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Constitutional amendments and federal balance: A comparative analysis of India, Canada, and South Africa

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Abstract
Constitutional amendments occupy a critical space in determining the equilibrium between federalism and central authority, particularly in nations with pluralistic societies and diverse governance needs. This paper undertakes a comparative study of India, Canada, and South Africa to evaluate how constitutional amendment processes have shaped, preserved, or disrupted the federal balance. India, with its quasi-federal structure, has witnessed amendments that often tilt toward strengthening parliamentary sovereignty, thereby sparking judicial scrutiny on the limits of amending power. In contrast, Canada's constitutional framework, anchored in both federal supremacy and provincial autonomy, has evolved through complex negotiations and judicial interpretations that safeguard decentralization. South Africa, emerging from apartheid, embodies a unique model where constitutional amendments are intricately linked to democratic transformation, emphasizing cooperative governance and judicial oversight to protect fundamental rights and provincial interests. The comparative analysis highlights that while all three jurisdictions adopt amendment mechanisms to adapt to political, social, and economic challenges, the outcomes differ substantially: India's trajectory reveals centralizing tendencies mitigated by judicial intervention; Canada reflects a negotiated balance that occasionally fosters intergovernmental deadlock; and South Africa demonstrates a rights-based constitutionalism that reinforces federal cooperation. By employing doctrinal, jurisprudential, and contextual analysis, this paper argues that the nature of amendment procedures and the role of the judiciary are decisive in maintaining federal balance. Further, it underscores that federal stability is less a product of rigid legal entrenchment and more an outcome of judicial philosophy, political culture, and the commitment of institutions to constitutional morality. The study thus provides comparative insights into how constitutional design and amendment practice can either consolidate or weaken federal arrangements in diverse democratic contexts.

Keywords: Constitutional amendments, federal balance, india, canada, south africa, judicial review, cooperative federalism, constitutional morality

Introduction

Constitutions, as foundational legal documents, are both reflections and instruments of political authority, often embedded within the architecture of federalism to balance central control with regional autonomy. In federations such as India, Canada, and South Africa, the power to amend the constitution not only embodies democratic responsiveness but also signifies the evolving nature of state-building in diverse societies. A comparative analysis of these jurisdictions offers a critical window into how amendment frameworks mediate the federal balance, whether through centralization, decentralization, or institutional negotiation. Each country's constitutional evolution has been shaped by distinct historical trajectories — colonial legacies, independence movements, and post-conflict transitions — that influence the logic of amendment and distribution of power. Aroney (2018) argues that the amendment processes in federal systems reflect "competing locations of constitutive authority," revealing deep political bargains entrenched in constitutional texts and practices (Aroney, 2018).

India's constitutional amendment framework, laid out under Article 368, is formally rigorous yet procedurally accessible, offering Parliament significant latitude in revising constitutional provisions. However, over time, this latitude has raised concerns about creeping centralization at the expense of states' autonomy. Scholars contend that this flexible structure, while democratically viable, tends to prioritize legislative dominance, often undermining federal distribution through top-down mandates (Narnolia, 2020) [30]. The emergence of the "basic structure doctrine" by the Indian Supreme Court, which limits Parliament's amendment power, is a unique judicial innovation aimed at defending constitutional identity. This contrasts with Canada, where the formulaic rigidity of constitutional amendment — notably the 7/50 Rule — has often led to constitutional inertia and prompted reliance on judicial interpretation and political conventions to maintain federal equilibrium (Dixon, 2011) [12].

South Africa, in contrast, presents a transformative model shaped by its post-apartheid transition and commitment to cooperative governance. Its Constitution integrates substantive and procedural safeguards for amendment while emphasizing broad-based participation and human rights protections. The South African Constitutional Court's limited review of amendment procedures — rather than substance — ensures legal certainty without impeding democratic will (Abebe, 2014) [1]. The notion of "transformative constitutionalism," deeply embedded in South African legal culture, positions constitutional amendments as tools for both institutional stability and socio-economic justice. Scholars like Sripati (2007) [41] have observed that South Africa's approach combines participatory legitimacy with structural innovation, offering

a contrast to India's elitist constitutional origins and Canada's constrained federal negotiation processes (Sripati, 2007) [41].

This study adopts a comparative doctrinal and jurisprudential lens to interrogate how amendment mechanisms operate as instruments of federal balancing. It aims to synthesize legal rules, judicial doctrines, and political cultures across three federal models to illustrate how amendment power can both consolidate and threaten federal structures. By analyzing the theoretical foundations and practical applications of amendment processes, the paper seeks to assess how constitutional design interacts with federal dynamics. The core argument posits that while constitutional texts provide formal frameworks, it is the judiciary, political negotiation, and constitutional morality that ultimately shape the federal balance.

Methodology of the Review

This paper adopts a qualitative, comparative legal research methodology grounded in doctrinal and jurisprudential analysis, along with contextual interpretation of constitutional practices. The primary objective is to assess how constitutional amendment mechanisms influence federal balance in three distinct jurisdictions—India, Canada, and South Africa. This methodology is well-suited for understanding how institutional structures are interpreted, amended, or resisted across jurisdictions and for identifying the normative principles that shape legal transformation in federal democracies (Aroney, 2018).

