

DOCTRINE OF “JUDICIAL REVIEW” UNDER CONSTITUTIONAL FRAMEWORK

WITH REFERENCE TO DOCTRINE OF RULE OF LAW/SPEARATION OF POWERS/BASIC STRUCTURE OF CONSTITUTION OF INDIA ETC

NOTES OF DR KAPIL GOEL ADV

1. Relevant Provisions of Constitution of India (vis a vis specific powers to constitutional courts of judicial review OF **LEGISLATIVE AND EXECUTIVE ACTION COLLECTIVELY CALLED AS “STATE” ACTION** IN **AJAY HASIA VS KHALIB MUJIB** 1980 INSC 218)

Article of constitution of India	Text of the relevant article
13	<i>Laws inconsistent with or in derogation of the fundamental rights.—(1) 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. (2) 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. (3) In this article, unless the context otherwise requires,—(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. 1 [(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]</i>
32	Right to Constitutional Remedies Remedies for enforcement of rights conferred by this Part.— (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.
136	Special leave to appeal by the Supreme Court. —(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. (2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any
226	Power of High Courts to issue certain writs. — (1) Notwithstanding anything in article 32 3 ***, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including 4 [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of

	<p>them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]</p> <p>(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. 1</p> <p>[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.] 2</p> <p>[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]</p>
227	<p>Power of superintendence over all courts by the High Court.—</p> <p>[(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]</p> <p>(2) Without prejudice to the generality of the foregoing provision, the High Court may— (a) call for returns from such courts; (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts</p> <p>. (3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.</p> <p>(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces</p>
245	<p>Extent of laws made by Parliament and by the Legislatures of States.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation</p>

2. Eminent Scholar Views on CONCEPT OF JUDICIAL REVIEW

2.1 Bernard Schwartz in Administrative Law, 2nd Edn., p. 584 has this to say :

" If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial inquiry must not be so restricted that it prevents full inquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. 'It makes judicial review of administrative orders a hopeless formality for the litigant.... It reduces the judicial process in such cases to a mere feint.'

Chief Constable of the North Wales Police v. Evans [1982] 1 WLR 1155 , Lord Brightman very succinctly observed thus: "Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.

2.2 The effect of several decisions on the question of jurisdiction have been summed up by Grahame Aldous and John Alder in their book "Applications for Judicial Review, Law and Practice" thus:

"There is a general presumption against ousting the jurisdiction of the Courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the Courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in council of Civil Service Unions v. Minister for the Civil Service this is doubtful. Lords Diplock, Scaman and Roskili appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. May prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another nonjusticiable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."

3. LANDMARK PATHBREAKING JUDICIAL OPINIONS ON JUDICIAL REVIEW CONCEPT

3.1 HON'BLE SUPREME COURT THREE JUDGE BENCH DECISION IN CASE OF

Mohd. Mustafa Appellant(s) Versus Union of India & Ors.

Respondent(s)

Coram Hon'ble Justice(s) L. NAGESWARA RAO SANJIV KHANNA B.R. GAVAI) 2022 1 SCC 294

13. Judicial review may be defined as a Court's power to review the actions of other branches or levels of government; especially the Court's power to invalidate legislative and executive actions as being

unconstitutional (BLACK LAW DICTIONARY). Power of judicial review is within the domain of the judiciary to determine the legality of administrative action and the validity of legislations and it aims to protect citizens from abuse and misuse of power by any branch of the State³. The power of judicial review is a

basic feature of the Constitution of India⁴. Judicial review has certain inherent limitations. However, it is suited more for adjudication of disputes other than for performing administrative functions. It is for the executive to administer law and the function of the judiciary is to ensure that the Government carries out its duties in accordance with the provisions of the Constitution

14. The grounds on which administrative action is subject to judicial review are illegality, irrationality and procedural impropriety...

16. Conditions prompted by extraneous or irrelevant considerations are unreasonable and liable to be set aside by Courts in exercise of its power under judicial review⁸. (See: **State of U.P. v. Raja Ram Jaiswal**⁹, **Sheonandan Paswan v. State of Bihar & Others**¹⁰, **Sant Raj v. O.P. Singla**¹¹, **Padfield v. Minister of Agriculture**¹²). A decision can be arrived at by an authority after considering all relevant factors¹³. If the discretionary power has been exercised in disregard of relevant consideration, the Court will normally hold the action bad in law¹⁴. Relevant, germane and valid considerations cannot be ignored or overlooked by an executive authority while taking a decision¹⁵. It is trite law that Courts in exercise of power under judicial review do not interfere with selections made by expert bodies by reassessing comparative merits of the candidates. Interference with selections is restricted to decisions vitiated by bias, mala fides and contrary to statutory provisions. (See: **Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan**¹⁶, **Badrinath v. State of T.N.**¹⁷, **National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman**¹⁸, **Major General I. P. S Dewan v. Union of India**¹⁹, **Union Public Service Commission v. Hiranyalal Dev**²⁰, **M. V. Thimmaiah v. UPSC**²¹ and **UPSC v. Sathiyapriya**²²).

3.2 ELABORATE & EXTENSIVE VIEW ON EVOLUTION OF DOCTRINE OF JUDICIAL REVIEW IN REFLECTED IN HON'BLE SUPREME COURT RECENT DICTUM IN CASE OF

IN RE : SECTION 6A OF THE CITIZENSHIP ACT 1955 (5JUDGE CONSTITUTION BENCH)
2024 INSC 789

PER JUSTICE SURYA KANT

(a) Concept of judicial review

38. The principle of judicial review finds its roots in common law. It can effectively be traced back to Chief Justice Coke's ruling in **Thomas Bonham v. College of Physicians**,³⁶ wherein it was asserted that common law had the authority to oversee Acts of Parliament and empowered the courts to invalidate an enactment conflicting with common right and reason. This principle entails subjecting all laws to scrutiny against a higher law, typically embodied in a constitution.

