procedural safeguards (Barak, 2012; Basu, 2020).

The increasing reliance on proportionality in rights adjudication reflects the maturation of India's justificatory constitutionalism. The State must show not only that it has legal authority, but that its restrictions are necessary and appropriately tailored. This is particularly salient in the digital era, where restrictions may operate through infrastructural control telecommunications, platforms, data systems rather than through classic censorship. The constitutional discipline required in such contexts is stringent because the risk is not merely episodic rights violations but systemic transformation of the citizen–State relationship into one of surveillance and behavioural governance (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017; Bhatia, 2019).

6.13 Rights Expansion and the Emergence of New Rights in 75 Years

The expansion of rights in India has often occurred through interpretation rather than formal amendment. Article 21's dignity-based reading, the development of informational privacy, environmental constitutionalism, and the strengthening of procedural fairness collectively illustrate how a constitutional text can generate new normative content without textual inflation. The constitutional question is not whether rights expand, but whether expansion remains faithful to constitutional structure and democratic legitimacy.

A notable example of rights expansion through formal amendment is Article 21A, which constitutionalised the right to education. Here, democratic processes and civil society advocacy converged with constitutional interpretation to transform a governance aspiration into an enforceable right, illustrating the dynamic interaction between institutions in India's constitutional development (The Constitution (Eighty-sixth Amendment) Act, 2002; Sripati, 2004).

At the same time, expansion generates legitimacy questions: when courts constitutionalise socio-economic entitlements, they may be accused of entering policy domains. The 75-year perspective suggests a more nuanced reading. In contexts of persistent deprivation, constitutional adjudication often functions

less as governance-by-judges and more as a mechanism of accountability, compelling the executive to justify failures and to comply with constitutional minimums. Still, institutional modesty and democratic respect remain essential to preserve the authority of rights adjudication over time (Sathe, 2002; Baxi, 1985).

6.14 Fundamental Rights and Democratic Citizenship: The 75-Year Assessment

India's constitutional success over 75 years cannot be measured solely by economic indicators or electoral continuity. It must also be measured by whether citizens continue to experience themselves as rights-bearing members of a constitutional community. On that measure, Fundamental Rights have functioned as the grammar of constitutional democracy. They have enabled contestation, shaped political accountability, constrained authoritarian drift, and produced a shared constitutional language that transcends partisan identities (Austin, 1999; Habermas, 1996).

Yet a celebratory narrative must remain intellectually honest. Persistent deficits remain: inequality limits effective access to justice; criminal justice delays erode liberty; structural violence undermines dignity; and administrative capacity often fails to translate rights into lived realities. The constitutional achievement lies not in denying these deficits but in maintaining a normative and institutional framework through which they can be named as constitutional wrongs and contested as matters of public justice. That a citizen can approach constitutional courts, invoke Part III, and demand justification from the State is itself a civilisational transformation in a society historically structured by hierarchy and exclusion (Baxi, 1985; Austin, 1966).

In this sense, Fundamental Rights are not only legal protections. They are the democratic conditions of possibility for India's constitutional republic. They have sustained constitutional legitimacy across generations by insisting that power must answer to reasons and that citizenship entails dignity. The endurance of this insistence over 75 years is among the most significant achievements of India's democratic journey.

6.15 Conclusion

Fundamental Rights are the heart and soul of the Indian Constitution because they transform sovereignty into constitutional authority and governance into reasoned power. Over 75 years, Part III has served as both shield and compass:

a shield against arbitrary coercion and a compass orienting public power toward equal citizenship, dignity, and accountable rule.

The Indian experience demonstrates that constitutional democracy is not a static achievement but a continuous practice. Fundamental Rights survive not because they eliminate conflict, but because they provide a principled framework for managing conflict within constitutional limits. In celebrating seventy-five years of constitutional adoption, we celebrate not merely a text, but a rights culture imperfect, contested, yet enduring that continues to make India's democratic experiment intelligible and legitimate.

Table 6.1

Selected Constitutional Amendments that Reshaped Fundamental Rights and Remedies

Amendment (Year)	Key change(s) affecting Fundamental Rights/Remedies	Constitutional significance for Part III
First Amendment (1951)	Expanded permissible restrictions on speech under Article 19; inserted Article 15(4) enabling special provisions for socially and educationally backward classes; inserted Articles 31A and 31B and the Ninth Schedule to protect certain laws from judicial review	Recalibrated early rights–reform tensions; constitutionalised affirmative action and strengthened the State's land/social reform agenda while also widening restrictions on expression
Sixteenth Amendment (1963)	Added "sovereignty and integrity of India" as a ground for restricting certain freedoms under Article 19	Demonstrated the Constitution's responsiveness to national integration concerns while retaining the "reasonableness" discipline
Twenty-fifth Amendment (1971)	Inserted Article 31C (limited form) to protect laws giving effect to specific Directive Principles; altered property-rights language	Intensified the rights–directive principles debate and contributed to the jurisprudence culminating in basic structure reasoning

Forty-second Amendment (1976)	Expanded Article 31C's protective scope (later judicially limited); inserted Fundamental Duties (Part IVA)	Marked a constitutional moment of strong state-centred governance; sharpened the later judicial defence of rights and judicial review
Forty-fourth Amendment (1978)	Removed the right to property from Part III (replacing it with Article 300A); strengthened certain protections regarding suspension of rights in emergencies; sought to enhance safeguards against preventive detention (some provisions requiring notification)	Reoriented the constitutional settlement after the Emergency period, reinforcing the non-negotiability of core liberty protections and recalibrating rights–property relations
Eighty-sixth Amendment (2002)	Inserted Article 21A (right to education for children aged 6–14) and adjusted related provisions	Converted an important socio-economic aspiration into an enforceable Fundamental Right, reflecting India's transformative constitutionalism
Ninety-third Amendment (2005)	Inserted Article 15(5) enabling reservations in admission to educational institutions (with minority-institution exception)	Deepened the constitutional commitment to substantive equality and social inclusion in education
One Hundred and Third Amendment (2019)	Inserted Articles 15(6) and 16(6) enabling reservation for Economically Weaker Sections	Reconfigured affirmative action discourse by adding economic criteria, raising new debates about equality's meaning and constitutional justification

Source (primary legal texts): The Constitution (First Amendment) Act, 1951; The Constitution (Sixteenth Amendment) Act, 1963; The Constitution (Twenty-fifth Amendment) Act, 1971; The Constitution (Forty-second Amendment) Act, 1976; The Constitution (Forty-fourth Amendment) Act, 1978; The Constitution (Eighty-sixth Amendment) Act, 2002; The Constitution (Ninety-third Amendment) Act, 2005; The Constitution (One Hundred and Third Amendment)

Act, 2019; and the consolidated text in *The Constitution of India* (Legislative Department, Government of India).

Table 6.2

Selected Landmark Supreme Court Decisions Shaping Fundamental Rights (1950–2020)

Decision (Year)	Right(s) implicated	Doctrinal or institutional contribution to rights culture
***A.K. Gopalan v. State of Madras* (1950)**	Article 21; preventive detention	Early formal approach to "procedure established by law," later superseded by dignity- and fairness-based reasoning
***State of Madras v. V.G. Row* (1952)**	Article 19	Developed early standards for reviewing "reasonableness" of restrictions, shaping Article 19 adjudication
***Kesavananda Bharati v. State of Kerala* (1973)**	Amendment power; Part III and constitutional structure	Articulated the basic structure doctrine, anchoring the constitutional protection of core rights and judicial review against destructive amendments
***E.P. Royappa v. State of Tamil Nadu* (1974)**	Article 14	Helped shift equality from formal classification to anti-arbitrariness and fairness in state action
***Maneka Gandhi v. Union of India* (1978)**	Articles 14, 19, 21	Reconceived Article 21 to require just, fair, reasonable procedure; integrated Articles 14–19–21 into a rights triad
***Minerva Mills v. Union of India* (1980)**	Judicial review; Part III–Part IV relationship	Reinforced limits on amendment power and defended constitutional balance, preserving enforceability of rights
***Indra Sawhney v. Union of India* (1992)**	Articles 14–16	Structured modern reservations doctrine (including limits and the "creamy layer" idea), shaping substantive equality debates
***D.K. Basu v. State of West Bengal* (1997)**	Articles 21–22	Established custodial safeguards and accountability norms, embedding constitutional discipline in policing
***Vishaka v. State of Rajasthan* (1997)**	Articles 14, 15, 19, 21	Recognised sexual-harassment protections through constitutional duties and international norms; exemplified rights-based governance through guidelines
***T.M.A. Pai Foundation v. State of Karnataka* (2002)**	Articles 19(1)(g), 29–30	Reframed autonomy and regulation of educational institutions, shaping minority-rights and regulatory balance

***Shreya Singhal v. Union of India* (2015)**	Article 19(1)(a)	Clarified constitutional limits on vague speech restrictions in the digital context, strengthening free-speech protections
***Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017)**	Article 21 (privacy)	Affirmed privacy as a Fundamental Right grounded in dignity, liberty, and democratic citizenship
***Navtej Singh Johar v. Union of India* (2018)**	Articles 14, 15, 19, 21	Linked dignity, equality, and autonomy in striking down criminalisation of consensual same-sex relations, deepening constitutional morality reasoning
***Anuradha Bhasin v. Union of India* (2020)**	Article 19; procedural safeguards	Developed constraints and review principles for restrictions affecting internet access and expression, reinforcing proportionality and transparency

Source: Supreme Court of India judgments (as cited by case name and year), including official Supreme Court PDFs for *Kesavananda Bharati* (1973), *Maneka Gandhi* (1978), and *Justice K.S. Puttaswamy* (2017).

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7 REVISITING IMPACT OF 42ND AMENDMENT

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7.1 Introduction

The Forty-Second Amendment is best approached not as a discrete legislative event but as a constitutional turning point that tested the durability of India's democratic design. Within the long arc of constitutional endurance that this book celebrates, 1976 marks a moment when the amendment power was deployed to rearrange foundational relations: between state and citizen, Parliament and judiciary, Union and States, and rights and governance. The chapter's opening frames the amendment as a rupture in constitutional method and aspiration, while also recognizing that the post-Emergency constitutional order did not simply revert to a prior baseline; it rebuilt legitimacy through political correction and judicial reconstruction. Seen in this light, the Forty-Second Amendment matters for its immediate content and, equally, for what it reveals about how constitutional democracies can be weakened from within-through the forms of legality rather than through the abandonment of law.

7.1.1 The Forty-Second Amendment as a break from routine constitutional change

Constitutional amendment in India, as designed by Article 368, permits an evolving constitutional order without requiring revolutionary rupture. Yet the Constitution (Forty-second Amendment) Act, 1976, does not sit comfortably within the ordinary grammar of "constitutional maintenance." It represented a scale of alteration that sought not merely to adjust governmental machinery but to revise the Constitution's internal hierarchy of values and institutional authority (Government of India, 1976).

While Indian constitutional history includes contentious amendments before 1976-most notably those responding to land reform litigation and the early contestations over property and equality-the Forty-Second Amendment stood apart for the breadth of its interventions across core domains: the Preamble's self-description, the relationship between Fundamental Rights and Directive

Principles, judicial review, federal distribution of powers, and the design of constitutional adjudication itself (Austin, 1999; Seervai, 1991). It is in this sense that the amendment is often treated in constitutional scholarship as a decisive moment of constitutional stress, a moment when the constitutional text was pressed into the service of concentrated executive–legislative dominance (Austin, 1999).

7.1.2 From constitutional continuity to constitutional rupture

A useful way to understand 1976 is to distinguish continuity in form from rupture in function. Formally, the Forty-Second Amendment proceeded through parliamentary procedure; it did not announce itself as a revolutionary charter. Substantively, however, it attempted to relocate sovereignty away from constitutional supremacy toward an intensified claim of parliamentary supremacy, including by seeking to prevent courts from questioning constitutional amendments and by asserting the absence of any limitation on Parliament's constituent power (Government of India, 1976).

The effort to insert clauses (4) and (5) into Article 368-purporting to immunize amendments from judicial challenge and to declare unlimited constituent power-was emblematic of this rupture (Government of India, 1976). The Supreme Court later held these changes beyond the permissible amending power, treating them as destructive of foundational constitutional commitments (Minerva Mills Ltd. v. Union of India, 1980).

7.1.3 Why the amendment demands renewed constitutional scrutiny

In a book that frames India's constitutional experience as a "democratic journey" culminating in seventy-five years of constitutional endurance, the Forty-Second Amendment requires careful re-reading precisely because it demonstrates that constitutional danger may present itself through legal technique rather than through overt abandonment of legality. The Emergency period illustrates how democratic erosion can be executed through amendments, statutes, and institutional reconfiguration while retaining the outward vocabulary of constitutional governance (Press Information Bureau, 2022; Britannica, n.d.).

Equally, the post-Emergency correction-through electoral change, constitutional amendment, and judicial reconstruction-illustrates resilience. It is therefore analytically inadequate to treat the Forty-Second Amendment as an isolated historical episode; it is better understood as a stress test that revealed vulnerabilities in constitutional design as well as the capacity of democratic institutions to repair constitutional damage over time (Austin, 1999; Minerva Mills Ltd. v. Union of India, 1980).

7.1.4 Scope, method, and normative orientation of the chapter

This chapter does not merely catalogue textual changes. Its method is evaluative and institutional: it examines how the Forty-Second Amendment sought to reorder constitutional power, how those attempts interacted with judicial doctrine (especially the basic structure limitation), and how democratic restoration after 1977 reframed constitutional meaning. The normative orientation is explicitly constitutionalist: constitutional democracy is assessed not only by electoral continuity but by the integrity of limitations on power, the meaningfulness of rights, and the independence of adjudication (Austin, 1999; Seervai, 1991).

To anchor the analysis in verifiable materials, the discussion relies on primary constitutional instruments (the amendment text), major judicial pronouncements interpreting and limiting it, and official statements reflecting the corrective objectives of later reforms (Government of India, 1976; Government of India, 1978; Minerva Mills Ltd. v. Union of India, 1980; Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

7.2 Political Context and Democratic Crisis Leading to the Amendment

Any assessment of the Forty-Second Amendment that abstracts it from the Emergency risks misreading both its purpose and its consequences. The amendment was enacted during a period when democratic contestation was significantly constrained, and when the ordinary checks of constitutional governance-open parliamentary deliberation, robust opposition, and confident institutional resistance-were weakened. This context is not offered as mere historical colour; it is central to constitutional evaluation, because constitutional change acquires its meaning from the political conditions in which it is produced. By situating the amendment within the constitutional vulnerabilities of the mid-1970s, this section clarifies why the Forty-Second Amendment is often regarded as a project of constitutional entrenchment rather than a neutral reform agenda.

7.2.1 Emergency governance and the suspension of democratic normalcy

The Forty-Second Amendment cannot be understood apart from the Emergency declared in June 1975, a period widely recognized as a constitutional exception within India's democratic record. Contemporary governmental documentation and standard historical accounts identify 25 June 1975 as the beginning of the Emergency and 21 March 1977 as its termination, marking nearly twenty-one months in which ordinary democratic safeguards were substantially weakened (Press Information Bureau, 2022; Britannica, n.d.).

Emergency governance is constitutionally distinctive because it reconfigures the relationship between citizen and state through exceptional powers, frequently enabling restriction of civil liberties, intensified executive discretion, and the narrowing of institutional resistance. Even where the constitutional text provides for emergencies, the democratic problem is not the existence of emergency powers but the incentives they generate for entrenchment, normalization of exceptional measures, and the constitutionalization of executive preference (Austin, 1999). The Forty-Second Amendment represented the most ambitious attempt to translate an emergency political logic into permanent constitutional architecture (Government of India, 1976).

7.2.2 Executive ascendancy and erosion of institutional restraints

The Emergency period is frequently analyzed as a moment of executive ascendancy in which the space for institutional contestation shrank. In constitutional theory, checks and balances depend not only on formal powers but on the willingness and capacity of institutions to exercise them. Under crisis conditions, legislatures may cease to operate as deliberative counterweights, courts may face pressure or doctrinal constraints, and federal units may encounter stronger central direction (Austin, 1999; Seervai, 1991).

The Forty-Second Amendment's wide-ranging provisions must be read against this background: its textual interventions were not neutral "reforms" but instruments intended to stabilize and extend a particular distribution of power. The amendment's own architecture-amending the Preamble, reshaping Article 31C, inserting clauses into Article 368, and reworking the Seventh Schedule-illustrates a strategy of institutional consolidation rather than limited adjustment (Government of India, 1976).

7.2.3 Crisis politics as a facilitator of constitutional overreach

A recurring lesson of comparative constitutionalism is that constitutional overreach often emerges during crises because crisis narratives reduce the political cost of exceptional measures. The Emergency created a context in which constitutional change could be portrayed as necessary for stability, discipline, or socio-economic transformation. Yet constitutionalism requires skepticism toward permanent structural change justified by transient political conditions. The Forty-Second Amendment's attempt to immunize constitutional amendments from judicial scrutiny and to subordinate rights enforcement to an expanded state-policy shield reflected precisely this dynamic of crisis-enabled constitutional maximalism (Government of India, 1976; Minerva Mills Ltd. v. Union of India, 1980).

Table 5.1: Key constitutional moments surrounding the Emergency and the Forty-Second Amendment

Event	Date	Evidentiary source
Proclamation of the Emergency begins	25 June 1975	Press Information Bureau (2022); Britannica (n.d.)
Constitution (Forty-second Amendment) Act receives assent	18 December 1976	Government of India (1976)
Certain provisions of the Forty-Second Amendment brought into force (staggered commencement)	From 3 January 1977 (notified dates varied)	Minerva Mills Ltd. v. Union of India (1980); Government of India (1976)
Emergency ends	21 March 1977	Press Information Bureau (2022); Britannica (n.d.)
Forty-Fourth Amendment Bill's corrective rationale stated (fundamental rights vulnerable to transient majorities)	Introduced as part of 1978 legislative programme	Government of India (1978)
Supreme Court invalidates key supremacy/rights-reordering components (Sections 4 and 55 of the 42nd Amendment)	31 July 1980	Minerva Mills Ltd. v. Union of India (1980)

Source: Press Information Bureau (2022); Government of India (1976, 1978); Minerva Mills Ltd. v. Union of India (1980)

7.3 Legislative Strategy and the Scope of Constitutional Overhaul

The Forty-Second Amendment was not simply expansive; it was architectonic. Its changes were distributed across multiple constitutional sites-Preamble, rights adjudication, amendment procedure, federal distribution, and institutional design-producing a cumulative effect that exceeded any single provision. This section therefore treats the amendment as a legislative strategy rather than an isolated set of textual edits. The focus is on the method of constitutional reconstruction: the ambition to convert amendment power into a tool of structural re-founding, the reliance on speed and volume in place of

deliberative legitimacy, and the attempt to make certain changes resistant to judicial scrutiny. Understanding this strategy is essential, because it explains why the amendment came to symbolize not merely an episode of constitutional conflict but a direct challenge to constitutional supremacy itself.

7.3.1 Expansion of amendment power beyond constitutional repair

A central constitutional question raised by the Forty-Second Amendment is whether amendment can be used to transform the Constitution's identity without breaching the limits of constitutional continuity. After Kesavananda Bharati, the Supreme Court affirmed that Parliament's amending power exists but is limited by the Constitution's "basic structure" (Kesavananda Bharati v. State of Kerala, 1973).

The Forty-Second Amendment nonetheless advanced provisions that purported to deny any limitation on constituent power. Clause (5) of Article 368, inserted by the amendment, declared that there would be "no limitation whatever" on Parliament's power to amend the Constitution (Government of India, 1976). This was not merely a response to a specific doctrinal dispute; it was an attempt to rewrite the relationship between constitutional supremacy and legislative authority (Minerva Mills Ltd. v. Union of India, 1980).

7.3.2 Speed and volume as substitutes for deliberative legitimacy

The Forty-Second Amendment's distinctive feature was not a single controversial clause but the aggregate scale of its changes. The Act's internal structure itself signals its breadth: it amended numerous constitutional provisions and introduced new constitutional materials, including a new Part IVA and changes to the Seventh Schedule (Government of India, 1976).

In constitutional design, deliberation is not a decorative aspiration; it is a legitimacy condition. When fundamental structural change is introduced with inadequate deliberative opportunity, constitutional legitimacy suffers even if formal amendment rules are met. The amendment's comprehensive scope, undertaken during a period of democratic contraction, makes the question of legitimacy inseparable from the question of legality (Austin, 1999).

7.3.3 Fragmented alterations and absence of a coherent constitutional vision

Although the Forty-Second Amendment aimed at consolidation of authority, its textual form was marked by dispersed alterations across diverse constitutional locations: rights adjudication, emergency provisions, institutional design, and federal distribution. Such fragmentation can itself be strategic, reducing the

possibility of unified resistance by presenting changes as technical modifications rather than as a single constitutional project. Yet the constitutional impact was coherent in effect: diminution of judicial constraints and strengthening of centralized governmental authority (Government of India, 1976; Minerva Mills Ltd. v. Union of India, 1980).

7.3.4 Attempted insulation of amendments from judicial review

The attempt to insulate amendments from judicial review is the amendment's most direct challenge to constitutionalism. Article 368(4), as inserted, declared that constitutional amendments would not be "called in question in any court on any ground" (Government of India, 1976). The Supreme Court subsequently held this effort incompatible with the basic structure, reaffirming that judicial review itself is a structural guarantee essential to constitutional supremacy (Minerva Mills Ltd. v. Union of India, 1980).

7.3.5 The Forty-Second Amendment as an unprecedented legislative exercise

To describe the Forty-Second Amendment as "unprecedented" is not rhetorical exaggeration; it reflects the range of constitutional fields it sought to reorder, including ideological self-description, adjudicative design, and federal structure. The Act's amendment of the Preamble, the Seventh Schedule, and Article 368 illustrates a re-founding ambition pursued under the cover of amendment form (Government of India, 1976).

7.4 Transformation of the Preamble: Ideological Reorientation of the Constitution

The Preamble occupies a special position in Indian constitutional reasoning: it is at once declaratory and interpretive, symbolic and doctrinal. Altering it is therefore never a purely rhetorical act; it can reframe the Constitution's self-description and shape how constitutional values are later argued in courts and public discourse. This section examines the insertion of "Socialist" and "Secular," along with the emphasis on "integrity," as a form of constitutional identity-making conducted under extraordinary political conditions. The analysis proceeds with care: it distinguishes the normative appeal of the values invoked from the democratic concerns raised by the circumstances of their insertion. The point is not to litigate labels, but to understand how constitutional meaning is constructed, contested, and stabilized over time.

7.4.1 The Preamble as a statement of constitutional identity

In Indian constitutional interpretation, the Preamble has been treated as a statement of constitutional identity and a guide for interpretive orientation. It signals the Constitution's self-understanding: its democratic commitments, its foundational values, and its normative horizon. By altering the Preamble, an amendment affects not only textual symbolism but also interpretive context (Austin, 1999; Seervai, 1991).

7.4.2 Ideological insertions and their political context

Section 2 of the Forty-Second Amendment substituted the phrase "SOVEREIGN DEMOCRATIC REPUBLIC" with "SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC" and replaced "unity of the Nation" with "unity and integrity of the Nation" (Government of India, 1976).

These insertions must be understood simultaneously as ideological claims and as constitutional signals. At one level, they articulated a vision of the state's commitments. At another, given the Emergency context, they represented a political assertion embedded in constitutional form. The legal significance arises from the fact that courts do not treat the Preamble as a mere slogan; it can become part of constitutional reasoning, especially when questions of secularism, democratic structure, or equality are in issue (Austin, 1999).

7.4.3 Social consensus versus executive-driven constitutional symbolism

Democratic constitutionalism is strengthened when ideological declarations reflect broad constitutional consensus. When they are introduced under conditions of restricted contestation, they risk being read as executive-driven symbolism rather than as deliberative constitutional settlement. The Preamble insertions, therefore, invite a dual assessment: whether they describe enduring commitments of the Indian republic, and whether the procedural context of their adoption compromised the democratic legitimacy normally associated with constitutional self-definition (Press Information Bureau, 2022; Britannica, n.d.).

7.4.4 Judicial engagement with the amended Preamble

Post-Emergency constitutional practice demonstrates that the Preamble is neither judicially invisible nor immune from constitutional discourse. Even where the political legitimacy of the Emergency is criticized, the interpretive use of "secular" and "socialist" in later constitutional practice reflects a jurisprudential move: courts often treat the amended Preamble as part of the constitutional text and therefore as material for constitutional reasoning. The

democratic lesson here is subtle: constitutional meaning may survive the political disrepute of its moment of insertion, yet the legitimacy debate about process remains relevant to constitutional morality (Austin, 1999).

7.5 Recasting the Balance Between Fundamental Rights and Directive Principles

India's Constitution is transformative without being authoritarian; it seeks social revolution through lawful constraint, not through the suspension of liberty. That balance is reflected in the relationship between Fundamental Rights and Directive Principles, a relationship the framers designed as complementary rather than hierarchical. The Forty-Second Amendment attempted to alter that design by strengthening the constitutional shield for laws said to implement Directive Principles, thereby narrowing the practical reach of enforceable rights. This section explains why that recalibration became one of the amendment's most consequential moves, because it shifted the Constitution's internal equilibrium: from rights as constraints on state power to policy goals as justifications for limiting rights. The subsequent constitutional correction makes clear that this is not merely an academic dispute; it goes to the heart of what it means to be a constitutional democracy committed to both dignity and social justice.

7.5.1 Original constitutional equilibrium between rights and directives

The Indian Constitution was designed with a deliberate tension: Fundamental Rights provided enforceable limits against the state, while Directive Principles articulated socio-economic goals intended to guide governance. This duality is foundational to India's constitutional identity as both liberal and transformative. The framers did not treat rights and directives as antagonists; rather, they assumed a constitutional dialogue in which social reform would proceed without sacrificing the essential content of individual liberty (Austin, 1966; Austin, 1999).

7.5.2 Reprioritisation of state policy over individual liberty

The Forty-Second Amendment's major move in this domain was its alteration of Article 31C. The amendment replaced the earlier protection-limited to laws implementing Article 39(b) and (c)-with a broader shield covering laws giving effect to "all or any of the principles laid down in Part IV" (Government of India, 1976).

This change functionally expanded the category of legislation insulated from challenge under Articles 14 and 19. In constitutional terms, it offered the state a

pathway to limit equality and freedoms by attaching legislation to a Directive Principle. The Supreme Court later treated this as an assault on the "harmony" of Parts III and IV, emphasizing that the Constitution's transformative goals cannot be pursued by extinguishing the constitutional identity of rights (Minerva Mills Ltd. v. Union of India, 1980).

7.5.3 Doctrinal tensions introduced by the reordering

The constitutional tension introduced by the Forty-Second Amendment was not only doctrinal but philosophical: it implied that socio-economic transformation justified a general downgrading of individual liberty. Yet constitutionalism requires that even transformative constitutional projects proceed through principled limitation. The Minerva Mills decision is pivotal precisely because it framed the rights–directives relationship as one of balance rather than hierarchy, treating an enforced primacy of Part IV over Part III as constitutionally destructive (Minerva Mills Ltd. v. Union of India, 1980).

7.6 Curtailment of Judicial Review and Constitutional Supremacy Claims

Judicial review is not a privilege of courts; it is a structural guarantee of constitutional government. When constitutional amendments attempt to narrow judicial competence or immunize themselves from scrutiny, the constitutional question is not institutional rivalry but the survival of constitutional supremacy as a meaningful principle. The Forty-Second Amendment's approach to Article 368 and related provisions reflected an assertion of parliamentary constituent supremacy, seeking to displace the judiciary's role in enforcing limits on constitutional change. This section explores the constitutional logic behind such supremacy claims, why they threatened separation of powers, and how the judiciary's later response reaffirmed that limited government is not optional within the constitutional design. The lesson is direct: constitutional democracy requires that no power-including the power to amend-be left without principled boundaries.

7.6.1 Judicial review as a structural guarantee of constitutionalism

Judicial review is often misunderstood as a mere power of courts. In constitutional design, it operates as a structural guarantee: it ensures that the Constitution remains superior to transient political majorities and that rights remain enforceable constraints. The Indian Supreme Court's basic structure doctrine emerged from this understanding, affirming that constitutional identity cannot be altered even by formal amendment (Kesavananda Bharati v. State of Kerala, 1973).

7.6.2 Parliamentary supremacy claims under the amended framework

The Forty-Second Amendment's insertion of Article 368(4) and (5) was the clearest textual articulation of parliamentary supremacy claims. Clause (4) sought to prevent courts from questioning any constitutional amendment; clause (5) declared there was no limitation whatever on Parliament's constituent power (Government of India, 1976).

The doctrinal implication was radical: if courts could not test amendments, the Constitution's supremacy would become contingent on legislative will. The Supreme Court treated this as incompatible with constitutionalism, holding that limited government and judicial review form part of the Constitution's basic structure (Minerva Mills Ltd. v. Union of India, 1980).

7.6.3 Exclusionary clauses and limits on judicial competence

The Forty-Second Amendment also introduced provisions aimed at narrowing the effective reach of rights adjudication. The best way to interpret these provisions is as a broader strategy of exclusion: if rights can be insulated through enlarged policy shields, and if amendments can be insulated from challenge, then judicial competence as constitutional guardian becomes structurally irrelevant. The Court's subsequent response, restoring judicial review as an indispensable constitutional function, reflects an institutional reassertion of constitutional supremacy over parliamentary will (Minerva Mills Ltd. v. Union of India, 1980).

7.6.4 Disruption of separation of powers

Separation of powers in India is not a strict American-style compartmentalization, but it does require that no single institution monopolize constitutional interpretation. The Forty-Second Amendment's design tended toward such monopolization, by reducing judicial capacity to review the constitutional validity of governmental action and by asserting legislative constituent supremacy. This threatened the core constitutional premise that power is limited not only by elections but by enforceable constitutional norms (Seervai, 1991).

7.6.5 Implications for constitutional legality and rule of law

The most enduring implication of the Forty-Second Amendment is the reminder that legality can be used to weaken legality. Constitutional text can be amended to authorize unconstitutional outcomes in spirit. The correction offered by Minerva Mills reaffirms a central lesson for India's seventy-five-year constitutional journey: rule of law is preserved when courts can meaningfully

test power against constitutional principle, and when amendment is treated as continuity-preserving change rather than as constitutional self-destruction (Minerva Mills Ltd. v. Union of India, 1980; Austin, 1999).

7.7 Impact on Federalism and Centre–State Relations

Federalism in India is not merely administrative convenience; it is a constitutional method for governing diversity through shared sovereignty. Any change that shifts the balance of legislative competence or administrative authority between Union and States therefore carries democratic implications, especially in a polity marked by linguistic, cultural, and regional plurality. The Forty-Second Amendment introduced changes that strengthened central capacity in several policy domains and, in doing so, altered the everyday grammar of federal governance. This section evaluates those changes not only as technical reallocation but as a structural tilt with long-term consequences: it asks whether the amendment advanced coordination and national planning at the cost of state autonomy, and how this centralization sits within the broader constitutional promise of unity without uniformity.

7.7.1 Federal balance as a constitutional safeguard

Federalism in India functions as a constitutional safeguard against excessive centralization; it distributes political authority and allows democratic pluralism to operate through regional autonomy. Even though India is sometimes described as quasi-federal, the federal principle remains structurally significant because it affects legislative competence and administrative control (Austin, 1999; Seervai, 1991).

7.7.2 Centralisation of legislative and administrative authority

The Forty-Second Amendment amended the Seventh Schedule in ways that shifted key policy areas toward concurrent competence. It inserted "Forests" as Entry 17A and "Protection of wild animals and birds" as Entry 17B into the Concurrent List; it inserted "Population control and family planning" as Entry 20A; and it substituted a new Entry 25 on "Education," placing education (including technical and medical education and universities, subject to Union entries) within the Concurrent List (Government of India, 1976).

