

Judiciary

Dr. Shinde Pramod G.
Dayanand College of Law, Latur

Introduction

- ▶ **The Judiciary is the third organ of the government**
- ▶ **It has the responsibility to apply the laws to specific cases and settle all disputes**
- ▶ **It acts as their protector against the possible excesses of legislative and executive organs**
- ▶ **Role of Judiciary as the guardian protector of the constitution and the fundamental rights of the people**

- ▶ It is that branch of govt. **which interprets law, settles disputes and administer justice.**
- ▶ Laws are like **dead letters** without courts to explain and expound their **meaning.**
- ▶ It is the **watch dog of democracy**, guardian of the constitution as well as **champion of liberty.**
- ▶ Bryce, observed , ‘If the lamp of justice goes out in darkness, how great is that darkness’.
- ▶ An impartial and independent judiciary is the most imp. Condition of a civilized govt.
- ▶ Bryce has stated that the **test of excellence of a good govt. is the efficiency of its judicial system**

- ▶ The judiciary, in order to be **fair and uniform, is structurally hierarchically organized.**
- ▶ In India the structure of judiciary is like a **pyramid.**
- ▶ The **Supreme Court** is at apex, below it, there are High courts, the next step in the hierarchy are the district courts and at the bottom of the judicial pyramid are the subordinate courts.
- ▶ In the states, having the federal form of govt., the judicial structure is arranged in either one or two hierarchies of courts.
- ▶ Where there is **a single , integrated hierarchy**, as India , the courts from **top to bottom deal** with the disputes arising under the laws enacted by the **Union Parliament** as well as state legislature.

- ▶ On the other hand , where there are **two hierarchies**, as in the USA, the **state courts** try cases arising out of state laws, while the federal courts try cases arising out of **federal laws**.
- ▶ So hence to say that **a single judicial hierarchy** secures **unity and integration** of the judicial system and **uniformity** in its administration.

Importance of Judiciary

- ▶ It is the third organ of the govt.
- ▶ It has the **responsibility to apply the laws to specific cases and settle all disputes,**
- ▶ The **real 'meaning of law'** is what the judges decide during the course of giving their judgments in various cases.
- ▶ From the **citizens point** of view , judiciary is the most imp. Organ of the govt. because it acts as their **protector against the possible excesses of legislative and executive organs.**
- ▶ Role of judiciary as the **guardian-protector of the constitution and the fundamental rights of the people makes** it more respectable than other two organs.

- ▶ It is **indispensable** organ of govt.
- ▶ Its imp. Cannot be **over emphasized**.
- ▶ Any society without judiciary system is bound to face **chaos and anarchy**.
- ▶ In a nation where the **judiciary is weak** or not independent its people might be **confronted with injustice** and all kinds of intimidation.
- ▶ The judiciary organ performs several roles **to ensure stability of a society**.
- ▶ Some of its **statutory functions** amongst others include: conflicts resolution, punish people who violate the laws of the land, interpret the constitution of the land and check the activities of the other organs of the govt. i.e. the exe. And legi.

- ▶ Thus, absence of judiciary system could create **an uncomfortable situation in any given country.**
- ▶ Democracy as the govt. of the masses cannot stand in such as a country.
- ▶ Hence in weak judiciary system, the **people cannot enjoy the dividends of democracy.**
- ▶ **Garner** highlights this view when he observes, ‘A society without legislature is conceivable, and indeed, legislative organs did not make their appearance in the state until modern times, **but a civilized state without a judicial organ and machinery is hardly** conceivable’

- ▶ Judiciary enjoys a big imp. In the eyes of the people because it acts as :
- ▶ 1. the dispenser of justice
- ▶ 2 Protector of the rights of the people.
- ▶ 3 guardian protector of the Constitution of the state.
- ▶ 4 Arbiter of center-state disputes
- ▶ 5 safeguard against legislative and executive excesses.
- ▶ 6 check against arbitrary exercise of powers by the power-holders
- ▶ 7 Guardian of Rule of Law and Justice
- ▶ So a govt. without independent judiciary is always held to be an authoritarian govt.