39. This principle originated in the Supreme Court of the United States during the landmark case of **Marbury v. Madison**.³⁷ In that decision, the Court asserted its authority by deeming the concerned legislation unconstitutional, thereby constraining the powers of Congress. The Court therein held that:

“Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.”

[Emphasis supplied]

40. The essence of our constitutional system is rooted in the concepts of constitutionalism and judicial review, which comprise three essential elements: first, the presence of a written Constitution establishing

and constraining government organs; second, the Constitution serving as a superior law or standard by which the conduct of all organs is assessed; and third, the provision for sanctions to prevent, restrain, and if necessary, annul any violation of superior law. The third element, which seeks to safeguard superior law, is through judicial review. Despite the expansive powers granted to legislatures, they operate within the confines set by the Constitution. In a democratic nation governed by a written constitution, supremacy and sovereignty reside in the Constitution. However, the duty of protecting the rights given under the Constitution falls to courts through judicial review, making them, in the process, the ultimate arbiter of constitutional interpretation.

41. Constitutional courts, equipped with the powers of judicial review, function as custodians of justice, ensuring effective safeguard of citizens' rights. Embedded in Article 13 of our Constitution, judicial review is recognized as a basic feature of our constitutional framework.³⁹ It gives the Court the authority to scrutinize any violation of constitutional mandates by state organs. As articulated by Lord Steyn, the justification for judicial review arises from a combination of principles, such as the separation of powers, the rule of law, and the principle of constitutionality.⁴⁰

42. The power of judicial review does not undermine the doctrine of separation of powers. Instead, it fosters it by ensuring a system of checks and balances to prevent constitutional transgression by any organ of the state. Separation of powers should be seen as a connection or link, rather than as a limitation or impediment; allowing the Court to ensure that the constitutional order prevails.⁴¹

43. In the present case, the Respondents urged that the matter entails policy considerations, and hence, the Court should not step into it.

44. It is pertinent to iterate the language under Article 13(2) of the Constitution, which states that:

“(2) 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.” The word “law” in Article 13 includes within its ambit, “any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law”.

45. Upon a perusal of the above, it becomes clear that though the term ‘policy’ is not expressly mentioned in Article 13, it becomes justiciable if it takes the shape of a law.⁴² In the event such a law is deemed void due to a violation of any fundamental rights outlined in Part III of the Constitution, it cannot be protected merely for being legislative policy. This view has been elucidated in **A.L. Kalra v. Project & Equipment Corporation**,⁴³ wherein objections were raised on the grounds that the Court could not review the statute, as it entailed policy considerations. However, this Court, having taken these contentions into consideration, held that a legislative policy taking the concrete shape of a statute could be tested on the anvil of violation of fundamental rights.

46. It is, therefore, abundantly clear that courts possess the authority to scrutinize whether legislative or executive actions contravene the Constitution, and the designation of a decision as a policy choice does not serve as a fetter to the exercise of this judicial power. This aligns with the principle of separation of powers, which bestows upon the judiciary the authority to serve as a guardian against the actions of the legislature and executive, intervening to safeguard the interests of citizens when necessary.

(b) Limits to judicial review

47. However, concurrently, it is imperative to acknowledge and respect the domain of the legislature and executive within the framework of the separation of powers. While the courts are entrusted with the authority to maintain checks and balances on the other branches concerning the constitution and other

legal provisions, they are not empowered to supplant the legislature by delving into additional facets of policy decisions and governing citizens in its stead.

Similarly, it is imperative to emphasize that courts also lack the authority to intervene in policy matters when based on the premise of policy errors or the availability of ostensibly superior, fairer, or wiser alternatives. The Court cannot do a comparative analysis of policy to determine which would have been better.

53. In summary, the judicial review of government policies encapsulates determining whether they infringe upon the fundamental rights of citizens, contravene constitutional provisions, violate statutory regulations, or display manifest arbitrariness, capriciousness, or mala fides.⁵⁷ The focus of judicial scrutiny is limited to the legality of the policy, excluding any evaluation of its wisdom or soundness. The Court cannot compel the government to formulate a policy, evaluate alternatives or assess the effectiveness of existing policies. This constraint stems from the principle of separation of powers, where the Court lacks the democratic mandate and institutional expertise to delve into such matters. Thus, while the Court can invalidate a policy, it lacks the authority to create one.

54. However, to reiterate, while the Court cannot look into the aforementioned aspects, the Court can check the constitutional validity of a policy, particularly so when it is elevated as an act of the Legislature.

55. The present challenge concerns checking the validity of Section 6A, a statutory provision. We are, therefore, of the firm view that the Respondents' plea regarding foreclosing the Petitioners' challenge at the threshold, on the grounds of judicial review, cannot be accepted."

Also held "The term 'irrationality' refers to the lack of reason or logic.. The aspect of irrationality, as found in the test for 'manifest arbitrariness', thus, does not solely imply the absence of reason but also requires alignment with constitutional morality. Hence, the legitimacy of the reason or logic behind the impugned legislation should be viewed from the lens of constitutional ideals... This was so observed by this Court in Joseph Shine (supra), wherein it was clarified that irrationality does not merely denote the absence of reason but also requires that such reasoning be in harmony with constitutionalism."

4. BRITISH COURT'S EPOCHAL DECISIONS ON JUDICIAL REVIEW CONCEPT

a) LORD DIPLOCK IN CASE OF COUNCIL OF CIVIL SERVICE UNIONS & ORS VS MINISTER FOR THE CIVIL SERVICE (CCSU) CASE

"TROIKA" FRAMED ON JUDICIAL REVIEW ASPECT- [1984] 3 All ER 935, where Lord Diplock summed up the permissible grounds of judicial review thus:

"Judicial Review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer or else there would be something badly wrong with our judicial system... ..

