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A STUDY ON THE DOCTRINE OF JUDICIAL REVIEW

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ABSTRACT

In the modern world, the doctrine of Judicial Review plays a pivotal role in preserving the Constitutional supremacy and prerogatives of the Principles of Natural Justice. The word Judicial Review implies— the powers vested in the Judicial branch of the State to check and examine the actions of the other branches whenever any substantial question of law has arisen regarding the Constitutionality or legitimacy, or reasonableness of those actions. It is intrinsic that all the actions of the different organs of the State must correspond to the provisions laid down in the Constitution, Principles of Natural Justice, and due process of law. All actions must undergo a test of Constitutionality and reasonableness, and if anything which is found contrary to it, is liable to be scrapped. In this article, the authors endeavor to throw light on the meaning of this doctrine, the history of its evolution, and landmark foreign cases from which this doctrine was initially derived, and its relevance in the context of democracy and the rule of separation of powers. The authors also presented various aspects of this doctrine, especially its scopes or applications, significance, and relevance in the Indian context. The various grounds of Judicial Review, such as legislative actions, administrative action, and judicial decisions, have been elaborately discussed in the article with the help of some leading cases. On the other hand, the limitations of this doctrine where it cannot be applied are also a significant concept which is described in the article. The positive and negative aspects of this doctrine are also analyzed in detail.

INTRODUCTION:

In the era of rising ideas of the nation-state, democracy is the most popular form of Government in the modern political system throughout the world despite its shortcomings. As the fundamental concept of democracy is founded upon the ‘Principle of Separation of Powers’ (propounded by french philosopher Montesquieu) between its major limbs, namely- legislature, executive, and judiciary, the checks and balances inclusive of harmony among the limbs are the most essential component in a democratic set-up. On the other hand, the hallmark of a healthy democracy is an independent and impartial judiciary. Thus aloofness of the judiciary from executive actions is a very vital aspect of democracy. In this context, 'Judicial Review' is an indispensable doctrine that

works as a key keep up the rule of law, Constitutional supremacy, and protect the rights of individuals from the arbitrary invasions of any other organs of the State in modern days. Besides the doctrine of separation of power, the connotation of the doctrine of Judicial Review can also be acknowledged in both the common and civil law legal system. Theories of Judicial Review can be comprehended in a broad spectrum of its scopes, significance, and limitations, and these vary from one nation to another nation. It is distinguished from Judicial Activism and Judicial Overreach.

From a general point of view, Judicial Review is a function of the judicial organ of the State that empowers the Courts, more particularly the Constitutional Courts of a sovereign nation to scrutinize and adjudge the executive and legislative actions of the State to ensure fairness, reasonableness, Constitutionality, and legitimacy of the actions and dispel all the evils of unjustness, unfairness, and lawlessness within their Constitutional boundaries by the well-established rules of interpretations and constructions keeping in consonance with the underlying principles of justice, equity and good conscience. The genesis of this doctrine has a long-standing history and deliberations made by renowned jurists, scholars, and judges in many civil as well as common law countries. Now it is a widely recognized doctrine in almost every civilized and sovereign nation in the contemporary world like the United States, United Kingdom, Canada, Australia, India, etc.

EVOLUTION OF JUDICIAL REVIEW:

The doctrine of Judicial Review first came into the picture in an English case, popularly known as **Dr. Bonham's case**[1] at **England's Court of Common Pleas** before **Chief Justice Sir Edward Coke** in 1610. In this case, Dr. Bonham was a trained medical practitioner, and his petition to join the College of Physicians was rejected for not having any valid license to continue his medical practice. In consequence of his continuing practice as a medical practitioner, he was imprisoned and subsequently sued for a fine by the College of Physicians at the King's Bench on the ground of maintaining illicit medical practice. Dr. Bonham claimed this action to be wrongful imprisonment and trespass to person. The minority verdict upheld the decision of the College of Physicians and held that the College was acting on behalf of the King exercising its power

