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New Dimension of
Judicial Review of the
Constitutional
Amendments
(A study with special reference
to Article 31A, 31B and 31C
read with 9th Schedule of the
Indian Constitution)

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**New Dimension of Judicial Review of the Constitutional
Amendments**
**(A study with special reference to Article 31A, 31B, 31C read with 9th
Schedule of the Indian Constitution)**

By: Shalabh

ABSTRACT:

Judicial Review is the part of the basic structure of the constitution , As in the Indian constitution Article -13 Talks about the judicial Review . New dimension to the judicial review is given in various landmark judgements, As judicial Review gives power to the court to look upon the grey side of any law which is reviewed judicially As Art-32 And Art-226 the Supreme court and High-court are having such powers .

As the society is changing rapidly and for the changes new laws are also being introduced and many laws are having its grey side and those laws are reviewed judicially . the emergence of article 31(1) which contains 5 sub-clauses. And those 5 subclauses cannot be reviewed judicially , Whereas Art 31-b the 9th schedule was established and the law which is included in 9th schedule cannot judicially reviewed but this aspect is laterally changed in 2007 with landmark judgement of (I.R Coelho v State of Tamil Nadu). Moreover, Article 31c was Amended by constitution 42 nd amendment act 1976 and the protection of article 31C was extended to the law giving effect to all or any of the principal content in part 4 start change in cooperative in article 31C by the 42 nd amendment was stuck down by the Supreme Court in Minerva Mills limited V/s Union of India as beyond the amending power of parliament since it destroys the basic structure of the constitution. The court held that the constitution was founded on the bedrock of the balance between Part 3 and part 4 to give absolute primary to one over the other, was to disturb the harmony of the constitution the harmony and balance between the fundamental rights and directive principle was an essential feature of the basic structure of the constitution. So we can clearly say that the government wants to keep the power in their own hands in pre pre-independence era, as this can be the positive lookout for protecting the Rights of the people by the government. This step was needed and plays a very important role at that time. But now the time has changed there are many political issues while making any law so for this judicial review is very much necessary and Many times state and centre government comes into the frame of conflict between each-other-regarding any law.

Thus in this case Judicial review is must so that the court can protect the rights of the common people and implement that law with proper caution and care while looking at its grey side of the law. “Amend your procedures and your doings, to improve in the future”.

INTRODUCTION:

Judicial review, is in a sense, the very life breath of the Constitution of a vibrant, working constitutional democracy. It is that which provides sinews for enforcement of rights, protection of liberty and upholding the rule of law. Article 13 of Indian constitution deals with the Judicial review, As this concept of Judicial Review has officially come into being (MARBURY.V/S MADISON in USA), Previously this concept was used in Britain. If we talk about India the concept of judicial review came from the case (CHANDRA KUMAR V/S UNION OF INDIA). With Art-32 and Art-226, the Supreme court and High court is having the power to judicial Review, The court can review the legislative actions . Therefore Judicial Review is the part of the basic structure.

As Article - 31A was introduced from First Amendment act 1951. This article was introduced because the government has to do lots of land reforms regarding agriculture trade reforms business reforms so that's why this article was added. In 1951 Article-31 was amended many times from the 4th constitutional amendment and 17th constitutional amendment. Article 31A states that saving of laws provides for acquisition of states-:Law made under article 31A By the government regarding trade, land reforms, agriculture, businesses. if these laws are violating Article 14 and 19 then also these laws will exist. We can also say that article 31 a is immune from judicial review Until the signature of the president on that judicial review petition is not there, until that point we can review that petition.

Article - 31B - states the validation of certain acts and regulation- from the Article-31B, 9th schedule was introduced both article 31B and 9 schedule is added from first constitutional amendment 1951. According to this article the central or and state government is having the power to make any laws and put that Law in 9 schedules then that law will not be Treated as violation of fundamental rights Nor judicially reviewed.

Article - 31C - Was added by the 25th amendment 1971 and amended by 42nd and 44th amendments remain part of the fundamental rights . Article31C saved certain loss giving effect

to directive principles from being questioned and validated on grounds of inconsistency with Article-14, and 19.

EXISTING LAWS:

As Article-: 31A Save certain laws providing for acquisition of estates etc from being questioned on the grounds of inconsistency with Article-: 14, and 19.

This law in its 5 clause states that any law,

- Made regarding the Acquisition of any state or right By the government or management of any property.
- Creates a merger of any two or more companies.
- Received the benefits of any agreement or lease or license.

(Will not be void or null until It has received the assent of president)

In case -: AMBICA MISHRA V/S STATE OF UP

Uttar Pradesh government put a ceiling on a large number of permissible landholdings under the Landholding acts ,1960.

Also under section-3(17) of land acquisition act, only the 'male' was considered as the landholder and owner whereas 'unmarried female' or 'woman whose husband is the landowner', wasn't considered as the owner of the land. Apart from the acquisition part, many people have also looked at this discriminatory side of the Act. The court upheld the constitutional validity of Article 31(1)(a).