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

In *Council of Civil Service Unions*, Lord Diplock attempted to sum up the grounds of judicial review of administrative action under three broad heads and noted thus: "... Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice." (emphasis supplied)

b) **LORD GREENE MR IN CASE OF ASSOCIATES PROVINCIAL PICTURE HOUSES LTD VS WEDNESBURY CORPORATION [1947] 2 ALL ER 680**

In that case Lord Green MR has held that a decision of a public authority will be liable to be quashed in judicial review proceeding where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have arrived it.

".....It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers the authority .. In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

Lord Greene also observed (KB p.230: All ER p.683) "....it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another." (emphasis supplied)

In *Wednesbury*, Lord Greene was of the opinion that discretion must be exercised reasonably. Explaining the concept of unreasonableness, Lord Greene stated that a person entrusted with discretion must direct himself properly in law and that he must call his own attention to the matter which he is bound to consider. He observed that the authority must exclude from his consideration matters which are irrelevant to the matter he is to consider. Lord Greene concluded that if an authority does not obey aforementioned rules, he may truly be said, and often is said, to be acting unreasonably.

5. **CONSTITUTIONAL ROLE/ DUTY (SENTINEL ON QUI VIVE ROLE) OF CONSTITUTIONAL COURTS IN MATTERS OF JUDICIAL REVIEW**

Hon'ble Apex court landmark epochal decision in case of State of Madras vs V.G.ROW 1952 ISC 19 PER HON'BLE JUSTICE PATANJALI SHASTRI
SENTINEL ON QUIE VIVE ROLE

*“Before proceeding to consider this question, we think it right to point out, what is sometimes overlooked, that our Constitution contains express provisions for judicial review of legislation as to its conformity with the Constitution, unlike as in America where the Supreme Court has assumed extensive powers of reviewing legislative acts undercover of the widely interpreted "due process" clause in the Fifth and Fourteenth Amendments. If, then, the courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. **This is especially true as regards the "fundamental rights", as to which this Court has been assigned the role of a sentinel on the qui vive.** While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute”*

-Applied recently by Hon'ble Apex court in case of Gujarat Mazdoor Sabha vs State of Gujarat 2020 INSC 572 by Hon'ble Justice Dr DY Chandrachud)

*“Justice Patanjali Sastry immortalized that phrase of this court **as the sentinel on the qui vive** in our jurisprudence by recognizing it in State of Madras vs. V G Row29. The phrase may have become weather-beaten in articles, seminars and now, in the profusion of webinars, amidst the changing times. **Familiar as the phrase sounds, judges must constantly remind themselves of its value through their tenures, if the call of the constitutional conscience is to retain meaning**”*

Hon'ble Apex court in case of Asif Hameed vs State of J&k 1989 3 SCR 19 (Per Hon'ble Justice Kuldeep Singh) (POWERFUL WEAPON OF JUDICIAL REVIEW)

*“Before advertng to the controversy directly involved in these appeals we may have a fresh look on the inter-se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers' have meticulously defined the functions of various organs of the State. A Legislature, Executive and Judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. **The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive.** The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self imposed discipline of judicial restraint.*

When a State action is challenged, the function of the court is to examine the action in accordance with Law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters. of policy or to sermonize qua any matter which under the Constitution lies within the sphere of

legislature of executive, provided these authorities do not transgress their constitutional limits or statutory powers”

Nine-Judge Bench of Hon’ble Supreme Court in the case of I.R. Coelho (Dead) by LRs. v. State of T.N. (2007) 2 SCC 1

recognized the doctrine of the separation of powers as a system of "check and balance The Court observed that the separation of powers leads to "prevention of tyranny". The Court while emphasizing on the interconnectedness between judicial review, rule of law, and the separation of power observed thus:

"Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. **These would be meaningless if the violation was not subject to the judicial review.** All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the duty to decide whether the limits have been transgressed has been placed on the judiciary. Judicial review is justified by combination of "the principle of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review" (Democracy Through Law by Lord Steyn, p. 131)."

(refer for doctrine of rule of law; separation of powers and judicial review recent decision by Hon’ble Supreme court in case of In Re: Directions in the matter of demolition of structures 2024 INSC 866 By Hon’ble Justice B.R.Gavai)

Hon’ble Supreme court 5 judge constitution bench decision in case of Dr D.C.Wadhwa vs State of Bihar Per Hon’ble Justice P.N.Bhagwati

“The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, petitioner No. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice. We must therefore reject the preliminary contention raised on behalf of the respondents challenging the locus of the petitioners to maintain these writ petitions.”

Hon’ble Supreme court 5 Judge constitution bench in case of State of West Bengal vs Committee for protection of democratic rights 2010 3 SCC 571

“Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

Per Hon’ble Justice DK Jain

It is trite that in the Constitutional Scheme adopted in India, besides supremacy of the Constitution, the separation of powers between the legislature, the executive and the judiciary constitutes the basic features of the Constitution. In fact, the importance of separation of powers in our system of governance was recognised in Special Reference No.1 (supra), even before the basic structure doctrine came to be propounded in the celebrated case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala & Anr.16, wherein while finding certain basic features of the Constitution, it was opined that separation of powers is part of the basic structure of the Constitution. Later, similar view was echoed in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain & Anr.17 and in a series of other cases on the point. Nevertheless, apart from the fact that our Constitution does not envisage a rigid and strict separation of powers between the

said three organs of the State, the power of judicial review stands entirely on a different pedestal. Being itself part of the basic structure of the Constitution, it cannot be ousted or abridged by even a Constitutional amendment. [See: L. Chandra Kumar Vs. Union of India & Ors. (*supra*)]. Besides, judicial review (1973) 4 SCC 225 1975 (Supp) SCC 1 is otherwise essential for resolving the disputes regarding the limits of Constitutional power and entering the Constitutional limitations as an ultimate interpreter of **the Constitution.**

he Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Article 32 and 226 respectively. Dr. B.R. Ambedkar described Article 32 as the very soul of the Constitution - the very heart of it - the most important Article. **By now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said Articles of the Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure.** Therefore, ordinarily, the power of the High Court and this Court to test the Constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution not only declares the pre- constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. **Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution.** It is manifest from the language of Article 245 of the Constitution that all legislative powers of the Parliament or the State Legislatures are expressly made subject to other provisions of the Constitution, which obviously would include the rights conferred in Part III of the Constitution. Whether there is a contravention of any of the rights so conferred, is to be decided only by the Constitutional Courts, which are empowered not only to declare a law as unconstitutional but also to enforce fundamental rights by issuing directions or orders or writs of or "in the nature of" mandamus, certiorari, habeas corpus, prohibition and quo warranto for this purpose. It is pertinent to note that Article 32 of the Constitution is also contained in Part III of the Constitution, which enumerates the fundamental rights and not alongside other Articles of the Constitution which define the general jurisdiction of the Supreme Court. Thus, being a fundamental right itself, it is the duty of this Court to ensure that no fundamental right is contravened or abridged by any statutory or constitutional provision. Moreover, it is also plain from the expression "in the nature of" employed in clause (2) of Article 32 that the power conferred by the said clause is in the widest terms and is not confined to issuing the high prerogative writs specified in the said clause but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of the fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, this Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress. (per P.N. Bhagwati, J. in Bandhua Mukti Morcha Vs. Union of India & Ors.23).

Hon'ble Supreme court in case of UOI vs Rajasthan high court 2017 2 SCC 519 (Per Hon'ble Dr DY Chandrachud)

"The powers under Article 226 are wide – wide enough to reach out to injustice wherever it may originate. These powers have been construed liberally and have been applied expansively where human rights have been violated. But, the notion of injustice is relatable to justice under the law. Justice should not be made to depend upon the individual perception of a decision maker on where a balance or solution should lie. Judges are expected to apply standards which are objective and well defined by law and founded upon constitutional principle. When they do so, judges walk the path on a road well-travelled. When judicial creativity leads judges to roads less travelled, in search of justice, they have yet to remain firmly rooted in law and the Constitution. The distinction between what lies within and what lies outside the power of judicial review is necessary to preserve the sanctity of judicial power. Judicial power is respected and adhered to in a system based on the rule of law precisely for its nuanced and restrained exercise. If these restraints are not maintained the court as an institution would invite a justifiable criticism of encroaching upon a terrain on which it singularly lacks expertise and which is entrusted for governance to the legislative and executive arms of government. Judgments are enforced, above all,

because of the belief which society and arms of governance of a democratic society hold in the sanctity of the judicial process. This sanctity is based on institutional prestige. Institutional authority is established over long years, by a steadfast commitment to a calibrated exercise of judicial power.”

Hon’ble Supreme court in case of Shanti Bhushan vs Supreme court through its registrar 2018 3 SCC 396’ (Per Hon’ble Justice Sikri)

“31 The Constitution makers, thus, reposed great trust in the judiciary by assigning it the powers of judicial review of not only the administrative acts of the Government/Executive but even the legislative acts of the Legislature. In the process, judiciary discharges one of the most important functions, namely, the administration of justice. It does so by upholding the rule of law and, in the process, protecting the Constitution and the democracy. Our Constitution guarantees free speech, fair trials, personal freedom, personal privacy, equal treatment under the law, human dignity and liberal democratic values. This bundle of non-negotiable rights and freedoms has to be protected by the judiciary. For this reason, independence of judiciary is treated as one of the basic features of the Constitution. **Here, we may point out four major aspects of judicial status or performance, which are: independence; impartiality; fairness; and competence”**

6. AMBIT & SCOPE OF JUDICIAL REVIEW : STUDY OF VARIOUS HON’BLE SC LEADING DECISIONS

Hon’ble Supreme court 5 Judge constitution bench decision in case of : Shri Sitaram Sugar Co Ltd vs UOI 1990 3 SCC 223

“The doctrine of judicial review implies that the repository of a power acts within the bounds of the power delegated and he does not abuse his power. He must act reasonably and in good faith. It is not only sufficient that an instrument is intra vires the parent Act, but it must also be consistent with the constitutional principles: Maneka Gandhi v. Union of India, [1978] 1 SCC 248, 314-315.

Where a question of law is at issue, the Court may determine the rightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the Court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the Court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the Court would have come to as a trier of fact. Whether an order is characterised as legislative or administrative or quasi-judicial, or, whether it is a determination of law or fact, the judgment of the expert body, entrusted with power, is generally treated as final and the judicial function is exhausted when it is found to have "warrant in the record" and a rational basis in law: See Rochester Tel. Corp. v. United States, [1939] 307 U.S. 125, 83 L. Ed. 1147. See also Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1948] 1 K.B. 223

As stated by Lord Hailsham of St. Marylebone L.C., (H.L.) in Chief Constable of the North Wales Police v. Evans, [1982] 1 WLR 1155 at 1160-61: "The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court". In the same case Lord Brightman says: "Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made". A repository of power acts ultra vires either when he acts in excess of

his power in the narrow ~ense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. See *Associated Provincial Picture Hoiises Ltd. v. Wednesbury Corporation*, [1948] 1 K.B. 223. In the words of Lord Macnaghten in *Westminster Corporation v. London and North Western Railway*, [1905] AC 426, 430: . " It is well settled that a public body invested with statutory ;powers such as those conferred upon the ,Corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first" **The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it"**

Hon'ble Supreme court 5 judge constitution bench decision in case of VIVEK NARAYAN SHARMA ...PETITIONER (S) VERSUS UNION OF INDIA .. RESPONDENT (S) B.R. GAVAI, J.