The review begins with a comprehensive literature search across peer-reviewed journals, law reviews, and government publications, focusing on Scopus-indexed research to ensure scholarly rigor. Relevant sources were identified through systematic keyword searches involving terms such as "constitutional amendment," "federalism," "India," "Canada," "South Africa," "judicial review," and "cooperative federalism." This approach allows for triangulation of legal theory, judicial decisions, and political developments in constitutional amendment frameworks. Comparative public law methods, as employed in transnational studies, are particularly beneficial in this regard since they help identify structural parallels and divergences that are embedded in each country's federal architecture (Dixon, 2011) [12].

To enhance contextual understanding, this methodology emphasizes the "thick description" of each jurisdiction's political history, legislative architecture, and judicial doctrines. For India, this includes the evolution of Article 368 and the basic structure doctrine; for Canada, the complexities of the amending formula under the Constitution Act, 1982; and for South Africa, the integration of democratic values into federal design post-1996. A comparative theoretical lens was adopted to accommodate divergent institutional traditions, allowing the analysis to remain sensitive to legal pluralism and distinctive federal logics (Kincaid & Tarr, 2005) [23].

Doctrinal legal research forms the backbone of the analytical framework. Primary sources including constitutional texts, Supreme Court judgments, and parliamentary records were reviewed. These are supplemented with secondary literature in the form of academic articles, books, and comparative law compendiums. Emphasis was placed on peer-reviewed and Scopus-indexed sources to maintain academic integrity and suitability for publication in international legal journals. For triangulation and validation, legal doctrines were traced across jurisdictions to identify commonalities and variances in how amendment powers have been judicially interpreted and politically contested (Albert, 2009) [2].

The comparative aspect of this study employs both horizontal and vertical comparisons. Horizontally, it juxtaposes constitutional amendments across the three federal systems. Vertically, it analyzes how amendment mechanisms interact with principles such as constitutional supremacy, judicial independence, and intergovernmental negotiation. This vertical dimension is especially important in federal contexts where constitutional design often mediates between central authority and sub-national autonomy (Aroney, 2006) [5].

Lastly, the review methodology incorporates a critical lens by evaluating the socio-political implications of amendment practices in each country. For instance, the political deadlock in Canada over constitutional change, judicial activism in India, and rights-based jurisprudence in South Africa are evaluated not merely as legal phenomena but as manifestations of deeper democratic cultures and institutional commitments. Such an approach provides a holistic and nuanced understanding of how federalism is both shaped and safeguarded through amendment processes.

Conceptual Framework of Federalism and Amendment Powers

Federalism is traditionally conceptualized as a system of governance that divides powers between a central government and regional units, constitutionally guaranteed and judicially protected. However, this definition, while normatively appealing, fails to account for the diversity of federal experiences in countries such as India, Canada, and South Africa. The conceptual framework of federalism must, therefore, transcend formal legal structures to incorporate political dynamics, judicial interpretation, and constitutional amendment mechanisms. As Choudhry and Hume (2010) [8] observe, federalism is not merely about the vertical allocation of authority but also involves the institutional mechanisms through which power is re-negotiated and reconstituted over time (Choudhry & Hume, 2010) [8].

A central element of this framework is the **amendment power**, which acts as the constitutional interface between legal continuity and political change. The literature generally classifies amendment procedures as either flexible or rigid, yet such binary characterizations are inadequate when assessing their effect on federal balance. In federal systems, amendment powers are often layered and tiered to involve both federal and sub-national actors, preserving the participatory ethos of federalism. In this regard, Aroney (2006) [5] emphasizes that the design of amendment mechanisms reflects broader assumptions about sovereignty and representation within the federal order (Aroney, 2006) [5].

India's quasi-federal model represents a departure from classical federalism. While the Constitution envisages a division of powers, the Union's primacy in the legislative and fiscal domains—coupled with unilateral amendment authority—has raised concerns about asymmetrical federalism. The evolution of the basic structure doctrine by the Supreme Court adds another conceptual layer, indicating that amendment powers are not unfettered but embedded

within a deeper constitutional morality. Scholars like Singh and Bhatia (2008) [39] argue that the Indian experience necessitates viewing federalism as a dynamic and contested process rather than a fixed institutional arrangement (Singh & Bhatia, 2008) [39].

In contrast, Canada presents a federal model rooted in negotiated autonomy and intergovernmentalism. The 1982 Constitution Act codified the amending formula, reflecting a deep commitment to consensual governance. However, the high threshold for constitutional change has resulted in a form of constitutional stagnation, prompting scholars like McDonald (1999) [29] to question whether rigidity can itself undermine federal dynamism by pushing reform into informal and judicial channels (McDonald, 1999) [29].

South Africa's federalism emerges from a history of systemic exclusion and is deeply informed by the principle of transformative constitutionalism. Here, the conceptual framework of federalism is not only institutional but normative, emphasizing equity, participation, and cooperative governance. The 1996 Constitution's amendment rules balance the need for stability with adaptability, making provincial consent necessary for specific changes. Venter (2009) contends that such a framework is less about entrenching regional sovereignty and more about enabling participatory constitutional change through structured deliberation (Venter, 2009).

Therefore, the conceptualization of federalism and amendment power must move beyond rigid classifications. It must be seen as a dynamic continuum that reflects political contestation, judicial reasoning, and constitutional design. The interplay between these dimensions determines whether federalism evolves, ossifies, or collapses under the weight of its contradictions.