[1] Thomas Bonham vs. College of Physicians, 8 Co. Rep. 114 (Court of Common Pleas [1610])

conferred under the statute. On the other hand, the majority verdict, including Cheif Justice Coke, held that the power to impose a fine for illicit medical practice is different from the power to imprison him for medical malpractice. Thus it was held that the act of Dr. Bonham did not amount to malpractice, and the College didn't have the authority to imprison him and the parliamentary statute conferring the power to the College to act as a party and adjudicator both was void. Sir Coke noted that any legislative action which would be violative of any established common law, right, reason, or repugnant to the natural laws and principles of natural justice could be abrogated by the Court of Justice. The supremacy of Common Law over Parliamentary enactments in England was asserted, and parliamentary prerogatives were also originated from the Common Law precedents. In this way, the archetype of Judicial Review was set for the first time even though this principle was not sustained for a long time as the review of legislative actions was abandoned later in England.

Eventually, the doctrine of Judicial Review was decisively worked out by the Supreme Court of the United States in the landmark case- **Marbury vs. Madison**[2] in 1803. In this case, due to the defeat in the Presidential Election of 1800, the tenure of President John Adams from the Federalist Party was about to end, and Thomas Jefferson from Anti-federalist Party was to take over the office. During the last few days of his term in office to remain in power by some other way, he brought out a legislative enactment- **Judiciary Act, 1801**[3]**,** popularly known as **Midnight Judges Act, 1801** by which the members of the Federalist Party were to be appointed as judges. At the time when new President Jefferson assumed the charge of the office, he forbade James Madison, the Secretary-General of the State, to send the appointment letters to the members who were to be appointed as judges. William Marbury, one of the members of the Federalist Party who was to be appointed as a judge, filed a Writ Petition of Mandamus in the Supreme Court to claim remedy. But the Court dismissed the plea as the Court didn't have adequate jurisdiction to do so. Most importantly, in this case, Chief Justice **John Marshall** laid the foundation stone of the doctrine of Judicial Review by striking down the relevant portion of **Section 13 Judiciary Act, 1789**[4] which

[2]. William Marbury vs. James Madison, Secretary of State of the United States- 5 U.S. (1 Cranch) 137 (1803)
[3].The Judiciary Act of 1801- 2 Stat. 89; February 13, 1801
[4] The Judiciary Act, 1789- Sept. 24, 1789, ch. 20, 1 Stat. 73

intended to enlarge the original jurisdiction of the Supreme Court beyond what was permitted under **Article III** of the Constitution of the United States. The power of Judicial Review though not explicitly mentioned in the Constitution is implied in **Article VI** of the US Constitution. Thus the Court ruled that it would be ultra vires to Congress to pass any law which contravenes any substantive portion of the Constitution since it is the supreme law of the land, and if any conflict occurs between enactment and the Constitutional provision, the Constitutional provision will have overriding effect over such enactment. John Marshall explicated that— *"It is emphatically the province and duty of the Judicial Department to say what the law is."*[5]

In this way, the doctrine of Judicial Review was first applied by the US Supreme Court, and it became evident that the deciding Constitutional validity of any legislative action is an inherent role of the judiciary. Over a period of time, the scope of Judicial Review has been enlarged, and it became an umbrella term.

JUDICIAL REVIEW IN INDIAN CONTEXT:

In India, the powers of Judicial Review are assigned only to the High Courts and Supreme Court. According to the Constitution of India, the roles of the judiciary are vast in comparison with the other two branches, and the judiciary is often considered as the custodian of the Constitution. The Supreme Court of India is said to be the 'sentinel on the qui vive' ie., the supreme protector and guarantor of the fundamental rights of the citizens. The framers of the Indian Constitution felt the essence of this doctrine in order to keep up Constitutional supremacy and unjust or unfair invasions of the State on the fundamental as well as various constitutional and legal rights of the citizens. Although the process of Judicial Review is not explicit in the Constitution, it is intrinsic in the following major Articles— 13, 32, 131-137, 143, 145, 226, 246, 251, 254, and 372 of the Constitution. Nevertheless, the applications of Judicial Review are also expanded by the different approaches adopted by the High Courts and Supreme Court, keeping pace with time and changing socio-political factors and other circumstances. In this regard, the milestones of Public Interest Litigations (PIL) along with Social Action Litigation and Public Cause Litigation have played a pivotal role in broadening the scopes of Judicial Review by harmonizing fundamental rights,

[5]. Marbury, 5 U.S. at 177.

directive principles of state policies, and other provisions of the Constitution in India in due course of time and this is however intertwined with Judicial Activism.