Scope of Judicial Review

215. The law with regard to scope of judicial review has been very well crystalized in the case of **Tata Cellular** (supra). In the said case, it has been held by this Court that the duty of the court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal would have reached or abused its powers. The Court held that it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.

216. After referring to various pronouncements on the scope of judicial review, the Court has summed-up thus:

"94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

“A judicial review is an exercise in reference to some existing rights and the reliefs and remedies prayed for.

The Rule of Law, as accepted and settled in India, with regard to judicial interference in administrative and executive or policy matters is no more res integra. The duty enjoined upon the judiciary is to ensure checks and balances; and to place itself between the Government and citizens when they come face to face in a Court of law. It is meant to act as an equaliser and ensure that the flow of decisions from executive to citizens is overseen through the prism of well-established principles, as and when called upon to do so. The judicial organ is not meant to impose the citizens' or even its own version of good governance upon the Government in the name of Rule of Law in exercise of its power of judicial review,.

148. We must note that the scope, operation and extent of judicial review is dependent upon the nature of subject matter that a Court is dealing with. A constitutional Court cannot devise a uniform standard of interference particularly when nature of administrative action may involve expediency (in relative terms) in execution depending on the subject matter.

In a judicial review, we do not sit in a discussion on idealism in Government actions, rather, our domain is to examine its legality on the touchstone ...

158. In India, what prevails is the “constitutional due process” i.e., the process which is due under the constitutional scheme. And what is due, as expositied above, is a principled judicial review wherein a “check” is maintainable without tilting the “balance”. For, all organs of the state are constitutionally committed to and beholden by the common goal of giving effect to processes and procedure established by law, ideals, expectations, rights and duties due under the Constitution and no deviation can be permitted therefrom...

the dispensation of judicial review cannot be resorted to by the aggrieved/dissenting section for vindication of their point of view until and unless it is demonstrated that the proposed action is in breach of procedure established by law or in a given case, colourable exercise of powers of the Government...Judicial review is never meant to venture into the mind of the Government and thereby examine validity of a decision.

167. To sum up the above discussion, it may be noted that judicial review primarily involves a review of State action – legislative, executive, administrative and policy. The primary examination in a review of a legislative action is the existence of power with the legislature to legislate on a particular subject matter. For this purpose, we often resort to doctrines of pith and substance, harmonious construction, territorial nexus etc. Once the existence of power is not in dispute, it is essentially an enquiry under Article 13 of the Constitution which enjoins the State to not violate any of the provisions of Part-III in a law-making function. The review of executive action would depend upon the precise nature of the action. For, the domain of executive is wide and is generally understood to take within its sweep all residuary functions of the State. Thus, the precise scope of review would depend on the decision and the subject matter. For instance, an action taken under a statute must be in accordance with the statute and would be checked on the anvil of ultra vires the statutory or constitutional parameters. The enquiry must also ensure that the executive action is within the scope of executive powers earmarked for State Governments and Union Government respectively in the constitutional scheme. The scope of review of a pure administrative action is well settled. Since generally individuals are directly involved in such action, the Court concerns itself with the sacred principles of natural justice – audi altrem partem, speaking orders, absence of bias etc. The enquiry is also informed by the Wednesbury principles of unreasonableness. The review of a policy decision entails a limited enquiry. As noted above, second guessing by the Court or substitution of judicial opinion on what would constitute a

better policy is strictly excluded from the purview of this enquiry. Under the constitutional scheme, the government/executive is vested with the resources to undertake necessary research, studies, dialogue and expert consultation and accordingly, a pure policy decision is not interfered with in an ordinary manner. The burden is heavy to demonstrate a manifest illegality or arbitrariness or procedural lapses in the culmination of the policy decision. However, the underlying feature of protection of fundamental rights guaranteed by the Constitution must inform all enquiries of State action by the constitutional Court”

Hon’ble Supreme court in case of Tata Cellular vs UOI (1994) 6 SCC 651 (per Hon’ble JUSTICE MOHAN)

“Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself

A modern comprehensive statement about judicial review by Lord Denning is very apposite; it is perhaps worthwhile noting that he stresses the supervisory nature of the jurisdiction : "Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Some times Parliament says it decision is to be final. At other times it says nothing about it. In all these cases the courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves embark on a rehearing of the matter: See Healey v. Minister of Health, (1955] 1 QB 221. But nevertheless, the courts will, if called upon act in a supervisory capacity. They will see that the decision-making body has acted fairly: see in re H.K. (an Infant), [1967] 2 QB 617, at 630 and Reg. v. Gaming Board for Great Britain; Ex parte Benaim and Khaida, (1970] 2 QB 417. The courts will ensure that the body acts in accordance with the law. If a question arises on the interpretation of words, the courts will decide it by declaring what is the correct interpretation: see Punton v. Minister of Pensions and National Insurance, [1963] 1 W.L.R. 186. And if the decision making body has gone wrong in its interpretation they can set its order aside: see Aslibridge Investments Ltd. v. Minister of House and Local Government, [1965] 1 W.L.R. 1320. (I know of some expressions to the contrary but they are not correct. If the decision-making body is influenced by considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the court will interfere: See Padfield v. Minister of Agriculture, Fisheries and Food, [1968] A.C. 997. If the decision-making body comes to its decision on no evidence or comes to an unreasonable finding - so unreasonable that a reasonable person would not have come to it - then again the courts will interfere: see E F G H Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1948] 1 KB. 223. If the decision-making body goes outside its powers or mis construes the extent of its powers, then, too the courts can interfere: see Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147. And, of course, if the body acts in bad faith or for an ulterior object, which is not authorised by law, its decision object, which is not authorised by law, its decision will be set aside: see Sydeney Municipal Council v. Campbell, [1925] A.C. 228. In exercising these powers, the courts will take into account any reason which the body may give for its decisions. If it gives no reasons - in a case when it may reasonably be expected to do so, the courts may infer that it has no good reason for reaching its conclusion, and act accordingly: see Padfield's case (A.C. 997, 1007 @ 1061)."