Judicial Safeguards and Federal Balance: A Literature Review

The judiciary plays a critical role in preserving federal balance, especially when constitutional amendment powers threaten to alter foundational principles. Across jurisdictions such as India, Canada, and South Africa, judicial intervention has often acted as both a safeguard and a facilitator of constitutional transformation. The Indian experience, in particular, showcases an assertive judiciary employing the basic structure doctrine to restrain parliamentary supremacy. In the landmark judgment striking down the 99th Constitutional Amendment and the National Judicial Appointments Commission (NJAC) Act, the Indian Supreme Court reaffirmed judicial independence as part of the Constitution's unamendable core. Scholars like Sengupta and Sharma (2018) [37] argue that this decision reflects the institutionalization of a counter-majoritarian check to protect federal design and judicial autonomy (Sengupta & Sharma, 2018) [37].

However, judicial safeguards are not without theoretical tensions. The doctrine of unconstitutional constitutional amendments has been described by Liu (2009) [26] as a departure from classical constitutional orthodoxy, challenging the boundaries of judicial legitimacy. Courts in India have invoked this doctrine to nullify legislative attempts at centralization, but its open-ended nature has also raised concerns about judicial overreach and indeterminacy (Liu, 2009) [26]. Meanwhile, the courts in Canada have adopted a more restrained approach. Wright (2016) [45] highlights how Canada's federal balance is preserved more through intergovernmental mechanisms than through aggressive judicial invalidation. The judiciary prefers collaborative federalism, shaping federal-provincial dynamics without overturning legislative choices unless absolutely necessary (Wright, 2016) [45].

South Africa's constitutional jurisprudence adds another layer of complexity by incorporating rights-based review into federal adjudication. The judiciary ensures that amendments, even when procedurally valid, do not infringe on fundamental rights or cooperative governance mandates. Faga *et al*. (2020) [16] compare the South African and Indian models, highlighting that both systems have used judicial review to enforce socio-economic rights and protect democratic values, thereby reinforcing their constitutional structures against unilateral centralization (Faga *et al*., 2020) [16].

The theoretical foundations of judicial balancing have gained attention in comparative constitutional literature. Hernández *et al*. (2024) [20] argue that constitutional courts increasingly rely on proportionality and judicial balancing to reconcile conflicts between central authority and federal integrity. This trend is visible in landmark federalism decisions, where courts articulate limits to legislative discretion in constitutional amendments by invoking principles like subsidiarity, accountability, and local autonomy (Hernández *et al*., 2024) [20].

In a broader doctrinal context, Dixon (2011) [12] offers a comparative account of amendment rules and judicial involvement, asserting that constitutional amendment procedures, though legislative in nature, often prompt judicial responses aimed at constitutional preservation. Courts, she contends, act as dialogic partners with legislatures, occasionally suspending legislative majorities from redefining federal structures without adequate deliberation and institutional consensus (Dixon, 2011) [12].

The literature thus reveals a spectrum of judicial behavior: from assertive guardianship in India to collaborative restraint in Canada, and transformative enforcement in South Africa. Judicial review serves as a pivotal mechanism for ensuring that constitutional amendments do not erode the federal compact, either through unilateral centralization or rights infringement. While the balance between judicial activism and restraint remains contested, it is clear that courts function as critical arbiters in preserving constitutional equilibrium within federal systems.

India: Literature on Constitutional Amendments and Federalism

The Indian constitutional framework presents a unique hybrid of federal and unitary features, and the literature on constitutional amendments reveals an ongoing tension between central authority and the constitutional vision of cooperative federalism. India's quasi-federal model, marked by a strong central government, is the product of historical necessities such as post-independence integration, but its federal character has evolved significantly through constitutional amendments. As Singh and Bhatia (2008) [39] observe, constitutional amendments have shaped the contours of federal balance by adapting constitutional norms to India's diverse socio-political challenges while retaining central predominance.

The mechanism of Article 368 has allowed for a dynamic, though often contested, evolution of the federal architecture. Scholars have long debated the compatibility of India's

amendment process with federal principles. Chakraborty (2008) [7] argues that while the Indian Constitution provides for flexible amendment procedures, the basic structure doctrine introduced a necessary judicial check, preventing the erosion of core constitutional values including federalism. The judiciary's assertion that federalism is part of the basic structure limits Parliament's power to alter the federal distribution of powers unilaterally, thereby reinforcing the federal balance.

Amendments related to state reorganization and emergency provisions have been particularly impactful on India's federal relations. According to Nirvikar Singh (1997) [40], the 73rd and 74th Amendments, which introduced constitutional status to local self-governments, reflect a rare moment of deepening federalism in India's otherwise centralized framework. These changes initiated a shift toward decentralized governance, although the actual empowerment of state and local units continues to depend heavily on the political will of the Union government.

A growing body of literature has also focused on informal constitutional amendments and executive practices that effectively bypass formal amendment processes. Deva (2021) [11] highlights the use of executive ordinances, reinterpretations, and administrative actions—such as the abrogation of Article 370—to illustrate how centralization can occur even without formal constitutional change. This underlines a critical weakness in Indian federalism, where structural safeguards may be undermined by political maneuvering rather than legal reform.