These changes were not merely administrative: they reshaped the everyday distribution of governance by enabling a stronger Union legislative footprint in domains historically associated with state policy responsibility. The constitutional effect was a more centralized legislative landscape, justified in

part through the rhetoric of planning and coordinated development, but with clear implications for state autonomy (Austin, 1999).

7.7.3 Diminution of state autonomy through constitutional design

The amendment also inserted Union List Entry 2A, addressing deployment of Union armed forces in states in aid of civil power, and modified related State List language on police, explicitly making it subject to Union deployment provisions (Government of India, 1976).

In a constitutional democracy, security coordination is legitimate; the difficulty arises when such provisions are read alongside emergency governance and diminished judicial review. Federalism's protective value depends on the presence of institutions capable of preventing central authority from becoming a default solution to political contestation (Austin, 1999).

7.7.4 Long-term structural consequences for Indian federalism

The long-term legacy of these changes is complex. Some domains now widely treated as requiring national coordination-environmental protection and forests, for instance-acquired stronger constitutional grounding for shared governance through concurrency. Yet the historical context matters: concurrency introduced during the Emergency cannot be read as a purely technocratic reform, because it also aligned with a wider centralizing project undertaken under conditions of reduced democratic contestation (Press Information Bureau, 2022; Government of India, 1976).

7.8 Democratic Rights, Civil Liberties, and the Culture of Constitutional Compliance

The Forty-Second Amendment's most enduring impact may lie in constitutional culture: the habits institutions adopt, the expectations citizens hold, and the ease with which restrictions become normalized when presented as legally authorized. This section therefore treats democratic rights and civil liberties not as a checklist of violated guarantees, but as an ecosystem that depends on the confidence of remedies, the legitimacy of dissent, and the availability of constitutional language to ordinary citizens. When rights become fragile, compliance can replace constitutional morality; obedience can be mistaken for consent. In a commemorative account of seventy-five years, the Emergency era and the Forty-Second Amendment serve as a sober reminder that democratic decline often proceeds gradually-through routinized legality-before it is recognized as a constitutional injury.

7.8.1 Democratic participation under an empowered executive state

The Emergency years demonstrate that democratic participation can be hollowed out even when formal electoral structures remain conceptually intact. When executive discretion expands, when dissent is treated as disloyalty, and when judicial remedies are weakened, the practical ability of citizens to contest government power diminishes sharply. Official and historical summaries of the period describe extensive restrictions and a governance climate that treated rights as contingent on state preference (Press Information Bureau, 2022; Britannica, n.d.).

7.8.2 Normalisation of rights dilution through constitutional means

One of the most troubling features of the Forty-Second Amendment is that it contributed to normalizing rights dilution as a constitutionally permissible tool of governance. Article 31C's expansion exemplified this: by enlarging the range of legislation insulated from Articles 14 and 19, the amendment created constitutional incentives to justify rights-restrictive laws through association with Directive Principles (Government of India, 1976; Minerva Mills Ltd. v. Union of India, 1980).

7.8.3 Effects on dissent, opposition, and political pluralism

Dissent is not an inconvenience to democracy; it is one of democracy's constitutional conditions. The historical memory of the Emergency period-especially preventive detention and restrictions-continues to shape Indian constitutional culture as a cautionary reference point. Later constitutional corrections, including changes to emergency-related enforcement limits, reflect an institutional effort to ensure that certain basic liberties cannot again be rendered judicially invisible (Government of India, 1978; Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

7.9 Judicial Response and the Constitutional Correction Process

A constitutional democracy is not judged only by whether it avoids crisis, but by whether it can correct itself after crisis. The post-Emergency period illustrates a constitutional repair process undertaken through multiple avenues: electoral reversal, constitutional amendment, and judicial doctrine. This section focuses on the judiciary's role in that repair, particularly the reassertion of the basic structure limitation and the invalidation of provisions that sought to immunize amendments from review or to submerge rights under an expanded policy shield. The Supreme Court's corrective jurisprudence did not merely restore earlier arrangements; it clarified the conditions of constitutional legitimacy

going forward. In doing so, it strengthened the idea that the Constitution is a framework of constrained power rather than a document available for capture by transient majorities.

7.9.1 Post-Emergency judicial self-correction

India's democratic journey is not only a story of crisis but a story of correction. Post-Emergency constitutionalism required institutional self-correction by multiple branches, including courts. The judiciary's later reassessment of Emergency-era reasoning-particularly in relation to life and liberty-illustrates how constitutional meaning is reconstructed after constitutional trauma (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

7.9.2 Revival of the basic structure doctrine

The basic structure limitation, articulated in Kesavananda Bharati, became the principal doctrinal tool for constitutional correction. Its significance lies not merely in limiting Parliament but in preserving constitutional identity-democracy, judicial review, and the rule of law-as non-negotiable structural commitments (Kesavananda Bharati v. State of Kerala, 1973).

7.9.3 Reassertion of constitutional supremacy

The clearest judicial repudiation of the Forty-Second Amendment's supremacy claims came in Minerva Mills. The Court held that the newly inserted clauses seeking to exclude judicial review and to assert unlimited constituent power could not stand, reaffirming that limited government and judicial review are part of the Constitution's basic structure (Minerva Mills Ltd. v. Union of India, 1980).

7.9.4 Selective invalidation of Forty-Second Amendment provisions

The correction process was not a wholesale deletion of every change, but a selective invalidation and rollback aimed at restoring constitutional equilibrium. This is important: constitutional resilience does not always mean returning to an original baseline; it often means restoring balance while retaining reforms that can be justified under renewed constitutional legitimacy. The invalidation of the expansive Article 31C shield and the rejection of Article 368(4)-(5) illustrate a targeted judicial strategy: remove provisions destructive of basic structure while preserving the Constitution's capacity for socially transformative governance (Minerva Mills Ltd. v. Union of India, 1980).

Table 5.2; Selected Forty-Second Amendment interventions and their constitutional fate

Intervention introduced by the 42nd Amendment	Constitutional location	Post-Emergency correction or limitation	Authoritative anchor
Inserted "Socialist" and "Secular"; added "integrity" to the unity clause	Preamble	Retained in constitutional text; continues to shape interpretive discourse	Government of India (1976)
Expanded Article 31C protection from Article 39(b)-(c) laws to laws implementing any Part IV principle	Article 31C	Held unconstitutional insofar as it destroyed Part III–Part IV balance	Government of India (1976); Minerva Mills Ltd. v. Union of India (1980)
Attempted to bar courts from questioning constitutional amendments; asserted unlimited constituent power	Article 368(4)–(5)	Struck down as violating basic structure and judicial review	Government of India (1976); Minerva Mills Ltd. v. Union of India (1980)
Shifted key subjects into Concurrent List (forests, wildlife protection, population control, education)	Seventh Schedule, List III	Structural centralization retained in concurrency, now part of ordinary governance architecture	Government of India (1976)

Post-Emergency constitutional culture reaffirms non-derogability of life and liberty against Emergency-era reasoning	Rights jurisprudence; Article 359 limits referenced	Explicit overruling of Emergency-era majority reasoning, and recognition of inalienable liberty	Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)

Source (table): Government of India (1976); Minerva Mills Ltd. v. Union of India (1980); Justice K.S. Puttaswamy (Retd.) v. Union of India (2017).

7.9.5 Judiciary as a stabilising constitutional institution

The longer arc of constitutional development reinforces this stabilizing role. In Justice K.S. Puttaswamy, the Supreme Court explicitly overruled the Emergency-era majority reasoning of ADM Jabalpur and described it as "seriously flawed," reaffirming that life and liberty are inalienable and that constitutional democracy depends on judicial remedies (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

This later repudiation is normatively significant: it shows that constitutional repair is not only textual but jurisprudential. A constitutional democracy celebrates longevity not by denying its failures but by demonstrating the ability to name them, reason through them, and institutionalize safeguards against recurrence.

7.10 Conclusion

The Forty-Second Amendment ultimately occupies a paradoxical place in India's constitutional narrative. It represents one of the most serious attempts to recast the Constitution toward concentrated authority, yet it also catalyzed doctrinal and political responses that reaffirmed constitutional supremacy, rights-consciousness, and institutional balance. The conclusion distills this dual legacy into lessons relevant to the book's central theme: constitutional success is not the absence of constitutional conflict, but the capacity of a democratic society to preserve constitutional identity through principled limits, independent adjudication, and political accountability. If the amendment warns how democracy can be weakened through constitutional form, the subsequent correction shows how constitutionalism can be restored through democratic means-making vigilance, not complacency, the most fitting tribute to seventy-five years of constitutional endurance.

7.10.1 Constitutional fragility during periods of political crisis

The Forty-Second Amendment stands as a reminder that constitutional fragility is most acute when crises enable concentration of power. The Emergency context illustrates how formal legality can coexist with severe weakening of democratic substance, and how constitutional text can be used to insulate authority from accountability (Press Information Bureau, 2022; Government of India, 1976).

7.10.2 Limits of constituent power exercised through amendment

The Indian constitutional experience affirms that amendment power is not identical to constituent power. The basic structure doctrine operates as a conceptual boundary that preserves constitutional identity against destructive alteration, ensuring that constitutional supremacy does not become an artifact of legislative will (Kesavananda Bharati v. State of Kerala, 1973; Minerva Mills Ltd. v. Union of India, 1980).

7.10.3 The Forty-Second Amendment as a cautionary precedent

For a work committed to "celebrating" seventy-five years of constitutional endurance, celebration must be mature rather than triumphalist. The Forty-Second Amendment is a cautionary precedent precisely because it demonstrates that constitutional regression can be pursued in the idiom of constitutional change. Its legacy is therefore best framed as an ethical warning: democratic deterioration may occur through constitutional technique, and vigilance must remain institutional rather than merely rhetorical (Austin, 1999; Seervai, 1991).

7.10.4 Reaffirming vigilance in constitutional democracy

Yet the chapter's final emphasis is not despair but democratic resilience. The post-Emergency constitutional correction-through electoral reversal, subsequent amendments aimed at safeguarding rights, and judicial reaffirmation of constitutional supremacy-demonstrates that India's constitutional journey is not a straight line, but it is nonetheless a durable project. The Forty-Fourth Amendment's statement of objects and reasons explicitly recognized the danger of fundamental rights being taken away by a transient majority and emphasized safeguards against recurrence (Government of India, 1978).

In that sense, the Forty-Second Amendment occupies an essential place in the story of India's constitutional success: it reveals the Constitution's vulnerabilities, and simultaneously reveals the democratic capacity-through

institutions and constitutional culture-to restore constitutionalism after profound strain.

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8 CONSTITUTION AND SOCIAL TRANSFORMATION

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8.1 Introduction

The Indian Constitution is often described as a framework for governance; yet its deeper aspiration is better captured by the idea of transformative democracy. At the moment of its adoption, the constitutional order confronted not merely the technical problem of establishing institutions, but the moral problem of converting a stratified society structured by caste hierarchy, patriarchal norms, religious and cultural exclusions, and deep material deprivation into a society of equal citizenship. In this sense, India's constitutional founding did not merely inaugurate a state; it inaugurated a normative project, one that sought to displace inherited status with public dignity, and social subordination with enforceable rights (Austin, 1999; Khosla, 2020). The Constitution thus stands not only as the "law of the land" but as a deliberate effort to re-author the grammar of social relations through equality, dignity, and fraternity, not as abstract ideals but as legally mediated commitments (Constitution of India, 1950/2020).

To speak of "successful adoption" over seventy-five years, as this book's central theme insists, is therefore to measure more than institutional survival. The constitutional achievement lies also in the gradual internalisation of constitutional standards by social life: in the shift, uneven and contested, from toleration of hierarchy to public justifications in the language of rights; from fatalism about exclusion to claims-making by historically marginalised communities; from silence about violence and discrimination to constitutional accountability (Austin, 1999; Baxi, 1982). The story is not triumphalist and cannot be, because transformation is never complete in a society as complex as India. But the constitutional fact remains: over decades, the Constitution has become the central normative reference through which Indian society evaluates itself, critiques its injustices, and demands reform thereby demonstrating a living constitutionalism that is democratic not only in procedure, but in purpose (Khosla, 2020).

This chapter therefore argues that social transformation is among the clearest indicators of India's constitutional success over seventy-five years: the Constitution has endured not by remaining socially neutral, but by persistently generating a legal vocabulary for equality and inclusion, even when implementation lags behind aspiration (Constitution of India, 1950/2020).

8.2 The Concept of Social Transformation in Constitutional Thought

Social transformation, as a constitutional idea, must be distinguished from ordinary policy change. Policy change can be episodic, reversible, and contingent upon shifting political majorities. Constitutional transformation, by contrast, refers to the reconstitution of social membership who counts as a full citizen, whose dignity matters as a public value, and which forms of domination are rendered illegitimate by law (Klare, 1998; Khosla, 2020). Transformation in this sense does not depend solely on judicial creativity or legislative ambition; it is a structural orientation of the constitutional order itself, expressed through rights, directive commitments, institutional design, and democratic participation (Constitution of India, 1950/2020).

8.2.1 Transformation as Constitutional Purpose, Not Merely Legislative Policy

The Constitution's transformative quality is anchored in its foundational commitments to justice social, economic, and political alongside equality of status and opportunity, and fraternity assuring the dignity of the individual (Constitution of India, 1950/2020). These commitments are not merely symbolic. They operate as interpretive and institutional directives: fundamental rights constrain both state power and private domination; directive principles supply a normative agenda for welfare and distributive justice; and constitutional institutions are tasked with securing the conditions under which equal citizenship becomes socially meaningful (Austin, 1999; Baxi, 1982).

8.2.2 Constituent Vision: From Hierarchy to Citizenship

In a society shaped by graded inequality, the framers confronted a hard truth: formal independence without social equality would remain incomplete freedom. The Constitution therefore sought to make citizenship rather than community status the primary mode of political and legal identity. This was neither naïve idealism nor utopian drafting. It was an institutional response to social structure, and it assumed that constitutionalism in India would require the state to act affirmatively against entrenched exclusions rather than merely to refrain from interference (Austin, 1966; Austin, 1999).

8.2.3 Transformative Constitutionalism and the Indian Variant

In comparative scholarship, "transformative constitutionalism" has often been associated with robust judicial enforcement of socio-economic rights (Klare, 1998). India's experience is distinct. Indian transformation has been co-produced through four interacting forces: constitutional text and amendment, legislative and policy interventions, judicial interpretation especially of the equality and life-and-liberty guarantees and social movements that converted constitutional promises into demands for recognition and redistribution (Baxi, 1982; Sathe, 2002; Khosla, 2020). The constitutional story is therefore not reducible to courts, nor to Parliament alone; it is a long democratic conversation mediated by institutions, and constrained by constitutional ideals (Constitution of India, 1950/2020).

8.3 The Constitutional Toolkit of Social Transformation: Text, Structure, and Institutions

The Constitution's capacity to generate social transformation is best understood through its toolkit: enforceable rights, directive governance commitments, civic obligations, and institutional pathways for participation. Each element operates differently, and yet together they form a coherent architecture of social reform.

8.3.1 Fundamental Rights as Anti-Hierarchy Guarantees

The equality code and related freedoms in Part III are not merely negative liberties. They function as anti-hierarchy principles that delegitimise status-based domination. The abolition of untouchability, the guarantee of equality before law, and non-discrimination commitments are direct constitutional refusals of inherited inequality (Constitution of India, 1950/2020). These rights constrain state complicity in social domination and also authorise robust legal frameworks against discriminatory practices (Austin, 1999).

8.3.2 Directive Principles as the State's Social Mandate

Part IV is often described as non-justiciable, but it is constitutionally weighty. It articulates a social agenda: reduction of inequality, welfare provision, public health, education, and social justice as a governance obligation rather than optional charity (Constitution of India, 1950/2020). The jurisprudence of harmonisation between rights and directives especially after the Emergency era has reinforced the idea that constitutional democracy must be both rights-protecting and welfare-oriented (Austin, 1999).

8.3.3 Fundamental Duties and Constitutional Citizenship

The insertion and expansion of Fundamental Duties (particularly through post-Emergency constitutional politics) reflects an effort to conceptualise citizenship as participatory and ethical, not purely rights-bearing (Constitution of India, 1950/2020). Yet constitutional order remains clear: duties cannot become a pretext to dilute fundamental rights, and civic obligation must be read as supportive of constitutionalism rather than superior to it (Constitution of India, 1950/2020).

8.3.4 Federalism and Local Self-Government as Instruments of Social Inclusion

Democratisation is not only national; it is also local. The constitutionalisation of Panchayati Raj and municipal governance created institutional space for the inclusion of marginalised groups, including women and historically disadvantaged communities, in the everyday practice of power. The reservation framework within local self-government has functioned as one of the Constitution's most concrete social-transformation mechanisms, precisely because it changes who governs at the grassroots, not merely what policies are adopted (Constitution of India, 1950/2020; The Constitution (Seventy-Third Amendment) Act, 1992).

8.4 Transforming Caste and Social Exclusion: Equality, Reservations, and Anti-Discrimination

No constitutional transformation in India can be meaningfully analysed without confronting caste. The Constitution's abolition of untouchability and its affirmative commitments to equality are not symbolic gestures; they are an explicit constitutional judgment that graded inequality is incompatible with citizenship (Constitution of India, 1950/2020).

8.4.1 Abolition of Untouchability and the Legal Refusal of Graded Inequality

Article 17 abolishes untouchability and forbids its practice "in any form," marking one of the Constitution's most direct interventions into social structure (Constitution of India, 1950/2020). The legal system subsequently developed penal frameworks to enforce this constitutional prohibition, including statutory punishments for offences arising out of untouchability practices (Protection of Civil Rights Act, 1955).

The constitutional significance of Article 17 is not exhausted by criminalisation. It operates as a constitutional norm that delegitimises social practices, justifies

state action against exclusion, and supplies an interpretive basis for equality jurisprudence. The abolition of untouchability is therefore best read as a constitutional attempt to convert moral condemnation into legal disability, and to convert social stigma into enforceable rights against humiliation (Austin, 1999).

8.4.2 Reservations as a Transformative Device: Representation and Corrective Justice

The Constitution's reservation architecture reflects the recognition that formal equality cannot by itself overcome structural exclusion. The constitutional scheme authorises affirmative measures in education and employment and mandates political representation safeguards through reserved constituencies, thereby treating representation as a prerequisite of democratic legitimacy rather than a mere distributive preference (Constitution of India, 1950/2020).

Indian constitutional law has also developed a sophisticated jurisprudence around reservations, attempting to hold together two commitments: the constitutional imperative of substantive equality, and the constitutional risk of entrenching new forms of unfairness if affirmative measures are untethered from reasonableness, backwardness criteria, and adequate representation. The Supreme Court's landmark decisions in Indra Sawhney v. Union of India (1992), M. Nagaraj v. Union of India (2006), and subsequent cases illustrate this attempt to transform equality from a formal to a substantive principle while retaining limiting doctrines such as reasonableness and proportionality (Indra Sawhney v. Union of India, 1992; M. Nagaraj v. Union of India, 2006).

8.4.3 Social Movements and Constitutional Claims-Making

Transformation has not occurred purely "from above." Dalit movements, backward-class mobilisations, and broader struggles for social dignity have repeatedly relied upon constitutional language to demand institutional reform. This is an essential feature of India's constitutional democracy: the Constitution becomes socially transformative not only when courts pronounce rights, but when citizens and movements use constitutional promises as political resources for demanding state accountability (Baxi, 1982; Austin, 1999).

8.5 Gender Justice and the Constitutional Reconstruction of Family and Public Space

The constitutional pursuit of gender justice has been gradual and frequently contested, yet unmistakably transformative in its cumulative effect. The Constitution's equality guarantees and its evolving interpretation have

increasingly treated gender inequality not as cultural inevitability but as constitutional wrong (Constitution of India, 1950/2020).

8.5.1 Equality, Dignity, and Bodily Autonomy as Constitutional Norms

The reorientation of constitutional discourse toward dignity and autonomy has been strengthened through the Supreme Court's articulation of privacy as a fundamental right and its broader emphasis on individual self-determination (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017). While privacy doctrine has multiple applications, its gendered significance is particularly pronounced: bodily autonomy and decisional freedom function as constitutional tools for resisting patriarchal control and state paternalism (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

8.5.2 Workplace Dignity and the Constitutionalisation of Safety

The jurisprudential and legislative trajectory from Vishaka v. State of Rajasthan (1997) to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 demonstrates a distinctive feature of Indian transformation: constitutional adjudication can generate normative standards that later crystallise into legislative frameworks. In Vishaka, the Court linked sexual harassment to violations of equality and life-and-liberty, thereby constitutionalising workplace dignity as a matter of fundamental rights rather than administrative discretion (Vishaka v. State of Rajasthan, 1997).

8.5.3 Political Representation and Local Governance

Few constitutional interventions have altered the lived sociology of power as directly as the reservation of seats for women in Panchayati Raj Institutions and urban local bodies. The constitutional mandate of minimum reservation, coupled with state-level expansions, has produced one of the world's largest experiments in women's local political leadership (The Constitution (Seventy-Third Amendment) Act, 1992; Constitution of India, 1950/2020).

The empirical scale of this transformation is significant. Government reporting indicates that India has approximately 14.5 lakh elected women representatives in Panchayati Raj Institutions, constituting about 46% of total PRI elected representatives, and that 21 states provide for 50% reservation for women in PRIs exceeding the constitutional minimum (Press Information Bureau, 2025b). This is not merely numerical progress; it reflects constitutional design converting representation into capability, and capability into democratic agency (Press Information Bureau, 2025b).

8.6 Education, Welfare, and the Rise of Socio-Economic Constitutionalism

The Constitution's transformative ambition is perhaps most visible in the gradual constitutionalisation of socio-economic entitlements. This trajectory has not been linear. Yet, over decades, governance and adjudication increasingly treated welfare not as benevolent policy but as the material precondition of dignity (Constitution of India, 1950/2020).

8.6.1 Education from Directive Principle to Enforceable Right

The conversion of education from a directive aspiration into an enforceable right marks a paradigmatic moment in India's social constitutionalism. The Constitution (Eighty-Sixth Amendment) Act, 2002 inserted Article 21A, imposing a constitutional obligation upon the state to provide free and compulsory education to children aged six to fourteen, and reorganised related constitutional provisions (The Constitution (Eighty-Sixth Amendment) Act, 2002).

This constitutional shift was operationalised through the Right of Children to Free and Compulsory Education Act, 2009, a comprehensive statutory framework intended to secure elementary education as a justiciable entitlement rather than a discretionary benefit (The Right of Children to Free and Compulsory Education Act, 2009; Ministry of Education, Government of India, n.d.).

8.6.2 Public Health, Nutrition, and Constitutional Responsibility

Public health transformation is harder to narrate doctrinally because India's Constitution does not explicitly codify a standalone right to health in Part III, yet it embeds health and nutrition as directive priorities. The constitutional story therefore appears in governance outcomes and interpretive expansions of dignity. Recent official reporting, grounded in Sample Registration System data, indicates substantial declines in maternal and child mortality indicators: the Maternal Mortality Ratio declined from 130 (2014–16) to 93 (2019–21) per lakh live births, with corresponding declines in infant mortality and under-five mortality over comparable periods (Press Information Bureau, 2025a).

8.6.3 Poverty, Livelihood, and Minimum Conditions of Dignity

The Indian constitutional project has increasingly treated poverty and livelihood as constitutional questions because deprivation undermines the conditions of equal citizenship. In development terms, this is visible in multidimensional poverty reduction. The National Multidimensional Poverty Index (MPI) progress review based on NFHS-4 and NFHS-5 reports that the

proportion of India's population considered multidimensionally poor declined from 24.85% (2015–16) to 14.96% (2019–21), corresponding to an estimate of 135 million individuals escaping multidimensional poverty during that period (UNDP India, 2023; NITI Aayog, 2023).

Human development measurement tells a related story. UNDP reporting notes that India's HDI value rose from 0.434 (1990) to 0.644 (2022), reflecting cumulative improvements in life expectancy, education indicators, and income measures, though continued structural constraints remain (UNDP, 2024a).

8.7 Religion, Culture, and Social Reform: Transforming Society Without Cultural Domination

India's constitutionalism is distinctive in that transformation must proceed without collapsing pluralism. Social reform cannot be pursued as cultural erasure; yet cultural autonomy cannot operate as a shield for inequality. The Constitution therefore adopts a mediated model: it protects religious freedom, while authorising state intervention for social welfare and reform, and subjecting all practices to the discipline of constitutional values (Constitution of India, 1950/2020).

The challenge is structural. In a multi-religious society, reform initiatives risk being read as majoritarian intrusion; yet failure to reform entrenches gender and caste hierarchies within community governance. India's model therefore depends upon a constitutional bargain: reform must be justified through equality and dignity rather than through cultural domination, and adjudication must remain attentive to the difference between faith as identity and discrimination as harm (Austin, 1999; Bhargava, 2010).

8.8 Environmental Justice, Development, and the New Social Question

Social transformation in the twenty-first century includes ecological vulnerability because environmental harms disproportionately burden the poor, the marginalised, and those whose livelihoods are ecologically dependent. Indian constitutionalism acknowledges this in both text and interpretation. The Constitution includes environmental protection as a directive commitment and civic responsibility, and courts have connected environmental quality to the right to life (Constitution of India, 1950/2020).

Judicial doctrine has contributed significantly to this transformation. In Subhash Kumar v. State of Bihar (1991), the Court linked pollution-free water and air to Article 21; in Vellore Citizens' Welfare Forum v. Union of India (1996), sustainable development and precautionary principles were invoked as

constitutional governance standards; and M.C. Mehta litigation repeatedly structured environmental regulation and liability principles through constitutional reasoning (Subhash Kumar v. State of Bihar, 1991; Vellore Citizens' Welfare Forum v. Union of India, 1996; M.C. Mehta v. Union of India, 1987).

This constitutionalisation of environment illustrates the evolving content of "social justice." Development cannot be evaluated purely by growth metrics if the costs are borne by vulnerable communities. Environmental justice therefore becomes, in constitutional terms, a demand that development be consistent with dignity, livelihood, and intergenerational responsibility (Constitution of India, 1950/2020).

8.9 Judiciary, Public Interest Litigation, and the Expansion of Transformative Remedies

The judiciary has functioned as a major institutional site for social transformation, particularly through Public Interest Litigation (PIL). This development widened access to justice, enabling those without resources to convert constitutional ideals into enforceable claims (Sathe, 2002). Yet its legitimacy depends upon prudence, because the same instrument that empowers the marginalised can also unsettle democratic accountability if used without restraint (Baxi, 1982; Sathe, 2002).

PIL's doctrinal origins are often associated with the relaxation of standing and procedural barriers in cases such as S.P. Gupta v. Union of India (1981), People's Union for Democratic Rights v. Union of India (1982), and Bandhua Mukti Morcha v. Union of India (1984), where the Court facilitated rights claims involving labour exploitation, bonded labour, and systemic governance failures (S.P. Gupta v. Union of India, 1981; People's Union for Democratic Rights v. Union of India, 1982; Bandhua Mukti Morcha v. Union of India, 1984).

Transformative adjudication also generated structural remedies, including continuing mandamus and monitoring of compliance in complex governance contexts visible in later cases such as Vineet Narain v. Union of India (1997). These innovations helped translate constitutional norms into administrative practice, yet also intensified critiques about separation of powers, democratic legitimacy, and institutional competence (Vineet Narain v. Union of India, 1997; Sathe, 2002).

8.10 Limits and Resistance: Why Social Transformation Is Uneven

A credible account of social transformation must emphasise unevenness. Caste hierarchies, patriarchy, and economic inequality are adaptive social structures; they do not disappear merely because law condemns them. The persistence of discrimination and violence, as well as gaps in access to justice, illustrates that constitutional transformation is mediated by institutional capacity, political will, and social power (Baxi, 1982; Austin, 1999).

Table 8.1: Literacy in India as a Long-Run Indicator of Transformative Constitutionalism (Census, Combined Rates)

Census Year	Female Literacy (%)	Male Literacy (%)	Total Literacy (%)	Gender Gap (Male–Female, percentage points)
1951	8.86	27.15	18.32	18.29
1961	15.35	40.40	28.31	25.05
1971	21.97	45.96	34.45	23.99
1981	29.76	56.38	43.57	26.62
1991	39.29	64.13	52.21	24.84
2001	53.67	75.26	64.83	21.59
2011	65.46	82.14	74.04	16.68

Source: Census of India (1951–2011), compiled in Ministry of Statistics and Programme Implementation, *Literacy and Education* (Chapter 3), with Census of India as the underlying source. Notes in the source clarify that literacy age thresholds differ across certain decades (5+ for early rounds; 7+ for later rounds). (Ministry of Statistics and Programme Implementation).

Implementation deficits are particularly significant. Rights without enforcement can produce symbolic constitutionalism rather than lived constitutionalism. Administrative weakness, unequal legal literacy, delays in adjudication, and resource constraints can slow transformation even when constitutional norms are clear (Austin, 1999). At the same time, transformation generates backlash. Equality reforms can provoke political mobilisation against inclusion, making constitutional culture the willingness of institutions and citizens to internalise constitutional restraint an essential variable in long-term success (Khosla, 2020).

8.11 Measuring Social Transformation Over 75 Years: Evidence, Indicators, and Institutional Narratives

A constitutional democracy should be evaluated through outcomes as well as doctrines. Metrics do not replace moral argument, but they discipline it. They clarify whether constitutional promises are becoming socially meaningful, and where the gap between constitutional aspiration and lived reality remains most severe (Sen, 1999).

Table 8.2: Women's Democratic Participation as a Transformative Constitutional Outcome

Indicator	Earlier Constitutional Period	Recent Period (as officially reported)
Women contesting general elections (share of total candidates)	3% (1957)	10% (2024)
Women elected to Lok Sabha	22 (First Lok Sabha)	75 (18th Lok Sabha; ~14% of total members)
Women members in Rajya Sabha	15 (1952)	42 (~17% of total members)
Elected women representatives in Panchayati Raj Institutions	Constitutional minimum reservation framework introduced later	~14.5 lakh women; ~46% of PRI elected representatives; 21 states provide 50% reservation

Source: Press Information Bureau, Government of India, official release on women's participation in democratic institutions (30 July 2025).

Two forms of measurement are especially useful. First, long-run social indicators reveal structural changes in education, health, and participation. Second, institutional indicators capture whether those historically excluded are now present within decision-making structures. The following tables are offered as empirical complements to the doctrinal narrative, not as substitutes for it.

This table captures one dimension of transformation: the expansion of access to basic capability. Total literacy increased from 18.32% (1951) to 74.04% (2011), and the gender gap narrowed substantially over time, though it did not disappear (Ministry of Statistics and Programme Implementation, n.d.). Such

gains cannot be attributed to constitutional text alone; they reflect governance, social movements, and institutional development. Yet constitutionally, literacy improvement is not incidental: it aligns with the constitutional commitment to equality of opportunity and the later elevation of education into enforceable entitlement through Article 21A and the RTE framework (The Constitution (Eighty-Sixth Amendment) Act, 2002; The Right of Children to Free and Compulsory Education Act, 2009).

Women's political participation illustrates a distinct kind of transformation: the constitutional project changes not only social outcomes but democratic composition. The local-government reservation framework, developed through the constitutionalisation of Panchayats and municipalities, demonstrates how constitutional engineering can reconfigure everyday power and normalize women's presence in governance (The Constitution (Seventy-Third Amendment) Act, 1992; Constitution of India, 1950/2020; Press Information Bureau, 2025b).

8.12 Conclusion: Social Transformation as the Constitution's Enduring Achievement

If the central theme of this book is the celebration of India's democratic journey through seventy-five years of constitutional adoption, then social transformation must be treated as one of its most serious achievements. The Constitution did not merely persist as text; it persisted as a normative force. It became the language through which hierarchy is challenged, exclusion is named as injustice, and dignity is claimed as a constitutional entitlement rather than a social privilege (Austin, 1999; Khosla, 2020).