The principles deducible from the above are : (1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

Applied under income tax law sec 132 (search /raid action) challenge by hon’ble supreme court in case of 446 ITR 18- 2022 SCC Online SC 872 – By Justice Hemant Gupta- various decisions of SC in context of tender laws/disciplinary proceedings etc referred/relied at para 29 (principle of judicial restraint in judicial review referred-then para 29 to 31- case laws on judicial review in context of tender matters/disciplinary matters referred) Further in para 32- WEDNESBURY REASONABLENESS principle invoked (HELD “One of the principles is that of judicial restraint” ; “The belief recorded alone is justiciable but only while keeping in view the Wednesbury Principle of Reasonableness. & HELD “The relevance of the reasons for the formation of the belief is to be tested by the judicial restraint as in administrative action as the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made”)

Hon’ble Supreme court in case of Reliance Airport Developers Pvt. Ltd vs Airports Authority of India and Ors (2006 10 SCC 1) PER HON’BLE JUSTICE PASAYAT

“The scope for judicial review of administrative actions has been considered by this Court in various cases. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasilegislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See State of U.P. and Ors. v. Renusagar Power Co. and Ors. (AIR 1988 SC 1737). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of

the Courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is 'illegality' the second 'irrationality', and the third 'procedural impropriety'. These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (1984 (3) All.ER.935), (commonly known as CCSU Case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See Commissioner of Income-tax v. Mahindra and Mahindra Ltd. (AIR 1984 SC 1182).

While exercising power of judicial review courts should not proceed where if two views are possible and one view has been taken. In such a case, in the absence of mala fide taking one of the views cannot be a ground for judicial review

In Tata Cellular v. Union of India (1994 (6) SCC 651), this Court has held that: "The duty of the court is to confine itself to the question of legality. Its concern should be: 1. Whether a decision-making authority exceeded its powers, 2. committed an error of law, 3. committed a breach of the rules of natural justice, 4. reached a decision which no reasonable tribunal would have reached or, 5. abused its powers. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under: (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it; (ii) Irrationality, namely, Wednesbury unreasonableness. (iii) Procedural impropriety. The above are only the broad grounds but it does not rule out addition of further grounds in course of time."

Hon'ble Apex court in case of State of UP vs Maharaja Dharmendra Prasad Singh & Others 1989 2 SCC 505 Per Hon'ble Justice M.N.Venkatchalliah

"Judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision making-process.

When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision making process includes examination, as a matter of Jaw, of the --+.. relevance of the factors."

Also refer J.M.D Alloys vs Bihar SEB 2003 5 SCC 226; Indian Railway Construction Co Ltd vs Ajay Kumar 2003 4 SCC 579

Hon'ble Apex court in case of Kumari Shreelekha Vidyarthi & Others vs State of UP 1991 1 SCC 212 Per Hon'ble Justice J.S.Verma

“No doubt, it is true, as indicated by us earlier, that there is a presumption of validity of the State action and the burden is on the person who alleges violation of Article 14 to prove the assertion. However, where no plausible reason or principle is indicated nor is it discernible and the impugned State action, therefore, appears to be ex facie arbitrary, the initial burden to prove the arbitrariness is discharged shifting onus on the State to justify its action as fair and reasonable. If the State is not able to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged. The scope of judicial review is limited as indicated in Dwarkadas Marfatia's case (supra) to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case. As indicated by Diplock, L.J., in Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 All ER 935, the power of judicial review is limited to the grounds of illegality, irrationality and procedural impropriety. In the case of arbitrariness, the defect of irrationality is obvious,

It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity”

Hon'ble Apex court dictum in case of Amrendra Kumar Pandey vs UOI in CIVIL APPEAL NOS. 11473/11474 OF 2018 (2022 SCC online SC 881) by Justice JB Pardiwala

“29. Where an Act or the statutory rules framed thereunder left an action dependent

upon the opinion of the authority concerned, by some such expression as ‘is satisfied’ or ‘is of the opinion’ or ‘if it has reason to believe’ or ‘if it considered necessary’, the opinion of the authority is conclusive, (a) if the procedure prescribed by the Act or rules for formation of the opinion was duly followed, (b) if the authority acted bona fide, (c) if the authority itself formed the opinion and did not borrow the opinion of somebody else and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed.

30. The action based on the subjective opinion or satisfaction, in our opinion, can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion. It is true that ordinarily the court should not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist. The courts will not readily defer to the conclusiveness of the authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated.”

REFER HON'BLE APEX COURT IN CASE OF CHIEF REVENUE CONTROLLING OFFICER CUM Appellant(s) INSPECTOR GENERAL OF REGISTRATION, & ORS. VERSUS P. BABU Respondent(s)

CIVIL APPEAL NOS.75-76 of 2025

“19. When both the authorities viz., the Registering Authority and the Collector are vested with the discretion to decide regarding the market value of the property, by the expression ‘reason to believe’, then whether it reflects the subjective satisfaction of the authorities concerned or it reflects the objective determination of the market value of the property? What is meant by ‘reason to believe’ is the issue to be considered.

Duty is enjoined upon the Registering Officer to ensure that Section 47-A(1) does not work as an engine of oppression nor as a matter of routine, mechanically, without application of mind as to the existence of any material or reason to believe the fraudulent intention to evade payment of proper Stamp Duty. The expression ‘reason to believe’ is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith, it cannot be merely a pretence. It is open to the Court to examine the question whether the reasons for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purpose of the section. The word ‘reason to believe’ means some material on the basis of which the department can re-open the proceedings. However, satisfaction is necessary in terms of material available on record, which should be based on objective satisfaction arrived at reasonably.”