As Article - 31B:- Save certain acts and regulations listed in ninth schedule from being challenged on the ground of inconsistency with any of the fundamental rights. As from the case (I.R Solvo v/s State of Tamil Nadu) Supreme court has stated that from the date 24 April 1973 rules and laws made under the ninth schedule or included under the night schedule with article 31A, 31B they can be challenged under the court as they are violating the fundamental rights article 14,15,19 and basic structure of the Constitution. In the present scenario under the nine schedule there are 282 acts and in 1951 in the ninth schedule there are only 13 Acts.

As Article – 31C:- Save certain laws giving effect to directive principles from being questioned and invalidated on the grounds of inconsistency with article 14 and 19.

1. As in the 25th amendment act 1971 it stated that the principle of article 30 (9B) and 30 9C to follow this principle if we make any law for following these principles and that law is violating article 14 and 19 then that law will be valid it will not become null and void.
2. And if any law is made by the government for following the principle of article -: 39 B,39 C then that Law will not be challenged judicially no judicial review will be there.

But in case (KESHAVANANDA BHARTI v/s STATE OF KERALA) supreme court states that any law which is made to follow the principle of article 31B and 31C and if that law is violating the article 14 and 19 then that law will not be repealed, but in second clause is stuck down by the supreme court as it states it is not valid (that any law made to follow the principle of Art 39 B, Art 39C that law will not be challenged judicially) This part is stuck by the supreme court in this case. And in Present scenario only part 1 of Art 31C is valid) and from the case (MINERVA MILL v/s UNION OF INDIA) Supreme court states that Art 31c will only applicable on Art-39 B, 39C not on all DPSP's, and stated that judicial review is a part of basic structure it cannot be Amended.

STATEMENT OF PROBLEM:

As judicial review is a part of the basic structure of our Constitution so it cannot be amended. As when our constitution is made then these laws are inserted, In the early independent time the society is not so developed and not so flexible, So these Articles are made as per the era of that time. Because these kinds of laws are needed at that time. As gov has restricted the judicial review in Article Sec 31 A, B, C when these articles are inserted into the constitution. But today's scenario is completely different As in the early independence era gov has restricted the judicial review for some aspects given in Art-31 A, B, C it is kind of needed at that time. But in the current scenario, judicial review should be available for each and every Articles and every part of the constitution. Reason behind the introduction of Article 31 A, B, and C was very appropriate at that early independent time but later on political class started involving politics in it. As judicial review is essential for maintaining the supremacy of the constitution, it is essential for checking the possible misuse of power by Legislature and executive. Judicial review is a device for protecting the rights of the people. Therefore now no part of the constitution should restrict itself from the judicial review. Now also Judicial review is restricted by the Art 31-A, law made on the aspects (Trade, Agriculture, land reform,

Business, Industry) as judiciary plays a very important role as a protector of the constitutional values that the founding father has given us. They try to undo the harm that is being done by legislature to legislature and executive and also they try to provide every citizen what has been promised by constitution under the Directive Principle of State Policy all this is possible thanks to the power of judicial review. The principle of judicial review became an essential feature of written constitutions of many countries. Seervai in his book *Constitutional Law of India* noted that the principle of judicial review is a familiar feature of the Constitutions of Canada, Australia and India, though the doctrine of Separation of Powers has no place in strict sense in Indian Constitution, but the functions of different organs of the Government have been sufficiently differentiated, so that one organ of the Government could not usurp the functions of another.

The initial years of the Supreme Court of India saw the adoption of an approach characterised by caution and circumspection. Being steeped in the British tradition of limited judicial review, the Court generally adopted a pro-legislature stance. This is evident from the rulings such as *A.K. Gopalan*, but however it did not take long for judges to break their shackles and this led to a series of right to property cases in which the judiciary was loggerhead with the parliament. The nation witnessed a series of events where a decision of the Supreme Court was followed by a legislation nullifying its effect, followed by another decision reaffirming the earlier position, and so on. The struggle between the two wings of government continued on other issues such as the power of amending the Constitution.⁶ During this era, the legislature sought to bring forth people-oriented socialist measures which when in conflict with fundamental rights were frustrated on the upholding of the fundamental rights of individuals by the Supreme Court. At the time, an effort was made to project the Supreme Court as being concerned only with the interests of propertied classes and being insensitive to the needs of the masses. Between 1950 and 1975, the Indian Supreme Court had held a mere one hundred Union and State laws, in whole or in part, to be unconstitutional.

RESEARCH QUESTION

Should schedule – 9 be subjected to Judicial Review, The laws inserted under schedule 9 listed under gov in Article 31A, B can be subjected to judicial review...

HYPOTHESIS

The following hypothesis would be examined in this study:

The new Dimension of the judicial review, A study with special reference to Art – 31A, 31B, 31C R/W 9th schedule of the constitution. As in present time the judicial review must be a part of every part of the constitution including Art -31 A, B, C also Judicial Review is a part of Basic Structure. Not to mention Judicial Review plays an important role to recognise any grey area in any law made by the government.

