



# Judicial Review of Administrative Action

# Objectives of the Session

**The objective of the session are to**

- **Understand the concept of judicial review**
- **Study the grounds for judicial review and**
- **Appreciate the constitutional basis of judicial review of administrative action**



# Meaning of Judicial Review

- **The authority of the Courts to declare void the acts of the legislature and executive, if they are found in violation of the provisions of the Constitution, is called judicial review.**
- **Judicial review is based on the idea that a Constitution which dictates the nature, functions and limits of a government – is the supreme law.**



- **Any action violates the principles of Constitution is invalid.**
  
- **Judicial review in India comprises of three aspects:**
  - **judicial review of legislative action**
  
  - **judicial review of judicial decisions and**
  
  - **judicial review of administrative action.**



# Judicial Review – Purpose

## **Judicial Review has a number of objectives:**

- **To uphold the principle of the supremacy of the Constitution.**
- **To maintain federal equilibrium i.e. balance between the centre and the states.**
- **To protect the fundamental rights of the citizens.**



- **Prevent abuse of power by authority and protection of Rights of Individual**
- **Ensures a conclusion which is correct in the eye of law.**
- **Most potent weapon for the maintenance of the rule of law.**
- **one of instrument of checks and balances in the separation of powers**
- **A basic and essential feature of Constitution**



# Origin of Judicial Review



# Judicial Review in United States

- **United States Constitution itself is silent about judicial review**
- **In 1803, in Marbury v. Madison, the Supreme Court made it clear that it had the power of judicial review.**
- **The Courts declare void the acts of the legislature and the executive, if they are found in violation of the provisions of the Constitution.**

# Judicial Review in England

- In Britain, the doctrine of parliamentary supremacy still holds goods.
- No court of law there can declare a Parliamentary enactment invalid. On the contrary every court is constrained to enforce every provision of the law of Parliament.



# Judicial Review in India

- **The doctrine of judicial review is firmly rooted in India with explicit sanction of the Constitution**
- **Provisions of Constitution explicitly establishing the Doctrine of Judicial Review are:**
- **Articles 13, 32, 131-136, 143, 226 & 246.**



# Appeal Vs Judicial Review

## Appeal

- the appellate authority can go into the merits of the decisions of the authority appealed against.
- Can substitute its decision for that of authority

## Judicial Review

- Court does not go into the merits of the administrative action
- Court's function is restricted to ensuring that such authority does not act in excess of its power.
- not supposed to substitute its decision for that of the administrative authority.
- merely enquire whether the administrative authority has acted according to the law.

# Ambit of Judicial Review

- **As long as an authority acts within the ambit of the power given no court should interfere.**
- **In this sense authority is said to have the liberty to act rightly as well as wrongly.**
- **It has been held that a court exercising judicial review should not act as a court of appeal over a tribunal**
- **Judicial review is concerned with reviewing how the decision has been arrived at.**
- **The review court is concerned with two questions:**
  - **Whether the authority has exceeded its power?**
  - **Whether it has abused its power?**



***“The range of judicial review recognized in the superior judiciary in India is perhaps the widest and most extensive known in the world of law. The power extends to examining the validity of even an amendment to the Constitution, for now it has been repeatedly held that no constitutional amendment can be sustained which violates the basic structure of the Constitution”***

**Pathak CJ**



***Certainly all those who have framed the written Constitution contemplate them as forming the fundamental and paramount law of the nations, and consequently, the theory of every such Government must be that an act of the legislature, repugnant to the Constitution is void”.***

***Chief Justice George Marshall in Marbury v. Madison 1Cranch 137 : 2L Ed 60***



# Constitutional Basis of Judicial Review

- Incorporated in Article 226 & 227 of the Constitution insofar as the High Courts are concerned.
- Under Article 32 & 136 of the Constitution, Supreme Court has come to control by judicial review every aspect of government and public function





- The Supreme and High courts are protector and guarantor of Fundamental Rights
- under Articles 32 and 226 they have the power to declare any law or administrative action which transgresses a Fundamental Right as *ultra-vires*
- The right to move the Supreme Court itself is a fundamental right. It is also the duty of the Supreme Court to protect the fundamental rights of the individuals.
- Art. 32 can be invoked only for the violation of fundamental rights.
- Under Art. 226 High Courts can issue writs not only for the enforcement of fundamental rights but also for any other purpose.

