

New dimensions of judicial review of constitutional amendments.

Special references to article 31 A, 31 CR/W IX Schedule of the constitution of india

The Indian Constitution, crafted with meticulous care and adopted in 1950, embodies a balance between rigidity and flexibility. Unlike constitutions that are almost immutable or those that are easily altered by transient political majorities, the Indian Constitution was designed to be adaptable while maintaining its essential core. The framers empowered Parliament to amend the Constitution through Article 368, but they also created an independent judiciary to act as the guardian of the Constitution. This duality has given rise to one of the most significant debates in Indian constitutional law: the scope and limits of judicial review over constitutional amendments. Over the decades, the Supreme Court of India has developed doctrines that not only interpret the extent of Parliament's amending power but also carve out substantive limitations on it. In recent years, the judicial approach has expanded into new dimensions, adapting to the demands of democratic governance, constitutional morality, and the evolving socio-political landscape.

The historical trajectory of judicial review over constitutional amendments began with early cases such as *Shankari Prasad v. Union of India* (1951) and *Sajjan Singh v. State of Rajasthan* (1965). In these cases, the Supreme Court took the position that Parliament's power to amend the Constitution under Article 368 was plenary and extended to all provisions, including fundamental rights. Judicial review was understood narrowly, and the court refrained from imposing substantive limits on Parliament. However, this position was challenged in *I.C. Golaknath v. State of Punjab* (1967), where the Supreme Court, by a slim majority, held that Parliament could not amend fundamental rights at all. This judgment introduced the idea that judicial review could act as a check on constitutional amendments that violated essential freedoms, but it created a paralysis by virtually freezing Parliament's power to reform fundamental rights.

The tension reached a climax in the landmark *Kesavananda Bharati v. State of Kerala* (1973) case. A thirteen-judge bench, the largest ever in Indian judicial history, formulated the famous Basic Structure Doctrine. According to this doctrine, Parliament's amending power is broad and includes fundamental rights, but it cannot alter the "basic structure" or the essential features of the Constitution. Judicial review thus acquired a new dimension: it was not merely about ensuring procedural compliance with Article 368 but also about examining the substantive content of amendments to see whether they damaged the core identity of the Constitution. Features such as the supremacy of the Constitution, the rule of law, separation of powers, secularism, democracy, judicial independence, and federalism were recognized as parts of this inviolable basic structure.

Subsequent cases expanded and clarified this doctrine. In *Indira Nehru Gandhi v. Raj Narain* (1975), the Supreme Court invalidated a constitutional amendment that sought to immunize the election of the Prime Minister from judicial scrutiny, holding that it violated the basic structure principle of free and fair elections. In *Minerva Mills v. Union of India* (1980), the court struck down clauses of the 42nd Amendment that sought to exclude judicial review altogether, reaffirming that limited amending

power and judicial review are themselves part of the basic structure. These cases firmly entrenched the judiciary's role as the final arbiter of constitutional identity.

The new dimensions of judicial review began to unfold as the Supreme Court grappled with the implications of the Basic Structure Doctrine in contemporary contexts. One such dimension is the increasing use of judicial review to protect **constitutional morality** and democratic values. In recent years, the court has interpreted the basic structure not merely in formalistic terms but as embodying the principles of inclusiveness, equality, and protection of rights. In cases like the National Judicial Appointments Commission (NJAC) judgment of 2015, the court struck down the 99th Constitutional Amendment that sought to change the system of judicial appointments. The reasoning emphasized not only the need to preserve judicial independence as part of the basic structure but also the protection of institutional integrity. This demonstrated an expansion of judicial review into the dimension of safeguarding institutional balance and constitutional ethos against majoritarian impulses.