It is worthwhile to note that the applications of Judicial Review in the case of legislative actions can be adjudged in different sovereign States on the basis of the natures and locations of the sovereignty. In nations like the United Kingdom, sovereignty by its nature is vested in the Parliament because it is represented by the people of the nation itself, and hence the laws made by the Parliament are considered to be the people's verdict. Here, the Courts are less powerful to supervise the laws of the Parliament while in a nation like India, United States, etc., the sovereignty is located in the people, the High Courts and Supreme Court are more powerful in exercising the doctrine of Judicial Review and laws made in contravention to the Constitution or any procedure established by law can be declared null and void. It can be applied only when a substantial question of law is challenged before the Court, but it cannot be applied suo motu.

The doctrine of Judicial Review has manifold applications in India. The major grounds of Judicial Review are as follows—

A. Judicial Review of Legislative Actions
B. Judicial Review of Administrative Actions
C. Judicial Review of Judicial Decisions.

A. JUDICIAL REVIEW OF LEGISLATIVE ACTIONS:

Judicial Scrutiny can be exercised on legislative actions of any State as well as Union Legislatures by the High Courts and Supreme Court on various grounds. Some of the major grounds are classified below—

1. **Laws made by the legislatures:**

Every law passed by the legislatures must qualify in the test of Constitutionality. If any question of law arises before any High Court or Supreme Court regarding the Constitutionality of any laws passed by any State Legislature or Union Parliament, the Court can apply the doctrine of Judicial Review to examine the same. As a general rule, the doctrine can be applied on very limited grounds, and those are in a nutshell—

a. If any law passed by a legislature is inconsistent with any fundamental rights contained in Part III of the Constitution of India.
b. If any law passed by a legislature contravenes with any substantive provision of the Constitution of India.
c. If any law passed by an incompetent legislature.

In the case of the first ground, **Article 13** of the Constitution lays down the provisions to deal with the laws inconsistent with or in derogation of the fundamental rights. Article 13(1) deals with the pre-constitutional laws inconsistent with Part III and states that— *"All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void".* On the other hand, Article 13(2) deals with the post-constitutional laws inconsistent with Part III and states that— *"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void"*. In the case of the **State of Rajasthan vs. Union of India**[6], the doctrine of supremacy of the Constitution and Judicial Review has been put forward very brilliantly but dynamically by Hon'ble Justice P.N Bhagwati.

In this regard, there are two widely recognized rules to deal with the laws mentioned above, and those are—

- **The Doctrine of Eclipse:**

The word 'Eclipse' means 'to hide' or 'to over-shadow'. It denotes that if any law contravenes with any provision of Part III, it is not to be treated as void ab initio or dead, but such law is to be eclipsed or over-shadowed by the fundamental rights, i.e., such law only becomes unenforceable or defunct and remains in a dormant state. It comes into operation again as soon as the eclipse is removed. Thus, if the legislature by an amendment removes the infirmities of the impugned law, that law becomes functional again. This doctrine was formulated in a landmark case- **Bhikaji vs. State of Madhya Pradesh**[7]. In this case, some provisions of the **Motor Vehicle Act, 1939**[8] were

[6]. State Of Rajasthan & Ors. Etc. Etc vs. Union Of India Etc. Etc, 1977 AIR 1361 (India).
[7]. Bhikaji Narain Dhakras And Others vs. The State Of Madhya Pradesh And Another, 1955 AIR 781 (India)
[8]. The Motor Vehicle Act, 1939, No. IV, Central Act, 1939 (India)

violative of **Article 19(1)(g)** of the Constitution, and **C.P & Berar Motor Vehicles (Amendment) Act, 1947**[9] was passed. It was challenged at the Supreme Court, and it was held that the amendment was made to remove the eclipse, and thus the defunct law became functional again following the amendment. This doctrine is generally applicable in the case of pre-constitutional laws.