The literature has increasingly recognized the importance of amendment culture in shaping federal relations. As Narnolia (2020) [30] discusses, the "ache of amendment" in India lies in the reality that constitutional changes, while necessary for evolving governance, often carry the risk of weakening subnational autonomy. The historical pattern shows that constitutional amendments have tended more toward consolidation of central authority than a balanced federal devolution. The recurring centralization is reinforced by India's single-party dominance during critical amendment phases, raising concerns about asymmetric federal power dynamics.

Furthermore, modern scholarship has explored the intersection of federalism and economic liberalization. Simon (2024) [38] notes that fiscal centralization and centralized revenue allocation frameworks continue to stifle true cooperative federalism despite constitutional amendments aimed at decentralization. The literature suggests that federalism in India remains structurally compromised, with constitutional amendments serving as both a potential enabler and threat to subnational autonomy.

Thus, the literature underscores a nuanced reality: while constitutional amendments have enabled democratic deepening and decentralization at times, their dominant trend in India has leaned toward reinforcing central dominance. The role of judiciary and political culture continues to mediate the effects of these amendments on the federal balance.

Judicial Review in India: The Basic Structure Doctrine in Scholarship

The evolution of the basic structure doctrine represents one of the most significant contributions of the Indian judiciary to global constitutional jurisprudence. Originating from the landmark case of Kesavananda Bharati v. State of Kerala (1973), the doctrine emerged as a direct response to the growing tension between constitutional amendments and the supremacy of the Constitution. Scholars have extensively analyzed this development, highlighting the Indian judiciary's role in placing substantive limitations on the otherwise plenary constituent powers of Parliament. As observed by Liu (2009) [26], the basic structure doctrine represents a departure from traditional constitutional theory by embedding judicial review within the framework of constituent power—a phenomenon largely unique to India.

The theoretical underpinnings of the doctrine have sparked intense scholarly debate. Patil (2025) [33] offers a contemporary reassessment of the doctrine's utility in protecting separation of powers and preventing legislative overreach. The article highlights how the Supreme Court has used the doctrine not merely as a reactive tool but as an affirmative instrument to shape democratic governance and enforce constitutional morality. This use of judicial review has attracted both acclaim and criticism, especially concerning the extent to which the judiciary should interfere with Parliament's constituent power under Article 368.

A major critique centers around the alleged counter-majoritarian nature of the doctrine. Niazi (2023) [32] challenges the legitimacy of the doctrine from a democratic theory standpoint, arguing that the judicially defined limits on constitutional amendment authority risk undermining parliamentary sovereignty. Niazi's work draws comparisons with other jurisdictions that have embraced forms of implicit constitutional unamendability but asserts that India's expansive use of the doctrine lacks rigorous normative justification.

However, the development of this doctrine has not occurred in isolation. Scholars such as Krishnaswamy (2010) [25] analyze its evolution through various Supreme Court decisions, including Minerva Mills v. Union of India and Indira Gandhi v. Raj Narain, showing how the judiciary has gradually expanded its scope. He notes that the doctrine now operates as a constitutional meta-norm, shaping jurisprudence not only in amendment cases but also in legislative and executive review. Krishnaswamy's scholarship reinforces the notion that judicial review in India is as much about interpretative guardianship as it is about norm enforcement.

Contemporary analyses further explore the sociopolitical implications of judicialized constitutionalism. Jasdeep (2012) [21] argues that the basic structure doctrine symbolizes the judiciary's increasing entanglement in "mega-politics," where courts arbitrate foundational political conflicts under the guise of legal interpretation. This trend, while ensuring constitutional continuity, raises concerns over judicial supremacy in a democratic framework.

Additionally, the application of the doctrine in post-Kesavananda decisions like I.R. Coelho v. State of Tamil Nadu and Pramati Educational Trust v. Union of India has broadened its jurisprudential reach. Raza (2015) [35] meticulously documents this trajectory, emphasizing that the doctrine now encapsulates core values such as secularism, federalism, judicial independence, and the rule of law—values viewed as beyond the reach of constitutional amendment.

In sum, Indian legal scholarship portrays the basic structure doctrine as both a protective shield for constitutional values

and a contested assertion of judicial power. While it has been instrumental in curbing majoritarian overreach, the doctrine continues to provoke debate on judicial legitimacy and democratic balance.

Canada – Literature on Constitutional Amendments and Negotiated Federalism

Canada's experience with constitutional amendments is marked by deep-rooted tensions between federal and provincial units, amplified by its multinational character and linguistic dualism. The 1982 patriation of the Constitution, without Quebec's assent, remains a watershed moment in Canadian federalism, setting the tone for later amendment challenges. The federal structure, designed to balance diverse identities, particularly French-speaking Quebec and Indigenous nations, has been put to repeated tests through failed efforts such as the Meech Lake and Charlottetown Accords. As noted by Tully (1994) [42], these failures underscore the limits of traditional amendment processes in accommodating diverse cultural identities, making federal consensus elusive.

Negotiated federalism in Canada manifests not only through formal constitutional procedures but also through executive federalism and informal intergovernmental arrangements. Scholars argue that rigid amendment requirements have made formal reforms nearly impossible, pushing negotiations into the realm of extra-constitutional practices. Albert (2015) [3, 4] contends that Canada's formal amendment rules, involving the "7/50 formula" (approval by Parliament and seven provinces representing at least 50% of the population), have erected near-insurmountable political hurdles for meaningful change. Consequently, constitutional deadlock has become a feature of Canadian federalism.