The evidence is necessarily mixed. Literacy gains and the rise of women's representation in local governance and legislatures reveal deep structural change (Ministry of Statistics and Programme Implementation, n.d.; Press Information Bureau, 2025b). Multidimensional poverty reduction indicates that welfare constitutionalism, while imperfect, has contributed to measurable improvements in the conditions of life and capability (UNDP India, 2023; NITI Aayog, 2023). Public health improvements such as declines in maternal mortality show that constitutional commitments to welfare and dignity can be reflected in outcomes, even as inequality persists (Press Information Bureau, 2025a).

Yet constitutional transformation remains unfinished. Caste and patriarchy adapt; implementation gaps endure; polarisation and institutional stress test constitutional ideals. It is precisely here that the "successful adoption" of the

Constitution should be understood not as the end of constitutional struggle but as its enabling condition: the Constitution has given India a durable legal and moral standard against which power may be judged, and through which democratic legitimacy must continuously be earned (Constitution of India, 1950/2020).

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9 GLOBALIZATION: IMPACT ON THE INDIAN CONSTITUTION

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9.1 Introduction

If the first seventy-five years of India's constitutional life can be described as a continuous experiment in sustaining democracy amid immense internal diversity, the late twentieth and early twenty-first centuries add a second axis of difficulty: the management of constitutional government under conditions of deep global interdependence. Globalization is not merely an economic episode, nor a transient policy orientation capable of being reversed at will. It is a structural condition in which domestic constitutional orders must govern while continuously interacting with external markets, transnational regulatory systems, international adjudicatory sites, and global normative languages of rights and legitimacy (Held, McGrew, Goldblatt, & Perraton, 1999; Sassen, 2006; Slaughter, 2004).

For a Constitution adopted to secure sovereignty after colonial rule, and to pursue social justice through democratic self-government, globalization introduces an enduring tension: how may India remain constitutionally committed to popular sovereignty, parliamentary responsibility, and fundamental rights, while simultaneously binding itself-often through executive-led processes-to international economic and legal regimes that can constrain domestic choice? The constitutional question is not whether globalization influences India; it is how India's constitutional system metabolizes globalization pressures without surrendering the normative primacy of constitutional supremacy and democratic accountability. The story of "successful adoption" of the Constitution is thus not only a story of survival against internal strains; it is equally a story of adaptation without capitulation to external compulsions.

This chapter argues that globalization has reshaped Indian constitutional practice along three connected dimensions. First, it has transformed governance by intensifying regulation, creating a modern administrative state and

multiplying quasi-judicial institutions, while structurally privileging the executive branch in international economic management (Cerny, 1995; Krisch, 2010). Second, it has transformed constitutional interpretation by diffusing global rights vocabularies-privacy, dignity, proportionality-like balancing-into domestic adjudication, even while Indian courts retain a strong insistence on constitutional text and context (Choudhry, 2006; Hirschl, 2014). Third, it has transformed constitutional conflict by relocating struggles over liberty and equality into new arenas: platforms, data flows, climate obligations, investment arbitration, and transnational supply chains.

To "celebrate" India's democratic journey at seventy-five years is not to sentimentalize it. Rather, celebration becomes intellectually credible precisely when it is accompanied by a hard-headed account of stress, contestation, and institutional learning. Globalization, in that sense, belongs to the constitutional narrative as a modern stress test: it reveals where Indian constitutionalism bends, where it resists, and where it innovates.

9.2 Conceptual Foundations: What "Globalization" Means for Constitutional Law

Globalization becomes meaningful for constitutional law only when it is translated into institutional and doctrinal consequences. At least three meanings are constitutionally salient.

First, globalization denotes economic integration and regulatory interdependence. Trade openness, cross-border finance, and global supply chains constrain domestic policy space not by legal coercion alone but by material dependence and market discipline (Rodrik, 2011). What appears as "policy choice" at the domestic level is frequently shaped by external vulnerability: dependence on investment inflows, exposure to commodity shocks, and competitive pressures to attract mobile capital (Cerny, 1995). This generates constitutional implications for federal distribution of resources, welfare commitments, and the meaning of state responsibility in an increasingly privatized economy.

Second, globalization denotes norm diffusion and rights convergence. Constitutional courts increasingly speak a partially transnational language. Rights such as dignity, equality, and privacy are not merely local moral claims but participate in a global grammar of constitutionalism, often mediated through international human rights instruments and comparative constitutional reasoning (Choudhry, 2006; Hirschl, 2014). In India, this is visible in the judicial willingness to treat international standards as persuasive interpretive material

in appropriate cases, while still insisting that enforceable rights are grounded in the Constitution itself (*Vishaka v. State of Rajasthan*, 1997).

Third, globalization denotes executive-centred governance. International negotiation, treaty-making, crisis economic management, and technical regulation are structurally concentrated in the executive. Even where legislatures retain formal power, the informational asymmetries and time-pressures of global governance make parliamentary deliberation difficult, thereby producing a familiar constitutional anxiety: a "democratic deficit" in the making of commitments that shape domestic life (Krisch, 2010; Slaughter, 2004). The Indian Constitution's architecture amplifies this concern because foreign affairs largely belong to the Union domain, and international economic policy is commonly operationalized through delegated legislation, regulatory agencies, and administrative discretion.

9.3 The Constitutional Framework for External Relations: Sovereignty, Treaties, and Parliamentary Role

The Indian Constitution assigns external affairs principally to the Union, consistent with a classical understanding that sovereignty in international relations must be centralized to preserve coherence. Yet the deeper constitutional question is not allocation alone; it is the relationship between external commitments and domestic legitimacy. Article 253 authorizes Parliament to make laws for implementing international agreements and decisions of international bodies, thereby supplying a constitutional bridge between treaty commitments and municipal law (Government of India, 1950/updated ed.).

Indian constitutional practice has generally been described as dualist in effect: treaty obligations do not automatically become enforceable domestic law unless incorporated through legislation. This principle has two constitutional virtues. It preserves parliamentary responsibility by requiring domestic lawmaking for enforceability, and it ensures that rights and duties binding individuals flow through constitutionally supervised processes rather than executive diplomacy alone (Bradley, 2013). Yet dualism also creates the possibility of selective compliance and opacity: India may assume international obligations at the level of external relations while domestic translation remains partial, uneven, or delayed.

Judicial doctrine has repeatedly been drawn into this terrain, especially when treaty commitments intersect with fundamental rights and legislative competence. The Supreme Court has treated the executive's treaty power as

significant but not unlimited in its domestic consequences, and has insisted that constitutional supremacy is not displaced merely because the subject-matter is international (*Maganbhai Ishwarbhai Patel v. Union of India*, 1969). The doctrinal significance here is structural: globalization produces pressures to govern through international commitment, while constitutionalism insists that governance must remain domestically accountable and rights-respecting.

Federalism introduces a second layer of complexity. International commitments undertaken by the Union may affect areas where States possess primary administrative capacity-labour, public health delivery, agriculture, policing-thus creating practical centralization even where formal constitutional distribution remains unchanged. Globalization, in this sense, can function as a silent engine of Union predominance, not always through constitutional amendment but through policy necessity and negotiated obligation.

9.4 Economic Liberalization and the Constitution: From Planning to Market Governance

A distinctive feature of India's globalization narrative is that constitutional text remained formally stable even as economic governance underwent a major transformation in the early 1990s. The Statement on Industrial Policy tabled in Parliament on 24 July 1991 is often treated as a turning point in dismantling the older licensing regime and liberalizing foreign investment and technology agreements (Government of India, Ministry of Industry, 1991). The Economic Survey of the early reform period likewise frames the "new Industrial Policy" as initiating far-reaching structural reforms shifting Indian industry away from a regulatory-protective regime toward market-oriented governance (Government of India, 1991–92).

Constitutionally, liberalization reconfigured the meaning of the state. The state increasingly appears not as producer but as regulator; not as direct provider but as architect of market frameworks. This shift does not make the Constitution irrelevant; it makes constitutional questions more subtle. When the state privatizes functions, does constitutional obligation evaporate, or does it migrate into regulation? When welfare is mediated through markets, do Articles 14 and 21 reassert themselves through the language of non-arbitrariness, fairness, and minimum conditions of dignity? These questions reveal why globalization cannot be reduced to "economics." It is a constitutional re-description of the social contract.

The constitutional tension is heightened by the symbolic legacy of the Constitution's self-description. The insertion of "socialist" into the Preamble by

the Forty-Second Amendment forms part of India's constitutional identity discourse even as economic governance moved toward liberalization. The result is not necessarily contradiction; it is a demand for interpretive coherence: India's constitutionalism must reconcile market governance with the social justice horizon of Part III and Part IV. The point, consistent with the theme of this book, is that the Constitution's successful adoption is demonstrated by its capacity to host such evolution without institutional breakdown.

9.5 Trade and Market Regulation: Constitutional Limits and Policy Space

India's participation in the World Trade Organization since 1995 situates it within a dense legal regime of non-discrimination, trade liberalization, and dispute settlement (World Trade Organization, n.d.). Trade commitments do not mechanically determine domestic law, but they restructure the environment in which domestic constitutional choices are made. The constitutional challenge lies in preserving space for welfare regulation-public health, food security, labour standards, environment-while engaging in trade rules designed to limit protectionism.

A classic example of constitutional salience is intellectual property. The Patents (Amendment) Act, 2005, is explicitly framed as part of India's compliance trajectory with the WTO TRIPS Agreement and introduces a product patent regime in sectors such as pharmaceuticals (World Intellectual Property Organization, 2005). The constitutional stakes are immediate: access to medicines implicates life and health, while innovation policy implicates economic development. The Doha Declaration on TRIPS and Public Health (2001) affirms that TRIPS "can and should be interpreted" in a manner supportive of protecting public health and promoting access to medicines (World Trade Organization, 2001). India's domestic legal position-particularly the interpretation of Section 3(d) in pharmaceutical patenting-has been globally scrutinized precisely because it is a site where constitutional values of life and welfare intersect with globalization commitments to intellectual property protection (*Novartis AG v. Union of India*, 2013).

The constitutional lesson is not that trade law defeats constitutionalism, nor that constitutionalism authorizes disregard of trade obligations. Rather, the lesson is that India must continuously negotiate policy space: it must translate welfare constitutionalism into regulatory design that remains defensible both domestically (under Articles 14 and 21) and externally (under WTO-consistent flexibilities).

9.6 Foreign Investment, ISDS, and Constitutional Democracy

If trade law tests India's regulatory autonomy in multilateral form, bilateral investment treaties and investor–state dispute settlement (ISDS) test it through privatized adjudication. The constitutional anxiety here is distinct: ISDS frequently allows foreign investors to challenge domestic regulatory measures before arbitral tribunals outside the domestic judicial hierarchy, raising questions of democratic accountability, transparency, and the preservation of constitutional policy space (Van Harten, 2007).

India's experience is instructive. UNCTAD's ISDS Navigator records 30 known treaty-based ISDS cases with India as respondent (as presented on the relevant UNCTAD listing). This empirical fact alone indicates that globalization is not a theoretical abstraction; it generates concrete juridified conflict over taxation, regulation, licensing, energy policy, and public authority.

India's response has been partly defensive and partly reconstructive. A parliamentary reply notes that, following Cabinet decision of 16 December 2015 to approve a "Model BIT," India served termination/renegotiation notices to 58 countries in March 2016 (Government of India, Rajya Sabha, 2017). The same reply reflects the strategic complexity of treaty renegotiation, including the position that EU Member States could not individually negotiate BITs after the EU acquired competence over foreign direct investment (Government of India, Rajya Sabha, 2017).

From a constitutional standpoint, the significance is twofold. First, India asserted a preference for regulatory autonomy, insisting that investment protection must not become a mechanism for disciplining democratic legislation and welfare regulation. Second, the state's turn toward a Model BIT illustrates constitutional self-protection under globalization: a recalibration of external commitments to preserve domestic policy legitimacy.

9.7 Labour, Migration, and Citizenship in a Globalized Economy

Globalization is often narrated in the language of markets, but it also reorganizes movement of persons: migration, urbanization, and precarious labour. Constitutionally, this matters because fundamental rights are not solely protections against the state; they are also frameworks through which vulnerability is rendered legible as injustice.

Internal migration produces a recurring constitutional problem of equal citizenship in practice. Migrant workers often experience discontinuous access to welfare schemes, unstable housing, and informality that reduces practical

enjoyment of rights. These realities pressure Article 21's evolving interpretation of life with dignity, and Article 14's insistence on non-arbitrariness. In constitutional terms, globalization intensifies the gap between formal equality and lived citizenship, thereby demanding rights-sensitive governance.

International migration and the Indian diaspora raise a different constitutional question: what does membership mean under globalization? India's diaspora policies and overseas categories, though statutory, implicate constitutional conceptions of belonging and state responsibility. At the level of constitutional values, a global diaspora can strengthen democratic constitutionalism through remittances, transnational civic engagement, and knowledge networks; yet it can also exacerbate inequality if policy becomes disproportionately responsive to globally mobile elites.

9.8 Global Human Rights Norms and Constitutional Interpretation

The judiciary has often functioned as the institutional site where global norms are domesticated without being uncritically imported. The best-known illustration remains *Vishaka v. State of Rajasthan* (1997), where the Supreme Court drew upon international conventions to fill normative gaps in domestic protection against workplace sexual harassment, while grounding enforceability in constitutional rights (Supreme Court of India, 1997).

The constitutional significance is methodological. India's judiciary has not treated international law as superior to the Constitution. Rather, it has treated it as interpretive material that may enrich rights reasoning where not inconsistent with constitutional text and values. This approach preserves sovereignty while acknowledging that constitutional morality may be illuminated by universal rights norms. It also reveals a deeper truth of globalization: norm diffusion is not simply external pressure; it is also internal appropriation through constitutional reasoning.

This balance is particularly relevant to contemporary rights discourse. Privacy and dignity, for instance, have become global constitutional keywords, and Indian jurisprudence has increasingly engaged them in forms that resonate with international constitutional conversation while remaining distinctly Indian in textual grounding and institutional context (*Justice K.S. Puttaswamy (Retd.) v. Union of India*, 2017).

9.9 Technology Globalization: Platforms, Speech, and Digital Constitutionalism

Technology is perhaps the most constitutionally disruptive dimension of globalization because it relocates power from states to transnational private actors. Cross-border data flows and platform governance pose new questions about the horizontal effect of rights: what does free speech mean when the most significant constraints are imposed not only by law but by corporate terms of service, algorithmic amplification, and opaque moderation systems?

The constitutional conflict becomes sharper because digital regulation is frequently justified in the language of national security, misinformation control, and public order, all of which can produce pressure toward overbroad restriction. In *Shreya Singhal v. Union of India* (2015), the Supreme Court struck down Section 66A of the Information Technology Act as unconstitutional, emphasizing vagueness and the chilling effect on speech (Supreme Court of India, 2015). The case is constitutionally global in its implications because it addresses a governance problem produced by global platforms: the temptation to control speech through expansive legal categories that are incompatible with Article 19(1)(a)'s democratic function.

Privacy, likewise, cannot be constitutionally understood without globalization. Surveillance infrastructures are often transnationally sourced, data is stored across borders, and informational autonomy is threatened by both state and corporate actors. The recognition of privacy as a fundamental right in *Puttaswamy* is therefore not merely a domestic doctrinal development; it is an Indian constitutional response to the structural conditions of a digitized global economy (*Justice K.S. Puttaswamy (Retd.) v. Union of India*, 2017).

9.10 Environment, Climate Commitments, and the Constitution

Globalization is also ecological. Climate change is a paradigmatic domain where sovereignty is inseparable from interdependence: emissions and warming ignore borders, while mitigation and adaptation require coordinated commitments. India deposited its instrument of ratification of the Paris Agreement on 2 October 2016 (, 2016).

The constitutional dimensions are increasingly visible. Environmental protection has long been linked in Indian jurisprudence to life and dignity under Article 21, while Directive Principles and Fundamental Duties provide normative support for ecological responsibility. Climate commitments now intensify the constitutional need to balance development, distributive justice, and sustainability. Importantly, globalization makes this balancing more

difficult because climate obligations can become vehicles for external conditionality, while climate harms disproportionately burden the poor and vulnerable within India. The constitutional demand, therefore, is not merely compliance with international commitments but the domestication of climate policy through democratic deliberation and rights-sensitive governance.

9.11 Institutional Consequences: Who Gains Power Under Globalization?

Globalization produces institutional redistribution of power within the state. The executive tends to gain influence because negotiation, crisis response, and technical regulation are concentrated in ministries and agencies with informational advantage and speed capacity (Cerny, 1995; Krisch, 2010). Regulators and specialized agencies multiply because globalized markets require continuous oversight: competition regulation, telecom regulation, securities regulation, environmental regulation. This can strengthen governance competence; it can also weaken transparency if regulators operate at a distance from legislative scrutiny.

Courts become central arenas of conflict not because judges "prefer" policy-making but because globalization generates rights disputes that cannot be resolved purely through electoral politics. Privatization raises equality questions; technology raises speech and privacy questions; investment disputes raise sovereignty questions. The judiciary is pulled into these arenas as a constitutional guardian, but this judicial role must remain conscious of democratic legitimacy and institutional limits.

Parliament faces a paradox. Globalization increases the stakes of lawmaking-because regulatory choices have transnational consequences-yet it also reduces deliberative space through speed legislation, complex technical detail, and executive dominance in international negotiation. The constitutional remedy is not romantic calls for sovereignty; it is renewed insistence on parliamentary scrutiny mechanisms, committee processes, and transparency requirements that translate global commitments into democratically contestable domestic law.

Federalism, too, is reshaped. States compete for investment and employment, and central economic commitments may practically constrain state autonomy. This can stimulate innovation, but also deepen inequality among states and intensify demands for fiscal fairness.

9.12 Measuring Globalization's Constitutional Impact: Evidence and Indicators

Constitutional evaluation becomes empty if it is purely doctrinal. A Constitution is "successfully adopted" not only when it survives but when it remains capable of legitimating governance under changing social and economic conditions. For globalization, one useful proxy is trade openness: the extent to which economic life is structurally integrated into global flows, thereby intensifying constitutional questions about regulation, welfare, and accountability.

Table 9.1 Trade Openness in India (Trade as % of GDP, selected years)

Trade is defined as the sum of exports and imports of goods and services as a share of GDP (World Bank, WDI metadata).

Year	India: Trade (% of GDP)
1990	15.5
2000	26.9
2015	41.9
2020	37.8
2022	50.1
2023	45.0
2024	44.6

Source: World Development Indicators (World Bank DataBank report for India, indicator "Trade (% of GDP)").

This series is not merely descriptive. A rise from 15.5% (1990) to the mid-40s and 50.1% (2022) signals a structural transformation in the conditions under which constitutional governance operates: macroeconomic policy, labour regulation, food systems, and industrial strategy become increasingly exposed to external shocks and international constraint narratives.

A second measurable site of globalization's constitutional friction is investment dispute exposure, because it reveals the extent to which sovereign regulatory acts are contested in fora beyond domestic constitutional institutions.

These facts matter constitutionally because they show the state actively attempting to preserve democratic regulatory space under globalization, rather than treating globalization as irresistible fate.

9.13 Conclusion: Globalization and the Constitution at 75 Years- Adaptation Without Surrender

At seventy-five years, the Indian Constitution's success cannot be measured solely by the continuity of elections, the stability of institutions, or the survival of text. Its deeper success lies in its capacity to remain normatively authoritative while governing amid profound transformation. Globalization, perhaps more than any other contemporary force, tests whether constitutional democracy can remain meaningful when economic constraints, transnational norms, and private platform power reshape the real conditions of citizenship.

Table 9.2 Investment Treaties, Dispute Exposure, and Policy Response

Issue	Recorded/Reported position	Source
Treaty-based ISDS cases against India (respondent)	30 known cases listed	UNCTAD ISDS Navigator
Treaty policy shift toward Model BIT	Cabinet decision approving Model BIT (noted in parliamentary reply)	Government of India, Rajya Sabha reply
Termination/renegotiation notices	Notices served to 58 countries (March 2016)	Government of India, Rajya Sabha reply

Three conclusions follow. Globalization intensifies executive power and regulatory complexity, thereby threatening democratic deliberation unless Parliament, civil society, and courts insist on transparency and accountability. WTO and TRIPS-era governance, together with investment treaty disputes, demonstrate that constitutional sovereignty today is not isolation but the ability to negotiate commitments while preserving welfare and rights space (World Trade Organization, 2001). Rights jurisprudence in areas such as speech and privacy shows that Indian constitutionalism is capable of responding to global digital conditions without abandoning its distinctive commitments to constitutional supremacy (*Shreya Singhal v. Union of India*, 2015; *Puttaswamy*, 2017).

In this sense, globalization does not negate the celebratory thesis of this book. On the contrary, it sharpens it. A Constitution that can absorb the pressures of global markets, transnational adjudication, digital platform power, and climate interdependence-while still providing a language of rights and legitimacy

through which citizens contest authority-exhibits not merely endurance but constitutional maturity. That, in a demanding world, is a central meaning of "successful adoption."

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10 CONSTITUTIONAL MORALITY VS SOCIAL MORALITY IN THE 21ST CENTURY

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10.1 Introduction

India's constitutional disputes in the twenty-first century are increasingly argued as moral conflicts, even when their legal form is doctrinally familiar. Debates about sexuality, gender equality, caste dignity, religious practice, free speech and offence, dissent, surveillance, and welfare distribution are now routinely conducted in a vocabulary of "values," "tradition," "culture," and "community sentiment," alongside the grammar of rights, proportionality, and institutional competence. This is not merely a change in rhetorical style. It reflects an underlying condition of constitutional democracy in a diverse society: where plural communities contest the moral meaning of public life, constitutional adjudication must decide whether the state may enforce dominant norms as law, and if so, on what justifications and within what limits.

In this context, "constitutional morality" is not an ornamental phrase. It operates as a constitutional technique for governing moral disagreement without allowing democracy to collapse into majoritarian moral coercion. The doctrine's central insistence is that the legitimacy of state power cannot be grounded merely in prevalent social sentiment or inherited norms; it must be justified by reference to constitutional values dignity, equality, liberty, fraternity, secularism, and rule of law and by constitutional methods reasoned justification, rights-sensitive review, minority protection, and the discipline of limited government (Bickel, 1962; Khosla, 2020; Mehta, 2010).

Read against the larger theme of this book *Celebrating India's Democratic Journey: 75 Years of Successful Adoption of the Constitution* the emergence of constitutional morality as a serious interpretive vocabulary is itself evidence of "successful adoption." A constitution is not successfully adopted merely because it survives. It is adopted when it becomes the authoritative public language through which power is criticised and justified, and when it compels institutions to explain themselves in the register of constitutional values rather than raw social prejudice. The 75-year arc from January 26, 1950 to the constitutional commemorations around January 26, 2025 is therefore not only a chronology of amendments and elections; it is also the slow institutionalisation of a moral discipline that insists: the Constitution, not social hierarchy, is the final measure of legitimate public power (Austin, 1999; Baxi, 2013).

This chapter proceeds on an additional clarification. Constitutional morality is not a doctrine hostile to society, culture, or religion. It does not ask constitutional adjudicators to "moralise" from a position of personal virtue. It asks, instead, whether coercive state action can be justified within a constitutional order that promises equal citizenship to persons who do not share a single moral universe. In that sense, constitutional morality is better understood as a democratic safeguard for pluralism: it protects the conditions of living together as equals, even when social morality remains uneven, conflicted, or resistant to the Constitution's transformative ambitions.

10.2 Conceptual Clarifications: Social Morality, Public Morality, and Constitutional Morality

Any serious analysis requires conceptual discipline, because "morality" in constitutional discourse can quickly drift into a haze of slogans. The Indian constitutional text itself uses the word "morality" as a limit on certain freedoms for example, in religious liberty and expressive liberty yet those references do not settle what kind of morality is being invoked, nor whose morality may legitimately constrain rights. The conceptual separation between social morality, public morality, and constitutional morality helps avoid that confusion.

10.2.1 Social Morality as Lived Norms and Community Practices

Social morality refers to the lived, everyday norms through which communities regulate conduct and belonging. It is a field of expectations about family life, sexuality, gender roles, caste hierarchy, religious piety, honour, speech propriety, and the performance of identity. Social morality is powerful precisely because it is normalised: it shapes what is taken to be "natural," "decent," "traditional," and therefore beyond argument. In plural societies, there is no single social morality, but there are often dominant moralities backed by demographic power, historical privilege, or institutional influence.

For constitutional analysis, social morality matters not because it is legally authoritative but because it structures the background against which coercive regulation is demanded. When censorship is sought to prevent offence, when couples are harassed for inter-faith marriage, when women's mobility is policed in public space, or when queer relationships are framed as threats to "culture," social morality is frequently the invisible engine driving public claims for state action.

10.2.2 Public Morality as State-Invoked "Decency" and "Order"

Public morality is distinct. It refers to morality as the state invokes it through legal categories such as "decency," "morality," "public order," and "community standards." Public morality often appears as a ground for restricting speech, regulating sexuality, controlling representation in art, or disciplining the presence of minority identities in public life. Historically, courts sometimes treated public morality as a relatively open-ended space of deference, allowing legislative or executive choices to determine what society can tolerate. Yet

modern rights jurisprudence increasingly insists that "morality" as a constitutional limitation cannot mean mere popular disgust, nor can it become a blank cheque for suppressing constitutional freedoms (Shreya Singhal v. Union of India, 2015).

This transition from deference to structured rights review matters because it changes the constitutional question from "What does society dislike?" to "Can the state justify coercion within constitutional limits, using reasons compatible with equal citizenship?" That is the bridge between public morality and constitutional morality.

10.2.3 Constitutional Morality as Normative Discipline of Power

Constitutional morality is fidelity to the Constitution's normative commitments and to its method of justification. It is a demand that state action, including the state's moral claims, must be defensible in terms of constitutional values such as dignity, equality, liberty, fraternity, secularism, and rule of law, and must be tested against constitutional procedures of reason-giving, proportionality-like balancing, and institutional restraint.

This concept performs at least three constitutional functions. First, it limits majoritarianism: it prevents the majority's moral preferences from automatically becoming law. Second, it protects minorities and dissenters: it ensures that equal citizenship is not conditioned on conformity to dominant norms. Third, it disciplines institutions: it requires legislatures, executives, and courts to act within a moral framework the Constitution itself authorises, rather than a framework inherited from hierarchy or prejudice. In Indian jurisprudence, this logic is visible in the Supreme Court's insistence that rights review cannot be defeated by majoritarian moral sentiment. The Court's explicit formulation that "constitutional morality" must prevail over "social morality" is among the most cited doctrinal statements of this position (Navtej Singh Johar v. Union of India, 2018).

10.3 Intellectual and Historical Origins: Ambedkar and the Constituent Assembly

10.3.1 Ambedkar's Idea of Constitutional Morality

The modern Indian vocabulary of constitutional morality cannot be understood without returning to the Constituent Assembly. Dr. B. R. Ambedkar's argument was not merely that India needed a constitutional text, but that it needed a constitutional culture capable of sustaining democratic institutions in a society historically organised by hierarchy. Ambedkar warned that constitutional morality is not a natural sentiment; it must be cultivated. He stressed that without constitutional morality, constitutional forms can exist while democratic substance decays, because formal institutions may be captured by social power and prejudice rather than animated by equal citizenship (Constituent Assembly Debates, 1948).

This warning is foundational for a book commemorating 75 years of constitutional life. The success of India's constitutional project, in Ambedkar's terms, depends on narrowing the gap between political democracy and social democracy between the promise of equal citizenship and the persistence of caste, patriarchy, and communal domination. Constitutional morality, in this lineage, is not anti-democratic; it is what makes democracy sustainable in a socially unequal society.

10.3.2 Constitutional Morality and Fraternity

Ambedkar's emphasis also ties constitutional morality to fraternity. In constitutional theory, fraternity is often the least theorised of the Preamble's values, yet it is indispensable in a diverse society. Fraternity supplies the moral infrastructure that makes rights workable: it is the refusal to treat difference as humiliation, and it makes disagreement compatible with civic equality. Without fraternity, the Constitution's promises of liberty and equality become socially fragile; they are constantly threatened by the impulse to convert difference into stigma.

In the Indian context, fraternity is not a sentimental aspiration. It is an operational requirement for governing plurality. It demands that the state, even when responsive to democratic majorities, cannot legitimise humiliation of minorities, women, Dalits, dissenters, or queer persons as "culture." Constitutional morality is thus fraternity in action: it insists that state power must not become an instrument of social cruelty.

10.3.3 Early Constitutional Practice and the Slow Emergence of the Doctrine

It is important, historically, not to overstate the immediacy of this doctrine. Constitutional morality did not arrive as a fully articulated judicial test in the first decades of the Republic. The early Court's concerns were often framed through public order, reasonable restriction, and institutional stability. The more explicit language of constitutional morality emerged gradually as courts confronted moral conflicts at the boundary of rights and tradition especially in late twentieth- and early twenty-first-century disputes about gender equality, sexuality, speech, and religious practices.

This gradual emergence is itself consistent with the idea of the Constitution as a living institution. Doctrines become explicit when constitutional life forces them to become explicit; that is, when the system must name the principles by which it will survive conflicts that the framers could not anticipate in detail but anticipated in structure.

10.4 The Structure of the Constitution that Supports Constitutional Morality

10.4.1 The Preamble as Moral Constitution

The Preamble is not enforceable as a standalone code, but it expresses the Constitution's moral identity: justice, liberty, equality, and fraternity. In constitutional reasoning, the Preamble functions as a normative compass, particularly when courts must decide whether state coercion is compatible with the constitutional project. The legitimacy of constitutional morality as an interpretive method is therefore not a judicial invention; it is anchored in the Constitution's self-description.

10.4.2 Fundamental Rights as Anti-Majoritarian Morality

Part III gives institutional form to constitutional morality by transforming moral commitments into enforceable rights. Equality rights, non-discrimination norms, freedoms of speech and association, and the guarantee of life and personal liberty all operate as anti-majoritarian constraints: they ensure that the majority cannot vote away the equal status of minorities or stigmatise unpopular identities as morally inferior (Austin, 1999; Bhatia, 2019).

This is why constitutional morality cannot be reduced to "judicial preference." The rights structure is the Constitution's own decision to limit majority power. It is the constitutional design that makes democracy more than majoritarianism.

10.4.3 Directive Principles and Social Justice Morality

A frequent misunderstanding treats constitutional morality as a doctrine of negative liberty only. The Directive Principles and the constitutional commitment to social justice complicate that picture. Constitutional morality also disciplines the state to act for dignity and capability: to pursue welfare, reduce inequality, and secure material conditions for meaningful freedom. In this sense, constitutional morality contains a social justice morality: it condemns not only discrimination but also institutional indifference to deprivation when deprivation destroys the possibility of equal citizenship (Sen, 1999; Baxi, 2013).

10.4.4 Basic Structure Doctrine as Constitutional Morality at the Structural Level

The basic structure doctrine is constitutional morality operating at the level of constitutional architecture. It treats certain constitutional commitments democracy, rule of law, judicial review, and limits on amending power as non-negotiable even by parliamentary supermajorities. For the present chapter, its relevance is conceptual: it shows that the Constitution contains a moral core that cannot be surrendered to temporary concentrations of power. This also links directly to the experience discussed in Chapter 7: the Emergency period and the constitutional crisis surrounding attempts to insulate power from accountability.

10.5 Constitutional Morality in the Supreme Court: The Doctrinal Journey

10.5.1 From "Public Morality" to Rights-Based Review

A central judicial development in the twenty-first century has been the Court's movement away from treating public morality as a broad discretionary zone and toward subjecting state claims of morality to rights-based standards. This is evident in free speech jurisprudence, where vague or overbroad restrictions are treated as threats to constitutional democracy rather than legitimate enforcement of public decency. In *Shreya Singhal*, the Court emphasised the constitutional centrality of free speech to democratic life and refused to sustain a vague criminal restriction that enabled arbitrary suppression of online expression (Shreya Singhal v. Union of India, 2015).