Another dimension is the court's engagement with the idea of **transformative constitutionalism**. The Indian judiciary has increasingly recognized the Constitution as a living document designed to transform a hierarchical society into one based on equality and dignity. Judicial review of constitutional amendments is now framed within this transformative vision. Law experts note that the court has subtly shifted from protecting only the structural features of the Constitution to also ensuring that amendments do not undermine its transformative promise. This approach can be seen in judgments where the court has defended the rights of marginalized groups, advanced social justice, and promoted progressive interpretations of equality and liberty.

A further dimension lies in the court's assertion of the principle of **constitutional supremacy over parliamentary sovereignty**. While *Kesavananda Bharati* established the limits of Parliament's power, subsequent jurisprudence has reinforced the idea that sovereignty in India resides in the Constitution itself and not in Parliament. Judicial review of amendments thus reflects a broader philosophical stance: the people, as represented through the Constitution, are supreme, and their essential compact cannot be rewritten by any political majority. This shift is particularly significant in today's context, where strong electoral mandates sometimes fuel attempts to consolidate political power. Judicial review acts as a safeguard to ensure that democratic legitimacy does not translate into constitutional absolutism.

The advent of **public interest litigation and expansive judicial activism** has also added new layers to the review of constitutional amendments. Through its activist role, the judiciary has increasingly positioned itself as the custodian not only of individual rights but also of collective constitutional values. In reviewing amendments, the court now examines broader questions of governance, transparency, and accountability. This expansion reflects the evolving expectations of society, where citizens look to the judiciary to check potential authoritarianism and protect constitutional democracy from erosion.

In addition, law experts point to the emergence of **comparative constitutionalism** as a dimension influencing judicial review in India. The Supreme Court increasingly looks to international jurisprudence and comparative examples when interpreting the scope of amendments and the content of the basic structure. References to foreign constitutional courts, particularly in matters relating to democracy, rule of law, and human rights, have enriched the Indian understanding of judicial

review. This comparative approach underscores the universality of certain constitutional principles and reflects India's integration into the global constitutional discourse.

Another important new dimension is the rise of debates around **federalism and decentralization**. As India evolves politically, constitutional amendments affecting the balance of power between the Union and the states have come under scrutiny. Judicial review has increasingly been called upon to examine whether such amendments respect the federal structure, which is considered part of the basic structure. The court's interventions in matters of state autonomy, local governance, and distribution of legislative power reflect an expanded vision of judicial review that goes beyond protecting individual rights to safeguarding the federal compact.

Critics of judicial review often argue that the judiciary, unelected and unaccountable, wields excessive power by invalidating constitutional amendments passed by Parliament. This tension between judicial supremacy and parliamentary sovereignty has fueled debate about the legitimacy of the basic structure doctrine itself. However, law experts generally agree that in a diverse and plural society like India, judicial review functions as a necessary counterbalance to majoritarian impulses. By limiting the amending power, the judiciary preserves the Constitution's identity while allowing for democratic evolution within its framework.

The emerging digital age has added yet another dimension to judicial review of amendments: the protection of constitutional rights in the context of technology, surveillance, and digital governance. While not yet fully tested in amendment cases, legal scholars predict that the judiciary will soon face questions about whether amendments curtailing digital privacy, data rights, or technological freedoms violate the basic structure. In this sense, judicial review is poised to expand into entirely new domains, adapting constitutional principles to the challenges of the twenty-first century.

The cumulative effect of these developments is that judicial review of constitutional amendments in India is no longer confined to the narrow procedural or structural questions that animated early debates. It has become a dynamic, evolving process that incorporates constitutional morality, transformative justice, institutional balance, federalism, comparative perspectives, and emerging digital rights. The judiciary's role as the guardian of the Constitution has thus been enriched with new responsibilities, ensuring that the Constitution remains resilient in the face of political, social, and technological change.