Multiple attempts at multilateral negotiations, such as the Charlottetown Accord, further illustrate how the process of federal bargaining in Canada often ends in popular or provincial rejection. The Charlottetown Accord was particularly notable for the extent of intergovernmental involvement; yet, its defeat in a national referendum highlighted a critical disconnect between elite-level agreement and public approval. Albert (2015) [3, 4] identifies this as a paradox where formalism meets populist constraints, suggesting that future amendments must incorporate deeper public engagement alongside elite consensus.

The necessity of negotiation with minority and sub-state national groups has become a defining constitutional principle in Canada. As Breda (2018) [6] argues, Canada's multinational character imposes not only a legal but also a moral obligation on the federal government to negotiate in good faith with Indigenous groups and Quebec. The Supreme Court's decisions—particularly its reference opinion on Quebec's secession—cement the requirement for cooperative constitutional politics grounded in federalism, democracy, and minority rights.

This negotiated approach, however, is fraught with structural and perceptual challenges. As demonstrated in the comparative analysis by McDonald (1999) [29], Canada's failure in constitutional negotiation—contrasted with South Africa's success—can be attributed to a lack of alignment between elite perceptions and public sentiment. Canadians, unlike South Africans during their constitutional transition, showed limited tolerance for elite-crafted accords, demanding more participatory processes.

Despite the repeated setbacks, constitutional scholars continue to explore pathways for reform through asymmetrical federalism, soft law mechanisms, and non-constitutional measures. Lorenz (2011) [27] provides a theoretical model for understanding how actors in federal systems can reconcile intergovernmental competition with cooperation through sequential bargaining and arguing. This model is particularly applicable to Canada, where consensus-building requires not only institutional alignment but also cultural accommodation.

Judicial Role in Canada – Literature on Supreme Court Federalism Cases

The Supreme Court of Canada (SCC) plays a critical role in mediating the tensions of Canadian federalism, especially in the face of rigid constitutional amendment procedures. Historically, the SCC has evolved from an intermediate appellate body subordinate to the Judicial Committee of the Privy Council to Canada's final and most authoritative constitutional arbiter. This transformation, especially after the abolition of appeals to the Privy Council in 1949, marked the SCC's entrance into active federal arbitration. The Court's role is not merely interpretative but deeply formative in shaping federal norms and balancing powers between Parliament and the provinces, as detailed by Kelly & Murphy (2005) [22]. The authors argue that the SCC acts as a "meta-political actor," providing a framework for constitutional dialogue without overtly undermining democratic institutions.

The SCC's jurisprudence in federalism is characterized by a shift from rigid compartmentalization to a more purposive and cooperative interpretation of powers. Particularly after the advent of the Charter of Rights and Freedoms in 1982, the SCC began integrating principles such as cooperative federalism and constitutional dialogue, aiming to harmonize conflicting jurisdictional interests. Daly (2015) [10] emphasized that the SCC's institutional role is now firmly entrenched in the constitutional framework, serving not only as an umpire but as a guardian of constitutional values—especially those concerning Quebec's distinctiveness and Indigenous rights.

The SCC's central role in interpreting federalism cases is evident in landmark rulings such as the Quebec Secession Reference and the Patriation Reference. These decisions reaffirmed the importance of democratic principles, rule of law, federalism, and constitutionalism as unwritten norms that influence legal outcomes. Newman (2009) [31] noted that such references highlight the flexible and pragmatic nature of Canada's federal judicial architecture, where the SCC interprets not only black-letter law but also infers underlying constitutional principles to preserve the federation's integrity.

Further, the SCC has impacted judicial appointments, diversity, and democratic legitimacy. Its 2014 decision in Reference re Supreme Court Act, ss. 5 and 6 reasserted the limited power of Parliament to unilaterally alter the Court's composition, reinforcing the notion that the SCC holds a quasi-constitutional status. Dodek & Way (2017) [13] analyzed this evolution, arguing that institutional independence and judicial diversity are increasingly seen as essential to reinforcing the SCC's federal legitimacy and functional autonomy.

Empirical studies have also explored how the SCC uses comparative law and foreign precedents to enhance its interpretive capacity, particularly in federalism cases. Gentili (2013) [18] observed that the SCC often engages with foreign jurisprudence to strengthen its reasoning, balancing domestic values with global constitutional insights. This approach underscores the Court's role not only as a domestic adjudicator but also as a transnational constitutional actor.

Lastly, critiques of the SCC's federalism jurisprudence suggest that its decisions sometimes oscillate between centralization and provincial autonomy. MacKay (2001) [28] identified a trend toward contextualism over rigid legalism, especially during the Lamer Court era, which expanded federal criminal law powers while maintaining an active judicial role in resolving intergovernmental disputes. Thus, while the SCC seeks balance, its impact on federal dynamics is contingent upon the prevailing judicial philosophy.

South Africa – Literature on Transformative Constitutionalism and Amendments

South Africa's post-apartheid constitutional order stands as a hallmark of transformative constitutionalism, a concept that has come to define not only its jurisprudential approach but also its normative vision of societal transformation. Emerging from a deeply divided past shaped by racial segregation, legal authoritarianism, and systemic exclusion, South Africa's 1996 Constitution embodies a radical break intended to address historical injustices through legal reform. According to Rapatsa (2014), transformative constitutionalism in South Africa is not merely a legal framework, but a socio-political project aimed at fostering equality, human dignity, and democratic participation, requiring active commitment from the state and civil society.