Hon’ble Apex court in case of Dr. Premachandran Keezhoth vs Chancellor Kannur University and Others 2023 SCC OnLine SC 1592 by Justice JB Pardiwala

“89. We emphasise on the decision-making process because in such a case the exercise of power is amenable to judicial review.

90. In Chief Constable of the North Wales Police v. Evans, [1982] 1 WLR 1155 : [1982] 3 All ER 141 (HL), Lord Brightman observed thus : (WLR p. 1174 G)

“... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.”

If the power has been exercised on a non-consideration or non- application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See [Commissioner of Income-tax v. Mahindra and Mahindra Ltd.](#) (AIR 1984 SC 1182).

7. *RECENT DECISION OF HON'BLE SUPREME COURT OF UK In the matter of an application by Noeleen McAleenon for Judicial Review (Appellant) (Northern Ireland*

[2024] UKSC 31

“(a) Judicial review of regulators

40. Judicial review is directed to examination of whether a public authority has acted lawfully or not. This means that the general position is that the focus of a judicial review claim is on whether the public authority had proper grounds for acting as it did on the basis of the information available to it. This may include examination of whether the authority should have taken further steps to obtain more information to enable it to know how to proceed: Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014, 1065B (Lord Diplock). Accordingly, it is for the public authority to determine on the information available to it the facts which are relevant to the existence and exercise of its powers, subject to review by a court according to the usual rationality standard. The court has a supervisory role only. (We leave aside cases where public law powers are conditional upon the existence of a fact which is to be determined objectively by the court itself, ie what is called a precedent fact).

41. Judicial review is supposed to be a speedy and effective procedure, in respect of which disputes of fact which have a bearing on the legal question to be determined by the court - that is, whether the public authority has acted lawfully - do not generally arise. A public authority is subject to a duty of candour to explain to the court all the facts which it took into account and the information available to it when it decided how to act

42. Given the nature of the legal question to be determined by the court and the duty of candour, the usual position is that a judicial review claim can and should be determined without the need to resort to procedures, such as cross-examination of witnesses, which are directed to assisting a court to resolve disputed questions of fact which are relevant in the context of other civil actions, where it is the court itself which has to determine those facts. In judicial review proceedings the court is typically not concerned to resolve disputes of fact, but rather to decide the legal consequences in the light of undisputed facts about what information the public authority had and the reasons it had for acting. (This is not to say that such procedures are not available in judicial review: cross-examination is available and will be allowed “whenever the justice of the particular case so requires”: O’Reilly v Mackman [1983] 2 AC 237, 283 per Lord Diplock; but usually, given the issues which arise in a judicial review claim, the justice of the case does not require it).

b) The suitable alternative remedy principle

50. The forms of relief available in a claim for judicial review are discretionary (albeit the ambit of the discretion may in the event be very small or non-existent in the circumstances of a particular case). The availability of the judicial review procedure is likewise discretionary. A court may refuse to grant leave to apply for judicial review or refuse a remedy at the substantive hearing if a suitable alternative remedy exists but the claimant has failed to use it. As stated in *R (Glencore Energy UK Ltd) v Revenue and Customs Comrs* [2017] EWCA Civ 1716; [2017] 4 WLR 213, para 55, “judicial review in the High Court is ordinarily a remedy of last resort, to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective”. If other means of redress are conveniently and effectively available, they ought ordinarily to be used before resort to judicial review: *Kay v Lambeth London Borough Council* [2006] UKHL 10; [2006] 2 AC 465, para 30; *R (Watch Tower Bible & Tract Society of Britain) v Charity Commission* [2016] EWCA Civ 154; [2016] 1 WLR 2625, para 19.

51. Where Parliament has enacted a statutory scheme for appeals in respect of certain decisions, an appeal will in ordinary circumstances be regarded as a suitable alternative remedy in relation to such decisions which ought to be pursued rather than having resort to judicial review: *Glencore Energy*, above, paras 55-58; *Watch Tower Bible & Tract Society*, above, para 19. Otherwise, use of judicial review would undermine the regime for challenging decisions which Parliament considers to be appropriate in that class of case.”

8. SECONDARY ROLE IN JUDICIAL REVIEW OF COURTS

Hon’ble Apex court decision in case of ; Union of India & Anr v G Ganayutham (1997) 7 SCC 463 (Per Hon’ble Justice M.Jaganaddha Rao)

“We are of the view that even in our country, - in cases not involving fundamental freedoms, - the role of our Courts/Tribunals in administrative law is purely secondary and while applying *Wednesbury* and *CCSU* principles to test the validity of executive action or of administrative action taken in exercise of statutory powers, the Courts and Tribunals in our country can only go into the matter, as a secondary reviewing Court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of *Wednesbury* and *CCSU* tests. The choice of the options available is for the authority the Court/tribunal cannot substitute its view as to what is reasonable.”

9. JUDICIAL REVIEW & PROPORTIONALITY DOCTRINE

Constitution of India — Arts. 226, 32 and 136 — “Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise — the elaboration of a rule of permissible priorities. “Proportionality” involves “balancing test” and “necessity test”. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative, *Coimbatore Distt. Central Cooperative Bank v. Employees Assn.*, (2007) 4 SCC 669; (2007) 2 SCC (L&S) 68.

essence of proportionality test: It is not permissible to use a “sledgehammer to crack a nut”. As has been said many a time; “where paring knife suffices, battle axe is precluded”

for doctrine of “proportionality” refer:

Coimbatore District Central Coop. Bank v. Employees Assn 9 (2007) 4 SCC 669 (it is clear that our legal system also has accepted the doctrine of proportionality ;"18. 'Proportionality' is a principle where the Court is concerned with the process, method or manner in which the decision maker has ordered is priorities, reached a conclusion or arrived at a decision. The very essence of decision making consists in the attribution of relative importance to the factors and considerations in the case..... 19.....the principle of proportionality needs to be imbibed in to any penalty imposed under Section 27 of the Act. Otherwise excessively high fines may over-deter, by discouraging potential investors which is not the intention of Act....." ; further on proportionality ground of judicial review: refer Chairman, All India Railway Recruitment Board & Anr v K Shyam Kumar & Ors (2010) 6 SCC 614; Union of India & Anr v G Ganayutham (1997) 7 SCC 463; Om Kumar & Ors v Union of India (2001) 2 SCC 386; Teri Oat Estates pvt ltd vs UT Chandigarh 2004 2 SCC 130; two tax decisions under customs and fema law where said proportionality principle is applied may be noted : Hon'ble delhi high court in case of SMS Logistics vs commissioner of customs (general) CUSAA 212/2019 order dated 12.09.2023 on issue of punitive measure being disproportionate; hon'ble Bombay high court in case of Spldirector vs JAIPURIPL CRICKET PVT LTD order dated 13 dec.2023 (in context of penalty for violations under fema law).