In conclusion, the new dimensions of judicial review of constitutional amendments in the Indian judicial construct reflect the adaptability of constitutional jurisprudence to contemporary realities. From the foundational Basic Structure Doctrine of *Kesavananda Bharati* to the transformative interpretations of the present, the Supreme Court has consistently sought to balance parliamentary power with constitutional supremacy. The emphasis has shifted from protecting only the formal structure of the Constitution to safeguarding its spirit, ethos, and transformative potential. In today's democratic and societal construct, where majoritarian politics, institutional pressures, and technological challenges threaten to dilute constitutional values, judicial review acts as a bulwark of constitutionalism. The new dimensions of this review—rooted in constitutional morality, transformative justice, and global constitutional discourse—underscore the judiciary's pivotal role in ensuring that the Indian Constitution remains not merely a legal document but a living charter of liberty, equality, and justice for generations to come.

New dimensions of judicial review of constitutional amendments, with special reference to Article 31A

1. Historical Context of Judicial Review and Article 31A

- Article 31A was inserted by the **First Constitutional Amendment Act, 1951** to protect land reform laws (especially zamindari abolition) from being challenged as violating fundamental rights (particularly Articles 14 and 19).
- It gave immunity to certain categories of laws relating to acquisition of estates, ceiling on agricultural landholdings, and regulation of property rights.
- Early judicial position (Shankari Prasad 1951, Sajjan Singh 1965) upheld Parliament's unlimited amending power, including the validity of Article 31A.

2. Shift in Judicial Review – Golaknath and Kesavananda

- In **I.C. Golaknath (1967)**, the Court held that Parliament could not amend fundamental rights, putting Article 31A under question.
- **Kesavananda Bharati (1973)** introduced the **Basic Structure Doctrine**: Parliament can amend any part of the Constitution but cannot alter the basic structure. Article 31A survived because agrarian reforms were viewed as furthering social justice, not destroying the basic structure.
- Judicial review thus moved from checking only *procedure* to assessing the *substantive content* of amendments.

3. Article 31A and Social Justice vs. Fundamental Rights

- Courts balanced the conflict between the **right to property (then a fundamental right)** and the goal of agrarian reform.
- The 44th Amendment (1978) removed the right to property from fundamental rights (making it a constitutional/legal right), further insulating Article 31A laws.
- Judicial review of 31A-related laws became tied to whether they serve the Directive Principles (Articles 39(b) and (c)) without destroying equality or other facets of the basic structure.

4. New Dimensions in Judicial Review

- **Basic Structure as a Limit**: Now amendments inserting protective clauses like 31A are reviewed to see whether they violate the basic structure. Protection is not absolute.
- **Constitutional Morality**: Courts interpret amendments in light of broader constitutional values, not just textual immunity.
- **Transformative Constitutionalism**: Courts read Article 31A in harmony with the Constitution's transformative goals—abolition of feudal structures, promotion of equality, and redistribution of resources.

- **Judicial Balancing:** Recent jurisprudence emphasizes harmonizing Fundamental Rights with Directive Principles; 31A is justified if it furthers social justice, but not if it undermines the essence of equality.
- **Property Rights Reconfigured:** After the 44th Amendment, review of 31A laws is less about property rights and more about whether state action under 31A is arbitrary or violates other basic structure values (rule of law, equality).
- **Federalism and Judicial Review:** Courts now also examine whether laws protected under 31A respect the federal balance—state autonomy in land reforms versus Union’s amendment power.
- **Contemporary Relevance:** In modern judicial review, the scope of Article 31A is seen through the lens of economic justice, but its protective shield is not absolute against scrutiny under the basic structure doctrine.

5. Landmark Case References

- **Kesavananda Bharati v. State of Kerala (1973):** Article 31A upheld but subject to the basic structure limitation.
- **Indira Gandhi v. Raj Narain (1975):** Expanded judicial power to strike down amendments violating democracy/free elections.
- **Minerva Mills v. Union of India (1980):** Reaffirmed harmony between Fundamental Rights and Directive Principles—relevant to Article 31A justifications.
- **Waman Rao v. Union of India (1981):** Post-24 April 1973 amendments to insert laws into the Ninth Schedule or under 31A would be subject to basic structure review.