The very nature of constitutional amendments in South Africa reflects the goals of transformation and democratic inclusivity. Unlike many federations where amendments tend to reinforce central authority or preserve rigid federal structures, South Africa's amendment process is more fluid, yet substantively grounded in promoting social justice and equity. As noted by Roux (2009) [36], the judiciary is encouraged to interpret the Constitution "in its best light," promoting progressive political values without succumbing to the pitfalls of politicized adjudication. This approach has helped courts maintain legitimacy while still advancing transformation.

An essential feature of transformative constitutionalism in South Africa is the integrated role of all three branches of government—legislature, executive, and judiciary—in achieving constitutional objectives. Rapatsa *et al*. (2012) [34] argue that this model fosters inclusive governance, calling for participatory constitutionalism where ordinary citizens also share responsibility for realizing constitutional ideals. This idea finds resonance in the amendment process, which includes robust legislative debates and, in some cases, public engagement, particularly when rights are implicated.

However, scholars have raised concerns that transformative constitutionalism is often interpreted predominantly through a judicial lens, thereby placing disproportionate responsibility on courts to deliver socio-economic transformation. Klaaren (2023) [24] critiques this trend, suggesting that South African constitutionalism could benefit from integrating elements of directive constitutionalism that empower the legislature as an equal agent of transformation. The imbalance risks judicial overreach while also undermining the democratic accountability of elected bodies tasked with implementing reform.

Amendments related to land rights and resource redistribution have further tested the resilience of South Africa's transformative constitutional order. In a study on mineral rights adjudication, Dugard (2021) [14] illustrates how the courts navigate conflicts between conservative governmental policies and more radical community-based transformation claims. The judiciary's willingness to entertain increasingly disruptive interpretations of constitutional rights underscores its evolving understanding of transformation as a dynamic and contested process.

Despite the constitutional framework's transformative aspiration, socio-economic inequality persists, often fuelling critiques that the Constitution lacks the tools or political backing for effective change. Fowkes (2015) [17] notes that the South African experience, while influential globally, reflects a broader challenge in translating constitutional ideals into material outcomes. Therefore, future amendment practices and jurisprudence must prioritize closing the gap between symbolic legal promises and the lived realities of marginalized communities.

Judicial Oversight in South Africa – Rights-Based Scholarship

Judicial oversight in South Africa plays a pivotal role in enforcing the country's transformative constitutional vision, particularly through a rights-based approach anchored in constitutional supremacy and the enforcement of socio-economic rights. Following the adoption of the 1996 Constitution, the South African judiciary, particularly the Constitutional Court, was vested with expansive powers to enforce justiciable rights and ensure that the state is accountable for implementing constitutional promises. The judiciary's interventions in this context have been instrumental in both shaping the public understanding of rights and holding the executive accountable, especially in areas where parliamentary oversight is ineffective or compromised. As observed by Venter (2019) [43], courts have had to assume a stabilizing role in foreign policy and international obligations, given the structural weaknesses in parliamentary mechanisms to control executive action. The judiciary's proactive role is further illustrated in landmark socio-economic rights decisions such as *Gundwana v Steko Development*, where the Constitutional Court insisted on meaningful judicial scrutiny before allowing the sale of mortgaged homes, thereby operationalizing Section 26(3) of the Constitution, which protects housing rights. This case, discussed by Walt & Brits (2012) [44], demonstrates the courts' commitment to a nuanced rights-based adjudication even in complex financial contexts. In addition to adjudicating individual rights claims, the Constitutional Court has also embraced structural interdicts and supervisory jurisdiction, which allows it to oversee long-term compliance with its orders, particularly in the implementation of socio-economic programs. This jurisprudence, as Christiansen (2011) [9] notes, illustrates the Court's willingness to innovate procedurally in order to promote substantive justice. However, while the judiciary's

transformative agenda is lauded, scholars such as Dugard (2016) [15] caution that the Constitutional Court's decisions are sometimes less transformative than those of lower courts, suggesting a potential misalignment between institutional design and judicial impact. Moreover, the growing reliance on judicial intervention for policy implementation raises concerns about democratic legitimacy and the counter-majoritarian difficulty, which is also evident in India. Henrico (2023) [19] explores this challenge, arguing that courts must carefully balance constitutionalism with judicial restraint to avoid encroaching on political functions. Yet, despite these criticisms, the South African judiciary continues to maintain high levels of public trust and legitimacy, largely due to its consistent commitment to upholding the dignity, equality, and socio-economic rights of marginalized communities. The judiciary's ability to creatively interpret rights and enforce them with contextual sensitivity ensures that judicial oversight remains central to South Africa's democratic consolidation and pursuit of constitutional justice.

Comparative Literature Analysis

The comparative literature on constitutional amendments and federalism in India, Canada, and South Africa reveals distinct paths shaped by each nation's historical, socio-political, and institutional contexts. While each country embodies a federal or quasi-federal structure, the way constitutional amendment powers interact with federal principles differs substantially, influencing the durability of the federal bargain and the role of judicial review. One of the primary distinctions highlighted in the literature is the relative rigidity or flexibility of constitutional amendment procedures and how this impacts federal balance (Dixon, 2011) [12].