- **The Doctrine of Severability:**

It means to separate as it is also known as 'Doctrine of Separability'. If any provision of a statute is inconsistent with any provision of Part III of the Constitution, only that impugned provision can be severed from the entire statute keeping the rest of the statute intact. By applying this doctrine, the offending **Section 14** of the **Preventive Detention Act, 1950**[10]**,** which was violative of **Article 22** of the Constitution was severed and struck down by the Apex Court in the leading case- **A. K Gopalan vs. State of Madras**[11]**.** In **Shreya Singhal vs. Union of India**[12]**, Section 66A** of the **Information Technology Act, 2000**[13] was struck down and severed by the Supreme Court for violating **Article 19(1)(a)** of the Constitution, keeping the rest of the statute book intact applying this doctrine.

In case of the second ground, any law in derogation of a provision laid down in the Constitution other than Part III also liable to be declared unconstitutional. In the case- **SCAoRA vs. Union of India**[14], the **National Judicial Appointment Commission Act, 2014**[15]**(99th Constitutional Amendment Act, 2014)** was held unconstitutional by the Supreme Court as it was violative of Article 50, i.e., separation of judiciary from executive interferences.

Even if any law is found to be passed by any incompetent State or Central legislature, such as transgressing the powers laid down in 3 lists ie., State list, Union list, and Concurrent list under the 7th Schedule of the Constitution, such law can be held unconstitutional. Any laws made by the

[9]. C.P & Berar Motor Vehicles (Amendment) Act, 1947, No. 3, Acts of Parliament, 1948 (India).
[10]. The Preventive Detention Act, 1950, No. 4, Acts of Parliament, 1950 (India)
[11]. A. K Gopalan vs. State of Madras, 1950 AIR 27 (India)
[12]. Shreya Singhal vs. Union of India, (2013) 12 S.C.C. 73 (India)
[13]. The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000(India).
[14]. Supreme Court Advocates-on-Record Association and Another vs. Union of India, Writ Petition (Civil) no. 13 of 2015 (India)
[15]. National Judicial Appointment Commission Act, 2014, Act of Parliament, 2014 (India)

central legislature under Articles 249 and 250 of the Constitution are also subject to Judicial Review.

It is explicit in Article 13(3), laws include *"ordinances, order, bye-law, rule, regulation, notification, custom, or usages; laws in force include laws passed or made by Legislature or other competent authorities".* Although the Supreme Court in various verdicts previously ruled that the power to promulgate ordinances by President under Article 123 and Governor of a State under Article 213 is excluded from the scope of Judicial Review, the ordinance must be promulgated in bonafide intend. However, now its scope has been widened by the Supreme Court rulings. An ordinance can also be treated as an ordinary legislative action, and it is ruled by a 7 judges Constitution Bench in the ratio 5:2 in 2017 that the satisfaction of the President and Governors are not immune from Judicial Review and unfettered re-promulgation of ordinances is unconstitutional.[16].

In the case- **State of Madras vs. V.G. Row. Union of India[17]**, the Supreme Court observed that—*"The Constitution contains express provisions for judicial review of legislation as to such important and none too easy task not out of any desire to tilt at legislative authority in a Crusader's spirit, but in discharge of the duty plainly laid upon them by the Constitution".*

In the case of a Money Bill under Article 110, it is also excluded from the scope of Judicial Review because the certification of the Speaker of Lok Sabha is decisive in this regard. On the other side, Article 212 stipulates that the parliamentary proceedings are not subject to scrutiny by the Courts.

In **Justice K.S Puttaswamy vs. Union of India[18],** 5 judges Constitution Bench of the Supreme Court in 4:1 ratio upheld the Constitutional validity of **Aadhar Act, 2016[19]** as a Money Bill while Hon'ble Justice DY Chandrachud sharply dissented in his judgment.

The power of Judicial Review can be exercised by writ jurisdiction of High Courts under Article 226 and Supreme Court under Article 32 of the Constitution.