The deeper jurisprudential point is that "morality" is not a self-justifying reason. When the state restricts speech, it must show that the restriction fits within constitutional grounds, is narrowly tailored, and does not confer unguided discretion. This is constitutional morality as method: a demand for structured justification rather than moral assertion.

10.5.2 Sexual Autonomy and Equality

The most explicit judicial articulation of constitutional morality as a counter to social morality arises in the sexuality jurisprudence culminating in *Navtej Singh Johar*. There, the Court rejected the idea that majoritarian moral disapproval can justify criminalisation of consensual intimacy. It treated dignity, privacy, and equality as constitutional reasons that cannot be overridden by popular moral sentiment, and it explicitly affirmed that constitutional morality must prevail over social morality when fundamental rights are at stake (Navtej Singh Johar v. Union of India, 2018).

What is jurisprudentially significant is not only the outcome (decriminalisation) but the reasoning structure: the Court framed constitutional adjudication as an obligation to protect equal citizenship even when the beneficiaries are socially stigmatised. In doing so, constitutional morality became a language of anti-humiliation: the Constitution, the Court insisted, cannot permit law to encode stigma as criminality.

The later decision in *Supriyo* illustrates the doctrinal complexity and institutional limits of constitutional morality. In 2023, the Court declined to judicially create a legal status of marriage for same-sex couples under existing statutory frameworks, emphasising separation of powers and the limits of adjudicatory competence; yet it also reiterated that queer persons are entitled to constitutional rights and that discrimination is impermissible (Supriyo v. Union of India, 2023).

Taken together, *Navtej* and *Supriyo* show constitutional morality operating in two registers: first, as a rights-anchored refusal to treat social disgust as lawful basis for coercion; second, as an institutional discipline that constrains the

judiciary's remedial reach even while affirming constitutional equality. That combination rights affirmation with institutional restraint is precisely the kind of balance a mature constitutional democracy must cultivate.

10.5.3 Gender Equality and Religious Practices

The conflict between equality and claimed religious tradition remains one of the most contested sites for constitutional morality. In *Indian Young Lawyers Association* (the Sabarimala litigation), the Court confronted exclusionary practices defended as religious custom. The judgment's significance for this chapter lies in the claim, made within the litigation and engaged by the Court's reasoning environment, that "morality" in Articles 25 and 26 cannot be reduced to social morality; it must be read as constitutional morality, i.e., morality consistent with equality and dignity (Indian Young Lawyers Association v. State of Kerala, 2018).

This is not an assertion that the Constitution is hostile to religion. Rather, it reflects the constitutional design: religious freedom is protected, yet it is not absolute; it is subject to constitutional values and to the state's authority to pursue social reform. Constitutional morality, in this field, becomes the interpretive device for preventing religion from being used as a shield for humiliation or structural gender inequality.

10.5.4 Privacy, Surveillance, and Informational Autonomy

The twenty-first century has transformed privacy from a private interest into a constitutional condition of democratic citizenship. In *Puttaswamy*, the Court affirmed privacy as a fundamental right grounded in dignity, autonomy, and the conditions of freedom. The judgment repeatedly links constitutional rights to dignity, insisting that liberty without dignity is hollow, and that privacy supports the individual's ability to live as an autonomous constitutional subject (Justice K. S. Puttaswamy (Retd.) v. Union of India, 2017).

For constitutional morality, the implication is clear. Surveillance and data practices cannot be justified by vague invocations of security or public morality. They must satisfy constitutional standards: legality, necessity, proportionality, and oversight. The moral claim embedded in privacy doctrine is that persons are not mere objects of governance; they are agents whose dignity limits what the state may legitimately do. Constitutional morality here is the refusal to allow administrative convenience or moral panic to substitute for constitutional justification.

10.5.5 Caste Dignity and Anti-Humiliation Jurisprudence

If constitutional morality is the discipline of power, caste is one of the most decisive tests of that discipline. The Constitution's rejection of untouchability and caste humiliation is not merely symbolic; it is foundational to the promise of equal citizenship. Modern constitutional morality jurisprudence, in various contexts, has increasingly treated humiliation and stigma as constitutional

harms. The jurisprudential movement is away from viewing equality merely as classification and toward understanding equality as protection against domination and degradation an approach that resonates with the social transformation narrative of Chapter 8 (Baxi, 2013; Khaitan, 2015).

This is also why constitutional morality cannot be confined to courtroom doctrine. The constitutional condemnation of caste humiliation demands institutional practices policing, prosecution, welfare administration, education policy that internalise the constitutional duty to treat persons as equals, not as bearers of inherited stigma.

10.6 Contemporary Sites of Conflict: Where Social Morality Pressures the Constitution

10.6.1 Family, Marriage, and Control of Choice

The family is a primary site where social morality asserts itself as coercion, often through informal violence, community pressure, and sometimes state complicity. Inter-caste and inter-faith couples are frequently constructed as threats to honour, culture, or communal boundary, and the moral policing of adult choice becomes a struggle over constitutional citizenship itself. Constitutional morality in this domain insists that adult choice is not a concession granted by community approval but a constitutional entitlement grounded in liberty and dignity.

At the level of social facts, the power of endogamy and boundary policing remains visible. Pew Research Center survey findings, for example, show very high proportions of respondents endorsing the view that it is important to prevent women or men in their community from marrying outside their religion (Pew Research Center, 2021).

The constitutional significance of such data is not that constitutional adjudication should mirror it. The significance is that constitutional rights often operate against the grain of dominant social morality. Successful adoption of the Constitution, therefore, includes the state's willingness to protect adult choice even when social morality resists it.

10.6.2 Free Speech, Art, and "Offence" Politics

Moral offence has become a familiar trigger for demands to censor speech, art, and scholarship. The constitutional question is not whether offence is real; it is whether the state can treat offence as sufficient reason for coercion. Modern free speech doctrine, as exemplified by *Shreya Singhal*, rejects vague restrictions that enable suppression based on subjective community sentiment and insists on constitutionally bounded grounds and standards (Shreya Singhal v. Union of India, 2015).

Constitutional morality here requires the state to tolerate disagreement and even discomfort as part of democratic life. A democracy that polices offence as a

routine method of governance risks converting social morality into a tool of silencing often against minorities, artists, or dissenters.

10.6.3 Policing of Bodies: Dress, Mobility, and Public Space

The governance of bodies particularly women's bodies and minority bodies remains a frequent manifestation of social morality translated into coercion. Dress codes, restrictions on mobility, surveillance of public presence, and informal "moral policing" often reveal a deeper constitutional problem: the unequal distribution of public space. Constitutional morality demands that public space be governed by equal citizenship rather than patriarchal or communal expectations.

10.6.4 Social Media, Moral Panics, and Rapid Mobilisation

Digital environments intensify moral outrage by accelerating mobilisation, amplifying misinformation, and collapsing complex disputes into identity conflicts. This is not merely a sociological observation; it has constitutional consequences because rapid outrage often pressures executives and police to act quickly, sometimes without legality, due process, or proportionality. In such settings, constitutional morality demands institutional restraint: the state must resist the temptation to convert trending moral panic into coercive action without constitutional justification.

10.7 Institutions Beyond Courts: Parliament, Executive, Media, Universities, and Civil Society

A constitutional culture cannot be judicially manufactured. Courts can articulate constitutional morality, but adoption of the Constitution is deeper: it requires the internalisation of constitutional restraint across institutions and society.

10.7.1 Parliament: Legislating Morality vs Legislating Rights

Legislation often sits at the boundary between social morality and constitutional rights. The constitutional discipline required is not that Parliament avoid moral issues many moral issues are unavoidable but that it legislate in a manner compatible with equal citizenship and reasoned justification. Where legislation encodes stereotypes, stigma, or exclusion, courts are compelled to intervene not as moral guardians but as constitutional guardians.

10.7.2 Executive and Police: Discretion, Moral Policing, and Rule of Law

The executive and police represent the state's most immediate coercive capacity. Constitutional morality is tested here through discretion: whether policing is guided by legality and equality or by informal moral norms and prejudices. This is why modern constitutionalism treats unchecked discretion as a constitutional danger. The rule of law requires predictable standards and public reasons, not moral intuition.

10.7.3 Media and Platforms: Norm-Production and Social Morality

Media and digital platforms are powerful producers of moral narratives. They shape which identities are respectable, which are suspect, and which moral panics are urgent. Yet their power also creates constitutional dilemmas: private platforms govern speech at scale, and their moderation choices can mimic censorship without the transparency and accountability expected of the state. Constitutional morality in this environment demands a rights-sensitive framework that recognises both the dangers of state censorship and the dangers of concentrated private power.

10.7.4 Universities and Civil Society: Sites of Constitutional Culture

Education and civil society are crucial for cultivating constitutional morality as habit. Ambedkar's warning that constitutional morality must be cultivated is, in effect, a theory of civic education: constitutional values do not automatically displace hierarchy; they must be learned, practiced, and institutionalised. Universities and civil society organisations therefore function as sites where constitutional language is translated into social expectation, and where citizens learn to argue in constitutional reasons rather than sectarian moral authority (Constituent Assembly Debates, 1948).

10.8 The Democratic Critique: Is Constitutional Morality Anti-Democratic?

10.8.1 The Counter-Majoritarian Difficulty and Judicial Role

The classic critique holds that courts, by invalidating laws supported by majorities, behave anti-democratically. This concern cannot be dismissed, especially when constitutional morality is invoked in morally polarising disputes. The question becomes whether constitutional morality is a vehicle for judicial overreach rather than constitutional fidelity (Bickel, 1962).

10.8.2 Constitutional Democracy as Limited Government

The response is foundational: India is not a system of pure majoritarianism; it is a constitutional democracy. The people govern themselves through a Constitution that sets limits on what any majority may do to minorities, dissenters, or unpopular persons. The legitimacy of judicial review rests on this prior democratic act: the adoption of a constitutional order that places rights beyond ordinary political bargaining. In this sense, constitutional morality is not anti-democratic; it is democracy's self-binding, a recognition that the majority too can be unjust.

The Supreme Court has explicitly linked constitutional morality to the maintenance of constitutional governance against the risks of political expediency and institutional conflict. In *Government of NCT of Delhi v. Union of India*, the Court's discussion of constitutional morality underscores the need for constitutional actors to respect boundaries and to avoid converting politics into a form of constitutional sabotage (Government of NCT of Delhi v. Union of India, 2018).

10.8.3 Risks of Judicial Overreach and the Need for Justificatory Discipline

The critique nonetheless identifies a real risk: courts may substitute personal moral judgment for constitutional reasoning. That danger is precisely why constitutional morality must be treated as a method of justification rather than a slogan. Courts must anchor their conclusions in text, structure, precedent, and reasoned standards. Otherwise, constitutional morality becomes what it claims to oppose: an unaccountable moral authority.

10.9 Method and Standards: How Courts Should Apply Constitutional Morality

10.9.1 Rights-Based Tests and Proportionality-Like Reasoning

Constitutional morality becomes juridically credible when it is operationalised through structured standards. Rights-based review, often articulated through proportionality-like reasoning in Indian jurisprudence, requires the state to show legality, legitimate aim, rational connection, necessity, and balancing. This method prevents "morality" from functioning as an incantation. It forces the state to disclose reasons and evidence.

10.9.2 Equality as Non-Domination and Anti-Humiliation

Equality in hierarchical societies cannot be reduced to classification. It must also be understood as non-domination: protection against being subordinated, stigmatised, or humiliated through law or state practice. This perspective explains why courts treat criminalisation of intimacy, patriarchal control in marriage laws, or exclusionary customs not merely as policy choices but as constitutional injuries to dignity and citizenship (Navtej Singh Johar v. Union of India, 2018; Joseph Shine v. Union of India, 2018).

10.9.3 Reasoned Public Justification and Evidence

A defining demand of constitutional morality is reason-giving. The state must justify coercion with public reasons accessible to citizens as equals, not sectarian reasons that assume some citizens are morally inferior. Evidence matters here, because constitutional morality rejects governance by stereotype. The reasoned justification requirement is therefore both epistemic and moral: it treats citizens as participants in a constitutional order, not subjects of moral policing.

10.9.4 Fraternity as a Norm for Managing Deep Disagreement

Fraternity supplies the ethical condition for constitutional disagreement. It insists that constitutional conflict be managed without humiliation, violence, or exclusion. In practical terms, fraternity demands that institutions do not perform constitutional interpretation as a project of cultural domination. Constitutional morality, grounded in fraternity, protects the possibility of living together as equals even amid deep moral disagreement.

10.10 Measuring Constitutional Morality in Practice: Indicators of Constitutional Culture

10.10.1 Why Measurement Matters

Constitutional morality is partly institutional and partly cultural. It is expressed not only in judgments but in policing practices, legislative deliberation, administrative transparency, and civic norms. A 75-year constitutional evaluation must therefore ask how constitutional morality appears in lived governance. Metrics do not replace doctrinal analysis; they supplement it by showing whether constitutional values travel beyond courtrooms into ordinary institutional behaviour.

The tables below are illustrative, not exhaustive. They are designed to show, first, the persistence of powerful social moral norms at the level of everyday attitudes; and second, the doctrinal sites where constitutional morality has been articulated as a constraint on those norms.

Table 10.1

Survey indicators of social boundary morality around marriage in India (% saying it is "very" or "somewhat" important to stop people in their community from marrying outside their religion)

Respondent group	% saying it is important to stop women from interreligious marriage	% saying it is important to stop men from interreligious marriage	Sample size (N)
India (overall)	82	81	29,999
Hindus	82	81	21,443
Muslims	89	87	5,025
Christians	62	61	1,646
Sikhs	81	81	1,782

Source: Pew Research Center, *Religion in India: Tolerance and Segregation Topline Questionnaire* (items QW21b and QM21b). (Pew Research Center, 2021).

The constitutional significance of Table 10.1 is not that constitutional law must follow these attitudes. It is that constitutional morality frequently must operate against entrenched boundary norms in order to protect equal citizenship and adult liberty, especially when social morality seeks to convert community control into state coercion.

Table 10.2

Key Supreme Court sites where "constitutional morality" has been used to manage conflict with social or public morality

Case (Supreme Court of India)	Year	Domain of conflict	Constitutional morality function (high-level)
Manoj Narula v. Union of India	2014	Constitutional ethics in executive appointments	Frames "constitutional morality" as a discipline guiding constitutional actors and limiting expedient power.
Justice K. S. Puttaswamy (Retd.) v. Union of India	2017	Privacy, dignity, autonomy	Grounds constitutional constraints on surveillance and personhood harms in dignity and autonomy, strengthening the moral core of rights.
Government of NCT of Delhi v. Union of India	2018	Institutional balance and democratic accountability	Treats constitutional morality as a stabilising norm requiring constitutional actors to respect boundaries and cooperative federalism.
Navtej Singh Johar v. Union of India	2018	Sexual autonomy vs majoritarian disapproval	Explicitly privileges constitutional morality over social morality to protect dignity and equality of LGBTQ persons.
Joseph Shine v. Union of India	2018	Criminal "morality" in family law	Rejects patriarchal moral regulation through criminal law; reorients doctrine toward dignity, equality, and sexual autonomy.
Indian Young Lawyers Association v. State of Kerala **(Sabarimala)**	2018	Gender equality vs exclusionary religious practice	Interprets "morality" in religious freedom limitations as constitutional morality, resisting exclusion based on stigma.
Supriyo v. Union of India	2023	Equality claims for queer unions vs institutional limits	Affirms equality and non-discrimination while emphasising separation of powers and remedial limits of adjudication.

Source: Compiled from the cited Supreme Court judgments.

The pattern disclosed by Table 10.2 is central to the 75-year theme of this book. Constitutional morality, as used by the Court, is not a single outcome-producing formula; it is an approach to justification that asks whether the Constitution's

moral core dignity, equality, liberty, fraternity will be permitted to govern conflict even when dominant social morality demands exclusion. That is precisely what "successful adoption" means in constitutional time: the Constitution becomes the measure by which society and state must justify themselves.

10.11 Conclusion

Constitutional morality has become an unavoidable concept because India's constitutional conflicts increasingly involve moral disagreement about who counts as a full citizen and whose life choices deserve public respect. In such conflicts, social morality often demands that the state enforce conformity, while public morality supplies legal categories decency, order, morality through which coercion can be rationalised. Constitutional morality resists that move by insisting that coercive power must be justified in the language of the Constitution: dignity, equality, liberty, fraternity, secularism, and the discipline of reasoned limitation.

The democratic value of constitutional morality lies in its refusal to treat majoritarian sentiment as the sole source of legitimacy. India's constitutional democracy is not merely a mechanism for counting votes; it is a normative project that makes equal citizenship the condition of democratic authority. This is why, across 75 years, constitutional morality can be read as an indicator of constitutional maturation: it expresses the Republic's effort to ensure that democracy does not become a vehicle for social prejudice, and that constitutional promises are not reduced to ceremonial text.

At the same time, constitutional morality must remain self-disciplined. It cannot become a synonym for judicial moral preference. Its legitimacy depends on method structured rights reasoning, evidentiary scrutiny, and fidelity to constitutional structure and on institutional humility regarding remedial competence, as the contrast between *Navtej* and *Supriyo* illustrates.

Finally, the future relevance of constitutional morality is only intensifying. The next chapters of this book on technology, data protection, emerging rights, and state power will repeatedly confront the same question in new forms: will constitutional governance be driven by panic, prejudice, and expediency, or by the Constitution's moral discipline of power. In that sense, constitutional morality is not merely a doctrine of the past decade; it is an interpretive compass for the Republic's next constitutional horizon.

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11 ARTIFICIAL INTELLIGENCE & DATA PROTECTION IN CONSTITUTIONAL FRAMEWORK

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11.1 Introduction

India's Constitution, now living through roughly three-quarters of a century of democratic practice, has repeatedly demonstrated that "successful adoption" is not measured only by the survival of a text, but by the capacity of constitutional values to discipline new forms of power. In the twenty-first century, artificial intelligence (AI) has emerged as precisely such a form: a governing infrastructure capable of classifying persons, predicting behaviour, distributing welfare, detecting fraud, moderating speech, and shaping public attention at a scale unknown to earlier administrative eras. The constitutional problem is not that machines "decide," but that decision-making is increasingly routed through socio-technical systems that are opaque, probabilistic, and often insulated from ordinary mechanisms of reason-giving and accountability (Citron, 2008; Pasquale, 2015).

If the Indian constitutional project was historically animated by the ambition to convert a society of graded status into a polity of equal citizenship, then AI must be evaluated against the same normative horizon: liberty, equality, dignity, fraternity, and the rule of law. The move from "visible" administrative discretion to "model-mediated" governance threatens to displace the classical constitutional safeguards of notice, hearing, reasons, and review, not always by open repudiation, but by quiet technological substitution (Citron, 2008).

This chapter therefore treats AI and data protection as a continuing chapter in India's constitutional journey. The central argument is that India's constitutional resilience at 75 years will increasingly be judged by whether constitutional supremacy can discipline digital power in two directions at once: first, the state's power to surveil, classify, and automate public decisions; and second, private power exercised through platforms, data brokers, and AI systems that profile, predict, and curate social life. The chapter proceeds from constitutional baseline to statutory implementation and then to governance design: privacy and dignity

as foundational; equality and non-discrimination as anti-hierarchy constraints; due process and reasoned justification as minimum rule-of-law conditions; and institutional accountability as the bridge between constitutional promise and algorithmic governance.

11.2 Conceptual Foundations: What AI Changes in Constitutional Terms

A constitutional chapter on AI must begin by rejecting the popular caricature of AI as humanoid "automation." In legal terms, AI is better understood as decision-making infrastructure: machine-based systems that infer, from inputs, how to generate outputs such as predictions, recommendations, content, or decisions that influence physical or virtual environments (OECD, 2024). This definitional framing matters because constitutional risk is tied to *function*, not to science-fiction form. When AI systems rank applicants, flag "suspicious" transactions, recommend content, or score risk, they become part of governance even when deployed by private actors under contract, or by platforms through terms of service.

The second conceptual anchor is that AI is inseparable from data. Modern AI systems are typically trained and refined through extensive collection, linking, and reuse of personal and non-personal data; thus AI governance cannot be separated from data governance. The Digital Personal Data Protection Act, 2023 (DPDP Act) itself defines "processing" broadly to include operations performed "wholly or partly by automated means" on digital personal data (Digital Personal Data Protection Act, 2023). This statutory language makes explicit what constitutional analysis must assume: the infrastructure of automation is also an infrastructure of data.

Third, AI shifts constitutional attention from isolated individual harms to population-scale governance harms. Statistical inference can systematically burden groups even where no single decision appears intentionally discriminatory. Modern discrimination can be reproduced by proxy variables, biased training data, and feedback loops that encode historical inequality into apparently neutral models (Barocas & Selbst, 2016). In a constitutional democracy committed to substantive equality, this is not a merely technical defect; it is a structural equality challenge.

11.3 The Constitutional Baseline: Privacy, Dignity, and Rule-of-Law Conditions of Data Governance

The contemporary Indian constitutional baseline for data and AI governance begins with the Supreme Court's recognition of privacy as a fundamental right. In *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), the Court located

privacy within the guarantees of Part III, linking it to dignity, autonomy, and the constitutional structure of limited government (K.S. Puttaswamy (Retd.) v. Union of India, 2017). Although privacy is often described as an individual right, the Court's reasoning also speaks to the architecture of democratic governance: when the state gathers data, or when it enables or tolerates pervasive private profiling, constitutional concerns arise about domination, chilling effects, and the reshaping of citizenship into a condition of continuous visibility.

A crucial constitutional contribution of the privacy decision was methodological. The Court articulated that intrusions into privacy must satisfy legality, pursue a legitimate aim, and meet standards of proportionality with appropriate safeguards (K.S. Puttaswamy (Retd.) v. Union of India, 2017). This structure, while developed in the privacy context, is of wider relevance to AI because many AI deployments in the public sector operate through large-scale collection, linking, and inference from data. It follows that AI-mediated governance must be constitutionally justified not by technological enthusiasm, but by demonstrable public purpose, necessity, and constrained design.

The rule-of-law dimension becomes especially acute where AI influences consequential administrative outcomes. Indian administrative law, even without a single codified "due process" clause, insists on procedural fairness through notice, opportunity to be heard, reasoned decisions, and review. In technologically mediated governance, these requirements become fragile. Citron's account of "technological due process" remains influential precisely because it identifies how automation can erode contestability: when an individual cannot understand why a model flagged them, or how to correct data inputs, the right to be heard becomes ritual rather than real (Citron, 2008).

The DPDP Act contains an implicit recognition of this rule-of-law problem when it obliges data fiduciaries to ensure completeness, accuracy, and consistency of personal data where such data is used to make decisions that affect the data principal or is disclosed to another fiduciary (Digital Personal Data Protection Act, 2023). This is not merely compliance language; it is a statutory pathway toward constitutional governance, because a decision cannot be "non-arbitrary" if it is built on demonstrably unreliable data.

11.4 Equality and Non-Discrimination in the Age of Algorithms

If privacy frames the citizen's interest in informational self-determination, equality frames the citizen's interest in non-domination and non-humiliation within systems of classification. Algorithmic discrimination is not limited to explicit use of protected attributes; it often arises from proxies-postcode,

purchasing history, language, device type, or social network patterns-that correlate with caste, class, gender, disability, or religious identity (Barocas & Selbst, 2016). In a society with entrenched social stratification, such proxy governance is constitutionally dangerous because it can reproduce hierarchy while maintaining the appearance of neutrality.

The constitutional significance of algorithmic bias lies in the way it reconfigures arbitrariness. Article 14 jurisprudence is centrally concerned with arbitrariness and unreasonable classification; yet in automated governance, arbitrariness can be "buried" in model design, feature selection, training labels, and statistical thresholds. This is why accountability cannot be limited to outcomes alone; it must include procedural guarantees such as auditability, traceability, and the ability to contest adverse inferences (Citron, 2008; Pasquale, 2015). These procedural guarantees are not external to equality: they are mechanisms that make equality review possible in the first place.

Group harms further implicate constitutional fraternity and the concerns explored in Chapter 10. Social prejudice can be encoded into datasets and models, thereby converting social morality into "coded morality." Where a community is historically treated as suspicious or deviant, predictive tools may amplify that stigma through risk scores and targeted scrutiny, producing systematic humiliation without explicit discriminatory intent (Barocas & Selbst, 2016). The constitutional response must therefore treat AI governance as part of anti-hierarchy constitutionalism, not simply as an administrative modernization initiative.

11.5 Data Protection Law as Constitutional Implementation: The DPDP Act, 2023

The DPDP Act represents India's principal legislative response to the constitutional recognition of privacy, and it must be read as constitutional implementation rather than as a narrow corporate compliance code. Its Statement of Objects and Reasons explicitly links the protection of personal data to the growth of the digital economy and to the need to confer rights on individuals while placing obligations on entities that process personal data (Digital Personal Data Protection Act, 2023). The logic is recognizably constitutional: the state acknowledges that digital transactions and data processing have become routine conditions of social participation, and thus must be governed by enforceable rights, obligations, and remedies.

The Act's architecture is notable for its breadth of coverage. It applies to processing of digital personal data within India, and also to processing outside

India where it is connected with offering goods or services to data principals within India (Digital Personal Data Protection Act, 2023). In constitutional terms, this reflects a shift from territorial governance to network governance: the citizen's data travels, and constitutional protection must increasingly be pursued through statutory frameworks that can address cross-border processing.

The DPDP Act constructs the citizen as a "data principal" and the processing entity as a "data fiduciary," a terminology that carries normative weight. The "fiduciary" metaphor signals that data processing is not morally neutral; it is an exercise of power that must be constrained by duty. The Act establishes consent as a central ground for processing and creates a framework for "Consent Managers," signalling an attempt-still evolving in practice-to operationalise autonomy at scale (Digital Personal Data Protection Act, 2023).

At the same time, the Act also recognises non-consensual processing through specified "legitimate uses," including processing by the state for certain functions and for compliance with law (Digital Personal Data Protection Act, 2023). This dual structure is constitutionally familiar: rights are protected, but governance requires limited and justified exceptions. The constitutional question is not whether exceptions exist, but whether they are structured, reviewable, and consistent with proportionality and safeguards, as demanded by privacy jurisprudence.

The Act also reshapes India's earlier legal landscape by amending the Information Technology Act, 2000, including omission of section 43A (Digital Personal Data Protection Act, 2023). This statutory move is constitutionally meaningful because it consolidates data protection governance into a dedicated framework with specified rights, duties, and penalties, and it signals a legislative decision to treat personal data as a domain requiring specialized public law controls.

Penalties under the DPDP Act are significant, including penalties up to ₹250 crore for failure to take reasonable security safeguards to prevent personal data breaches (Digital Personal Data Protection Act, 2023). In constitutional terms, penalty design is not merely punitive; it is a governance signal that informational harms-privacy violations, breach risks, and systemic insecurity-are public wrongs affecting the conditions of democratic citizenship.

Table 11.1

DPDP Act, 2023: Core Rights and Obligations as Constitutional Implementation

Statutory element (DPDP Act, 2023)	Illustrative content (high-level)	Constitutional value operationalised
Section 4 read with Sections 5–6	Processing conditioned on lawful ground; notice and consent architecture for routine processing	Liberty and autonomy; rule-of-law legality
Section 7	Specified "legitimate uses" enabling non-consensual processing in defined situations	Limited government; proportionality discipline
Section 8	Obligations of data fiduciaries including security safeguards, breach intimation, deletion when purpose is served, and accuracy duties when decisions affect individuals	Dignity; non-arbitrariness; accountability
Section 9	Additional obligations in relation to children's data including verifiable consent and restrictions	Protection of vulnerable persons; dignity
Section 10	Significant Data Fiduciary requirements, including data protection officer and impact assessment/audit architecture	Institutional responsibility; preventive governance
Sections 11–14	Rights to access information about processing, correction/erasure, grievance redressal, and nomination	Effective remedy; personhood and agency
Section 15	Duties of data principals (e.g., not furnishing false information, not lodging false grievances)	Responsible constitutional citizenship
Section 16	Cross-border transfer permitted subject to government-notified conditions/countries	Sovereign regulatory control; security and autonomy
Schedule	Monetary penalties for specified breaches (including security safeguards and breach notice)	Enforcement credibility; deterrence

Source: Digital Personal Data Protection Act, 2023 (India Code).

11.6 The DPDP Rules and the Operationalisation Problem: Law in Motion

A recurring lesson of India's constitutional experience is that transformative commitments depend on institutionalisation. Rights proclaimed without accessible procedures risk becoming symbolic. The DPDP Act anticipates this by delegating substantial operational detail to rules, and by designing a "digital by design" compliance framework intended to make implementation faster and more accessible (Digital Personal Data Protection Act, 2023).

The Act's phased commencement structure is also constitutionally important. The India Code publication reflects that commencement has been notified in stages, with different provisions taking effect on different dates (Digital Personal Data Protection Act, 2023). This staged approach, while administratively pragmatic, creates a constitutional governance question: during transition, what remedies exist for citizens, what compliance duties bind processors, and how quickly can the enforcement architecture mature into meaningful accountability.

The DPDP Rules, 2025 were presented by the Government as a mechanism to make key elements operational, including notice, consent, grievance handling, and the functioning of consent managers and the Data Protection Board's digital interface (Press Information Bureau, 2025). Official summaries emphasize that the framework seeks to make consent notices standalone and comprehensible, to enable withdrawal of consent, and to require timely grievance responses (Press Information Bureau, 2025). These are procedural devices that translate privacy from abstraction into contestable governance.

At the same time, public reporting about implementation has highlighted the policy tension between data minimisation principles and the data appetites of AI development ecosystems (Reuters, 2025). Even when such debates are framed as innovation-versus-regulation, the constitutional lens demands a different question: whether innovation is being pursued through rights-respecting design, or through the quiet normalisation of surveillance and profiling as unavoidable conditions of participation.

11.7 AI Governance Beyond Data Protection: Why Privacy Law Is Not Enough

Data protection is necessary for constitutional governance in the digital age, but it is not sufficient for AI governance. A system can be fully "lawful" in the narrow sense of having consent or a legitimate use ground, yet still generate systemic injustice through biased outputs, unexplainable exclusions, or unsafe recommendations. This is why scholarship distinguishes data governance from

model governance: the latter concerns not only inputs, but inferential logic, deployment context, human oversight, and institutional responsibility (Pasquale, 2015; Wachter, Mittelstadt, & Floridi, 2017).

The constitutional stakes sharpen where AI produces what might be called "systemic error." In welfare delivery, policing, examinations, or healthcare triage, error is not a private inconvenience; it becomes a public law wrong because it can exclude persons from entitlements, intensify suspicion, or mark reputations. When error is automated at scale, remedies must also be structural. Courts, regulators, and administrators must develop practices that ensure intelligible reasons, meaningful contestability, and effective review, even where model internals cannot be fully disclosed due to complexity or trade secrecy. The constitutional norm is not "full transparency of code," but rather "sufficient transparency for accountability."

Liability and remedies therefore become constitutional questions. If a government department deploys a vendor-built AI tool, and the tool causes systematic exclusion or discrimination, responsibility cannot disappear into contractual fragmentation. The rule-of-law demand is that the state must remain answerable for public decisions, and private actors exercising delegated power must be placed under enforceable public obligations. In this sense, AI governance revives classical constitutional concerns about delegation, accountability, and the conditions of legitimate administration.

11.8 Comparative Constitutional Models: Learning Without Transplanting

Comparative reference is useful, but India's constitutional method has never been pure transplantation; it has been adaptation through local constitutional commitments. The European Union's regulatory trajectory provides a prominent contrast. The GDPR (Regulation (EU) 2016/679) governs personal data processing through rights, lawful bases, and constraints, while also expressly addressing automated decision-making and profiling (European Union, 2016). The EU's newer AI Act adopts a risk-based governance structure aimed at protecting health, safety, and fundamental rights, and it has entered into force with staged application (European Commission, 2024).