Functions of Judiciary

- ▶ **To Give Justice to the people**
- ▶ **Interpretation and Application of Laws**
- ▶ **Role in Law-making**
- ▶ **Equity Legislation**
- ▶ **Protection of Rights**
- ▶ **Guardian of the Constitution**
- ▶ **Special Role in Federation**
- ▶ **Advisory Functions**
- ▶ **To conduct Judicial Inquires**

To Give Justice to the people

- ▶ The first and foremost function of the judiciary is to give justice to the people, **whenever they may** approach it.
- ▶ It **awards punishment to those who after trial are found guilty of violating the laws** of the state or the rights of the people.
- ▶ The aggrieved citizens can go to the courts for seeking **redress and compensation**
- ▶ They can do so either when they **fear any harm to their quantity** and quality of punishment to be given to the criminals
- ▶ It decides all cases involving **grant of compensations** to the citizens.

Interpretation and Application of Laws

- ▶ One of the major functions of **the judiciary is to interpret and apply laws to specific cases.**
- ▶ In the course of deciding the disputes that come before it, the judges interpret and apply laws
- ▶ Every law needs **a proper interpretation for getting applied to every specific cases.**
- ▶ **This function is** performed by the judges
- ▶ The law means **what the judges** interpret it to mean.
- ▶ Golaknath. Minarva mills, keshwanand case Art 368- amendment not on fundamental rights

Role in Law-making

- ▶ The judiciary also plays a role in law-making
- ▶ The **decisions given by the courts** really determine the meaning, **nature and scope of the laws** passed by the legislature.
- ▶ The **interpretation of laws** by the judiciary amounts to law-making as it is these interpretations which really define the laws.
- ▶ Moreover, ‘ the judgments delivered by the higher courts, which are the **Courts of Records** , are **binding upon lower** courts.
- ▶ The latter can decide the cases before them on the basis of the decisions made by the higher courts
- ▶ **Judicial decisions constitute a source of law.**

Equity Legislation

- ▶ Where a law is silent or ambiguous or appears to be inconsistent with some other law of the land, the judges depend upon their sense of justice, fairness, impartiality, honesty and wisdom for deciding the cases.
- ▶ Such decisions always involve law-making.
- ▶ It is usually termed as equity legislation.
- ▶ I.e. judicial precedent
- ▶ Equality and Equity

Protection of Rights

- ▶ The judiciary has the supreme responsibility to safeguard the rights of the people.
- ▶ A citizen has the right to seek the protection of the judiciary in case his rights are violated or threatened to be violated by the govt. or by private organizations or fellow citizens.
- ▶ In all such cases, it becomes the responsibility of the judiciary to protect his rights of the people.

Guardian of the Constitution

- ▶ It acts as the guardian of the constitution
- ▶ The constitution is the **supreme law** of the land and it is the responsibility of the judiciary to **interpret and protect** it.
- ▶ For this purpose, the judiciary can conduct **judicial review** over any law of determining as to whether or not it is in accordance with the letter and spirit of the constitution
- ▶ In case any law is **found ultra vires** (unconstitutional), it is rejected by the judiciary and it becomes **invalid for future**.
- ▶ This power of the court is called the power of Judicial review.

Power to get its Decisions and Judgments enforced

- ▶ The judiciary has the power not only to deliver judgments and decide disputes, but also to **get these enforced**.
- ▶ It can direct the **executive to carry** out its decisions.
- ▶ It can **summon any person and directly** know the truth from him.
- ▶ In case any person is held:
 - ▶ 1 guilty of not following any decision of the court or
 - ▶ 2 of acting against the direction of the court or
 - ▶ Misleading the court or
- ▶ Of **not appearing before** the court in case being heard by it, the court has the power to punish the person for the **contempt of court**.

Special Role in Federation

- ▶ In a federal system , the judiciary has to perform an additionally imp. Role as the **guardian of the constitution** and **arbiter of disputes** between the center and states.
- ▶ It acts as an **independent and impartial umpire** between the central govt. and state govts. As well as among the states
- ▶ All **legal center-state** disputes are settled by the judiciary.
- ▶ Centre - state relations, inter-state council, financial relation, conflict bet them

Running of the Judicial Administration

- ▶ The judiciary is **not a department of the govt.**
- ▶ It is **independent of both the legi.** And the exe.
- ▶ It is **a separate and independent organ with its own organization and officials**
- ▶ **It has the power to decide the nature of judicial** organization in the state
- ▶ It **frames and enforces its own rules**
- ▶ These govern the **recruitment and working of the magistrates and other persons working in the courts**
- ▶ It makes and **enforces rules** for the orderly and efficient conduct of judicial administration

Advisory Functions

- ▶ Very often the courts are given the responsibility to give advisory opinions to the **rulers on any legal matter**
- ▶ For ex. The **president of India** the power to refer to the SC any questions of law or fact which is of **public importance**.