[16]. Krishna Kumar Singh and Another vs. State of Bihar and Others, (2017) 3 SCC 1 (India)
[17]. State of Madras vs. V.G. Row. Union of India, 1952 AIR 196 (India)
[18]. Justice KS Puttaswamy Retd. and Another vs. Union of India and Others, WP (C) 494/2012 (India)
[19]. The Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Act, 2016 , No. 47, Acts of Parliament, 2016 (India).

2. Constitutional Amendments:

Despite the exception laid down under Article 13(4) in the case of Constitutional Amendments made under Article 368, it doesn't infallibly take away the power of Judicial Review, and it was figured out by the Supreme Court through a series of landmark Constitutional law cases regarding the question whether the fundamental rights can be amended or not from 1951 to 1980. As it is obvious that a Constitutionally elected Government may also act despotically and for this reason, a large number of eminent Indian jurists including Nani Palkhivala and H.M Seervai emphasized the necessity of Judicial Review in the Constitutional amendments to safeguard the fundamental and sacrosanct features of the Constitution from the onslaughts by the other branches of the State. Hereinafter, it prompted Senior Advocate Mr. Nani Palkhivala to argue in landmark **Kesavananda Bharati's**[20] case. In this regard, an authority of Senior Advocate H.M Seervai deserves special mention, and in his authority, he accentuated that— *"There were 'grave consequences' to treating the Constitution as 'as ordinary law to be changed at the will of the party in power'. If governments always could be trusted, there would have been no need for Fundamental Rights"*[21].

In the **Sankari Prasad**[22] and **Sajjan Singh**[23] cases, it was held that the legislature is empowered to amend any part of the Constitution without any limitations under Article 368. But these rulings were overturned by the **Golaknath**[24] verdict in 1967 where the ruling came that the power of the legislature to amend anything contained in Part III is ultra vires. In this period, India witnessed ample occurrences of the tussle of powers between legislature and judiciary. Finally, the most landmark **Kesavananda Bharati's**[25]case, well-known as **the Fundamental Rights case** verdict, came in 1973 from the 13 judges Constitution Bench of the Supreme Court, and the **'Basic Structure Doctrine'** was formulated and enumerated some of the unassailable basic features of the Constitution. According to this doctrine, the legislature can amend any part of the Constitution exercising power conferred under Article 368 except those are the Basic Structures of the

[20]. Kesavananda Bharati Sripadagalvaru and Ors vs. State of Kerala And Anr, AIR 1973 SC 1461 (India)
[21]. Hamza Lakdawala, Kesavananda Bharati Case And Friendship Between Nani Palkhivala & HM Seervai, Live Law.in (11 December, 2020), https://www.livelaw.in/columns/kesavananda-bharati-case-friendship-between-nani-palkhivala-hm-seervai-167083
[22]. Sri Sankari Prasad Singh Deo vs. Union Of India And State Of Bihar (And Other Cases), 1951 AIR 458 (India)
[23]. Sajjan Singh vs. State Of Rajasthan (With Connected Petions), 1965 AIR 845 (India)
[24]. I. C. Golaknath & Ors vs. State Of Punjab & Anrs. (With Connected Petitions), 1967 AIR 1643 (India)
[25]. Kesavananda Bharati Sripadagalvaru and Ors vs. State of Kerala And Anr, AIR 1973 SC 1461 (India)

Constitution. This verdict saved the democracy of India, and it was a watershed moment in the history of Judicial Review in India. In the case- **Indira Nehru Gandhi vs. Shri Raj Narain**[26], this doctrine was reaffirmed, and the Supreme Court struck down clause 4 of the **39th Constitutional Amendment Act, 1975,** which was restraining the scope of Judicial Review by the Courts in matters relating to the election of President, Vice President, Prime Minister, and Speaker of Lok Sabha. The Court declared that the Judicial Review is one of the Basic Structures of the Constitution, and it cannot be abrogated. In another notable **Minerva Mills**[27] case in 1980, the same ruling was reinforced.

B. JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS:

Administration plays an important role in the life of every individual. It emerges as a separate legal discipline in mid of 20th century. Administrative action is the power given to the officials who are in charge of certain laws passed to use in the administration of Government projects meant to serve society. There is no need for the collection of evidence, no need to measure the arguments; it's based solely on self-satisfaction where the decision is based on efficiency and policy. In administrative action, the Principles of Natural Justice can't be done away with. Depending upon each case, Principles of Natural Justice should be taken into consideration.

Administrative action may be backed by law or may not, but many administrative actions are backed by law because the Constitution gives legal force to it. Mechanism of Judicial Review of administrative action has been taken from Britain; however, the present trend of Judicial pronouncements has widened the scope of Judicial Review in administrative action. The doctrine of Ultra vires is relevant to the doctrine of Judicial Review in the case of administrative actions as well. 'Ultra vires' is a Latin phrase that means '*beyond the power given'.* Some acts that are for any reason in excess of power are often described as outside the jurisdiction, and those are void in the eyes of the law. This doctrine is a yardstick for the measurement of delegated legislation, its validity, and proper observance of procedure created by said legislation. Judicial Review in administrative action can be implemented on the following grounds—

[26]. Indira Nehru Gandhi vs. Shri Raj Narain & Anr, 1975 AIR 1590 (India)
[27]. Minerva Mills Ltd. & Ors vs. Union Of India & Ors, 1980 AIR 1789 (India)

1. Irrationality
2. Proportionality
3. Procedural Impropriety
4. Jurisdictional error
5. Legitimate expectation

All these above-mentioned grounds have been developed by **Lord Diplock** in the landmark case of **Council of Civil Service Union vs. Minister of Civil Service**[28]decided before the House of Lords. Although these grounds are not decisive, it provides sufficient grounds for the Court to use the power of Judicial Review effectively.

1. Irrationality:

The unchanging general principle is that discretionary power granted to the administrative bodies should be exercised properly and reasonably. Any decision and action or decision of the administrative agencies can be treated as irrational when it becomes derogatory or offensive if the decision of the administrative agency is so unreasonable that it is contrary to logic and any generally accepted ethics, to such an extent that no reasonable person make such a decision based on the fact and circumstances. Irrationality as a ground of Judicial Review emerged from the English case of **Associated Provincial Picture House vs. Wednesbury Corporation**[29] by the Court of Appeal of England and Wales in the year 1948 which is known as the Wednesbury unreasonableness test. As per the **Sunday Entertainment Act, 1932**[30]**,** it permits the opening and use of places for amusement on Sunday by the local authority of the market town of Wednesbury in Staffordshire, to operate a cinema on condition that any youngsters below the age of 15 were not admitted to the cinema on Sunday. Hereinafter, the Associated Provincial Picture house contended that such a condition was unacceptable and totally beyond the power of the Corporation to impose such a condition. The Court stated that interference wouldn't be appreciable unless it found that authority must have contravened the law or suffering from any procedural indecency or suffered from procedural improprieties or an inexpensive one

[28]. Council of Civil Service Unions & Others vs. Minister for the Civil Service,[1985] AC 374 (United Kingdom).
[29]. Associated Provincial Picture Houses vs. Wednesbury Corporation,[1948] 1KB 223 (United Kingdom).
[30]. Sunday Entertainments Act, 1932, Chapter 51, United Kingdom Legislations, 1932.

that decided supporting materials provided to him and he couldn't be founded under the law. The Court said that only because the defendant was dissatisfied with the terms, the Court couldn't intervene to vary the terms.

2. **Proportionality:**

According to this, to achieve the desired object, the act of administration should not be more rough and rigid than it ought to be. The principle of proportion implies that the Court should essentially review the pros and cons of the claims involved. In the case of **Hind Construction & Engineering Co. Ltd. vs. Their Workmen**[31], some workers remained absent by declaring a day as a holiday but later on ceased work. In this case, the Court said that before getting dismissed from the work, the worker should have been warned or may be fined by the employer. The Court held that punishments imposed on the workmen were not only unjustified but also harsh.