The constitutional point of comparative discussion is not that India must mimic Europe, but that risk-based regulatory architecture represents one attempt to translate constitutional values into differentiated obligations. Certain AI uses are treated as unacceptable because they threaten fundamental rights, while high-risk uses attract stricter duties of risk management, data quality, human oversight, and transparency (European Commission, 2024). This framework

echoes constitutional proportionality reasoning: the more intrusive or consequential the tool, the stronger the justification and safeguards required.

India's constitutional context, however, is distinctive in scale, social stratification, welfare-state reliance, and digital public infrastructure. Thus, the challenge is to build governance that is both rights-respecting and administratively workable. The goal is neither laissez-faire adoption nor innovation paralysis; it is constitutional modernity-technology deployed under the discipline of dignity, equality, and accountability.

11.9 Sectoral Sites Where AI Meets Constitutional Rights in India

The encounter between AI and constitutional rights is most visible not in abstract debate but in sectoral governance. Welfare systems increasingly rely on data-intensive verification and authentication. A striking illustration is UIDAI's account of Aadhaar authentication volumes at scale, including growth in face authentication transactions, presented as a means to enhance access and "ease of living" (UIDAI, 2025). Such systems may be socially valuable, yet they also raise constitutional questions about exclusion risk, error correction, and procedural safeguards-especially for vulnerable populations who experience authentication failure as denial of entitlement.

Policing and public order create even sharper risks. Predictive analytics and surveillance technologies can reconfigure suspicion into data-driven classification, intensifying the danger that historically marginalized communities become over-policed through proxy indicators. In constitutional terms, this is a problem of equality and liberty simultaneously, because discriminatory suspicion burdens both dignity and freedom. Where such tools are used, the constitutional demand is heightened oversight: legality, necessity, proportionality, and independent review.

Education and examinations increasingly experiment with proctoring technologies and automated integrity systems. Here, due process concerns become concrete: if an AI tool flags a student for misconduct, what reasons are given, what evidence is disclosed, and what forum exists for challenge. The rule-of-law requirement of reasons and fair hearing is not displaced by software; rather, software heightens the need for procedural design that prevents "automation bias" in disciplinary decision-making (Citron, 2008).

Health and insurance are similarly complex. AI-based diagnostics and risk scoring can expand access and efficiency, but also risk discrimination through proxy inference and create heightened sensitivity of health data. Privacy,

dignity, and equality converge here, making data protection and model accountability central to constitutional governance.

Table 11.2

India's Data-Intensive Governance at Scale: Selected Indicators Relevant to Constitutional Oversight

Indicator	Reported value and period	Why it matters constitutionally	Source
Aadhaar numbers generated	142.76 crore as of 16 September 2025	Illustrates the scale of identity-linked data infrastructure; raises proportionality, security, and remedy questions	UIDAI (2025)
Aadhaar authentication transactions	231 crore in November 2025	Indicates the volume of automated/remote verification shaping access to services; underscores due process needs when failures occur	UIDAI/PIB (2025)
Face authentication transactions (Aadhaar)	28.29 crore in November 2025 (with growth noted over the previous year)	Demonstrates AI-adjacent biometric verification at population scale; demands robust safeguards against error and exclusion	UIDAI/PIB (2025)
Digital payments transaction volume (all modes)	2,071 crore in FY 2017–18; 18,592 crore in FY 2023–24	Shows how daily economic life is datafied; amplifies privacy, consumer protection, and cybersecurity stakes	Dept. of Financial Services (2024)
UPI transaction volume	92 crore in FY 2017–18; 13,116 crore in FY 2023–24	Illustrates platform-scale data processing in finance; increases stakes of profiling, fraud analytics, and accountability	Dept. of Financial Services (2024)

Sources: UIDAI website statistics (UIDAI, 2025); UIDAI press information on authentication volumes (UIDAI/PIB, 2025); Department of Financial Services, Ministry of Finance digital payments overview (Dept. of Financial Services, 2024).

11.10 Constitutional Morality in Digital Governance: Managing AI's Social Power

The normative vocabulary developed in Chapter 10-constitutional morality as fidelity to dignity, equality, liberty, and fraternity-acquires special importance in AI governance because prejudice can be translated into technical artefact. A discriminatory stereotype need not be spoken; it can be encoded into labels, proxies, and training objectives. The constitutional danger is that social morality, in its exclusionary or hierarchical forms, becomes operational at machine speed and bureaucratic scale.

Here fraternity becomes a design norm rather than merely a civic aspiration. Fraternity, as a constitutional ethic, insists that governance must not humiliate. This implies concrete governance demands in AI: impact assessment for group harms, mechanisms to detect and mitigate bias, and institutional practices that treat persons not as risk categories but as rights-bearing citizens. UNESCO's ethics framework underscores that AI governance should be grounded in human rights, accountability, and safeguards against surveillance and social scoring (UNESCO, 2021). While international norms do not directly bind domestic law absent incorporation, they provide persuasive constitutional vocabulary for rights-respecting governance.

11.11 Institutions, Accountability, and Democratic Oversight: Who Governs AI?

AI governance is often executive-driven because technical regulation, procurement, and implementation are administratively managed. Yet constitutional democracy demands that executive capacity be matched by democratic accountability. Parliament's role is crucial not only in enacting laws such as the DPDP Act but also in ensuring that subordinate legislation and institutional design remain faithful to constitutional values. The DPDP Act itself contemplates parliamentary laying of rules and certain notifications, reinforcing the principle that delegated governance must remain under legislative visibility (Digital Personal Data Protection Act, 2023).

Courts remain essential guardians of constitutional boundaries. Judicial review supplies a forum where legality, proportionality, reason-giving, and remedies can be demanded for AI-mediated governance. Yet courts alone cannot govern technology; they require institutional complements, including regulators, standards bodies, procurement norms, and audit ecosystems. The DPDP Act's Data Protection Board and penalty framework, as well as the concept of

Significant Data Fiduciaries, signal an attempt to build that institutional complement.

India's policy architecture is also moving toward an ecosystem approach. Official materials describing the IndiaAI Mission emphasise both capacity-building and "safe and trusted AI" initiatives, including workstreams such as bias mitigation, explainability, auditing, and governance testing (Press Information Bureau, 2025). While policy missions are not substitutes for enforceable rights, they matter constitutionally because they shape how the administrative state internalises restraint and rights-respecting design as routine practice.

11.12 Measuring Constitutional Adequacy: Indicators for AI and Data Protection

A constitutional framework that cannot be evaluated risks devolving into rhetoric. The evaluation of AI and data protection should therefore include measurable indicators that reflect constitutional adequacy rather than mere compliance theatre. Such indicators include, among other things, the time required to resolve grievances, the frequency and transparency of breach notifications, the existence and quality of algorithmic impact assessments, the rate of exclusion errors in welfare authentication contexts, and the availability of meaningful explanations and appeal pathways where automated tools influence consequential decisions. The DPDP Act's design-rights, duties, enforcement, and penalties-creates a scaffolding on which such metrics can be constructed, but the constitutional test will be whether the scaffolding produces lived accountability.

11.13 Conclusion: Constitutionalism at 75-Digital Power Under Constitutional Discipline

India's constitutional journey, celebrated in this book as a 75-year story of democratic endurance and self-correction, now confronts a new governance frontier. AI and data-driven systems do not merely modernise administration; they alter the conditions of citizenship by transforming how persons are seen, sorted, and acted upon. The constitutional response cannot be nostalgia for an earlier administrative era; it must be a principled modernization that keeps digital power under constitutional discipline.

Three conclusions follow. First, AI governance is constitutional governance because it implicates liberty, equality, dignity, fraternity, and rule-of-law methods at scale, as captured by the privacy jurisprudence and the continuing demands of proportionality and safeguards (K.S. Puttaswamy (Retd.) v. Union of

India, 2017). Second, the DPDP Act is a major step in constitutional implementation of privacy, but privacy law alone cannot exhaust AI governance; model accountability, bias mitigation, and contestability require additional institutional and regulatory design. Third, the next phase of India's democratic journey depends on cultivating constitutional culture within digital governance: a habit of reason-giving, restraint, and rights-based oversight-within the state, and also within private architectures of platform power. This is how India's Constitution remains, even now, a living document: not by resisting modernity, but by insisting that modernity answer to constitutional morality.

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12 REIMAGINING THE CONSTITUTION AT 75 YEARS: WHAT NEXT

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12.1 Introduction

To ask "what next" at the seventy-fifth year of India's constitutional life is to ask a question of constitutional method, not of political impatience. The Indian Constitution-adopted on 26 November 1949 and brought into force on 26 January 1950-was designed not merely to establish institutions of government but to constitute a democratic people under law, amid profound social inequality and plural identity (Austin, 1966; Constitution of India, 1950). The endurance of this constitutional order for seventy-five years is itself a democratic achievement; yet endurance, in constitutional theory, is never a guarantee of adequacy. A constitution may persist even as constitutionalism thins-through weakened deliberation, administrative opacity, unequal citizenship, or the normalisation of exceptional power (Krishnaswamy, 2009; Tushnet, 1999).

Reimagining the Constitution at 75 years, therefore, should be understood as renewal through fidelity: a recommitment to the Constitution's normative core-justice, liberty, equality, and fraternity-together with institutional reforms that address contemporary stress points without risking the rupture that replacement rhetoric can invite in a plural society (Constitution of India, 1950; Austin, 1966). The Indian constitutional experience demonstrates a distinctive capacity for "correction without collapse," visible in the post-Emergency restoration of checks and freedoms, in the continued evolution of rights under Articles 14, 19, and 21, and in the constitutional absorption of new governance challenges such as digital power and climate risk (Minerva Mills Ltd. v. Union of India, 1980; Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017). The next quarter-century will test whether democratic legitimacy can be maintained under conditions of accelerating technological transformation, intensifying ecological stress, and deepening informational polarisation-conditions that produce not only policy disputes but constitutional disputes about power, accountability, and equal citizenship (IPCC, 2022).

The central argument of this chapter is that India's "successful adoption" of the Constitution, celebrated in this book, is not a completed historical event; it is an ongoing practice. The constitutional future will depend upon three intertwined tasks. First, the reinforcement of democratic accountability in a governance environment that trends toward executive dominance. Second, the deepening of rights in a manner that preserves both liberty and capability, particularly for historically marginalised communities. Third, the strengthening of constitutional culture-those habits of restraint, justification, and fraternity-without which constitutional text becomes insufficiently protective (Constituent Assembly Debates, 1948/1949; Baxi, 2010).

12.2 The Meaning of Constitutional Renewal: Continuity, Change, and the Limits of Amendment

Constitutional renewal is often misunderstood as textual revision. In constitutional theory and practice, however, renewal is more commonly achieved through interpretation, convention, and institutional behaviour. India's constitutional evolution illustrates this point: the text remains recognisably continuous, yet the meaning and operational force of provisions-especially within the equality and liberty code-have changed considerably through jurisprudence and governance practice (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017; Khaitan, 2019). Renewal, in this sense, is not an abandonment of constitutional identity, but a disciplined updating of constitutional application to new contexts.

At the same time, India's constitutional history also confirms that formal amendment is both necessary and dangerous. Necessary, because democratic society changes and must be accommodated; dangerous, because amendment can become a technique of constitutional capture when used to disable checks, marginalise rights, or centralise power in a manner that alters the constitutional regime's identity. The Emergency-era experience and the Forty-Second Amendment are paradigmatic of this danger (Minerva Mills Ltd. v. Union of India, 1980).

The constitutional response to that risk is the Basic Structure doctrine-India's distinctive constitutional guardrail against formal legal destruction of constitutional identity by amendment (Kesavananda Bharati Sripadagalvaru v. State of Kerala, 1973). In Kesavananda Bharati, the Supreme Court held that Parliament's amending power is broad but not unlimited, and that the Constitution contains essential features-its "basic structure"-that cannot be abrogated even through formal amendment (Kesavananda Bharati

Sripadagalvaru v. State of Kerala, 1973). In Minerva Mills, the Court further defended a constitutional equilibrium by insisting on limits to amending power and on a harmony between Fundamental Rights and Directive Principles as central to constitutional identity (Minerva Mills Ltd. v. Union of India, 1980).

This doctrinal architecture makes possible a principled distinction between reform and replacement. Reform is constitutionally legitimate when it strengthens rights, improves accountability, and addresses governance deficits while preserving constitutional identity. Replacement rhetoric, by contrast, risks destabilising the shared normative framework that plural societies require for peaceful disagreement and lawful politics. The Indian Constitution's success, properly understood, lies not in immobility but in its ability to remain the common language of legitimacy amid deep social contestation (Austin, 1966; Krishnaswamy, 2009).

12.3 Diagnosing the Present: Constitutional Achievements and Persistent Gaps at 75

A forward-looking constitutional agenda must begin with a sober diagnosis. The narrative of India's constitutional life is neither purely celebratory nor purely critical; it is best understood as a record of democratic continuity accompanied by uneven constitutional implementation.

One of the most visible achievements is democratic continuity itself. India has conducted regular national elections under universal adult franchise since 1951–52, with participation levels that-while varying across time-illustrate the embedding of electoral democracy as a constitutional practice. The Election Commission's official atlas records the long arc of voter turnout from the first general election to 2024 (Election Commission of India, 2025).

Yet electoral continuity is not sufficient evidence of constitutional adequacy. The constitutional project also includes the availability of rights, the quality of governance, and the accessibility of justice. Here, a persistent gap concerns delay and pendency in adjudication-an issue not merely administrative, but constitutional, because delays in adjudication can degrade the effective enjoyment of rights and remedies. India's National Judicial Data Grid (NJDG) system-an official platform under the eCourts Project-publishes near real-time pendency data (Department of Justice, Government of India, 2025).

As displayed on NJDG dashboards at the time of writing, the scale of pending cases is substantial across tiers, raising questions about access to constitutional justice and the capacity of institutions to realise the rule of law in daily life (Law Commission of India, 2014).

Table 12.1: Voter turnout in Indian general elections (Lok Sabha), 1951–52 to 2024

Election year	Voter turnout (%)
1951–52	45.67
1957	47.74
1962	55.42
1967	61.04
1971	55.27
1977	60.49
1980	56.92
1984–85	64.01
1989	61.95
1991–92	55.88
1996	57.94
1998	61.97
1999	59.99
2004	58.07
2009	58.21
2014	66.44
2019	67.40
2024	66.10*

Source: Election Commission of India, *An Atlas of Lok Sabha Elections 2024*, Table T28.1 (Election Commission of India, 2025). *The atlas notes that the 2024 figure excludes the Surat parliamentary constituency because the election was uncontested.*

Table 12.2: Pending cases across court tiers (NJDG dashboards, as displayed 6 January 2026)

Court tier (dashboard)	Civil cases pending	Criminal cases pending	Total pending
District & subordinate courts (NJDG)	1,10,58,103	3,64,75,284	4,75,33,387
High Courts (HC NJDG)	44,69,485	19,03,385	63,72,870
Supreme Court (SC NJDG)	72,902	19,419	92,321

Source: National Judicial Data Grid dashboards (NJDG District Courts; NJDG High Courts; NJDG Supreme Court), accessed 6 January 2026.

The constitutional implication is not simply that "courts are slow." It is that constitutional rights and constitutional remedies are mediated through institutional capacity. If the availability of timely adjudication declines, rights risk becoming formally grand but practically thin. Reimagining at 75 thus requires performance reforms that enhance adjudicatory capacity and access, while also maintaining judicial independence and the legitimacy of constitutional review (Law Commission of India, 2014; Krishnaswamy, 2009).

A further constitutional achievement-often underappreciated-is the capacity of India's constitutional order to incorporate change through amendment without losing identity. The Legislative Department's updated text of the Constitution notes that amendments have been incorporated up to the One Hundred and Sixth Amendment enacted in 2023 (Legislative Department, Ministry of Law and Justice, 2025). This density of amendment reflects adaptation to new governance requirements: local self-government, fiscal federalism, rights expansion, and institutional design. Yet it also underlines why method matters: amendment must remain a tool of maintenance, not capture, a distinction defended by the Basic Structure doctrine (Kesavananda Bharati Sripadagalvaru v. State of Kerala, 1973; Minerva Mills Ltd. v. Union of India, 1980).

12.4 Democracy and Representation: Deepening the "People's Constitution"

The phrase "We the People" is not merely rhetorical; it is operationalised through electoral integrity, political equality, and deliberative lawmaking. Reimagining the Constitution at 75 requires confronting how contemporary

governance risks diluting democratic voice even while maintaining the outward form of elections.

A first site of reform concerns political finance and democratic equality. Constitutional democracy presupposes that citizens can evaluate political power through information and reason. In February 2024, the Supreme Court unanimously struck down the Electoral Bonds Scheme, holding that the scheme violated voters' right to information under Article 19(1)(a) and directing immediate cessation of sales; it also ordered disclosure mechanisms through the State Bank of India and the Election Commission (Association for Democratic Reforms v. Union of India, 2024). The constitutional significance of this decision is not only its immediate impact on a particular policy design; it illustrates a deeper constitutional proposition: democratic equality is undermined when the material conditions of political competition are shielded from public scrutiny, because secrecy in political funding can reshape representation through unequal influence (Association for Democratic Reforms v. Union of India, 2024).

A second site concerns delimitation and the federal balance of representation. While delimitation is often framed as a technical exercise of boundary revision, it is constitutionally central because it determines how "the people" are distributed into representative units. Parliamentary materials record that the freeze on delimitation of parliamentary constituencies was extended to 2026 via the Constitution (Eighty-Fourth Amendment) Act, motivated by differential progress in population stabilisation (Ministry of Law and Justice, 2023). The approaching end of this freeze raises constitutionally delicate questions for the next quarter-century: how to reconcile democratic equality (one person, one vote) with federal fairness, and how to ensure that representation does not become a site of zero-sum constitutional conflict between regions. The constitutional task is to ensure that any future delimitation process is governed by principled criteria and transparent procedures, capable of sustaining both democratic legitimacy and national unity in a plural federation (Constitution of India, 1950; Austin, 1966).

A third site concerns parliamentary deliberation as a constitutional value. Global governance complexity-fiscal regulation, platform governance, climate adaptation, public health preparedness-requires not only executive efficiency but legislative intelligence. Committee culture and deliberative scrutiny become constitutional necessities when the consequences of legislation are widely distributed and technically complex. The constitutional point is not that every policy must be slow; it is that democratic legitimacy is strengthened when lawmaking is accompanied by public justification, evidence sensitivity, and

procedural regularity (Krishnaswamy, 2009). Without these, constitutional democracy risks administrative substitution-governance by notification, circular, and executive discretion-where Parliament becomes episodic rather than constitutive.

12.5 Rights in the Next 25 Years: From Liberty to Capability and Digital Dignity

A constitution is reimagined not only through institutional reform but through the evolution of rights as social conditions change. India's rights jurisprudence has been a principal vehicle through which the Constitution has remained "living," particularly through Article 21 and its interpretive expansion toward dignity, autonomy, and informational self-determination (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

A first horizon concerns socio-economic rights as minimum conditions of dignity. Indian constitutional structure contains both enforceable rights and Directive Principles that articulate a welfare mandate. The future constitutional question is not whether the state should pursue welfare, but how constitutional governance can ensure that welfare commitments are realised with accountability, non-discrimination, and minimal arbitrariness. The constitutional imagination increasingly turns toward capability: education, health, nutrition, housing, disability inclusion, and social security as prerequisites for equal citizenship (Sen, 1999; Khaitan, 2019). This approach is not a departure from the Constitution's core; it is an application of the Preamble's promise of justice and the Directive Principles' social agenda to 21st-century vulnerability.

A second horizon concerns digital rights as conditions of democratic citizenship. In Puttaswamy, the Supreme Court recognised privacy as a fundamental right and articulated legality and proportionality-like constraints on state intrusion, treating privacy as integral to dignity and liberty (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017). The legislative response includes the Digital Personal Data Protection Act, 2023, which frames data protection as a balance between the individual's right to protect personal data and lawful processing (Digital Personal Data Protection Act, 2023). Reimagining at 75 requires treating such regimes not as "compliance law," but as constitutional implementation: a framework that operationalises dignity, limits arbitrary power, and creates contestable governance.

A third horizon concerns the changing public sphere. Speech and dissent are constitutionally protected not merely to permit expression, but to sustain

democratic accountability. Yet the 21st-century public sphere is increasingly shaped by platform architectures, virality incentives, and disinformation ecosystems-conditions that can erode public reason while enabling new forms of coercion, including non-state coercion. The constitutional challenge is to protect free expression while addressing hate and misinformation through rights-consistent methods that preserve legality, transparency, and proportionality (Barendt, 2005; Waldron, 2012). The future of constitutional democracy will be judged by whether it can govern speech conflicts without collapsing into either censorship or laissez-faire abdication.

12.6 Federalism 2.0: Cooperative Federalism Under Stress

Federalism is not merely a distribution of competences; in India it is a constitutional technique for holding together a plural society. The future will intensify federal stress because the most pressing governance problems-public health, climate adaptation, disaster response, urban infrastructure, migration, and digital enforcement-are multi-level by nature. Reimagining federalism thus requires strengthening cooperative mechanisms while preserving state autonomy and democratic accountability.

Fiscal federalism is central. Modern governance is expensive, and constitutional rights are costly in implementation. When states lack fiscal capacity, constitutional commitments-health, education, welfare delivery-become uneven across territory, producing unequal citizenship. The constitutional future demands transparency and fairness in intergovernmental transfers, predictable revenue arrangements, and institutional mechanisms for resolving fiscal disputes. The deeper point is constitutional: federalism is a rights condition, because rights are realised through local administrative capacity (Austin, 1966; Baxi, 2010).

Local self-government must also be treated as constitutional deepening. The constitutionalisation of Panchayats and municipalities created a framework for participatory governance and inclusion, including women's representation at the grassroots. Yet performance varies significantly across states. Reimagining at 75 should therefore include a stronger constitutional culture of decentralisation: not as romantic localism, but as a governance technology for accountability and capability.

12.7 Institutions and Accountability: Performance Reforms Without Constitutional Capture

The next constitutional quarter-century will be shaped by the institutional question: who holds power, how is it checked, and how is it made answerable.

Global experience shows that complex governance tends to centralise discretion in executive agencies. India is no exception. But constitutional democracy cannot treat executive competence as a substitute for accountability. The constitutional method is not suspicion of administration as such; it is insistence on legality, reason-giving, transparency, and review.

The judiciary occupies a special place because it is the institutional guardian of constitutional boundaries. Yet, as Table 12.2 indicates, pendency and delay raise structural issues for access to justice. The Law Commission's work on arrears and judicial capacity reflects the recurring institutional diagnosis that constitutional justice depends on adequate manpower and governance design (Law Commission of India, 2014). Reimagining the Constitution at 75 therefore requires reforms that strengthen adjudicatory capacity-procedural simplification, case management, effective legal aid, and technology that improves access-while safeguarding decisional independence and the integrity of constitutional review (Krishnaswamy, 2009).

Independent institutions such as the Election Commission, the Comptroller and Auditor General, and information oversight bodies form part of India's constitutional ecosystem of accountability. Their autonomy is not an administrative detail; it is a constitutional condition for trust. Where appointment processes, tenure protections, or operational autonomy are perceived as fragile, constitutional culture weakens even if formal rules remain. The future agenda must therefore include design principles that strengthen perceived neutrality: transparent appointments, reasoned decision-making, and robust public communication.

12.8 National Security, Emergency Powers, and Constitutional Resilience

India's constitutional experience teaches that constitutional crisis is not hypothetical. Emergency powers exist, and can be abused. The post-Emergency constitutional response, including the Forty-Fourth Amendment, illustrates constitutional learning: a recognition that emergency powers must be disciplined by procedural safeguards and by a constitutional culture that resists normalisation of exception (The Constitution (Forty-Fourth Amendment) Act, 1978). The constitutional future will include new forms of crisis-cybersecurity threats, misinformation-driven unrest, and transnational security pressures-that can generate demands for rapid centralised action. The challenge is to ensure that necessity does not become a narrative that dissolves rights.

A central future site is surveillance governance. Digital infrastructures make pervasive surveillance technically feasible at scale; constitutionalism demands

that feasibility not become permission. The constitutional principles articulated in privacy jurisprudence-legality, legitimate aim, necessity and proportionality-like balancing, and safeguards-must become governance habits rather than exceptional judicial interventions (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017). Where surveillance becomes routine without transparent oversight, constitutional democracy risks sliding into managed citizenship, in which autonomy is formally recognised but practically chilled.

12.9 Climate Constitutionalism and Environmental Justice: The Next Constitutional Frontier

Climate risk is increasingly a constitutional fact. It reshapes livelihoods, health, migration patterns, and disaster vulnerability. The IPCC's Sixth Assessment Report synthesises high-confidence findings that extreme heat and other climate risks will intensify in Asia, with serious implications for human health and welfare (IPCC, 2022). In constitutional terms, this is not merely an "environment policy" issue. It is an equality issue because burdens are distributed unequally; it is a dignity issue because extreme heat, floods, and livelihood loss degrade the minimum conditions of life; and it is a federalism issue because adaptation requires coordinated multi-level governance.

Indian constitutional jurisprudence has long connected environmental protection to the right to life, and has incorporated principles such as sustainable development and precaution into constitutional reasoning (Vellore Citizens' Welfare Forum v. Union of India, 1996). The future constitutional question is how to institutionalise climate governance without turning courts into climate administrators. Reimagining at 75 requires building administrative capacity for climate resilience, transparent impact assessment, and rights-sensitive rehabilitation frameworks, so that climate adaptation does not become a new theatre of displacement and exclusion. Climate constitutionalism, properly conceived, is the extension of social transformation into ecological conditions: a demand that development be aligned with intergenerational justice and equal citizenship (IPCC, 2022; Sen, 1999).

12.10 Constitutional Morality and Civic Education: Building Constitutional Culture for the Next Generation

No constitutional future is secure without constitutional culture. The Constituent Assembly's debates reveal an acute awareness that constitutional morality is not automatic. The warning associated with the framing era is that constitutional fidelity must be cultivated as a public habit, not assumed as a natural sentiment (Constituent Assembly Debates, 1948). Ambedkar's broader

constitutional argument insisted that political democracy cannot be stable without social democracy-without the internalisation of equality, dignity, and fraternity in social life (Constituent Assembly Debates, 1949).

This connects directly to the theme developed in Chapter 10. Constitutional morality, in the 21st century, is tested not only in courtrooms but in administrative discretion, digital speech ecosystems, and everyday encounters with difference. Reimagining at 75 must therefore include civic education as constitutional infrastructure. Education policy documents themselves recognise the role of constitutional values and duties in curriculum and civic formation (Ministry of Education, 2020). Yet civic education must not be reduced to ceremonial patriotism. It must cultivate the discipline of disagreement, the ethic of fraternity, and the capacity to reason with constitutional principles in plural contexts. Without this, constitutional interpretation becomes a specialised craft disconnected from public life, and constitutional democracy becomes procedurally intact but culturally fragile.

12.11 Methods of Reform: A Constitutional Toolkit for the Future

The method of reform matters as much as the content. India's constitutional tradition contains multiple legitimate pathways for renewal.

Formal amendment is legitimate when it is necessary to update governance architecture or rights protection, and when it is pursued through deliberative legitimacy rather than haste. But the Basic Structure doctrine remains a warning that amendment cannot become a means to dissolve constitutional identity (Kesavananda Bharati Sripadagalvaru v. State of Kerala, 1973; Minerva Mills Ltd. v. Union of India, 1980).

Ordinary legislation and institutional rules are often the more appropriate tools for performance reform. Many governance deficits are not constitutional gaps but implementation gaps: delays, opacity, weak grievance redress, and uneven capacity. These are often better addressed through carefully designed statutes, robust delegated legislation with safeguards, transparent procurement and audit rules, and capacity-building in public institutions.

Judicial doctrine will continue to play a role, but doctrine is not a substitute for administration. Courts can articulate standards-legality, proportionality, non-arbitrariness, due process, dignity-yet the future success of constitutionalism depends on whether these standards are internalised by institutions as routine constraints (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017). Participatory constitutionalism is also essential. Commissions, consultations, and public reasoning processes create legitimacy for difficult reforms-

particularly those involving technology governance, climate adaptation, and electoral design-because they distribute ownership of the constitutional future across the public rather than concentrating it in transient majorities.

12.12 Conclusion

India's constitutional journey over seventy-five years can be celebrated precisely because it has displayed an unusual democratic capacity: to endure, to correct, and to expand the meaning of citizenship without constitutional breakdown. That achievement is visible in the routine conduct of elections and the stabilisation of democratic transfer; it is visible in the judicial defence of constitutional identity against capture; and it is visible in the continuing expansion of rights discourse toward dignity and equality (Election Commission of India, 2025; Kesavananda Bharati Sripadagalvaru v. State of Kerala, 1973; Minerva Mills Ltd. v. Union of India, 1980).

Yet celebration, to remain credible, must be paired with constitutional realism. Pendency and delay raise access-to-justice concerns at scale; political finance controversies illustrate how democratic equality can be eroded through opacity; climate risk threatens to reconfigure vulnerability in ways that demand a constitutional response; and digital power creates new forms of surveillance and non-state coercion that the traditional constitutional imagination did not fully anticipate (National Judicial Data Grid, 2026; Association for Democratic Reforms v. Union of India, 2024; IPCC, 2022).

Reimagining the Constitution at 75 years is therefore not a call to rewrite the constitutional promise, but to renew it: by strengthening deliberative democracy, by deepening rights as capability and digital dignity, by modernising institutions without undermining independence, and by cultivating constitutional morality as a civic practice rooted in fraternity. If the next quarter-century can sustain these commitments, India's constitutional story will remain what it has largely been: a demonstration that constitutional democracy can survive diversity, inequality, and crisis-provided it retains the discipline of constitutionalism.

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13 EMERGENCE OF NEW FUNDAMENTAL RIGHTS: AN APPRAISAL

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Seventy-five years after the Constitution of India came into force, the most remarkable evidence of its democratic success is not only that it has endured, but that it has continued to speak to problems that its framers could not fully anticipate. Fundamental Rights were drafted as enforceable limits on state power and as the legal language of equal citizenship. Yet the lived experience of the Republic has repeatedly shown that an enumerated list of rights is never a complete catalogue of human vulnerability. New forms of deprivation, surveillance, exclusion, and structural inequality have emerged alongside development, urbanisation, and technological change. If constitutional democracy is to remain meaningful, constitutional rights must remain capable of principled growth.

The emergence of "new" Fundamental Rights in India is best understood as an interpretive achievement rooted in constitutional necessity. The constitutional text has been relatively stable, but the content of constitutional liberty has expanded through judicial reasoning that treats Articles 14, 19, and 21 as an integrated scheme of freedom, equality, and dignity. The transition from early formalism to a more substantive rights jurisprudence-most visibly after *Maneka Gandhi*-reoriented Article 21 from a narrow guarantee of procedure into a constitutional source of dignity-based claims, enabling recognition of rights to livelihood, education, privacy, and a clean environment (Maneka Gandhi v. Union of India, 1978; Olga Tellis v. Bombay Municipal Corporation, 1985; Unni Krishnan, J.P. v. State of Andhra Pradesh, 1993; Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

This chapter offers a careful appraisal of that expansion. It does not treat judicial creativity as automatically virtuous, nor does it reduce it to illegitimate overreach. Instead, it asks a harder question central to the constitutional story at seventy-five: when the Court discovers rights in constitutional silence, does it deepen democratic citizenship by making dignity enforceable, or does it risk weakening democratic responsibility by shifting contested policy choices into

the judicial domain? The answer, as India's experience suggests, lies in the discipline of constitutional reasoning-how closely the Court ties new rights to constitutional structure, how responsibly it respects institutional limits, and how effectively rights declarations are translated into governance. In tracing this jurisprudential evolution, the chapter connects rights expansion to India's broader democratic journey: a Republic where constitutional citizenship has grown not merely by electoral participation, but by the steady, contested enlargement of what it means to live with liberty and dignity under the Constitution.