In India, constitutional flexibility has enabled successive governments to pursue centralizing agendas through frequent amendments, raising questions about the stability of federalism. This centralization trend is mediated only partially by the judiciary through doctrines like the Basic Structure, which places substantive limits on amendment powers (Albert, 2009) [2]. In contrast, Canada features one of the most difficult amendment regimes in the world, with complex multi-tiered requirements involving federal and provincial consent. This has resulted in a phenomenon described as "constructive unamendability," where constitutional evolution occurs primarily through judicial interpretation and informal mechanisms (Albert, 2015) [3, 4].

South Africa's constitution, shaped by a transformative and rights-oriented agenda, occupies a middle ground between rigidity and flexibility. The formal amendment process is tiered and deliberate, but not so rigid as to hinder necessary reforms. The South African Constitutional Court plays a more proactive role in ensuring that amendments align with the transformative ethos of the Constitution, rather than adhering to a formalistic or procedural review (Kincaid & Tarr, 2005) [23].

From a comparative standpoint, the Canadian system prioritizes the preservation of regional autonomy by embedding multiple veto points in its amendment formula, whereas India's Parliament wields more concentrated power, often sidelining states in the amendment process (Aroney, 2018). South Africa's model emphasizes public participation and rights-based values in both constitutional design and amendment, reflecting a transformative approach rather than traditional federal balancing (Dixon, 2011) [12].

Scholars like McDonald (1999) [29] have drawn comparisons between Canada's failed constitutional negotiations, including the Meech Lake and Charlottetown Accords, and South Africa's successful transition to a negotiated constitutional democracy. South Africa succeeded, according to McDonald, because its process was more inclusive and was grounded in a shared vision of transformation, unlike the fragmented consensus in Canada. These differences underscore the importance of procedural legitimacy, public involvement, and clear political commitment in achieving successful constitutional amendment and federal reform.

In wholesome, the literature shows that while all three jurisdictions share a federal structure, their experiences with constitutional amendment vary significantly in scope, procedure, and judicial interaction. The balance between stability and adaptability in constitutional design, mediated by institutions like the judiciary, plays a decisive role in shaping federal resilience and democratic legitimacy.

Conclusion and Research Gaps

This comparative analysis of constitutional amendments and federal balance in India, Canada, and South Africa reveals that the interplay between amendment procedures, judicial interpretation, and political context decisively shapes the trajectory of federalism in each jurisdiction. While India exhibits a pattern of centralizing constitutional change mitigated by judicial intervention through the basic structure doctrine, Canada relies on an exceptionally rigid amendment framework that often renders formal change politically unfeasible, resulting in judicial creativity and informal federal adjustments. South Africa's approach is uniquely transformative, embedding participatory and rights-based principles within a flexible yet principled constitutional framework that enables meaningful institutional reform. Across all three countries, the judiciary emerges as a critical actor in maintaining constitutional equilibrium, though its influence varies based on legal culture and institutional design. Despite the valuable insights offered by existing scholarship, significant research gaps remain. These include the lack of empirical analysis on the political negotiation processes behind amendments, the long-term impact of judicial rulings on federal governance, and the role of civil society in shaping constitutional discourse. Future research must also interrogate the relationship between constitutional morality, institutional trust, and the success of amendment practices, particularly in diverse and evolving democracies. Addressing these gaps will deepen our understanding of how constitutional design, judicial philosophy, and political commitment interact to sustain or weaken federal arrangements in pluralistic societies.

References

1. Abebe A. The substantive validity of constitutional amendments in South Africa. S Afr Law J,2014:131:656–694.
2. Albert RN. Nonconstitutional amendments. Can J Law Jurisprud,2009:22(1):5-47.
3. Albert RN. The conventions of constitutional amendment in Canada [Internet]. Osgoode Hall Law