3. **Procedural Impropriety:**

In coming to a decision, the decision-maker must act fairly, and this applies to the situation where the authorities fail to abide by the rule of procedure or violate convention rights. The Government must act impartially without any prejudice. The Court needs to be persuaded that there is a risk of the decision being biased. Where the complaint is based on the fact that a public authority has promised to perform an act in a specific way, but he is unable to do the same, then the process of Judicial Review can be applied.

In the famous UK labour law case of **Ridge vs. Baldwin**[32] decided by the House of Lords, Ridge was charged with the offence of conspiracy to impede the Court of Justice. Ridge was found not guilty and the other two officers were found guilty. The other two officers who were convicted at the same time criticized Ridge because of which Ridge was ousted from work by his employer without any warning and representation on his behalf. As per Ridge, the rule of natural justice has been breached. The House of Lords on appeal delivered its verdict in favour of Ridge. This case

[31]. Hind Construction & Engineering Co. Ltd. vs. Their Workmen 1965 AIR 917 (India).
[32]. Ridge vs. Baldwin, [1987] 4 SCC 611 (United Kingdom).

was vital due to the stress on the link existing between the right of a person to be heard and the right to know the case brought against him.

4. **Jurisdictional Error:**

Jurisdictions mean the power to decide. The jurisdictional error may arise because of lack of jurisdiction, excess of jurisdiction or may be an abuse of jurisdiction. Where the administrative body has no power or jurisdiction to implement or pass the order, the Judicial Review may be exercised to prevent such abuse of powers. Even if the Court is satisfied that the power of the administrative body has been abused, then the Judicial Review can also be exercised. So as per this principle, before taking any action by an Administrative body, they must have to understand and examine the scope of the law.

5. **Legitimate Expectation:**

The English law doctrine of Legitimate Expectation denotes that every individual may have some reasonable expectations that they should be treated in a certain way by the concerning administrative bodies due to some previous consistent practice or any explicit promises made by the authorities. It can be taken as a ground of Judicial Review to protect the substantive and procedural interests in the cases when public authority rescinds from a representation made to a person. It mostly relies upon the Principles of Natural Justice, fairness, reasonableness and strives for preventing the administrative authorities from abusing the powers vested in them. In the case- **Regina vs. Secretary of State for Health, ex parte United States Tobacco International Inc[33],** with the Government's grant, a company had opened a factory for the production of snuff, even though the Government was aware of the unhealthy consequences of the product. After some time, the Government banned the production. The Company sought the resort of Judicial Review, relying on a legitimate expectation based on the ban. However, the Court ruled that although the applicant had a reasonable expectation, such expectation could not be given preference over the public interest in prohibiting or banning products having a harmful effect.

[33]. Regina vs. Secretary of State for Health, ex parte United States Tobacco International Inc [1992] QB 353 (United Kingdom).

In regard to the Constitutional remedies available under Indian Constitution, five types of writs can be issued exercising the writ jurisdictions conferred under Articles 32 and 226 of the Constitution by the Supreme Court and High Courts, respectively, as a method of Judicial Review. Those are— Habeas Corpus, Mandamus, Quo Warranto, Prohibition, and Certiorari.

C. JUDICIAL REVIEW OF JUDICIAL DECISIONS:

Judicial decisions delivered by the Courts having inferior jurisdictions can be reviewed by the Superior Courts by the ways of appeal. Articles 214-231 of the Constitution deal with the powers and jurisdictions of High Courts. The judgments of District, Session, or other Tribunals and Special Courts can be appealed in both civil and criminal matters to the High Courts. The High Courts under Article 226 are also empowered to issue certain writs to review the judicial decisions of Subordinate Courts. As the High Courts are Courts of Record as per Article 215, it has inherent power to review its own records or precedents.

On the other hand, Articles 124 to 147 deal with the powers and jurisdictions of the Supreme Court. The verdicts of the High Courts can be reviewed under its appellate jurisdictions conferred by Articles 132, 133, and 134. As per Article 136, judgments of any court or tribunal can be appealed through Special Leave Petitions. Even, as it is the Court of Record according to Article 129, it is explicitly vested with the power to review its own verdicts or precedents under Article 137, notwithstanding any law made by Parliament, or rules made under Article 145 of the Constitution.