13.1 Introduction: From Enumerated Rights to an Expanding Constitutional Horizon

India's constitutional democracy is often celebrated for the durability of its written Constitution and the resilience of its electoral and representative institutions. Yet, the most profound marker of constitutional success over seventy-five years has not been mere endurance, but the Constitution's capacity to generate an expanding culture of rights. In the Indian experience, the Fundamental Rights chapter has functioned not only as a catalogue of liberties frozen in 1950, but as a framework through which the meaning of citizenship has been repeatedly renegotiated in response to social movements, administrative realities, and the moral claims of equality and dignity (Austin, 1999; Baxi, 1985; Khosla, 2020). This chapter situates the judicial emergence of "new" Fundamental Rights-particularly through Articles 14, 19, and 21-within the broader theme of this book, Celebrating India's Democratic Journey: 75 Years of Successful Adoption of the Constitution. The expansion of rights jurisprudence is presented here not as an accidental by-product of litigation, but as part of India's continuing democratic project: the transformation of constitutional text into lived constitutionalism through interpretive practices, institutional contestation, and public participation (Choudhry, Khosla, & Mehta, 2016; Bhatia, 2019).

13.1.1 Fundamental Rights as a dynamic constitutional promise

The Indian Constitution enumerates rights with an aspiration that is both legal and civilisational: to ensure that a post-colonial society would be governed by rule of law, limited government, and equal citizenship. However, even an enumerated list cannot anticipate every form of vulnerability produced by social change, new technologies, market transformations, or evolving understandings of personhood (Choudhry et al., 2016). The promise of Part III has therefore been dynamic in practice: its normative content has expanded through

adjudication, legislation, and constitutional amendments, producing new forms of constitutional protection while continuing to rely on the textual anchors of equality, freedom, and life with liberty (Austin, 1999).

13.1.2 Textual stability and interpretive flexibility

The Indian Constitution exhibits a distinctive duality: it is textually stable, yet doctrinally adaptive. Rights such as "life," "personal liberty," "equality," and "freedom of speech" are framed in capacious terms, enabling the judiciary to develop rights-based responses to problems not explicitly foreseen in 1950. This interpretive flexibility has been crucial in addressing structural injustices, particularly where legislative or executive responses have been slow, uneven, or contested (Sathe, 2002). The judicial method has often been purposive and structural: the Court has read rights not as isolated provisions but as a coherent scheme of constitutional liberty, sometimes described as a "golden triangle" of Articles 14, 19, and 21 (Maneka Gandhi v. Union of India, 1978).

13.1.3 Rights expansion as democratic evolution

Rights expansion in India is inseparable from democratic evolution. The post-Emergency period witnessed a surge in rights consciousness, accompanied by the rise of public interest litigation, the mobilisation of civil society, and heightened judicial willingness to intervene where governance failures threatened constitutional guarantees (Bhuwania, 2017; Sathe, 2002). Such expansion should be understood as a mode of democratic deepening-an attempt to make constitutional citizenship meaningful for those historically excluded from social and economic power (Baxi, 1985).

13.1.4 Judicial interpretation as a constitutional necessity

In a constitutional system grounded in justiciable rights, judicial interpretation is not a discretionary embellishment; it is an institutional necessity. A court that refuses to interpret open-textured rights would leave the Constitution under-enforced precisely where enforcement is most needed. At the same time, judicial creativity must remain tethered to constitutional structure, democratic legitimacy, and institutional competence (Choudhry et al., 2016; Sathe, 2002). The Indian jurisprudence of newly recognised rights-especially under Article 21-thus reflects a continuing tension: the need to protect dignity and liberty, and the imperative to respect democratic choice and separation of powers.

13.2 Original Constitutional Design and Early Judicial Attitudes

The emergence of new Fundamental Rights is best understood against the background of constitutional design in 1950 and the judiciary's early

interpretive temperament. The Constituent Assembly drafted Part III in the shadow of colonial repression and communal violence, while simultaneously confronting mass poverty, illiteracy, and social hierarchy. The resulting architecture distributed constitutional aspirations across enforceable rights and non-justiciable Directive Principles, creating a moral economy of governance that the judiciary would later reinterpret and partially re-integrate through Article 21 jurisprudence (Austin, 1966; Khosla, 2020).

13.2.1 Constituent Assembly debates on rights limitation

The Constituent Assembly's debates reveal an insistence that rights must coexist with state capacity and public order, reflected in restrictions clauses and emergency provisions. The framers sought to avoid both majoritarian tyranny and governmental paralysis. The debates also disclose anxieties about security and unity, which shaped provisions such as preventive detention and limits on certain freedoms (Constituent Assembly of India, 1949).

13.2.2 Emphasis on negative liberties

Early constitutional rights were frequently conceptualised as negative liberties-protections against arbitrary state action. This orientation reflected a liberal constitutional inheritance and the immediate post-colonial need to restrain governmental power (Austin, 1966). However, India's social conditions soon generated demands for rights with affirmative content, particularly in relation to livelihood, health, education, and environmental protection-domains where liberty is meaningless without material conditions that sustain human dignity (Baxi, 1985).

13.2.3 Socio-economic concerns and Directive Principles

The Directive Principles were drafted to guide the state toward social revolution through constitutional means. Their non-justiciable character did not signify insignificance; rather, they expressed a constitutional strategy: to commit the state to welfare transformation while permitting democratic experimentation in implementation (Austin, 1966; Khosla, 2020). Over time, courts used Directive Principles as interpretive resources, especially in reading socio-economic dimensions into Article 21 (Unni Krishnan, J.P. v. State of Andhra Pradesh, 1993).

13.2.4 Early judicial restraint and textual fidelity

In the formative decades, the Supreme Court often interpreted Fundamental Rights with a comparatively literal and compartmentalised approach. The classic illustration is A.K. Gopalan, where personal liberty under Article 21 was treated as satisfied by any "procedure established by law," and rights were read

in isolation rather than as mutually reinforcing guarantees (A.K. Gopalan v. State of Madras, 1950). Such restraint reflected institutional caution in a newly established constitutional order and a jurisprudential preference for textual fidelity over purposive constitutionalism (Austin, 1999).

13.2.5 Separation of powers in the formative years

This early phase also expressed a strong separation-of-powers sensibility: policy was largely viewed as legislative and executive terrain, while courts operated as guardians of explicit limitations rather than architects of new constitutional obligations. Yet the limits of this posture became increasingly visible as governance failures produced systemic rights deficits, especially for marginalised communities with limited access to political power (Baxi, 1985; Sathe, 2002).

13.3 The Constitution as a Living and Transformative Document

The later emergence of new Fundamental Rights rests on a foundational jurisprudential shift: the recognition that the Constitution is not merely a legal code but a living normative order that must remain responsive to changing social realities. In India, the idea of a "living Constitution" has not been imported mechanically from other jurisdictions; it has been shaped by post-colonial conditions, developmental imperatives, and the aspiration to transform a hierarchical society into a democratic community of equals (Bhatia, 2019; Choudhry et al., 2016).

13.3.1 Living Constitution doctrine in Indian jurisprudence

The most decisive doctrinal turn was the move from formal legality toward substantive constitutionalism. In Maneka Gandhi, the Supreme Court rejected a narrow reading of Article 21 and held that "procedure" must satisfy standards of fairness, reasonableness, and non-arbitrariness-thereby connecting Article 21 to Articles 14 and 19 (Maneka Gandhi v. Union of India, 1978). This doctrinal reorientation created the conditions for the recognition of unenumerated rights as necessary implications of life and liberty.

13.3.2 Transformative constitutionalism in a post-colonial society

Transformative constitutionalism, classically theorised in comparative constitutional scholarship as a commitment to structural social change through constitutional interpretation, has particular resonance in India (Klare, 1998; Bhatia, 2019). The Indian Constitution's transformative ambition is evident in its commitment to abolish untouchability, guarantee equality, secure social justice, and expand opportunities. Rights expansion under Article 21 has

functioned as one mechanism through which the Court has attempted-sometimes unevenly-to translate constitutional ideals into enforceable guarantees for those excluded from effective citizenship (Baxi, 1985; Bhuwania, 2017).

13.3.3 Constitutional morality as interpretive guidance

Constitutional morality has increasingly served as a judicial vocabulary for linking rights to the Constitution's ethical foundations. The concept-associated with constitutional fidelity to values of liberty, equality, and fraternity-permits courts to resist social majoritarianism where it conflicts with constitutional commitments (Bhatia, 2019). In rights adjudication, constitutional morality supplies a justificatory bridge: it explains why courts may protect unpopular liberties and minority autonomy even in the face of prevailing social morality (Choudhry et al., 2016).

13.4 Constitutional Silence and Implied Fundamental Rights

A central question in Indian rights jurisprudence has been whether constitutional silence denotes constitutional absence. The Supreme Court's answer, developed over decades, has been largely negative: silence may represent interpretive space. The emergence of new Fundamental Rights is therefore inseparable from the jurisprudence of implied rights-rights not explicitly enumerated but treated as integral to the enjoyment of life, liberty, equality, and freedom.

13.4.1 Concept of unenumerated rights

Unenumerated rights, in the Indian context, are not rights invented ex nihilo; they are typically framed as necessary implications of existing constitutional guarantees. The Court has justified their recognition by invoking the Constitution's broad purposes, the structural relationship between rights, and the imperatives of dignity and substantive equality (Choudhry et al., 2016).

13.4.2 Constitutional silence as interpretive space

The interpretive technique has often been to treat the Constitution as a coherent moral and institutional scheme rather than a fragmented collection of clauses. Where new forms of state power-surveillance, administrative arbitrariness, environmental degradation-threaten dignity, the Court has treated constitutional silence as permitting doctrinal development rather than forcing constitutional abdication (Puttaswamy (Retd.) v. Union of India, 2017).

13.4.3 Article 21 as the fulcrum of rights discovery

No provision has been more central to rights discovery than Article 21. After Maneka Gandhi, Article 21 became an engine of constitutional creativity, enabling the Court to recognise rights to speedy trial, legal aid, livelihood, shelter, health, education, privacy, and environmental quality, among others (Hussainara Khatoon v. State of Bihar, 1979; Olga Tellis v. Bombay Municipal Corporation, 1985).

13.4.4 Transition from formal legality to substantive justice

This rights evolution reflects a deeper jurisprudential movement: away from formal compliance with enacted procedure and toward substantive justice grounded in reasonableness, dignity, and non-arbitrariness. The Court's emphasis on "fair, just and reasonable" procedure under Article 21 created an evaluative standard that could discipline legislative and executive power even where procedural formality existed (Maneka Gandhi v. Union of India, 1978).

13.4.5 Structural linkage between Articles 14, 19, and 21

The consolidation of implied rights was also supported by reading Articles 14, 19, and 21 as mutually reinforcing. Equality under Article 14 limited arbitrariness; freedoms under Article 19 shaped the content of liberty; and Article 21 provided the existential core of dignity (Choudhry et al., 2016). This structural reading furnished a constitutional grammar through which implied rights could be doctrinally stabilised rather than remaining episodic judicial pronouncements.

13.4.6 Doctrinal consolidation of implied rights

The table indicates how the Court's implied-rights method has relied on a small number of doctrinal pivots-especially Article 21 after Maneka Gandhi-to generate a broader rights ecosystem. The legal significance of this evolution lies not merely in the multiplication of rights labels, but in the Court's insistence that constitutional citizenship entails enforceable conditions of dignity.

13.5 Judicial Role and Democratic Responsibility

The judicial expansion of rights has generated one of the most enduring debates in Indian constitutionalism: whether courts, in protecting fundamental rights expansively, strengthen democracy or displace democratic decision-making. Any serious appraisal must resist caricature. The Supreme Court has often acted as a constitutional sentinel in contexts of administrative inertia, structural exclusion, and rights-denial. Yet the risks of judicial governance are equally real:

institutional overload, uneven enforcement, and the possibility that rights rhetoric substitutes for systematic policy reform (Sathe, 2002; Bhuwania, 2017).

Table 13.1: Illustrative Judicial Recognition of Implied or Expanded Fundamental Rights (Selected Cases)

Right or doctrinal expansion (illustrative)	Constitutional anchor	Selected Supreme Court authority (year)
Fair, just and reasonable procedure; integration of Arts. 14/19/21	Arts. 14, 19, 21	Maneka Gandhi v. Union of India (1978)
Speedy trial as part of life and liberty	Art. 21	Hussainara Khatoon v. State of Bihar (1979)
Right to livelihood linked to right to life	Art. 21	Olga Tellis v. Bombay Municipal Corporation (1985)
Right to education as implicit (later constitutionally entrenched)	Arts. 21, 41, 45	Mohini Jain v. State of Karnataka (1992); Unni Krishnan v. State of A.P. (1993)
Privacy and decisional autonomy as Fundamental Right	Arts. 14, 19, 21	Kharak Singh v. State of U.P. (1962/63); Govind v. State of M.P. (1975); Puttaswamy v. Union of India (2017)
Procedural safeguards against unlawful surveillance/telephone tapping	Arts. 19, 21	PUCL v. Union of India (1997)
Pollution-free water/air as part of the right to life	Art. 21	Subhash Kumar v. State of Bihar (1991); Vellore Citizens Welfare Forum v. Union of India (1996)

Source: Compiled from Supreme Court of India decisions (as cited).

13.5.1 Supreme Court as constitutional guardian

The Supreme Court's self-understanding as a guardian of the Constitution is rooted in its power of judicial review and its role in enforcing Part III. In rights expansion cases, the Court often portrayed itself as protecting constitutional commitments against the failures of ordinary politics, particularly where vulnerable groups lacked effective political representation (Baxi, 1985).

13.5.2 Judicial creativity and constitutional limits

Judicial creativity is constitutionally defensible when it remains anchored in text, structure, and principle. The Court has often justified implied rights by

arguing that the Constitution's values-dignity, equality, liberty-would be hollow if confined to narrow textual literalism (Choudhry et al., 2016). However, the question of limits persists: when courts prescribe policy detail, monitor administration, or create continuing mandamus regimes, they risk substituting adjudication for governance (Sathe, 2002).

13.5.3 Public Interest Litigation and access to justice

The rise of Public Interest Litigation transformed the Court into a forum for structural claims. PIL reduced procedural barriers, relaxed standing, and enabled petitions on behalf of bonded labourers, prisoners, pavement dwellers, and environmental victims. This development democratised constitutional enforcement in important respects (Bhuwania, 2017). Yet it also created new vulnerabilities: PIL could be instrumentalised for private agendas, ideological projects, or performative litigation, prompting the Court to develop cautionary doctrines against abuse (Subhash Kumar v. State of Bihar, 1991).

13.5.4 Expansion of locus standi

The liberalisation of locus standi permitted courts to hear claims where the affected persons were unable to access legal remedies. This shift responded to India's socio-economic conditions and the reality that formal access to courts does not guarantee substantive access to justice (Baxi, 1985; Bhuwania, 2017).

13.5.5 Protection of marginalised interests

Rights expansion has often been most meaningful where it operated as a constitutional shield for marginalised groups. The recognition of livelihood, shelter, legal aid, and environmental rights reflects an attempt to constitutionalise conditions of human dignity. But the unevenness of enforcement remains a persistent challenge: rights recognition is not self-executing, and the gap between judicial declaration and administrative implementation can be significant (Sathe, 2002).

13.6 Reimagining the Right to Life and Personal Liberty

The jurisprudence of new fundamental rights is, at its core, a reimagination of "life" and "liberty." The Court gradually moved from treating life as mere biological existence to treating it as a dignified human condition. This interpretive transformation has become one of the defining features of India's constitutional journey and a major reason the Constitution continues to be experienced as a living source of democratic hope (Austin, 1999; Bhatia, 2019).

13.6.1 Life beyond mere physical existence

The right to life was progressively interpreted to include conditions that make life worth living: humane treatment, freedom from degrading conditions, and protection against arbitrary deprivations that destroy the possibility of meaningful existence (Francis Coralie Mullin v. Administrator, Union Territory of Delhi, 1981).

13.6.2 Dignity as the core of Article 21

Dignity emerged as the conceptual fulcrum of Article 21. Once dignity is treated as constitutionally central, the scope of Article 21 necessarily expands beyond negative liberty. Dignity requires not only absence of coercion but also protection against structural deprivation that reduces persons to survival without agency (Bhatia, 2019).

13.6.3 Livelihood and shelter as constitutional claims

The recognition of livelihood as part of the right to life in Olga Tellis exemplifies this shift. The Court treated eviction and deprivation of livelihood as potentially threatening life itself, even while attempting to balance competing claims of urban governance and public space (Olga Tellis v. Bombay Municipal Corporation, 1985). Similar reasoning later informed the jurisprudence linking shelter and humane living conditions to dignity, though the implementation of such rights has remained contested and uneven across jurisdictions (Sathe, 2002).

13.7 Privacy, Autonomy, and Individual Choice

The recognition of privacy as a Fundamental Right represents one of the most significant modern expansions of Indian constitutionalism. It reflects a deeper evolution: the Constitution increasingly protects not only citizens against coercive power but also citizens' capacity for self-authorship-the ability to make intimate decisions about body, belief, identity, and association without illegitimate state intrusion (Puttaswamy (Retd.) v. Union of India, 2017).

13.7.1 Evolution of privacy jurisprudence

Indian privacy jurisprudence evolved incrementally. Early cases raised the problem through challenges to surveillance and police regulations, producing doctrinal ambiguity rather than categorical recognition (Kharak Singh v. State of U.P., 1962/63; Govind v. State of M.P., 1975). Subsequent decisions recognised privacy interests in reputation, publication, and personal autonomy, laying

doctrinal groundwork for later consolidation (R. Rajagopal v. State of Tamil Nadu, 1994).

13.7.2 Privacy as decisional autonomy

In Puttaswamy, the Supreme Court recognised privacy as intrinsic to liberty and dignity, framing it as essential to personal autonomy and the capacity to make fundamental life choices (Puttaswamy (Retd.) v. Union of India, 2017). This constitutional move was not merely about secrecy; it was about protecting the moral agency of the individual against an increasingly data-driven state and market.

13.7.3 Privacy, dignity, and liberty nexus

The doctrinal significance of privacy lies in its interlinkage with dignity and equality. Privacy protects decisional zones-family, intimacy, identity-while equality ensures that state intrusion is not selectively imposed on vulnerable groups. The Court's approach thus situates privacy within the broader architecture of constitutional citizenship rather than treating it as a purely individualistic entitlement (Choudhry et al., 2016).

13.7.4 Surveillance and constitutional restraint

The legitimacy of surveillance in a constitutional democracy depends on legality, necessity, proportionality, and procedural safeguards. Earlier jurisprudence on telephone interception illustrates judicial concern with uncontrolled executive discretion. In PUCL, the Court insisted on procedural protections to reduce arbitrariness in interception regimes, implicitly acknowledging that privacy interests require institutional design, not merely moral rhetoric (PUCL v. Union of India, 1997).

13.7.5 State power and personal freedom

Rights expansion is also reflected in legislative responses. The Digital Personal Data Protection Act, 2023 expressly frames data processing regulation around the protection of individuals' interests in personal data, while also recognising lawful purposes and governance needs (Government of India, 2023). Although statutory data protection is not identical to constitutional privacy, its enactment indicates how constitutional rights can shape legislative horizons and democratic expectations in a digital age.

13.8 Environmental and Educational Dimensions of New Rights

Two domains illustrate with particular clarity how implied rights under Article 21 have altered governance: environmental protection and education. Both

areas reveal a characteristic Indian pattern. First, courts identify constitutional dimensions of the issue through Article 21 and related principles; second, constitutional amendments and statutes sometimes follow, partially translating judicial principle into institutional frameworks; third, implementation remains the decisive battleground, where rights depend on administrative capacity and political will (Austin, 1999; Sathe, 2002).

13.8.1 Environmental protection as a rights discourse

Environmental rights entered Indian constitutional discourse through a convergence of constitutional amendments, statutory development, and judicial interpretation. The Forty-second Amendment inserted Article 48A (a Directive Principle) and Article 51A(g) (a Fundamental Duty), marking an explicit constitutional commitment to environmental protection (Government of India, 1976). Courts then used these provisions as interpretive supports when reading environmental quality into Article 21.

13.8.2 Clean and healthy environment under Article 21

In Subhash Kumar, the Supreme Court affirmed that enjoyment of pollution-free water and air is part of the right to life, even while cautioning against misuse of PIL (Subhash Kumar v. State of Bihar, 1991). Later, in Vellore Citizens Welfare Forum, the Court treated principles of sustainable development-particularly the precautionary principle and "polluter pays"-as part of the law of the land, explicitly connecting environmental protection to Articles 21, 48A, and 51A(g) (Vellore Citizens Welfare Forum v. Union of India, 1996).

13.8.3 Sustainable development and precautionary principle

The Court's articulation of sustainable development principles reflects an attempt to constitutionalise ecological rationality into governance. By placing the burden on polluters and emphasising prevention over post-hoc remediation, the Court aligned Indian environmental law with evolving international environmental norms while grounding it in domestic constitutional text (Vellore Citizens Welfare Forum v. Union of India, 1996).

13.8.4 Intergenerational justice

Intergenerational justice-an idea that present generations hold environmental resources in trust-has informed Indian environmental jurisprudence through sustainable development reasoning. While courts can articulate such principles, their operationalisation requires regulatory capacity, scientific expertise, and political commitment. This gap between principle and implementation remains

one of the defining challenges of environmental rights as constitutional claims (Divan & Rosencranz, 2001; Sathe, 2002).

13.8.5 Right to education as an implied right

The right to education demonstrates a more direct trajectory from implied right to constitutional entrenchment. In Mohini Jain, the Court treated education as essential to dignity and life under Article 21, striking down capitation fees as incompatible with equality and constitutional obligation (Mohini Jain v. State of Karnataka, 1992). In Unni Krishnan, the Court affirmed a fundamental right to free education up to age 14, explicitly interpreting Article 21 in light of Directive Principles, particularly Articles 41 and 45 (Unni Krishnan, J.P. v. State of Andhra Pradesh, 1993).

13.8.6 Constitutional entrenchment and implementation limits

The constitutionalisation of educational entitlement culminated in the Constitution (Eighty-sixth Amendment) Act, 2002, inserting Article 21A and imposing a corresponding parental duty through Article 51A(k) (Government of India, 2002). Statutory implementation followed through the Right of Children to Free and Compulsory Education Act, 2009, which provides a legislative framework for enforcing free and compulsory education for children aged 6–14 (Government of India, 2009).

The relationship between rights and social transformation is visible-though not reducible to simple causation-in India's long-term literacy gains. The Women and Men in India statistical publication reports literacy rising from approximately 18.32% in 1951 to 74.04% in 2011, with substantial increases for women (Ministry of Statistics and Programme Implementation [MOSPI], 2016). Such data illustrates the scale of transformation within which the right to education must be situated: constitutional recognition matters, but outcomes depend on decades of institutional investment, policy design, and democratic accountability.

13.9 Conclusion

The Indian Constitution's seventy-five-year journey demonstrates that the success of constitutional democracy cannot be measured only by the stability of institutions or the regularity of elections. It must also be measured by the Constitution's capacity to generate a culture of rights that deepens citizenship over time. The emergence of new Fundamental Rights-through the expansion of Article 21, the structural integration of Articles 14 and 19, and the interpretive

use of Directive Principles-has been central to this achievement (Austin, 1999; Choudhry et al., 2016; Bhatia, 2019).

Table 13.2: Literacy Rates in India (Selected Census Years)

Census year	Female literacy (%)	Male literacy (%)	Total literacy (%)
1951	8.86	27.15	18.32
1961	15.35	40.40	28.31
1971	21.97	45.96	34.45
1981	29.76	56.38	43.57
1991	39.29	64.13	52.21
2001	53.67	75.26	64.83
2011	65.46	82.14	74.04

Source: MOSPI, Women and Men in India (Literacy and Education chapter; Census-based figures).

13.9.1 Seventy-five-year trajectory of rights expansion

The trajectory from early textual restraint to expansive rights constitutionalism illustrates how democratic experience shapes constitutional meaning. Rights expansion has responded to social movements, governance failures, and new forms of state and market power, particularly in the domains of livelihood, privacy, education, and environmental protection (Bhuwania, 2017; Sathe, 2002).

13.9.2 Judicial contribution to democratic deepening

The judiciary's contribution has been decisive but contested. Courts have often served as an institutional counterweight in moments of rights vulnerability, particularly for marginalised groups. Yet rights-based judicial governance cannot substitute for legislative deliberation or administrative competence. The democratic value of rights expansion ultimately depends on whether it produces enforceable and equitably distributed conditions of dignity (Baxi, 1985; Sathe, 2002).

13.9.3 Rights consciousness and constitutional culture

Perhaps the most enduring legacy of rights expansion is cultural. The language of rights has become part of public reason in India: citizens increasingly

articulate grievances in constitutional terms, civil society mobilises around constitutional claims, and institutions are compelled to justify power through constitutional rationality. This is itself a marker of democratic constitutional success and a reason the Constitution remains a living object of allegiance seventy-five years after its adoption (Austin, 1999; Khosla, 2020).

13.9.4 Future direction of Fundamental Rights jurisprudence

The future of newly recognised rights will depend on maintaining doctrinal integrity while strengthening implementation capacity. As India confronts digital governance, algorithmic decision-making, climate stress, and persistent inequality, the Constitution's rights horizon will continue to expand-but the deeper constitutional challenge will remain constant: ensuring that rights are not merely declared, but realised through accountable institutions and democratic governance. In this sense, the emergence of new Fundamental Rights is not an episode in India's constitutional history; it is a continuing expression of India's democratic journey and the Constitution's promise of equal and dignified citizenship.

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14 SEVENTY-FIVE YEARS OF PERFORMANCE AND REFORM: CONSTITUTIONAL INSTITUTIONS AND DEMOCRATIC GOVERNANCE

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India's constitutional project-set in motion on 26 January 1950-has been sustained not merely by the formal supremacy of a written text, but by the everyday performance of institutions tasked with converting constitutional promises into governmental practice (Austin, 1999; Choudhry et al., 2016). In a book that seeks to celebrate India's democratic journey across seventy-five years of successful constitutional adoption, it is institution-building and institutional endurance that most concretely evidences success. The Constitution's commitments to representative government, limited power, accountable administration, rights, and federal balance are not self-executing. They must be operationalised through Parliament and legislatures, executives and civil services, courts and tribunals, "fourth-branch" accountability bodies, and intergovernmental mechanisms (Khosla, 2020; Austin, 1966).

This chapter therefore treats "performance" and "reform" as two dimensions of the same constitutional reality. Performance refers to how institutions actually function under electoral competition, social conflict, developmental demands, and national-security pressures. Reform refers to the recurring, often contested, efforts to recalibrate institutional design so that constitutional institutions can remain both effective and democratically legitimate (Baxi, 1982; Sathe, 2002). The central claim advanced here is that India's constitutional endurance has depended less on institutional perfection than on institutional learning: a gradual, uneven capacity to correct course after error, to absorb political shocks without constitutional rupture, and to preserve a rule-governed framework even when politics becomes intensely polarised (Austin, 1999; Choudhry et al., 2016).

14.1 Institutions and the Democratic Life of the Constitution

Seventy-five years after the coming into force of the Constitution of India, the durability of Indian democracy is best understood through the functioning of its constitutional institutions. While the Constitution provides an elaborate

normative framework of rights, duties, and structural arrangements, these commitments acquire practical meaning only when they are realised through institutional action. Parliament, the executive, the judiciary, and independent constitutional bodies collectively constitute the living machinery of constitutional governance, translating constitutional principles into everyday political and administrative practice.

This section proceeds from the premise that democracy is not sustained by constitutional text alone, but by the quality of institutional performance. Institutional behaviour-manifested in deliberation, accountability, restraint, and reasoned decision-making-determines whether constitutional ideals retain democratic legitimacy over time. India's constitutional experience reveals that institutional continuity, even amid periods of crisis and contestation, has been central to democratic endurance. By examining institutions as active agents of constitutional life rather than passive constitutional creations, this section situates institutional performance at the core of India's seventy-five-year democratic journey.

14.1.1 From constitutional text to constitutional practice

A constitution is not only a charter of powers and rights; it is also a framework for institutional behaviour. The Indian Constitution specifies offices, procedures, and jurisdictional boundaries; yet the democratic meaning of those specifications is completed only through practice (Austin, 1966; Khosla, 2020). Constitutionalism, in this sense, is a lived discipline: it is sustained when institutions internalise the text's normative grammar-legality, reason-giving, accountability, equality-and when political actors treat constitutional constraints as binding rather than merely strategic (Choudhry et al., 2016).

The Indian experience underscores that text-practice relations are dynamic. Institutional norms emerge through conventions and interpretive settlements, often mediated by judicial doctrine and political bargaining. The Speaker's role in recognising parties, the committee system's gatekeeping of legislative scrutiny, cabinet responsibility as a political practice, or judicially enforced standards of fairness in executive action are all illustrations of how constitutional governance is produced not only by "what is written" but by "how it is done" (Jain, 2018; Austin, 1999).

14.1.2 Institutions as translators of democratic ideals into governance

Democracy under the Indian Constitution is not reducible to periodic elections; it is a constitutionalised form of popular government, committed to rights and rule of law, and mediated through institutions designed to prevent arbitrary

power (Choudhry et al., 2016; Khosla, 2020). Institutions therefore function as translators. Parliament translates political preferences into general norms (law). The executive translates law into administration (policy and implementation). Courts translate rights into enforceable constraints and remedies (adjudication and review). Accountability bodies translate public standards into oversight (audit, transparency, electoral integrity) (Austin, 1999).

This "translation" is never neutral. The quality of translation depends on procedural integrity-deliberation, transparency, and reasoned decision-making-and on institutional independence paired with answerability. Put differently, democratic ideals are realised only when institutions both perform their tasks and justify their exercise of authority in constitutional terms (Baxi, 1982; Sathe, 2002).

14.1.3 Continuity, breakdown, and institutional learning in India's democracy

India's democratic history reveals cycles of continuity and crisis. The Emergency (1975–1977), federal conflicts, corruption scandals, insurgencies, and periods of coalition instability tested institutional resilience (Austin, 1999; Baxi, 1982). Yet constitutional democracy persisted because breakdowns were often followed by institutional learning: constitutional amendments correcting excesses, judicial repudiations of earlier deference, procedural innovations enhancing transparency, and electoral reforms improving inclusion (Austin, 1999; Choudhry et al., 2016).

Learning is not automatic. It can be delayed, selective, or even reversed. But the broad trajectory-especially visible across rights jurisprudence, electoral consolidation, and deepening federal negotiations-suggests that India's constitutional institutions have shown a capacity for adaptive continuity: the system bends, sometimes alarmingly, yet does not easily break (Khosla, 2020).

14.1.4 Why institutional performance matters more than institutional perfection

Institutional design is indispensable; however, design alone cannot guarantee democratic governance. Even well-designed institutions can fail if political incentives promote capture, if procedures are bypassed, or if public trust collapses. Conversely, imperfect institutions may still sustain democracy if they remain corrigible and responsive-capable of acknowledging mistakes and restoring legitimacy through reform (Austin, 1999; Choudhry et al., 2016).

This is a particularly relevant lesson for a seventy-five-year appraisal. Celebration is justified not because India's institutions have always embodied constitutional ideals, but because many have repeatedly returned-under pressure-to constitutional grammar: elections are still contested and consequential; courts still matter; federal negotiation continues; public accountability remains a norm even when compliance is partial (Austin, 1999).