To conduct Judicial Inquiries

- ▶ Judges are very often **alleged upon to head Enquiry Commissions constituted** to enquiry into some serious incidents resulting from the alleged errors or **omissions on the part of government or some public servants**
- ▶ Commissions of enquiry headed by **a single judge** are also sometimes constituted for investigating imp. And complicated issues and problems.

Miscellaneous Functions

- ▶ Besides the above major functions, the judiciary also performs several other functions
- ▶ 1. appointment of certain **local officials of the court, choosing of clerical and other employees.**
- ▶ Cases relating **to grant of license, patents, and copy rights, the appointment of guardians and trustees**, the admission of wills. To appoint trustees to look after the **property of the minors.**
- ▶ To settle the issues **of successions of property and rights, issue of administrating the estates of deceased persons**
- ▶ The appointment of receivers, naturalizations of aliens, marriage and divorce cases, election petitions and the hike
- ▶ Cases relating to suspending MLA Magharashtra

- ▶ The excellence of the judiciary is a measure of the excellence of the govt.
- ▶ Judiciary comprises all the **law courts in the country, both superior and subordinate.**

The following are the functions performed by the judiciary in a modern state

- ▶ A . Administration of Justice :-
- ▶ The primary function of the judiciary is to apply the law to specific cases or disputes
- ▶ When a dispute is brought before the courts it **'determines the facts'** involved
- ▶ The court determines facts **through evidence** given by the contestants.
- ▶ The court proceeds to decide **what law is applicable to the controversy** or case in question
- ▶ By applying the **appropriate law to the** dispute or case, the court awards **judgment.**
- ▶ **If it finds a person or party guilty of violating laws and rules, it has to impose a penalty on the guilty.**
- ▶ Thus , **holding a trial and giving judgment** is an imp. Aspect of the function of the judge.

Creation of Judge-Made Law

- ▶ there are many cases where the judges find it difficult to select the appropriate law for application
- ▶ The law may not be clear or two laws might appear to conflict under a given circumstances
- ▶ Here the judges decide what the appropriate law is on the basis of their wisdom and common sense
- ▶ In doing so judges have built up a great body of 'judge made law' or 'case law'
- ▶ Under the doctrine of 'stare decisis', the previous decisions of judges are generally regarded as binding on later judges in similar cases

Guardian of the Constitution

- ▶ In federal states like the USA, India, Australia, the highest court acts as the guardian of the constitution
- ▶ The conflicts of jurisdiction between the central govt. and the state govts. Or bet. The legislature and the exe. Are decided by the court
- ▶ Any law or exe. Order which violates any provision of the constitution is declared unconstitutional or null and void by the judiciary
- ▶ This is known as the power of 'judicial review'. Judicial review has the merit of guaranteeing the fundamental rights of individuals and ensuring balance between the union and the units in federal state.
- ▶ It has the disadvantages of the judiciary becoming a super legislature acting irresponsibility in which case the principle of the separation of powers is violated.

Protector of Fundamental Rights

- ▶ The judiciary protects the rights of people against **the encroachment of the govt. or any other association or individual.**
- ▶ The superior courts enforce the fundamental rights of the people through appropriate writs judicial order in the nature of **Habeas Corpus, Mandamus, Certiorari, Quo-Warrant etc.**

Supervisory Function

- ▶ Higher courts, in most cases, are assigned the task of **supervising the work of the lower courts.**
- ▶ The high courts supervise the work of the **subordinate courts** in India.

Advisory Function

IN **Canada and India** , The Supreme Court, the highest court of Law, may give advisory opinion on **constitutional questions**.

Such advice is given in the **absence of an actual dispute**, when the chief exe. So desires.