Journal, 2015 [cited 2025 Aug 20]:53:399–441.
4. Albert RN. The difficulty of constitutional amendment in Canada [Internet]. Alberta Law Review, 2015 [cited 2025 Aug 20]:39:85.
5. Aroney N. Formation, representation and amendment in federal constitutions. Univ Queensland TC Beirne Sch Law Legal Stud Res Pap Ser, 2006.
6. Breda V. Canada: a multinational constitution and the obligation to negotiate [Internet], 2018 [cited 2025 Aug 20].
7. Chakraborty S. Constitutional Amendment in India: An Analytical Reconsideration of the Doctrine of 'Basic Structure' [Internet]. SSRN, 2008 [cited 2025 Aug 20].
8. Choudhry S, Hume N. Federalism, Devolution & Secession: From Classical to Post-Conflict Federalism. [Internet], 2010 [cited 2025 Aug 20].
9. Christiansen E. Transformative constitutionalism in South Africa: Creative uses of Constitutional Court authority to advance substantive justice [Internet]. J Gend Race Justice,2011 [cited 2025 Aug 20]:13:575.
10. Daly P. A Supreme Court's place in the constitutional order – contrasting recent experiences in Canada and the United Kingdom [Internet], 2015 [cited 2025 Aug 20].
11. Deva S. Constitutional Politics over (Un)Constitutional Amendments [Internet]. The Law and Politics of Unconstitutional Constitutional Amendments in Asia, 2021 [cited 2025 Aug 20].
12. Dixon R. Constitutional amendment rules: a comparative perspective. SSRN Electron J, 2011.
13. Dodek A, Way M. The Supreme Court of Canada and appointment of judges in Canada [Internet], 2017 [cited 2025 Aug 20].
14. Dugard J. Evaluating transformative constitutionalism in South Africa: A view from mineral rights adjudication [Internet]. Nordic J Hum Rights,2021 [cited 2025 Aug 20]:39(4):373–90.
15. Dugard J. Testing the transformative premise of the South African Constitutional Court [Internet]. Int J Hum Rights,2016 [cited 2025 Aug 20]:20(8):1132–60.
16. Faga HP, Aloh F, Uguru U. Is the Non-Justiciability of Economic and Socio-Cultural Rights in the Nigerian Constitution Unassailable? [Internet], 2020 [cited 2025 Aug 20].
17. Fowkes J. Transformative constitutionalism and the global South: The view from South Africa [Internet], 2015 [cited 2025 Aug 20].
18. Gentili G. Canada: protecting rights in a 'worldwide rights culture' – an empirical study of the use of foreign precedents by the Supreme Court of Canada (1982–2010) [Internet], 2013 [cited 2025 Aug 20].
19. Henrico R. Judicial review in South Africa and India: Advancing constitutionalism or undue activism? [Internet]. Obiter, 2023 [cited 2025 Aug 20]:43(4).
20. Hernández JE, Sandoval DV, Ordoñez PE, Gavilanes LA. Judicial Balancing in Constitutional Law. [Internet], 2024 [cited 2025 Aug 20].
21. Jasdeep. Understanding Judicialization of Mega-Politics: The Basic Structure Doctrine and Minimum Core [Internet], 2012 [cited 2025 Aug 20].
22. Kelly JB, Murphy M. Shaping the constitutional dialogue on federalism: Canada's Supreme Court as meta-political actor [Internet]. Publius-the Journal of Federalism, 2005 [cited 2025 Aug 20]:35:217–43.
23. Kincaid J, Tarr GA. Constitutional origins, structure, and change in federal countries. Forum Fed, 2005.
24. Klaaren J. A comment from a South African perspective on directive and transformative constitutionalism [Internet]. Verfassung in Recht und Übersee, 2023 [cited 2025 Aug 20].
25. Krishnaswamy S. Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine [Internet], 2010 [cited 2025 Aug 20].
26. Liu J. Judicial Review of Constitutional Amendments: India's Experiences. [Internet], 2009 [cited 2025 Aug 20].
27. Lorenz A. Constitutional negotiations in federal reforms: interests, interaction orientation and the prospect of agreement [Internet]. Regional & Federal Studies, 2011 [cited 2025 Aug 20]:21:407–25.
28. MacKay A. The Supreme Court of Canada and federalism: does / should anyone care anymore? [Internet], 2001 [cited 2025 Aug 20].
29. McDonald K. Constitutional negotiations in Canada and South Africa: a comparative analysis, 1999.
30. Narnolia K. The ache of amendment – lessons from the story of Indian federalism. SSRN Electron J, 2020.
31. Newman WJ. The constitutional status of the Supreme Court of Canada [Internet]. Supreme Court Law Review, 2009 [cited 2025 Aug 20].
32. Niazi T. Judging Constitutional Amendment: A Critique of South Asia's Basic Structure Doctrine [Internet]. SSRN Electron J, 2023 [cited 2025 Aug 20].
33. Patil N. Reconciling Constitutional Ideals: A Contemporary Reassessment of the Basic Structure Doctrine [Internet]. GLS Kalp J Multidiscip Stud, 2025 [cited 2025 Aug 20].
34. Rapatsa M, Nkosi B, Kgopa T. South Africa's transformative constitutionalism [Internet], 2012 [cited 2025 Aug 20].
35. Raza A. The Doctrine of 'Basic Structure' in the Indian Constitution: A Critique [Internet]. SSRN Electron J, 2015 [cited 2025 Aug 20].
36. Roux T. Transformative constitutionalism and the best interpretation of the South African constitution [Internet], 2009 [cited 2025 Aug 20]:20:258–85.
37. Sengupta A, Sharma R. Appointment of Judges to the Supreme Court of India. [Internet], 2018 [cited 2025 Aug 20].
38. Simon C. Building a Robust Federalism in India: Constitutional Provisions, Practical Challenges, and Pathways to Overcome [Internet]. Int J Multidiscip Res Arts Sci Technol, 2024 [cited 2025 Aug 20].
39. Singh M, Bhatia RP. Foundation and historical evolution of Indian constitutionalism. Indian Historical Review,2008:35:173–207.
40. Singh N. Governance and Reform in India [Internet]. Journal of International Trade & Economic Development, 1997 [cited 2025 Aug 20]:6(2):179–208.

41. Sripati V. Constitutionalism in India and South Africa: A comparative study from a human rights perspective. Legal Stud, 2007.
42. Tully J. The crisis of identification: the case of Canada [Internet]. Political Studies, 1994 [cited 2025 Aug 20]:42:77–96.
43. Venter F. Judicial defence of constitutionalism in the assessment of South Africa's international obligations [Internet]. Potchefstroom Electron Law J, 2019 [cited 2025 Aug 20]:22.
44. Walt AV, Brits R. Judicial oversight over the sale in execution of mortgaged property [Internet], 2012 [cited 2025 Aug 20].
45. Wright W. The Political Safeguards of Canadian Federalism. [Internet], 2016 [cited 2025 Aug 20].