# Remedies

- **Writs under (Art. 32 & 226),**
- **Special appeal (Art. 136);**
- **injunction, declaration, suit for damages for tortuous acts and breach of contract**



# Range of Judicial Review

- *Judicial review of Constitutional amendments*—The test of validity of Constitutional amendments is conforming to the basic features of the Constitution
- *Judicial review of legislation of Parliament, State Legislatures as well as subordinate legislation*
- *Judicial review of administrative action*





# Grounds of Judicial Review

Let's start with the first set of slides

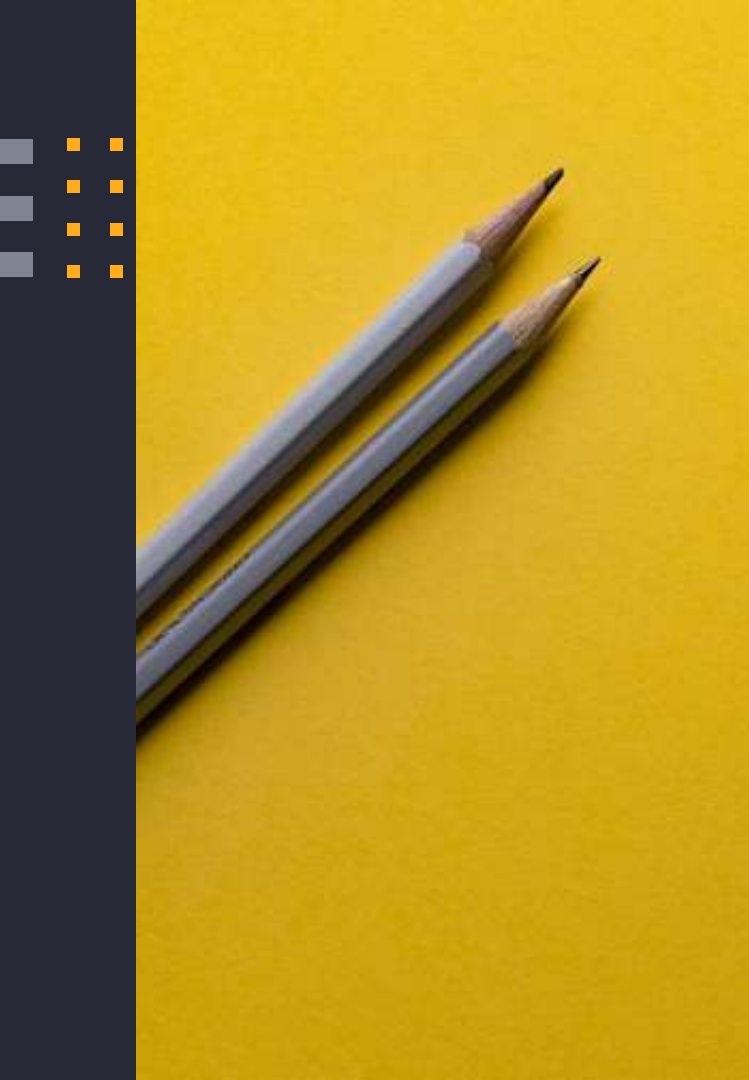
Generally, judicial review of any administrative action can be exercised on four grounds:

- **Illegality**- decision makers if they fail to follow the law properly
- **Irrationality**- decision is so demonstrably unreasonable as to constitute 'irrationality' on the part of the decision maker.
- **Procedural Impropriety/ Fairness**- This principle applies solely to matters of procedure like rule of natural justice
- **Proportionality**

# Limitations on Power of Judicial Review

- Policy decision taken by the State or its authorities is beyond the purview of judicial review
- unless the same is found to arbitrary, unreasonable or in contravention of the statutory provisions or violates the rights of individuals guaranteed under the statute.
- If Legislature in its wisdom provides for a particular right/ guarantee/benefit etc., the authority taking a policy decision cannot nullify the same.





Thanks!

Any questions?