14.2 Evaluating Constitutional Institutions: Norms, Standards, and Limits

Assessing constitutional institutions requires more than descriptive analysis; it demands clear normative standards against which institutional conduct can be evaluated. This section establishes the criteria for such evaluation, focusing on constitutional morality, independence, accountability, and democratic legitimacy. It recognises that institutions operate within practical and political limits, and that constitutional governance depends on maintaining a careful balance between autonomy and restraint. By identifying both the capacities and constraints of constitutional institutions, this section provides the analytical framework necessary for a meaningful appraisal of institutional performance over seventy-five years of India's constitutional democracy.

14.2.1 Constitutional morality as an institutional compass

Constitutional morality, originally articulated in India's founding debates and later invoked in constitutional adjudication, may be understood as fidelity to the Constitution's normative structure even when immediate social or political morality pulls in a contrary direction (Constituent Assembly of India, 1949/1990; Choudhry et al., 2016). It is not moralism; rather, it is an ethic of constitutional restraint and justification. For institutions, it requires adherence to procedure, non-arbitrariness, equality, and respect for dissent as a democratic necessity (Khosla, 2020).

In institutional terms, constitutional morality demands that officials do not treat constitutional powers as personal prerogatives. It insists on reason-giving, avoidance of conflicts of interest, and recognition that constitutional authority is fiduciary-held in trust for the people and bounded by law (Jain, 2018).

14.2.2 Independence without insulation: the accountability dilemma

Independence is often defended as essential for constitutional institutions: courts must be independent to review the state; election management bodies must be insulated from partisan manipulation; auditors must be free to criticise expenditure. Yet independence without accountability can degenerate into

opacity, elitism, or self-protective governance (Sathe, 2002; Choudhry et al., 2016).

The Indian challenge is therefore to design independence without insulation. Accountability cannot mean executive control; it must mean transparent standards, fair procedures, and public justification. The institutional dilemma is persistent: the more an institution is protected from political pressure, the more it must cultivate internal norms of openness to retain democratic legitimacy (Baxi, 1982).

14.2.3 Democratic legitimacy, public trust, and institutional authority

Institutional authority ultimately rests on public trust: the belief that an institution acts according to constitutional reasons rather than factional interest. Trust is not sentimental; it is rationally produced by performance, integrity, and procedural fairness (Choudhry et al., 2016).

In India, the credibility of elections, the perceived impartiality of courts, the seriousness of parliamentary scrutiny, and the willingness of oversight bodies to "speak truth to power" function as public signals of constitutional vitality. A decline in these signals does not merely weaken institutions; it weakens the Constitution's practical authority as a common framework for political contestation (Austin, 1999).

14.3 Parliament and the Architecture of Representative Governance

Parliament occupies a central position in India's constitutional democracy as the primary institution of representation, deliberation, and political accountability. This section examines Parliament's role in translating popular will into law, supervising the executive, and sustaining democratic legitimacy. It situates parliamentary performance within a seventy-five-year constitutional trajectory, assessing how legislative practices, deliberative norms, and oversight mechanisms have shaped the quality of representative governance.

14.3.1 Parliament as a site of representation, deliberation, and contestation

Parliament was designed to represent India's plural society and to produce law through deliberation rather than command. Deliberation is not a decorative democratic ritual; it is a constitutional technology. It disciplines majorities, exposes executive proposals to critique, and allows minorities to shape the public record even when they cannot shape outcomes (Austin, 1966; Jain, 2018).

Representation also implies that Parliament is a conflict-processing institution. In a society as diverse as India, the ability to convert conflict into speech, speech into law, and law into policy is a core achievement of constitutional democracy (Khosla, 2020).

14.3.2 Law-making across decades: volume, quality, and democratic depth

Legislative productivity is often measured by output-bills introduced and passed. Yet democratic depth requires additional measures: the time devoted to debate, the degree of committee scrutiny, the extent of recorded voting, and the robustness of oversight instruments such as questions and motions (PRS Legislative Research, 2019, 2024).

Across the last two full Lok Sabhas before the seventy-fifth year of constitutional operation, available legislative statistics suggest a pattern that is constitutionally consequential: significant law-making capacity combined with declining scrutiny through committees and compressed deliberation for a substantial portion of bills (PRS Legislative Research, 2019, 2024).

14.3.3 Decline of deliberation and the rise of procedural majoritarianism

Procedural majoritarianism refers to a style of governance in which formal parliamentary procedures remain intact, yet the spirit of deliberation is weakened: bills move rapidly, limited time is allotted for debate, and the parliamentary calendar becomes short relative to the volume of legislative ambition (Choudhry et al., 2016).

The constitutional risk is subtle but serious. If Parliament becomes primarily a site for ratification rather than contestation, the executive's dominance is normalised, and constitutional accountability shifts from public reason-giving to managerial efficiency. The system may still be "legal," but its democratic character thins (Austin, 1999; Baxi, 1982).

14.3.4 Committee systems and the invisible labour of legislation

Committee scrutiny is one of the most important mechanisms for converting parliamentary sovereignty into informed legislation. Committees enable non-partisan examination, consultation with stakeholders, and technical improvements. Where committees are under-used, parliamentary debate alone rarely compensates, because floor debate is shaped by political theatre and time constraints (PRS Legislative Research, 2019, 2024).

The decline in the proportion of bills referred to committees across recent Lok Sabhas has therefore been widely discussed as a structural challenge to

deliberative quality. It is not merely a procedural issue; it affects the constitutional legitimacy of law-making by reducing the informational and participatory basis of legislation (PRS Legislative Research, 2019, 2024).

14.3.5 Parliamentary oversight in an era of executive dominance

Oversight is the constitutional counterweight to executive initiative. Question Hour, committee reviews of expenditure, debates on executive action, and confidence mechanisms are means through which Parliament ensures that government remains responsible to the House (Jain, 2018).

Table 14.1

Selected indicators of parliamentary functioning: 16th and 17th Lok Sabha (India)

Indicator	16th Lok Sabha (2014–2019)	17th Lok Sabha (2019–Feb 2024)
Total sittings (days)	331	274
Share of scheduled time lost / not utilised (selected measure)	16% of scheduled time lost to disruptions	Lok Sabha functioned for 88% of scheduled time
Bills passed (excluding Finance & Appropriation, where specified)	133 Bills passed	179 Bills passed (excluding Finance & Appropriation Bills)
Bills referred to committees	25% of Bills introduced	16% of Bills referred
Recorded voting (at least one instance)	Noted as roughly similar to 15th LS (figure reported contextually)	9% of Bills passed with recorded voting
Budget scrutiny (selected measure)	83% of the budget passed without discussion	Noted through sitting-time and bill-passage compression indicators

Source: PRS Legislative Research (2019; 2024).

Yet oversight can be weakened by disruptions, truncated sessions, and the passing of significant portions of budgetary demands without discussion. When oversight becomes episodic, accountability migrates away from institutional

processes toward media spectacle and litigation, neither of which is a stable substitute for parliamentary control (PRS Legislative Research, 2019).

The constitutional significance of these figures lies not in partisan inference, but in structural diagnosis. A legislature can pass many laws and still underperform as a deliberative institution. Conversely, even with limited sittings, robust committee referral and serious oversight could preserve democratic depth. The comparative trend here indicates that output has not been matched by scrutiny, reinforcing a longer-standing concern that executive-drafted legislation increasingly moves through Parliament without the level of institutional interrogation that constitutional democracy presupposes (PRS Legislative Research, 2019, 2024; Austin, 1999).

14.4 Executive Power and the Practice of Governance

The executive is the most active site of constitutional power, responsible for translating law into policy and administration. This section examines the evolution of executive authority within India's constitutional framework, focusing on governance practices, bureaucratic functioning, and accountability mechanisms. It evaluates how executive power has expanded in response to developmental, security, and administrative demands, while remaining constitutionally constrained within a democratic system.

14.4.1 Constitutional executive versus political executive

The Constitution differentiates between the formal constitutional executive (President and Governors acting on aid and advice) and the political executive (Prime Minister/Chief Ministers and Councils of Ministers). This duality is intended to preserve responsible government while maintaining constitutional formality and continuity (Jain, 2018; Austin, 1966).

The political executive's legitimacy stems from legislative confidence; its constitutional constraint stems from legality, federal limits, and rights. When these constraints weaken in practice, executive dominance can emerge without any textual amendment-precisely because the Constitution's institutional checks depend on other institutions actively performing their roles (Austin, 1999).

14.4.2 Expansion of executive authority in welfare, security, and economic policy

The post-1950 Indian state has expanded its governing footprint through welfare schemes, regulatory governance, and national security administration. Such expansion is not inherently unconstitutional; it often reflects democratic

demand for development and protection. The constitutional question is whether expansion occurs through law and accountable administration or through discretionary governance insulated from scrutiny (Choudhry et al., 2016; Baxi, 1982).

Executive authority expands structurally when legislation delegates broad rule-making power, when parliamentary oversight thins, and when emergency or security rationales normalise exceptionalism. The long-term risk is that governance becomes "executive-centred" even while remaining formally parliamentary (Austin, 1999).

14.4.3 The civil services as agents of continuity and constraint

Civil services provide institutional memory and continuity across electoral cycles. They also operationalise constitutional values when administrative decision-making is guided by legality, equality, and reasoned justification. Yet they can equally become instruments of executive will if neutrality is compromised or transfers are politicised (Second Administrative Reforms Commission, 2008).

India's reform discourse has long emphasised the need for transparent personnel systems, depoliticised postings, and performance-based administration as safeguards for constitutional governance (Second Administrative Reforms Commission, 2008).

14.4.4 Administrative neutrality, politicisation, and reform debates

Neutrality is not value-free; it is fidelity to constitutional legality rather than partisan interest. Institutional reform proposals-ranging from civil service boards to fixed tenure norms-aim to ensure that administration remains both responsive and rule-governed (Second Administrative Reforms Commission, 2008).

From a constitutional perspective, the question is not whether executives should lead policy-they must-but whether administration remains constrained by law and subject to meaningful oversight. Where oversight migrates to courts or media, the system becomes less institutionally balanced and more crisis-driven (Austin, 1999; Sathe, 2002).

14.5 Judiciary, Constitutional Supremacy, and Democratic Balance

14.5.1 Judicial review as the cornerstone of constitutional governance

Judicial review is integral to constitutional supremacy. It ensures that legislative and executive acts remain within constitutional bounds, especially with respect

to rights, federal structure, and procedural propriety (Kesavananda Bharati v. State of Kerala, 1973; Minerva Mills Ltd. v. Union of India, 1980).

The basic-structure doctrine, and later rights-expanding jurisprudence, exemplify how the judiciary has shaped India's constitutional identity. Yet judicial power also raises a democratic tension: how to reconcile counter-majoritarian review with democratic self-government (Sathe, 2002; Choudhry et al., 2016).

14.5.2 Courts as protectors of rights and arbiters of federal balance

The Supreme Court and High Courts have repeatedly adjudicated conflicts that are simultaneously legal and political: centre–state disputes, emergency powers, defections, and the scope of rights. Landmark federalism jurisprudence-such as limits on the misuse of President's Rule-illustrates the judiciary's role as arbiter in the management of plural power (S.R. Bommai v. Union of India, 1994).

Rights adjudication has likewise evolved from a narrow to a more substantive understanding of liberty and dignity, culminating in the recognition of privacy as constitutionally protected (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017).

14.5.3 Judicial independence: institutional design and lived reality

Judicial independence is protected through security of tenure and constitutional status; nonetheless, its lived reality depends on the appointment system, administrative transparency, and the judiciary's own commitment to public justification (Sathe, 2002).

In a seventy-five-year frame, the judiciary's performance must be assessed in two registers: its doctrinal contribution to constitutional supremacy and its institutional capacity to deliver justice efficiently and transparently. Independence is not only protection from interference; it is also a responsibility to ensure that constitutional authority is exercised with openness and integrity (Choudhry et al., 2016).

14.5.4 Activism, restraint, and the problem of judicial governance

The Indian judiciary has sometimes moved beyond negative review into governance-like directions through continuing mandamus, policy guidelines, and structural injunctions. Supporters view this as necessary in contexts of executive failure; critics caution that governance by courts can distort democratic accountability and institutional competence (Sathe, 2002; Baxi, 1982).

A balanced constitutional evaluation recognises both: judicial intervention has often protected vulnerable groups and preserved constitutional boundaries, but it also raises recurring questions about institutional role fidelity and separation of powers (Choudhry et al., 2016).

14.5.5 Public confidence, transparency, and judicial accountability

Public confidence in courts depends on impartiality, timeliness, and transparency. Accountability mechanisms compatible with independence-reasoned judgments, open courts, clear recusal norms, and institutional disclosure-are increasingly central to maintaining legitimacy (Choudhry et al., 2016).

This emphasis on legitimacy is not external critique; it is constitutional necessity. If citizens cease to view courts as fair arbiters, constitutional rights lose practical enforceability, and constitutional disputes risk being resolved through raw political power rather than legal reason (Austin, 1999).

14.6 Fourth-Branch Institutions and the Infrastructure of Accountability

Beyond the traditional separation of powers, India's constitutional framework has developed independent institutions to secure accountability, transparency, and integrity in governance. This section examines the role of bodies such as the Election Commission, the Comptroller and Auditor General, and information authorities in reinforcing democratic discipline. It evaluates how these institutions have strengthened constitutional accountability while also confronting challenges to autonomy and public trust.

14.6.1 The Election Commission and the credibility of electoral democracy

No constitutional institution more visibly demonstrates India's democratic endurance than the election machinery. The scale and regularity of elections, and their capacity to facilitate peaceful changes in power, are a foundational element of India's seventy-five-year constitutional success (Austin, 1999).

Yet electoral credibility depends on institutional independence and public confidence. Contemporary reform debates regarding appointment processes and service conditions demonstrate that the constitutional design of independence remains contested, precisely because elections are the gateway through which democratic legitimacy enters the constitutional order (PRS Legislative Research, 2023).

Table 14.2

All-India voter turnout in General Elections to the Lok Sabha (selected years)

Election	All-India voter turnout (%)	Official source
2014	66.44	ECI Atlas (Index-card based turnout)
2019	67.40	ECI Atlas (Index-card based turnout)
2024	65.79	ECI Press Note (turnout recorded at polling stations)

Source: Election Commission of India (2021; 2024).

Even this limited series is constitutionally instructive. Voter turnout reflects not only participation but also perceived legitimacy of electoral competition. The 2024 turnout figure is reported by the Election Commission through an official press note, explicitly framed as turnout "recorded at polling stations" pending later consolidation of postal-ballot totals, illustrating the Commission's own insistence on definitional clarity and reporting conventions (Election Commission of India, 2024).

14.6.2 Financial oversight and democratic discipline: the role of the CAG

The Comptroller and Auditor-General is a constitutional office that embodies a core democratic principle: public money must be accounted for publicly. Constitutional provisions define the CAG's position and duties, reinforcing audit as a structural check on executive expenditure (Comptroller and Auditor General of India, 2021).

Audit is not adversarial governance; it is constitutional accounting. In the constitutional scheme, CAG reports enable legislative scrutiny, inform public debate, and serve as a deterrent against fiscal arbitrariness. The strength of this institution therefore affects the quality of democratic governance even when courts are not involved and elections are distant (Austin, 1999).

14.6.3 Transparency regimes, information rights, and institutional erosion

The Right to Information regime represented a significant transparency turn in India's accountability architecture. Its democratic rationale was to convert citizens from passive recipients of governance into participants in oversight (Second Administrative Reforms Commission, 2006).

At the same time, institutional debates regarding the service conditions and independence of information commissions demonstrate the fragility of transparency institutions. Amendments that shift control over tenure and conditions of service toward the executive raise constitutional concerns about whether transparency watchdogs can remain adequately autonomous (Government of India, 2019).

14.6.4 Regulatory bodies and the challenge of captured independence

Regulatory agencies-whether in finance, telecommunications, environment, or competition-reflect a modern governance reality: specialised decision-making is required in complex economies. Yet independent regulation can be undermined by executive influence, revolving-door incentives, and weak parliamentary oversight (Choudhry et al., 2016).

The constitutional question is again one of balanced design: regulators must be competent and insulated from partisan pressure, while remaining accountable through transparent reasoning, review mechanisms, and legislative frameworks. Where this balance fails, "independence" becomes performative rather than real, and democratic accountability is hollowed out (Baxi, 1982).

14.6.5 The promise and fragility of autonomous institutions

Autonomous institutions are "promise" because they operationalise constitutional constraints in routine governance. They are "fragility" because they often depend on political self-restraint: governments must tolerate critique; legislatures must insist on scrutiny; the public must care enough to demand integrity (Austin, 1999).

This dialectic is central to celebrating seventy-five years. The celebration is not of institutional infallibility but of the remarkable fact that institutions of accountability have been repeatedly created, defended, and re-invoked as normative expectations within India's public life (Austin, 1999; Second Administrative Reforms Commission, 2006).

14.7 Federal Institutions and the Management of Plural Power

Federal institutions play a crucial role in sustaining India's constitutional balance by mediating power between the Union and the States within a diverse and asymmetrical polity. This section examines how constitutional and institutional mechanisms manage unity and diversity through cooperation, fiscal arrangements, and inter-governmental coordination. It evaluates federal performance over seventy-five years, highlighting both integrative successes and recurring constitutional tensions in Centre–State relations.

14.7.1 Federalism beyond texts: institutions as mediators of unity and diversity

Indian federalism is both constitutional and institutional. The text distributes power; institutions manage conflicts. Intergovernmental processes, commissions, and judicial arbitration enable India to remain united without erasing regional diversity (Austin, 1966; Choudhry et al., 2016).

14.7.2 Finance Commissions, fiscal federalism, and distributive justice

Fiscal federalism is distributive justice in institutional form. Finance Commissions and revenue-sharing arrangements translate the constitutional idea of unity into workable economic arrangements between Union and States (Jain, 2018). The legitimacy of fiscal federalism depends on fairness, transparency, and predictability; when these are weakened, federal trust declines and political conflict intensifies (Choudhry et al., 2016).

14.7.3 Inter-State coordination and cooperative federal mechanisms

Contemporary governance requires cooperation in public health, disaster management, infrastructure, and taxation. Cooperative mechanisms exist not as optional policy tools but as constitutional necessities in a multi-level democracy. Their success depends on negotiation norms and a willingness to treat States as partners rather than administrative subordinates (Austin, 1999).

14.7.4 Centralisation, regional assertion, and constitutional tension

Indian federal history includes persistent tensions: centralisation through planning and security frameworks on the one hand, and regional assertion through party systems and linguistic-cultural mobilisations on the other. Federal commissions have repeatedly examined these tensions and proposed recalibrations within the constitutional framework (Commission on Centre-State Relations, 1988; Commission on Centre-State Relations, 2010).

A central insight of these commission exercises is that federal stability is achieved less by rigid textual allocation and more by institutional conventions regarding consultation, restraint, and reasoned justification for central intervention (Commission on Centre-State Relations, 2010).

14.8 Democratic Stress Tests: Crisis, Conflict, and Institutional Response

Periods of crisis provide the most revealing tests of constitutional institutions and democratic commitment. This section examines how India's constitutional framework has responded to moments of emergency, political conflict, and institutional confrontation. It evaluates whether institutional responses during

such stress tests have reinforced constitutional norms or exposed vulnerabilities, and how these experiences have shaped democratic resilience over seventy-five years.

14.8.1 Constitutional emergencies and the suspension of normal governance

The Emergency period remains the paradigmatic stress test in India's constitutional history. It revealed how constitutional forms can be used to suppress constitutional substance, and how institutional complicity can normalise exceptionalism (Baxi, 1982; Austin, 1999). The post-Emergency constitutional and political response also demonstrates institutional learning: later reforms sought to constrain the ease with which extraordinary powers could become ordinary governance (Austin, 1999).

14.8.2 Executive-judicial confrontations and institutional recalibration

Conflicts between executive ambition and judicial constraint have repeatedly forced constitutional recalibration. The evolution of doctrines limiting constitutional amendments and protecting judicial review illustrates how confrontation can yield institutional settlements that stabilise the democratic order (Kesavananda Bharati v. State of Kerala, 1973; Minerva Mills Ltd. v. Union of India, 1980).

14.8.3 Coalition politics and legislative instability

Coalition eras reshaped institutional practices: parliamentary bargaining gained prominence, federal negotiation intensified, and executive dominance sometimes weakened as governments relied on shifting legislative support. Coalition politics thus produced both instability and pluralism; it demonstrated that democratic governance can persist without single-party dominance, albeit with different institutional stresses (Austin, 1999; Choudhry et al., 2016).

14.8.4 Crisis as a moment of constitutional clarification

Crises reveal the Constitution's operative meaning. Whether the issue is emergency power, federal intervention, or rights during security operations, crises force institutions to articulate constitutional limits. When institutions respond with legality and reasoned justification, constitutional authority deepens. When they respond with opacity and coercion, constitutional legitimacy erodes (Baxi, 1982; Choudhry et al., 2016).

14.9 Reforming Institutions: Between Necessity and Resistance

nstitutional reform is a recurring constitutional imperative, yet it remains deeply contested within democratic politics. This section examines why reform becomes necessary in response to institutional shortcomings, while also encountering resistance from entrenched interests and political incentives. It evaluates reform efforts across constitutional institutions, highlighting the tension between efficiency and accountability, and assessing why meaningful reform often proceeds incrementally rather than through structural transformation.

14.9.1 Reform narratives and the politics of institutional change

Institutional reform is never purely technocratic. It redistributes power and therefore generates resistance. Reform narratives often alternate between two poles: efficiency (strong executive, rapid decisions) and accountability (scrutiny, checks, transparency). Constitutional democracy requires both, but politics frequently treats them as trade-offs (Austin, 1999).

14.9.2 Procedural reform versus structural transformation

Procedural reforms-rules of business, committee calendars, reporting norms-can improve transparency without altering constitutional architecture. Structural reforms-changes to appointment systems, tenure protections, or federal distribution-are more difficult because they threaten entrenched interests (Choudhry et al., 2016).

India's reform history illustrates this asymmetry. Procedural improvements are more common; structural transformations are episodic and often crisis-driven (Austin, 1999).

14.9.3 Transparency reforms and unintended consequences

Transparency reforms can produce backlash. Stronger disclosure obligations may provoke attempts to narrow access, restructure watchdog autonomy, or shift control of oversight bodies' tenure and service conditions (Second Administrative Reforms Commission, 2006; Government of India, 2019).

The constitutional point is not that transparency is undesirable, but that transparency institutions require design protections if they are to function as independent instruments of accountability rather than as administratively convenient bodies (Choudhry et al., 2016).

14.9.4 Why institutional reform remains incomplete

Reform incompleteness is partly structural: constitutional change requires broad consensus and is therefore difficult. It is also political: governments may prefer reforms that increase effectiveness without increasing scrutiny. As a result, reforms often strengthen administrative capacity while leaving accountability deficits unresolved (Austin, 1999; Baxi, 1982).

14.9.5 Reform fatigue and democratic disillusionment

When citizens repeatedly witness institutional failure without corrective reform, democratic disillusionment grows. Disillusionment is dangerous because it undermines the normative expectation that institutions can be improved through constitutional means. The long-term consequence may be a turn toward extra-institutional solutions-charismatic politics, street power, or excessive judicialisation-each of which strains constitutional balance (Choudhry et al., 2016).

14.10 Democratic Governance After Seventy-Five Years: Futures and Fault Lines

As India marks seventy-five years of constitutional governance, democratic institutions confront new pressures shaped by technology, polarisation, and changing expectations of public accountability. This section identifies emerging fault lines-digital governance and surveillance, populist challenges to institutional restraint, and declining public trust-while also considering institutional pathways for renewal. It argues that constitutional democracy's future will depend on adaptive reform that preserves legitimacy, rights, and the rule of law in a transformed governance landscape.

14.10.1 Digital governance, surveillance, and institutional adaptation

Digital governance intensifies classical constitutional questions of power. Data-driven administration expands state capacity, but it also expands surveillance potential and the risk of discretionary profiling. The recognition of privacy as constitutionally protected, and the enactment of a statutory framework for personal data protection, exemplify institutional adaptation to new governance realities (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017; MeitY, 2023).

The constitutional challenge is to ensure that digital governance remains rule-governed, proportionate, and reviewable. Institutions-courts, legislatures, regulators, and transparency bodies-will determine whether technological capacity becomes constitutional strength or democratic vulnerability (Choudhry et al., 2016).

14.10.2 Populism, executive charisma, and institutional weakening

Populist politics often frames institutions as obstacles to "the people's will." In constitutional democracies, this framing can legitimise bypassing scrutiny mechanisms, weakening independent bodies, and concentrating authority in the executive. The constitutional response cannot be institutional self-defence alone; it must be renewed public reasoning about why institutions protect democracy from arbitrariness-even when they slow down governance (Khosla, 2020; Choudhry et al., 2016).

14.10.3 Declining trust and the crisis of institutional legitimacy

Trust declines when institutions appear partisan, opaque, or ineffective. A constitutional system can survive intense political disagreement, but it struggles to survive widespread disbelief in institutional fairness. Restoring trust therefore requires reforms that are visible, rule-based, and credible across political divides (Austin, 1999).

14.10.4 Reimagining constitutional institutions for the next democratic phase

Reimagining is not rewriting. It is recommitting. It involves strengthening deliberation in Parliament, ensuring transparent and balanced appointments to watchdog institutions, improving administrative professionalism, and building technological governance consistent with rights and accountability (Second Administrative Reforms Commission, 2006; Law Commission of India, 2015).

Electoral reform proposals-ranging from campaign finance transparency to party regulation and anti-defection recalibration-continue to be debated within institutional forums, including the Law Commission (Law Commission of India, 2015).

14.10.5 Institutional renewal as a constitutional obligation

Institutional renewal is not optional; it is implicit in the Constitution's claim to govern a changing society. A seventy-five-year celebration that ignores renewal risks becoming ritualistic. The deeper constitutional celebration is the recognition that India's democracy has survived precisely because institutions have been repeatedly contested, defended, and reformed-sometimes inadequately, but often enough to prevent systemic collapse (Austin, 1999; Choudhry et al., 2016).

14.11 Conclusion: Institutions as Custodians of India's Constitutional Future

The concluding section brings together the chapter's central argument that India's constitutional democracy has endured through the sustained functioning of its institutions rather than through constitutional text alone. It reflects on how institutional performance, despite periodic failures, has preserved democratic continuity and legitimacy over seventy-five years. The conclusion emphasises that the future of the Constitution depends on renewing institutional integrity, accountability, and public trust, reaffirming institutions as the primary custodians of India's constitutional promise.

14.11.1 Democratic endurance through imperfect institutions

India's constitutional institutions have never been uniformly strong. They have been uneven, sometimes compromised, and periodically crisis-prone. Yet they have also been resilient. Parliament has remained the central arena of representative legitimacy even when deliberation has thinned; courts have remained crucial arbiters of rights and structure even amidst debates about activism; electoral institutions have maintained the basic credibility of democratic competition; audit and information regimes have embedded accountability as a public expectation (Austin, 1999; PRS Legislative Research, 2019, 2024).

The seventy-five-year achievement, consistent with the theme of this book, lies in the fact that constitutional democracy has persisted through these imperfections. The Constitution has endured not because institutions never failed, but because institutional failure has not become an accepted norm. Failure has remained contestable within constitutional language-through elections, litigation, parliamentary debate, commission reports, and public mobilisation (Austin, 1999).

14.11.2 Performance, reform, and the unfinished constitutional project

A mature constitutional democracy is one that can criticise itself institutionally. India's democratic journey invites celebration precisely because it has sustained the possibility of constitutional self-correction. The next phase of the constitutional project must therefore deepen the culture of justification: stronger legislative scrutiny, more credible independence of watchdog bodies, transparent administrative professionalism, and rights-compatible digital governance (MeitY, 2023; Government of India, 2019; Choudhry et al., 2016).

In that sense, the story of seventy-five years is not a closed chapter but an ongoing constitutional argument-about how power is exercised, how it is constrained, and how institutions can remain worthy custodians of a democratic Constitution in a rapidly changing republic (Austin, 1999; Khosla, 2020).

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15 STATE POWER, NATIONAL SECURITY, AND THE LIMITS OF CONSTITUTIONAL FREEDOM

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India's Constitution was adopted not as an instrument of governmental convenience but as a disciplined political morality for a diverse people-one that binds power to reasons, and authority to legality. As India marks seventy-five years of constitutional life, the most persistent and least easily resolved tension within democratic governance remains the same: the State's claim that security is the precondition of liberty, and the Constitution's insistence that liberty is the condition of legitimate security. The everyday work of constitutionalism therefore lies in refusing false choices. National security cannot become a rhetorical solvent that dissolves rights, nor can constitutional freedom be romanticised into an absolute that denies the State the capacity to prevent violence, protect territorial integrity, and secure public order (The Constitution of India, 1950, arts. 19, 21, 352). This chapter argues that India's constitutional journey is best understood not through a binary of "security versus liberty," but through a normative architecture of "security with liberty": a model in which security governance is legitimate only when it remains tethered to rule of law, proportionality, institutional accountability, and constitutional morality (Puttaswamy v. Union of India, 2017; Dyzenhaus, 2006).

15.1 Constitutional Frame at Seventy-Five: Security, Liberty, and Democratic Continuity

The constitutional vocabulary of security in India is neither accidental nor merely incidental. It is structured through explicit emergency provisions, enumerated grounds of restriction in Part III, and the federal distribution of policing and defence responsibilities. Yet the same Constitution that empowers the State to meet threats also constructs a rights-bearing citizen whose freedoms are not gifts of governmental grace. A mature constitutional democracy therefore judges security not only by outcomes, but by the quality of justification, the integrity of procedure, and the presence of institutional restraint (Austin, 1999; T.R. Andhyarujina, 2011).

15.1.1 National security as a constitutional category rather than a mere policy concern

National security in India is constitutionalised in at least three senses. First, the Constitution expressly authorises emergency rule in circumstances of war, external aggression, or armed rebellion (The Constitution of India, 1950, art. 352). Second, it permits calibrated restrictions upon speech, association, movement, and occupation on grounds such as security of the State, public order, and sovereignty and integrity of India (The Constitution of India, 1950, art. 19(2)–(6)). Third, it recognises that certain domains-such as armed forces and intelligence-related operations-often implicate secrecy and operational discretion, while nonetheless remaining subject to constitutional discipline through legality and review (The Constitution of India, 1950, arts. 33–34; Sathe, 2002). Security, in other words, is not outside the Constitution; it is inside it, and therefore accountable to it.

15.1.2 Constitutional freedom as the organising principle of Part III

If security is constitutionalised, so too is freedom-and not as a decorative aspiration but as an organising principle of democratic citizenship. Part III constructs the citizen as a rights-holder against the State, including against majoritarian impulses that seek to punish dissent as disloyalty (Khosla, 2020). The grounds of restriction in Article 19 are therefore not invitations to routine control; they are exceptions that demand constitutional reasons. The Supreme Court's development of rights jurisprudence under Articles 14 and 21 has reinforced that the legitimacy of coercion depends upon fairness, non-arbitrariness, and procedural integrity (Maneka Gandhi v. Union of India, 1978; E.P. Royappa v. State of Tamil Nadu, 1974). Over seventy-five years, the deeper achievement is not the elimination of conflict between security and liberty, but the constitutional insistence that such conflict must be mediated through law rather than power alone (Baxi, 2002).

15.1.3 The problem of "exception" in a constitutional democracy

The central constitutional danger is the normalisation of exceptionalism. Classic theories of emergency often describe crises as moments when law recedes and decisionism dominates (Schmitt, 1922/2005). Modern constitutional theory resists this move by arguing that emergencies must remain legally structured and institutionally supervised, precisely because coercion expands under claims of necessity (Dyzenhaus, 2006; Gross & Ní Aoláin, 2006). India's experience demonstrates that "exception" is not limited to formally proclaimed emergencies; it can emerge through preventive detention, prolonged

incarceration without trial, internet shutdowns, surveillance regimes, and expansive criminal categories that blur the distinction between violence and dissent (Ujjwal Kumar Singh, 2007; Puttaswamy v. Union of India, 2017). The constitutional challenge is therefore twofold: preventing the exception from swallowing the rule, and ensuring that security governance remains a mode of constitutional administration rather than constitutional suspension (Bhatia, 2019).