Supreme Court in Excel Crop Care Ltd. vs. CCI and Anr (2017) 8 SCC 47—

PER JUSTICE SIKRI ”92. Even the doctrine of —proportionality would suggest that the court should lean in favour of —relevant turnover. No doubt the objective contained in the Act viz. to discourage and stop anticompetitive practices has to be achieved and those who are perpetrators of such practices need to be indicted and suitably punished. It is for this reason that the Act contains penal provisions for penalising such offenders. At the same time, the penalty cannot be disproportionate and it should not lead to shocking results. That is the implication of the doctrine of proportionality which is based on equity and rationality. It is, in fact, a constitutionally protected right which can be traced to Article 14 as well as Article 21 of the Constitution. **The doctrine of proportionality is aimed at bringing out —proportional result or proportionality stricto sensu. It is a result-oriented test as it examines the result of the law in fact the proportionality achieves balancing between two competing interests: harm caused to the society by the infringer which gives justification for penalising the infringer on the one hand and the right of the infringer in not suffering the punishment which may be disproportionate to the seriousness of the Act.**

PER JUSTICE N.V.RAMANA: “10. At this point, I would like to emphasize on the usage of the phrase ‘as it may deem fit’ as occurring under Section 27 of the Act. At the outset this phrase is indicative of the discretionary power provided for the fining authority under the Act. As the law abhors absolute power and arbitrary discretion, this discretion provided under Section 27 needs to be regulated and guided so that there is uniformity and stability with respect to imposition of penalty. This discretion should be governed by rule of law and not by arbitrary, vague or fanciful considerations. Here we may deal with two judgments which may be helpful in deciding the concerned issue.”

two tax decisions under customs and fema law where said proportionality principle is applied may be noted : Hon'ble delhi high court in case of SMS Logistics vs commissioner of customs (general) CUSAA 212/2019 order dated 12.09.2023 on issue of punitive measure being disproportionate; hon'ble Bombay high court in case of Spldirector vs JAIPURIPL CRICKET PVT LTD order dated 13 dec.2023 (in context of penalty for violations under fema law).

10. **Some important take aways on JUDICIAL REVIEW**

- a) Our constitutional drafter recognized and constitutionalised the judicial review of not only executive action but also primary legislation
- b) Judicial review is to uphold supremacy of the constitution
- c) Judicial review is the exercise of power by superior courts to test the legality of any governmental or state action;
- d) Judicial review is life breadth of the constitution of a vibrant working constitutional democracy
- e) Judicial review is rooted in constitutional interpretation
- f) The rule of law is protected and upheld by judicial review
- g) Judicial review is integral part of constitutional government
- h) Judicial review is a TRUST and judges are trustees of same
- i) Constitutional courts are to sentinel on qui vive;
- j) Judicial review has to be balanced with judicial restraint;
- k) Constitutional courts are accountable to constitution and its values
- l) JUDICAL review is part of basic feature of constitution of india and is beyond scope of any change
- m) Apart from "Troika" (illegality ;irrationality and procedural impropriety) of CCSU ,Arbitrariness & Proportionality are important ground of judicial review

11. **FINALLY ON CONSTITUTIONAL DIALOGUE (UNDER JUDICIAL REVIEW)**

REFERENCE IS MADE TO HON'BLE SUPREME COURT DICTUM IN CASE OF GUJARAT URJA VIKAS NIGAM LTD VS AMIT GUPTA (Per Hon'ble Justice Dr DY Chanadrachud)

"168 In the past, this Court has adopted such dialogical remedies – where the Court engages in a dialogue in its judgments with the other two organs of government so that each organ can best perform its constitutionally assigned role...169 Conscious as we are of the fact that this case is about statutory and not constitutional interpretation, we think it would be apposite to quote the following observations by Anne Meuwese and Marnix Snel131: —The core of constitutional dialogue between the judiciary and the legislature is that they engage in a conversation about constitutional meaning, in which both actors (should) listen in order to learn from each other's perspectives, which can then lead to modifying their own views accordingly... In this way, 'dialogue' represents the 'middle way between judicial supremacy on the one hand, and legislative supremacy on the other'

170 The Court is at its heart, an institution which responds to concrete cases brought before it. It is not within its province to engraft into law its views as to what constitutes good policy. This is a matter falling within the legislature's remit. Equally, when presented with a novel question on which the legislature has not yet made up its mind, we do not think this Court can sit with folded hands and simply pass the buck onto the Legislature. In such an event, the Court can adopt an interpretation – a workable formula – that furthers the broad goals of the concerned legislation, while leaving it up to the legislature to formulate a comprehensive and well-considered solution to the underlying problem. To aid the legislature in this exercise, this Court can put forth its best thinking as to the relevant considerations at play, the position of law obtaining in other relevant jurisdictions and the possible pitfalls that may have to be avoided. It is through the instrumentality of an inter-institutional dialogue that the doctrine of separation of powers can be operationalized in a nuanced fashion. It is in this way that the Court can tread the middle path between abdication and usurpation"