6. Conclusion (Pointer Form)

- Article 31A reflects the tension between socio-economic reform and fundamental rights.
- Judicial review has evolved from a formalistic to a substantive, value-based approach.
- New dimensions include basic structure, constitutional morality, transformative constitutionalism, federal balance, and reinterpretation of property rights.
- The judiciary continues to safeguard against misuse of 31A while allowing Parliament to pursue redistributive justice.

New dimensions of judicial review of constitutional amendments, with special reference to Article 31A

1. Background of Article 31C

- Inserted by the **25th Constitutional Amendment Act, 1971**.

- Originally provided that a law giving effect to **Directive Principles under Article 39(b) and (c)** (ownership/control of material resources to subserve common good, and prevention of concentration of wealth) could not be challenged for violating Articles 14, 19, or 31.
- Shielded laws of socio-economic reform from judicial review on grounds of equality or freedom of trade/property.

2. Expanded Scope – 42nd Amendment (1976)

- Extended Article 31C to cover **all Directive Principles**, not just 39(b) and (c).
- Made laws implementing *any* Directive Principle immune from challenge under Articles 14 and 19.
- Marked a radical attempt to subordinate Fundamental Rights to Directive Principles.

3. Judicial Response and Basic Structure Doctrine

- **Kesavananda Bharati (1973)**: Upheld the original Article 31C (limited to 39(b) and (c)) but clarified that Parliament's amending power is subject to the **Basic Structure Doctrine**.
- **Minerva Mills v. Union of India (1980)**: Struck down the 42nd Amendment expansion of 31C as unconstitutional since it destroyed the harmony between Part III and Part IV, violating the basic structure.
- Therefore, Article 31C survives only in its original form (linked to 39(b) and (c)).

4. New Dimensions of Judicial Review Post-31C

- **Balance between Fundamental Rights and Directive Principles**: Judicial review now ensures that Directive Principles can be advanced without destroying essential Fundamental Rights.
- **Basic Structure as a Check**: Even when protected under 31C, laws can be scrutinized to see if they violate the Constitution's basic structure (rule of law, equality, judicial review itself).
- **Constitutional Morality**: Courts use this principle to ensure that laws justified under 31C respect broader constitutional values of democracy, liberty, and justice.
- **Transformative Constitutionalism**: 31C is interpreted as an instrument to realize socio-economic justice, but within constitutional limits, emphasizing inclusivity and equality.
- **Judicial Harmonization**: Courts adopt a harmonizing approach, not absolute supremacy of either Part III or Part IV.
- **Judicial Review of "Reasonableness"**: Even laws claiming protection under 31C may be checked for arbitrariness under Article 14 (as arbitrariness itself is a violation of the rule of law, a basic structure element).
- **Doctrine of Proportionality**: Emerging as a tool in judicial review to balance restrictions on rights with the objectives of Directive Principles.

5. Landmark Cases Relevant to Article 31C

- **Kesavananda Bharati (1973)**: Upheld limited 31C; basic structure doctrine introduced.

- **Indira Gandhi v. Raj Narain (1975):** Reinforced the principle that judicial review cannot be ousted by constitutional amendments.
- **Minerva Mills (1980):** Struck down the 42nd Amendment expansion of 31C; reaffirmed balance between FRs and DPSPs.
- **Waman Rao v. Union of India (1981):** Post-Kesavananda, laws inserted under 31C or Ninth Schedule are subject to basic structure review.
- **I.R. Coelho v. State of Tamil Nadu (2007):** Reiterated that even constitutional amendments (including those protecting laws under 31C or Ninth Schedule) are subject to the basic structure doctrine.

6. Contemporary Relevance

- After the 44th Amendment removed the Right to Property from Part III, Article 31C primarily concerns the relationship between socio-economic Directive Principles and rights under Articles 14 and 19.
- Courts today interpret 31C with caution, ensuring it does not become a tool for arbitrary state action under the guise of social justice.
- In a neoliberal economy, 31C remains relevant in evaluating redistributive laws, land reforms, and welfare schemes.