Non-Judicial or Administrative Functions

- ▶ Courts perform certain other miscellaneous functions of a non-judicial nature
- ▶ The courts may grant certain licenses, administer the estates (property) of deceased persons and appoint receivers
- ▶ They register marriages, appoint guardians of minor children and lunatics
- ▶ In some states, they are authorized to confer citizenship of aliens
- ▶ Superior courts are give the power to exercise control over their officers and servants

Importance of Independent Judiciary

It enjoys importance in the eyes of the people because it acts as:

- ▶ **The dispenser of Justice**
- ▶ **Protector of the rights of the people**
- ▶ **Arbiter of center-state disputes**
- ▶ **Safeguard against Legislative and executive excesses**
- ▶ **Check against arbitrary exercise of powers by the power-holders**
- ▶ **Guardian of Rule of Law and Justice**

Independence of Judiciary

- ▶ The chief quality which helps the judiciary **to faithfully administer justice and to perform its functions efficiently** is judicial independence
- ▶ Judiciary must work independently without any interference of the other two organs of the government
- ▶ Dr. P. Sharan, **“is a corner stone of every democratic government and upon it is built the structure of civil liberty.”**
- ▶ Judiciary can perform its functions only when it is **free to administer justice according to law.**
- ▶ Without being **well organized** and independent it can never serve its purpose

- ▶ Therefore, Judiciary must be organized in such away as can **enable the judges to give their judgments without any fear or favor.**
- ▶ **Administration of justice** is the key task of the judiciary.
- ▶ Justice, which is **the soul of the state**, must be administered **without fear or favor.**
- ▶ The judicial branch should **remain outside** the influence of **politics.**
- ▶ While **interpreting laws and deciding cases**, the judges must be impartial and honest.
- ▶ Without independence, impartially and integrity of **the judges are endangered.**

- ▶ The first condition for an **efficient and impartial judiciary is independence**
- ▶ This independence broadly means the **freedom of the judiciary from the control and influence of the executive, the legi., and the people** at large.
- ▶ Secondly, impartiality in the administration of justice is as important as independence
- ▶ Justice should be administered without fear or ***favor, affection or ill-will***
- ▶ Besides being independent and impartial, the **judges should be wise, learned and skilled in their profession**
- ▶ It follows that the judiciary should have certain qualities if it has to perform its functions properly.

Organisation of Judiciary on following features

- ▶ **Appointment of only highly qualified and experienced judges**
- ▶ **The Judiciary must have prevented the executive and legislature from committing excesses**
- ▶ **The ability of the judiciary to maintain and independently run the judicial administration**
- ▶ **The judiciary must be made the guardian protector of the constitution**
- ▶ **It must be ensure full, fair and less-expensive opportunities to the people for defending their rights and getting justice**

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- ▶ **The method of appointment of judges must be fair, systematic, effective and transparent**
- ▶ **Method of removal of judges should be difficult and no single should have the power to remove the judges**
- ▶ **Judges must be paid high salaries, necessary allowances, good service conditions and appropriate retirement benefits**

Proper Method of Appointment

- ▶ The independence of the judges depends, to a large extent , upon the mode of appointment
- ▶ There are various methods of selecting judges
- ▶ **Election by the people** is followed in certain states of **the USA and cantons of Switzerland**
- ▶ **Election by the legislature** is followed in Switzerland
- ▶ **Elected judges** cannot be free from influence of **party politics**
- ▶ The best method is **nomination by the chief Exe.** Which is in vogue in most of the states.
- ▶ The exe. Is a **better judge of the merits and suitability** of those appointed, the judges should remain outside the influence of the executive.

- ▶ Again, the rules relating to the **nomination of judges** may be **so framed that persons only of high efficiency and integrity will enter the judgeship.**
- ▶ To the **lower ranks of the judiciary**, appointments are made through open competition by an independent agency like **Public Service Commissions in India.**

Security of Tenure

- ▶ **Long and secure tenure** is essential for ensuring judicial independence
- ▶ In most of the states judges, **once appointed, continue in office**, till they attain a **specific age and hold office during good behavior**
- ▶ Long tenure enables judges to **gather experience**
- ▶ **Security of tenure** enables them **to dispense justice** without fear or favour
- ▶ **Fair salary, comfortable retirement benefits and security of tenure during good behavior** are excellent principles