OBJECTIVES

As judicial review is the important part of our constitution , As previously during the early time of the independence era the judicial review has not been given importance and has been restricted by the gov as in Art 31 A, B, C including 9thschedule.

- To understand the meaning, scope and Establishment of Judicial Review .
- To understand the historical aspects of Judicial Review in accordance with Article – 31 A, B, C
- To understand the need and importance of judicial review in India
- To analyse the concept of 9th schedule and the laws included in 9th schedule by Article 31 A, B.

REVIEW OF LITERATURE

Area of Research : New Dimension of judicial Review of constitutional amendment with special reference to Art -31A,B,C R/W 9th schedule of the constitution .

Books- :

- Bare Act Of The Indian constitution
- Ascent's Law Journal Book -: This book provides us with all the law journals which have been published in recent times.
- (Narendra Kumar) Constitutional law of India-: This book provides us with proper explanation of constitutional law and Each and every part of the constitution is explained separately.
- Article by:(Gurnam Chandra Rao) Judicial Review in India-: This article provides us with the complete knowledge of the judicial review , The history of judicial review And the present scenario of the judicial review . And the growth of the judicial Review from the independence era.

- Article by: (Fayaz Ahmed Bhatt) Doctrine of Judicial Review in India -: This Article , provide us with the knowledge of Article 13 Judicial Review and The power of the judicial review . And many landmark judgements regarding the doctrine of judicial review.
- Indian constitutional law by prof. M.P Jain -: This article provides us with the research project done by the author . Also depicts the concept of Doctrine of Eminence in American constitution.
- In the landmark judgement of supreme court(I.R Coelho v State of Tamil Nadu) -: the 9 judges bench was presided by mr Justice YK Sabharwal, the then CJI delivered a unanimous verdict on 11.1.2007 in I.R Coelho vs Tamil nadu and others upholding the basic structure doctrine and the authority of judiciary to review any such law , which destroy or damages the basic structure as indicated in Art.21 read with Art 14 , 19 and the principle underlying there under, even if they have been put in 9th schedule after April 14, 1973, this case is properly known as The ninth schedule case due to the politics involved and exhaustive discussion on the validity of our Indian constitution .(Keshav Nanda Bharti vs State of Kerala is also a landmark judgement regarding this aspects)

CHAPTERIZATION

The following chapter scheme is proposed to carry the research in a systematic way-:

- Introduction
- Evolution of Laws
- Judicial Review and Said Articles RW scheduled 9
- Legal Provision regarding judicial review
- Conclusion

CONCLUSION

Judicial Review growth is an inevitable response of the judiciary to ensure proper check on the exercise of public Power, Growing Awareness of the Rights in the people trend of the judicial scrutiny of every governmental. Action and the readiness of the executive to seek judicial determination of debatable or controversial issues As Art -: 13 tell us about the judicial Review. As per Art - 32 in Supreme court and Art - 226 in High court . As in early independence

era judicial review is restricted by the Government, As it was the need of that time As in the Art 31 a- Under this Art laws which are made by the gov related to 5 Aspects (Land, Agriculture, Business, Trade) and if these are violative of the Art -14, 19 Then also these law will exist, And these laws are not judicially reviewed , But this step is necessary to take at that point of time as this for the benefits of people Rights and for protecting the rights of the people this step was taken by the gov , But now the society is changed completely and These laws are become a ground of politics in today era .

And under Art 31B also 9th schedule was added and if any law made by the government is included under the 9th schedule then it is free from judicial review But after the landmark judgement of (I.R Coelho v State of Tamil Nadu) – this Rule was changed and the laws included in 9th schedule after 24 April 1973 can be now judicially reviewed.

And Article 31C -:Thus give primacy it to directive principles specified in article 39 by and the article 39 C what the fundamental rights conferred by the article 14,19,31.The object behind the 25th amendment was to get over the difficulties place in the way of giving effect to the directive principle of state policy .This article was inserted by the 25th amendment and was upheld by the supreme court in Kesavananda Bharati versus state of Kerala how are the quotes talk down the later part of article 31 C the declaratory clause and unconstitutional as it was destructive of the basic feature of the constitution the judicial review. The Supreme Court had thus preserved its power of judicial review on the question whether the law made by legislature has nexus with the principal enshrined in article 39 B and 39 C.

Art-31C was Amended by constitution 42nd amendment act 1976 and the protection of article 31 see was extended to the law giving effect to all or any of the principal content in part 4 start change in corporative in article 31C by the 42nd amendment was stuck down by the Supreme Court in Minerva Mills limited V/S union of India As beyond the amending power of parliament since it destroy the basic structure of the constitution the court held that the constitution was founded on the bedrock of the balance between Part 3 and part 4 to give absolute primary to one over the other. The harmony and balance between the fundamental rights and directive principle was an essential feature of the basic structure of the constitution.

BIBLIOGRAPHY

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- Ascent Law Journal book
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- Madhav Khosla (India's Founding moment) book

This case study is for information purpose only. Nothing contained herein shall be deemed or interpreted as providing legal or investment advice.