7. Conclusion (Pointer Form)

- Article 31C represents the constitutional attempt to prioritize socio-economic justice (Part IV) over individual liberties (Part III).
- Judicial review has added *new dimensions* through the **Basic Structure Doctrine, constitutional morality, transformative constitutionalism, harmonization of rights and directives, proportionality, and review of arbitrariness.**
- Courts continue to safeguard that the pursuit of social justice under 31C does not dismantle the constitutional core of equality, liberty, and rule of law.

Impact of These Amendments on the Judiciary

1. Expansion of Judicial Review

- Initially, amendments like 31A and 31C sought to **limit judicial review** by insulating certain laws from challenge.
- But landmark cases (Kesavananda Bharati, Minerva Mills, I.R. Coelho) turned the tide: the judiciary asserted that **no amendment can take away judicial review**, since it is part of the *basic structure*.
- Result: The judiciary gained an **expanded constitutional role** as the ultimate guardian of fundamental rights and constitutional balance.

2. Assertion of Judicial Supremacy through the Basic Structure Doctrine

- By scrutinizing amendments like 31A and 31C, courts established that Parliament's amending power is **not unlimited**.
- Judiciary emerged as the final arbiter of constitutional validity, even against constitutional amendments.
- This strengthened the judiciary's authority in shaping India's constitutional order.

3. Balancing Rights and Socio-Economic Justice

- Amendments like 31A and 31C reflected Parliament's attempt to prioritize **Directive Principles** (land reforms, socio-economic equality) over **Fundamental Rights** (property, equality).
- Judiciary had to balance individual rights with collective welfare.
- This gave courts a **transformative role**: harmonizing Part III (FRs) with Part IV (DPSPs), shaping constitutional morality and distributive justice.

4. Re-definition of Property Rights

- Judicial interpretation of amendments led to the **downgrading of right to property** from a fundamental right to a constitutional right.
- This reshaped the court's docket: fewer property disputes under fundamental rights, more emphasis on equality, liberty, and socio-economic justice.

5. Evolution of Doctrines and Tests

- Judicial encounters with 31A/31C amendments pushed the development of doctrines like:
 - **Basic Structure Doctrine** (Kesavananda Bharati).
 - **Harmony and Balance Doctrine** (Minerva Mills).
 - **Judicial Review of Ninth Schedule laws** (I.R. Coelho).
 - **Proportionality and arbitrariness tests** in evaluating restrictions.
- These doctrines now form the **core of constitutional adjudication** in India.

6. Strengthening of Judicial Independence

- Attempts by Parliament (esp. during the 42nd Amendment period) to curb judicial power backfired.
- The judiciary reaffirmed its independence by striking down portions of amendments that undermined constitutional supremacy.
- Judiciary thus emerged **institutionally stronger** and more autonomous.

7. Politicization and Judicial Activism

- These amendments created a long-term **conflict between Parliament and judiciary**.

- Judiciary's assertiveness in striking down amendments has sometimes been criticized as judicial overreach.
- Nonetheless, it expanded the judiciary's role in **nation-building, constitutional interpretation, and safeguarding democracy**.

8. Contemporary Role of Judiciary Post-Amendments

- Courts continue to review welfare laws, economic reforms, and redistributive policies in the light of Articles 14, 19, and DPSPs.
- Judiciary remains the **balancing authority**: allowing space for socio-economic reform while preventing authoritarian misuse of 31C-like provisions.
- Modern review emphasizes **constitutional morality, transformative constitutionalism, and proportionality** as evolved standards.

The amendments (31A and 31C) initially sought to curtail judicial power, but in the long run, they actually strengthened the judiciary. They led to the creation of the Basic Structure Doctrine, expanded the scope of judicial review, and positioned the judiciary as the guardian of constitutional balance between Fundamental Rights and Directive Principles.