

LECTURE ON JUDICIAL REVIEW

B.COM LLB- 4TH SEM

What is Judicial Review?

- Process established by statute: courts control exercise of government.
- Anyone exercising government power must do so in constraints of law.
- JR only applies to people who act on behalf of government. One of problems privatization by government (immune from JR).

Ground under which can seek JR is claim that government acted ultra virus (outside scope of legitimacy). Can only question whether acted legally within proper exercise of power.

Foundation of Judicial Review :

- Judicial review has its foundations essentially in Common Law is, in India, enshrined in the Constitution- Art 13 read with Arts 32,226,227 expressly confer that power.
- The Constitution is the supreme law from which all organs derive their authority and within whose confines they have to act. It is for the Court to uphold constitutional values and enforce constitutional limitations.
- Judicial review does not mean supremacy of the judiciary but that of the Constitution.

- It is universally recognized that the range of judicial review exercised by the superior Courts in India is perhaps the widest and most extensive known to the world of law.

- We have judicial review of –purely executive action, of statutory orders and statutory discretion, quasi judicial orders, subordinate legislation, plenary legislation and also constitutional amendment.

- There is also judicial review of other constitutional functions like imposition of President's rule. Emergency, removal of Governors, formation of Government, appointment of Ministers and Judges, assent to bills, parliamentary proceedings.

•The **concept of judicial review** lies in the supremacy of the Constitution of the land. Since, the Judiciary is the guardian of the Constitution, thereby; it is under its purview to check actions, which are inconsistent with the Constitution.

•The tool of **judicial review empowers the judiciary** to struck down any action, which is in conflict with the Constitution.

•Article 13 provides that the law to be made should be in line with the norms laid down in the Constitution of India. In addition, any exiting law inconsistent with it is void to the extent of inconsistency.

- **Judicial Review provided-**

under Articles 32 and 226 provide for the enforcement of the fundamental rights enshrined in Part III of the Constitution of India.

Judicial review is one of the basic features of the Constitution:

- *Kesavananda Bharti v. State of Kerala*
(1973) 4 SCC

- *Indira Nehru Gandhi v. Raj Narain*
AIR 1975 SC 2299

- *Raja Rampal v. Hon'ble Speaker, Lok Sabha*
(2007) 3 SCC 184).

✓ In re **Golaknath v. State of Punjab** AIR 1967 SC 1643, the Court held that the Parliament could not amend the Constitution to take away the rights provided in Part III of the Constitution. This resulted in the 24th amendment (1971).

✓The controversy was rested in the case of **Kesavanand Bharati v. State of Kerala** AIR 1973 SC 1461 where the court though agreeing that the Parliament is not restricted to amend the Constitution, but also put a caveat of the doctrine of basic structure.

✓ The Court observed that the constitutional amendments are to be done keeping in mind the basic structure of the Constitution

✓ In **Minerva Mills v. Union of India** AIR 1980 SC 1789 case the Court further observed that the tool of the amendment of the Constitution cannot be used to destroy the constitution itself. The Supreme Court of India has used the power of judicial review from time to time to uphold the values incorporated in our Constitution.

✓ **Judicial Review of Policy Decisions**

Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation, AIR 2000 SC 2272, SC held “the Courts would not interfere with the matter of administrative action or changes made therein, unless the Government’s action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.”