LIMITATIONS OF JUDICIAL REVIEW:

Besides its large amplitude of applications, this doctrine is circumscribed by some limitations also, and those are mostly known as Judicial Restraint. The duty of the judiciary as per this doctrine is only to surveil the actions of each organ of the State whether those are strictly in adherence to the Constitution and procedure established by law or not. In no circumstances, the Judicial Review along with Judicial Activism must not turn into Judicial Overreach or Judicial Adventurism as it will vitiate the main purposes behind adopting the Principles of Separation of Powers, and it entails

disharmony and conflicts between the judiciary and the other two branches. Noted American jurist, former judge of the US Supreme Court, and one of the most outspoken advocates of Judicial Restraint- **Justice Felix Frankfurter** was of the view that—*"Courts should not interpret the constitution in such a way as to impose sharp limits upon the authority of the legislative and executive branches"*[34]. He articulated that in a democracy the judges are not the elected representatives of the people while the legislators are elected by people to put forth the wishes and demands of them before the Parliament. On the other hand, the judgments can be influenced by the personal prejudices or motives of the judges. Thus the legislators are directly associated with the populace of the State, and the judiciary must not create any unnecessary bar in discharging the duties of the legislators as frequent interventions in the domain of the other organs may diminish the public confidence in the lawmaking processes associated with probity and transparency of the Government actions. Most importantly, the doctrine of Judicial Review cannot be applied in any matter arising out of political questions and policy matters of the Government except in cases of absolute necessity. Even in the case of Election matters, the Election Commission of India, being a Constitutional body, is vested with powers to supervise the same, and the judiciary should not intervene unless any grave issue arises regarding corrupt electoral practices, unconstitutionality in election rules and procedures or any doubts or improprieties arise concerning the free and fair elections. Non-adherence to the Separation of Powers in the case of Judicial Review tends to make Parliament less responsible, and it is undemocratic as well. Applying this doctrine indiscriminately amounts to judicial dictatorship or tyranny that is sufficient to harm the public at large and invalidate the very basis of the democracy, i.e., by the people, of the people, and for the people. It must be borne in mind that the Supreme Court is supreme but not infallible. Therefore, the Judicial Review must be conformed with the checks and balances between the limbs of the State, and each limb must perform its respective obligations within its arenas of boundaries as mandated by the Constitution. The power must not be concentrated in any limb, and each should be accountable to the others.

[34]. https://en.wikipedia.org/wiki/Felix_Frankfurter

CONCLUSION:

Every organ of the State must be categorically allegiant to the supremacy of the Constitution, principles of natural laws, and natural justices, procedures established by law, accompanying with the other axiomatic doctrines for upkeeping the Rule of Law in the State. In order to preserve the sanctity and supremacy of the Constitution and other established doctrines, the doctrine of Judicial Review has become the most widely accepted and inalienable part of the modern legal system all over the world. In a nation like India where the Constitutional democracy prevails, despite its shortcomings, it has become successful in most cases to safeguard the Basic Structures of the Constitution, prevent the arbitrary uses of powers by any administrative as well as legislative authorities, and also secure the fundamental along with various Constitutional and legal rights by preventing the miscarriages of justice. It is noteworthy that it also protected India from slipping into a totalitarian regime. Nowadays, Judicial Activism has become part and parcel of the judicial system. Over a period of time, various High Courts and Supreme Court have widened the scopes or applications of this doctrine and also opened the new horizons remaining within the boundaries as mandated by the Constitution. It is also held that it is one of the Basic Structures of the Constitution and cannot be done away with. But it is equally necessary for each organ of State to comply with the doctrines of Separation of Powers and Checks and Balances because circumvention of these doctrines causes disharmony and conflicts between the judiciary and the other organs of the State. Overwhelming power exercising by any of the branches may result in a dictatorship or anarchy. It can be concluded that the cardinal goals of democracy can only be achieved only if all the branches of the State act within their respective domains without interfering in the matters of the other branches maintaining the balance of powers and harmony between them.