15.1.4 Scope, methodology, and central thesis of the chapter

This chapter proceeds doctrinally and institutionally. Doctrinally, it examines how Articles 14, 19, 21, and emergency provisions structure the legal conditions for restricting freedoms. Institutionally, it assesses the distribution of security powers among the executive, Parliament, and courts, identifying recurring accountability deficits. The central thesis is that India's constitutional project at seventy-five must be read as a continuing effort to build "security with liberty," where the State's coercive capacities are legitimate only when constrained by proportionality, transparency-compatible oversight, and judicially enforceable standards of fairness (Puttaswamy v. Union of India, 2017; Modern Dental College v. State of Madhya Pradesh, 2016). The celebratory character of India's democratic journey is not undermined by acknowledging constitutional stress; rather, the celebration becomes meaningful precisely because constitutional democracy survives by confronting, correcting, and learning from the temptations of unaccountable power (Austin, 1999).

15.2 Sources and Forms of State Power in Security Governance

Security governance is not located in a single constitutional office. It is dispersed across federal arrangements, executive structures, policing institutions, intelligence practices, and a legal system that authorises coercion through statutes and delegated rules. The constitutional question is therefore not whether power exists, but whether it is distributed and supervised in a manner consistent with democratic legitimacy and rule of law (Sathe, 2002).

15.2.1 Union–State distribution of security and policing powers

India's federal design places "police" and "public order" primarily within State competence, while defence and national security concerns are largely Union responsibilities (The Constitution of India, 1950, Seventh Schedule). Yet modern security challenges-terrorism, insurgency, cyber threats, and cross-border networks-often blur the boundaries between the local and the national. The result is a recurring federal tension: States carry the practical burden of policing, while the Union increasingly shapes security priorities through central agencies,

financial leverage, and legal regimes that operate across State borders (Adeney, 2017). Constitutional federalism does not forbid central coordination; it demands that coordination remain accountable, non-arbitrary, and respectful of State autonomy as a democratic value rather than an administrative inconvenience (S.R. Bommai v. Union of India, 1994).

15.2.2 Executive predominance and the architecture of secrecy

Security governance tends to concentrate authority in the executive because operational decisions require speed, confidentiality, and coordination. Yet executive predominance generates constitutional risk when secrecy becomes a substitute for accountability. India's security architecture has long relied upon secrecy laws, classification practices, and intelligence operations that are rarely supervised through robust parliamentary mechanisms. Even historically, official accounts justified legal amendments and security laws by reference to "anti-national elements" and secessionist threats, reflecting how the language of necessity shapes the legal imagination of the State (Ministry of Home Affairs [MHA], 1967–1968).

15.2.3 Parliamentary accountability and the oversight deficit

In a constitutional democracy, Parliament is not merely a legislature; it is the principal institutional forum where coercive power must be explained to the people. Yet national security frequently escapes sustained parliamentary scrutiny because claims of secrecy narrow debate, committee oversight is limited, and security laws are often enacted or amended in moments of heightened threat perception (Thiruvengadam, 2017). This deficit is not simply procedural. When oversight is weak, legality risks becoming formal rather than substantive: the existence of a statute is treated as sufficient justification, even when application patterns indicate overreach or misuse (Baxi, 2002).

15.2.4 Judicial review as a constitutional boundary-setting mechanism

Judicial review performs a boundary-setting function: it does not administer security policy, but it enforces the constitutional conditions under which security policy may burden rights. Indian constitutional law has increasingly framed this boundary through legality, reasonableness, non-arbitrariness, and proportionality (Maneka Gandhi v. Union of India, 1978; Puttaswamy v. Union of India, 2017). Yet courts also confront institutional constraints-limited access to intelligence materials, doctrines of deference, and the practical difficulties of fashioning remedies in complex security environments (Sathe, 2002; Bhatia, 2019). The constitutional aspiration is neither judicial governance nor judicial

silence, but judicially enforced standards that keep coercion within lawful and justified limits.

15.3 Constitutional Permission for Restricting Fundamental Freedoms

The Constitution is not naïve about threats; it explicitly authorises restrictions. But it is also not permissive about power; it insists that restrictions be justified through constitutional grounds and disciplined by judicially enforceable standards. The constitutional design is therefore best read as a system of conditional permission rather than an open-ended licence (The Constitution of India, 1950, art. 19).

15.3.1 Article 19 restrictions: security of the State, public order, sovereignty, and integrity

Article 19 permits restrictions on specified grounds. The most constitutionally significant point is that these grounds are not rhetorical labels; they are legal categories requiring interpretation. Indian free speech jurisprudence has repeatedly insisted that mere offensiveness or governmental discomfort cannot be conflated with threats to security or public order (Shreya Singhal v. Union of India, 2015). At the same time, the Court has historically upheld the constitutionality of sedition-like restrictions when narrowed to incitement or tendency to create disorder, illustrating how judicial interpretation often becomes the mechanism by which constitutional permission is contained (Kedar Nath Singh v. State of Bihar, 1962).

15.3.2 Article 14 as a safeguard against arbitrariness in security action

Article 14's equality guarantee has evolved into a general principle against arbitrariness. This is crucial in security governance because coercion often operates through discretionary choices: whom to surveil, detain, prosecute, or restrict. The Court's jurisprudence has treated arbitrariness as incompatible with equality, thereby constitutionalising rationality and fairness in State action (E.P. Royappa v. State of Tamil Nadu, 1974; Shayara Bano v. Union of India, 2017). The significance for national security is direct: even when the State acts on a legitimate ground, it must do so through standards that are not vague, overbroad, or discriminatorily applied (Bhatia, 2019).

15.3.3 Article 21 and the requirements of legality and fairness

Article 21, after Maneka Gandhi, requires that any deprivation of life or personal liberty occur through a "procedure established by law" that is just, fair, and reasonable (Maneka Gandhi v. Union of India, 1978). This doctrinal shift matters profoundly for security law because it rejects purely formal legality. A statute is

not constitutionally sufficient merely because it exists; it must operate through fair procedures, permit effective challenge, and avoid arbitrary deprivation (Sathe, 2002). Where detention becomes prolonged without meaningful review, or where bail regimes invert the presumption of innocence through exceptional burdens, Article 21 becomes the constitutional language for contesting punitive governance under the guise of investigation (Hussainara Khatoon v. State of Bihar, 1979).

15.3.4 Proportionality as the contemporary standard of constitutional justification

Proportionality has emerged as a central technique for constitutional adjudication in India. It requires that restrictions pursue legitimate aims, bear a rational connection to those aims, adopt necessary means, and maintain an appropriate balance between rights burdens and public objectives (Modern Dental College v. State of Madhya Pradesh, 2016; Puttaswamy v. Union of India, 2017). Proportionality is especially relevant in security contexts because the temptation of necessity is greatest there. It compels the State to move from assertion to justification, and from general claims to evidence-based reasoning (Dyzenhaus, 2006).

15.3.5 Least-restrictive-means analysis and evidentiary burden on the State

The logic of proportionality culminates in a constitutional demand: if the State can achieve security objectives through less rights-restrictive alternatives, it must do so. This is not idealism; it is constitutional discipline. The burden of justification cannot rest on the citizen, because coercion is an exercise of public power. When restrictions are framed broadly-through vague criminal categories, expansive detention powers, or sweeping communication bans-the constitutional question is whether the State has demonstrated necessity with reasons capable of judicial evaluation (Puttaswamy v. Union of India, 2017; Shreya Singhal v. Union of India, 2015).

15.4 Emergency Constitutionalism and the Culture of Exception

The Emergency provisions represent the Constitution's most dramatic concession to necessity. They are also the site of the Constitution's most sobering lessons about institutional failure. A seventy-five-year constitutional review cannot avoid the conclusion that India's democratic continuity was tested most severely when emergency powers were used not only to meet threats, but to restructure political competition and suppress civil liberties (Austin, 1999; ADM Jabalpur v. Shivkant Shukla, 1976).

15.4.1 Constitutional design of national, state, and financial emergencies

India recognises national emergency (Article 352), State emergency/President's Rule (Article 356), and financial emergency (Article 360). Each has distinct triggers and consequences. National emergency expands Union authority and reshapes rights protections; State emergency addresses breakdown of constitutional machinery in a State; financial emergency is designed for fiscal stability (The Constitution of India, 1950, arts. 352, 356, 360). The design assumes that extraordinary powers may be necessary, but it also assumes that such powers are politically dangerous and therefore must be bounded by constitutional form.

15.4.2 Suspension and curtailment of rights: permissible limits and prohibitions

The most constitutionally contested aspect of emergency rule concerns rights. Historically, emergency provisions enabled suspension or curtailment of rights enforcement, creating a zone where legality risked becoming executive will. India's later constitutional reforms-particularly after the 1975–1977 Emergency-sought to prevent a recurrence of absolute rightslessness by strengthening safeguards and limiting the suspension of core protections (Austin, 1999). The trajectory illustrates a constitutional learning process: the Constitution's text did not remain static; its interpretation and amendment reflected democratic repair after institutional breakdown.

15.4.3 Institutional failures and post-Emergency constitutional repair

The Emergency experience remains a constitutional warning about institutional fragility. It revealed how executive power can dominate when parliamentary opposition is neutralised and judicial remedies are constrained. The judicial capitulation in ADM Jabalpur-later widely criticised-demonstrated that legality without rights is a thin and dangerous concept (ADM Jabalpur v. Shivkant Shukla, 1976; Austin, 1999). Post-Emergency reforms and later jurisprudence, including the basic structure doctrine, represented attempts to reconstruct constitutional barriers against authoritarian drift (Kesavananda Bharati v. State of Kerala, 1973; Minerva Mills v. Union of India, 1980).

15.4.4 The persistence of emergency logic outside formal proclamation

A critical insight after seventy-five years is that "emergency" is not only a constitutional event; it can be a governmental style. Preventive detention, exceptional bail regimes, secrecy in surveillance, and the routine framing of dissent as threat can reproduce emergency logic without constitutional

proclamation (Gross & Ní Aoláin, 2006; Ujjwal Kumar Singh, 2007). The constitutional task is therefore not merely to police Article 352, but to identify and resist the diffusion of exceptionalism into ordinary governance.

15.4.5 Democratic safeguards and constitutional amendments

The historical record of national emergency proclamations provides a factual lens through which the culture of exception can be studied. The data below captures the duration and termination of proclaimed national emergencies, demonstrating how emergency governance can outlive the immediate precipitating event and persist through political choice rather than necessity alone (MHA, 1967–1968; MHA, 1977–1978).

Table 15.1: National Emergency Proclamations in India (Selected Historical Record)

Proclamation (Ground)	Date of Proclamation	Date of Revocation / Formal End	Notes from Official Records
Emergency following Chinese aggression (external aggression)	26 October 1962	10 January 1968	Continued through 1967; revocation published in Gazette on 10 Jan 1968 (MHA, 1967–1968).
Emergency during 1971 war context (external aggression)	3 December 1971	27 March 1977	Revoked on 27 March 1977 (MHA, 1977–1978).
Internal Emergency (internal disturbance; later reforms replaced the trigger language)	25 June 1975	21 March 1977	Revoked on 21 March 1977 (MHA, 1977–1978).

Source: Ministry of Home Affairs annual reports (Government of India): Report 1967–1968 and Report 1977–1978.

The constitutional meaning of this table is not merely historical. It demonstrates why democratic constitutionalism must treat emergency as a governance risk: once proclaimed, extraordinary power develops institutional inertia and

political utility. The celebrated success of India's constitutional adoption, at seventy-five, is therefore inseparable from the Constitution's capacity to repair itself-through amendments, jurisprudential correction, and renewed civil liberties-after periods of deep stress (Austin, 1999).

15.5 Preventive Detention: Pre-Emptive Coercion and Due Process Limits

Preventive detention occupies a constitutionally unusual position. Unlike many democratic constitutions that treat detention without trial as an exceptional derogation, India constitutionalises it explicitly, while simultaneously prescribing procedural safeguards (The Constitution of India, 1950, art. 22). This design reflects the framers' anxiety about security threats in a newly independent State; it also reveals the framers' awareness that preventive detention can become a tool of political control.

15.5.1 Constitutional positioning and rationale of preventive detention

Article 22 permits preventive detention while distinguishing it from ordinary criminal process. The constitutional logic is predictive rather than retrospective: detention is justified not as punishment for proven guilt, but as prevention of anticipated harm. The constitutional problem is immediate: prediction weakens the evidentiary discipline of criminal law and increases the probability of error, bias, and political misuse (A.K. Roy v. Union of India, 1982). Preventive detention therefore forces constitutional law to confront a morally difficult question-whether liberty can be taken away to prevent an act that has not occurred-and to demand heightened procedural integrity precisely because the substantive justification is speculative (Sathe, 2002).

15.5.2 Procedural safeguards: grounds, representation, and advisory review

The constitutional safeguards include communication of grounds, an opportunity of representation, and review by advisory boards within prescribed timeframes (The Constitution of India, 1950, art. 22). In practice, however, safeguards can become thin when grounds are vague, evidence is withheld, or review becomes perfunctory. The Supreme Court has sought to ensure that procedural rights are not emptied of content, but judicial vigilance varies with institutional context and perceived threat levels (A.K. Roy v. Union of India, 1982; Rekha v. State of Tamil Nadu, 2011).

15.5.3 Habeas corpus and practical barriers to effective judicial remedy

Habeas corpus is the classical constitutional remedy against unlawful detention. Yet its efficacy depends on timely judicial hearing, access to grounds, and

meaningful evaluation rather than formal review. India's constitutional history demonstrates both the power and vulnerability of habeas corpus: it is strongest when courts insist that detention must be justified through strict compliance with law; it is weakest when courts treat detention as a security domain largely insulated from scrutiny (ADM Jabalpur v. Shivkant Shukla, 1976; Sathe, 2002). In a constitutional democracy celebrating seventy-five years, the enduring lesson is that habeas corpus must function not only as a formal writ but as a lived remedy.

15.5.4 Detention, bail, delay, and erosion of the presumption of innocence

Preventive detention is conceptually distinct from prolonged incarceration under special criminal laws, but the lived experience can converge: individuals may lose liberty for long periods without conviction. Where stringent bail provisions operate in tandem with slow trials, the constitutional promise that punishment follows conviction becomes fragile. Indian constitutionalism has increasingly recognised that delay itself can constitute a form of injustice under Article 21 (Hussainara Khatoon v. State of Bihar, 1979). The security state's legitimacy therefore depends not only on catching perpetrators, but on preventing liberty from being destroyed by process.

15.6 Security Criminal Law and the Expansion of Penal Power

Security threats have repeatedly produced new penal categories and exceptional procedures. India's legal history includes cycles of special anti-terror laws, their repeal, and the absorption of many exceptional features into general security legislation. The constitutional question is not whether terrorism must be punished-few democracies dispute that-but whether counter-terrorism law remains compatible with due process, equality, and the presumption of innocence (Ujjwal Kumar Singh, 2007; Sathe, 2002).

15.6.1 Terrorism legislation and exceptional procedural regimes

India's post-independence legal responses have included the Unlawful Activities (Prevention) Act, 1967 (UAPA) and later special enactments in different periods. Even official accounts in the late 1960s framed secessionist threats as a central rationale for empowering the State through anti-unlawful activity legislation (MHA, 1967–1968). The constitutional difficulty arises when "exceptional procedure" becomes normalised: extended detention periods, reversed burdens at bail stage, and expansive definitions of unlawful association can shift criminal law from adjudication toward preventive incapacitation (Ujjwal Kumar Singh, 2007).

15.6.2 Unlawful association, membership offences, and guilt by proximity

Membership-based offences present a distinctive constitutional risk because they can punish association rather than conduct. Indian jurisprudence has attempted to narrow this risk by requiring evidence of active participation or incitement, thereby resisting pure guilt by association (Arup Bhuyan v. State of Assam, 2011; Indra Das v. State of Assam, 2011). This doctrinal insistence is constitutionally important: democratic citizenship presupposes ideological freedom and associational life, even when the State finds particular views threatening or undesirable (Khosla, 2020).

15.6.3 Sedition and anti-state offences: constitutional re-calibration

The constitutional journey at seventy-five has included a visible re-evaluation of colonial categories of "anti-state" speech. In *S.G. Vombatkere* (2022), the Supreme Court recorded the Union's decision to re-examine Section 124A of the Indian Penal Code and issued directions expecting governments to restrain from registering FIRs or continuing coercive measures under that provision while reconsideration was underway (S.G. Vombatkere v. Union of India, 2022).

Subsequently, India enacted new criminal codes that came into force on 1 July 2024, replacing the colonial-era penal framework in significant respects (Press Information Bureau, 2024). In the Bharatiya Nyaya Sanhita, 2023, Section 152 creates an offence concerning acts that "excite" secession, armed rebellion, or subversive activities, while also including an explanation excluding lawful disapprobation of governmental measures that does not incite such activities (Bharatiya Nyaya Sanhita, 2023, § 152). The constitutional question therefore shifts from a debate about "sedition" as a colonial label to a more enduring inquiry: whether the new offence is drafted and applied with sufficient precision and restraint to avoid criminalising dissent, satire, or legitimate political advocacy-concerns that remain central to Article 19 jurisprudence (Shreya Singhal v. Union of India, 2015).

15.6.4 Investigative agencies, federal tensions, and accountability concerns

Security prosecutions often depend on specialised investigative agencies and coordinated intelligence inputs. This institutional ecology can strain federal balance when central agencies operate extensively within States, and it can strain accountability when investigative secrecy restricts effective scrutiny. Constitutionalism does not deny the need for specialised capacity; it demands that capacity be regulated by transparent legal authority, auditable procedures, and meaningful avenues for challenge (Adeney, 2017; Sathe, 2002).

15.6.5 Prolonged trials and incarceration as constitutional harm

Perhaps the most constitutionally troubling feature of security criminal law is the capacity of process to become punishment. Stringent bail standards, slow trials, and broad arrest powers can produce long detention periods without conviction. Official data illustrates the scale and complexity of UAPA enforcement. In a parliamentary response dated 4 December 2024, the Ministry of Home Affairs provided NCRB-based figures for UAPA cases, arrests, convictions, and conviction rates for 2018–2022 (Ministry of Home Affairs, 2024).

Table 15.2: UAPA Enforcement Indicators (All-India), 2018–2022 (NCRB-based)

Year	Cases Registered (CR)	Persons Arrested (PAR)	Persons Convicted (PCV)	Conviction Rate (CVR, %)
2018	1182	1421	35	27.2
2019	1226	1948	34	29.2
2020	796	1321	80	21.1
2021	814	1621	62	39.7
2022	1005	2636	41	18.2

Source: Ministry of Home Affairs, Rajya Sabha Unstarred Question No. 1045 (answered 04 December 2024), citing National Crime Records Bureau.

These figures should not be read simplistically. Conviction rates in criminal justice statistics typically depend on the subset of cases that reach trial completion within a given period rather than the total number registered, and the temporal gap between registration and adjudication is especially pronounced in complex security prosecutions (NCRB conventions; Sathe, 2002). Even with that caution, the constitutional concern remains: when arrests are high and adjudication is slow, the risk increases that liberty is restricted for long durations without a conclusive finding of guilt-precisely the condition Article 21 doctrine seeks to prevent (Maneka Gandhi v. Union of India, 1978; Hussainara Khatoon v. State of Bihar, 1979).

15.7 Free Speech, Dissent, and the Public Order State

No constitutional freedom is more central to democratic self-government than speech. In a constitutional democracy, public order is not the absence of dissent;

it is the capacity of the State to protect both order and dissent within a framework of legality. The difficulty lies in the ease with which governments treat criticism as threat, and with which populist opinion equates loyalty with silence (Khosla, 2020; Baxi, 2002).

15.7.1 Speech as democratic infrastructure and constitutional identity

Speech is not only an individual liberty; it is a democratic institution. It enables scrutiny of power, electoral accountability, and the possibility of peaceful political change. The Supreme Court's free speech jurisprudence has repeatedly emphasised that restrictions must be narrowly construed, because a democracy that criminalises disagreement undermines its own constitutional foundation (Shreya Singhal v. Union of India, 2015). India's seventy-five-year constitutional celebration is therefore inseparable from the survival of robust public discourse, including uncomfortable discourse, so long as it does not cross the constitutional line into incitement or violence.

15.7.2 Incitement, hate speech, and constitutionally permissible restrictions

The Constitution does not protect speech that directly incites violence or threatens public order. The challenge is doctrinal precision: restrictions must identify the harm clearly and avoid conflating moral disapproval with legal injury. Indian courts have sought to develop tests that protect speech while permitting restrictions where speech becomes a mechanism of violence, discrimination, or organised harm (Kedar Nath Singh v. State of Bihar, 1962; Pravasi Bhalai Sangathan v. Union of India, 2014). The constitutional line must be reasoned, not merely asserted.

15.7.3 Vagueness, overbreadth, and the chilling effect on expression

Vague and overbroad restrictions are constitutionally dangerous because they chill lawful speech. The striking down of Section 66A of the Information Technology Act reflected the Court's insistence that indeterminate categories enable arbitrary enforcement and suppress democratic debate (Shreya Singhal v. Union of India, 2015). The same constitutional logic applies whenever security laws employ elastic language-such as "anti-national," "subversive," or "threatening sovereignty"-without carefully defined elements and safeguards.

15.8 Protest, Assembly, and Policing: The Street as a Constitutional Forum

The constitutional right to assemble is not a decorative right. It recognises that democracy is not only parliamentary but participatory: citizens must be able to gather, demonstrate, and contest state policy in public space. At seventy-five,

India's democratic endurance depends on whether protest is treated as a constitutional practice rather than a policing problem (The Constitution of India, 1950, art. 19(1)(b)).

15.8.1 Right to assemble as participatory constitutional practice

Assembly is an extension of speech and association. It permits those without institutional power to render themselves visible within the public sphere. A constitutional democracy that celebrates its adoption must treat assembly as a sign of democratic vitality rather than a pathology of disorder (Khosla, 2020). The constitutional discipline lies in managing assemblies through rights-consistent regulation rather than suppressing them through presumption of illegality.

15.8.2 Prohibitory orders, preventive arrests, and permission-based regimes

Public order powers-such as prohibitory orders and preventive policing-are often justified as necessary to prevent violence. Yet when such powers become routine, they risk inverting constitutional logic: the citizen must seek permission to exercise a right. Judicial review has therefore repeatedly emphasised that restrictions on assembly must be reasonable, time-bound, and justified by concrete risk rather than general apprehension (Mazdoor Kisan Shakti Sangathan v. Union of India, 2018).

15.8.3 Use of force, proportionality, and mechanisms of accountability

Policing protest presents a recurring constitutional problem because coercion is often deployed in moments of heightened emotion and contested legitimacy. The constitutional standard is not the elimination of inconvenience but the containment of violence. Proportionality must guide the use of force, and accountability must exist for excesses, including through independent inquiries and judicial remedies (D.K. Basu v. State of West Bengal, 1997). A democracy's claim to legitimacy is weakened when it treats public space as a zone of executive control rather than constitutional engagement.

15.8.4 Balancing inconvenience, security, and democratic freedom

The constitutional balance cannot assume that any disruption is illegitimate. Democratic life inevitably creates friction. The real constitutional question is whether the State calibrates restrictions to minimise rights burdens while protecting safety and essential public functioning. Where restrictions are framed as blanket bans or indefinite prohibitions, they risk becoming

instruments of political convenience rather than constitutional necessity (Amit Sahni v. Commissioner of Police, 2020).

15.8.5 Judicial standards governing protest regulation

Judicial doctrine increasingly frames protest regulation through reasoned limits: restrictions must be lawful, necessary, proportionate, and procedurally fair. Yet doctrine must be matched by implementation. In the constitutional story of seventy-five years, the legal recognition of protest as a right is a democratic achievement; the unevenness of practice remains a democratic task (Baxi, 2002).

15.9 Surveillance, Privacy, and Data in the Digital Security State

Security governance in the twenty-first century increasingly operates through data. Surveillance is no longer limited to targeted interception; it includes metadata analysis, profiling, and automated inference. The constitutional promise of liberty therefore depends on whether informational power is regulated, justified, and constrained.

15.9.1 Privacy and informational self-determination as constitutional constraints

In *Puttaswamy*, the Supreme Court recognised privacy as a constitutional right grounded in dignity and liberty. The judgment also articulated that privacy restrictions must satisfy legality, necessity, and proportionality (Puttaswamy v. Union of India, 2017). This matters directly for national security: the existence of threat does not eliminate the need for law; it increases the need for disciplined law because surveillance powers are uniquely capable of invisible abuse.

15.9.2 Interception, monitoring, metadata collection, and profiling practices

India's surveillance ecosystem includes statutory and delegated-rule mechanisms permitting interception and information control. The constitutional concern is not only overreach, but opacity: citizens often cannot know whether they are surveilled, and therefore cannot effectively contest illegality. A constitutional democracy must ensure that secrecy does not become unreviewability. Otherwise, privacy becomes a right in name but not in lived reality (Puttaswamy v. Union of India, 2017; Dyzenhaus, 2006).

15.9.3 Oversight models: legality, necessity, proportionality, and auditability

Oversight is the institutional translation of proportionality into governance. Effective oversight typically requires authorisation processes, documentation, independent review, and ex post audit capacity. The constitutional objective is not to disable security agencies but to ensure they operate within traceable legal boundaries. Without oversight, surveillance tends to expand through bureaucratic momentum and technological possibility rather than demonstrated necessity (Gross & Ní Aoláin, 2006).

15.9.4 National security exemptions in data protection and constitutional risk

The Digital Personal Data Protection Act, 2023 recognises individual data protection while also providing exemptions. Notably, Section 17(2)(a) states that the Act shall not apply to processing of personal data by State instrumentalities notified by the Central Government "in the interests of sovereignty and integrity of India, security of the State… [and] maintenance of public order," among related aims (Digital Personal Data Protection Act, 2023, § 17(2)(a)). This exemption illustrates a defining constitutional challenge of the digital security state: data protection frameworks can be structurally weakened if national security exceptions are broad, executive-controlled, and weakly supervised. The constitutional task is therefore to ensure that exemptions do not become constitutional loopholes, and that even exempted processing remains governed by legality, necessity, and proportionate restraint consistent with privacy jurisprudence (Puttaswamy v. Union of India, 2017).

15.10 Information Control and Contemporary Techniques of Security Governance

Modern security governance increasingly operates through control of information infrastructure-networks, platforms, and digital intermediaries. These techniques can be justified as responses to misinformation, violence, or operational threats. Yet they can also become tools of political control if not strictly bounded by law and review.

15.10.1 Internet shutdowns and communications restrictions

Internet shutdowns represent one of the most sweeping contemporary forms of restriction because they disable not only speech but commerce, education, health access, and democratic mobilisation. India's legal framework includes the Temporary Suspension of Telecom Services (Public Emergency or Public Safety)

Rules, 2017, issued by the Department of Telecommunications (Department of Telecommunications, 2017). The constitutional concern is clear: such measures must be legally authorised, exceptional, time-bound, and reviewable, because they burden rights at scale rather than through individualised restrictions.

15.10.2 Transparency requirements: publication, duration, and review

Judicial doctrine has increasingly emphasised that restrictions must be published and reviewable to be constitutional. In *Anuradha Bhasin*, the Supreme Court addressed the constitutional implications of communications restrictions, stressing that legality requires accessible orders and that indefinite restrictions are constitutionally suspect (Anuradha Bhasin v. Union of India, 2020). Transparency is not a procedural luxury; it is the condition for democratic contestation and judicial supervision.

15.10.3 Platform regulation, misinformation control, and prior restraint

Platform governance poses a difficult constitutional dilemma. On one hand, misinformation and coordinated incitement can produce tangible harm. On the other hand, broad regulatory powers can enable prior restraint and chilling effects, particularly when executive agencies determine what is "false," "anti-national," or "harmful" without independent review. Constitutional freedom requires that misinformation regulation be narrowly tailored, procedurally fair, and compatible with the anti-vagueness logic of Article 19 jurisprudence (Shreya Singhal v. Union of India, 2015).

15.10.4 Cybersecurity and protection of critical infrastructure

Cybersecurity governance is increasingly central to national security. Yet cybersecurity measures-particularly those involving monitoring, data sharing, and emergency directives-must remain legally structured. Otherwise, the language of cyber threat can become a justification for pervasive surveillance. The constitutional principle remains stable: the more invisible the power, the more robust must be the oversight (Dyzenhaus, 2006; Puttaswamy v. Union of India, 2017).

15.10.5 Algorithmic governance and emerging due-process deficits

The next frontier is algorithmic security governance: predictive policing, automated risk scoring, and AI-driven surveillance. These tools promise efficiency, but they also threaten constitutional values through opacity, bias, and error. Article 14's anti-arbitrariness principle and Article 21's fairness requirement demand explainability, contestability, and auditability in systems that affect liberty (E.P. Royappa v. State of Tamil Nadu, 1974; Maneka Gandhi v.

Union of India, 1978). The constitutional celebration at seventy-five therefore must include institutional imagination about how rights review can operate in a world where the "decision-maker" may be a machine-learning model embedded in administrative practice.

15.11 Closing Synthesis: Constitutional Morality and "Security with Liberty"

The constitutional balance between liberty and security is not a mechanical compromise; it is a moral and institutional discipline. A democratic people do not merely demand security from the State; they demand lawful security. The most valuable constitutional achievement is not the elimination of threat but the refusal to abandon constitutional methods in the face of threat.

15.11.1 Constitutional morality versus popular security morality

Constitutional morality requires that public power be exercised through reasons consistent with dignity, equality, and liberty, even when popular sentiment demands harshness or instant punishment (Navtej Singh Johar v. Union of India, 2018). Popular security morality often rewards decisive displays of force; constitutional morality insists that force must be justified, bounded, and accountable. At seventy-five, India's democratic durability depends on privileging constitutional morality over the politics of fear (Baxi, 2002; Khosla, 2020).

15.11.2 Rule of law as a core component of national security

The rule of law is not an obstacle to security; it is a security asset. When citizens trust institutions, they cooperate with policing, share intelligence, obey law voluntarily, and resist extremist mobilisation. Conversely, when coercion appears arbitrary or discriminatory, legitimacy erodes and security governance becomes fragile (Tyler, 2006). India's constitutional history demonstrates that rights-respecting governance is not weakness; it is democratic strength.

15.11.3 Institutional reform: oversight committees, sunset clauses, and reporting duties

The institutional reforms implied by "security with liberty" are conceptually straightforward even if politically difficult. Security legislation should be accompanied by structured parliamentary oversight mechanisms, periodic reporting duties, and independent review capable of testing necessity and proportionality. Sunset clauses can force democratic reconsideration of exceptional powers rather than allowing them to harden into permanent architecture (Gross & Ní Aoláin, 2006). Transparent standards for surveillance

authorisation, meaningful remedies for unlawful detention, and strong judicial insistence on reasoned justification are not anti-security measures; they are constitutional security measures.

15.11.4 India at Seventy-Five: constitutional balance sheet and the road ahead

The last seventy-five years reveal a constitutional democracy that has endured wars, insurgencies, terrorism, communal violence, and profound political conflict. The endurance itself is a constitutional achievement worth celebration. Yet the same period reveals recurring patterns of exceptionalism-emergency governance, preventive detention, expansive criminal categories, and information control-that test constitutional freedom. India's democratic journey is therefore not a completed narrative but an unfinished constitutional project. To celebrate the successful adoption of the Constitution is to recommit to its method: power constrained by law, security justified through proportionality, and freedom protected not as sentiment but as enforceable right. If the Constitution is to remain the living charter of India's democratic future, its most urgent task is not to choose between security and liberty, but to insist that security must be constitutional-or it will eventually cease to be legitimate (Puttaswamy v. Union of India, 2017; Austin, 1999).

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