Method of Removal

- ▶ Judges should not be on the **whims and caprices** of their exe. Or the legi.
- ▶ They should continue in office **during good behavior**
- ▶ In most of the countries judges are **removed by the exe.** Upon an address made by the legi.
- ▶ In the **UK** , judges are removed by the **crown upon an address of both houses of Parliament**
- ▶ In the **USA judges** are removed by the difficult process of **impeachment**
- ▶ In India, the judges of SC and HC can be removed only on **the ground 'proved misbehavior' or 'incapacity'**
- ▶ Each house has to pass a resolution by a **special majority**
- ▶ The resolution is addressed to the **President** who then issues the order of removal

Attractive Salary and Service Conditions

- ▶ Judiciary requires **talented men of law**
- ▶ If the salary of judges will not be attractive, **talented men of law will not be attracted to the judiciary**
- ▶ Again, good salary keeps judges above **corruption and abuse of power**
- ▶ **So salary, retirement benefit** and other conditions of service ought to be lucrative
- ▶ In no case is a judge to face **any reduction in pay** and other benefits during his tenure

High Qualification

- ▶ Judicial function requires **technical competence**.
- ▶ Judges must possess **proper qualification** to be worthy of their vocation
- ▶ The usual practice in almost all the countries **is to appoint judges from among distinguished and experienced members of the legal profession**
- ▶ **Qualification to become a judge in SC**
- ▶ **He or she should be citizen of India**
- ▶ **Must have an LLB /LLM degree**
- ▶ **He/she should have been a judge of HC for atleast 5 yrs or should have been an advocate of HC for 10 yrs.**

Separation from the Executive

- ▶ Judiciary should be free from **the influence of the exe.** So that it could promote the **ends of justice**
- ▶ If the govt. is one of the parties to a dispute the **judges should protect the citizens against exe. Encroachment**
- ▶ No exe. Authority should **interfere in or exercise control over the working of law courts**

Other Conditions

- ▶ The salary of the judges and the **cost of establishment** of the court shall from **non-votable** items of the state's budget so that there will not be any adverse criticism in the legi.
- ▶ The matters or issues which **are pending in the court are not to be discussed in the legi. Or in the public**
- ▶ To prevent judges from misbehaving, some **restrictions** upon them are imposed:
- ▶ 1 the judges are not to **be appointed in other works after their retirement**
- ▶ 2 they **are not to practice after retirement in any** court of the same rank or below the rank of the court from where he retires

Judicial review

- ▶ Judicial Review refers to the power of the judiciary to interpret the constitution and to declare any such law or order of the legi. And exe. Void, if it finds them in conflict the constitution
- ▶ The Supreme court has the power to reject any law or any of its part which is found to be unconstitutional
- ▶ This power of the SC is called the Judicial Review power
- ▶ State HC also exercise this power but their judgments can be rejected or modified or upheld by the SC.

Meaning and Definition

- ▶ It refers to the power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict with the constitution of India
- ▶ It is the principle under which legislative and executive actions are subject to review by the judiciary
- ▶ A specific court that has judicial review power may suspend acts of the state and find them incompatible
- ▶ It is a good example of check and balances in a modern governmental system
- ▶ It is one of the main features of government in a federal republic of the USA and other democratic governments.

Judicial Review is the power of the Judiciary by which

- ▶ 1 the court reviews the laws and rules of the legi. And exe. In cases that come before them: in litigation cases
- ▶ 2 the court determines the constitutional validity of the laws and rules of the govt; and
- ▶ 3 the court rejects that law or any of its part which is found to be unconstitutional or against the constituion

JR - it can be understood in the context of two distinct parallel- legal systems

- ▶ Govt should be organized in respect to the principles of legislative supremacy and the separation of powers.
- ▶ 1. first , two distinct legal systems, civil and common law have different views about J.R.
- ▶ Common law are seen as sources of law, capable of creating new legal system and also capable of rejecting legal rules that are no longer
- ▶ In the civil law tradition judges are seen as those who in the laW, WITH NO POWER TO CREATE LEGAL RULES.

- ▶ 2. second, the idea of separation of powers is another idea about how democratic society's govt. should be organized
- ▶ In contrast to legislative supremacy, THE IDEA OF SEPARATION OF Powers was firstly introduced by Montesquies and was later institutionalized in the USA by the supreme court ruling in Marbury vs Madison under the court of Marshall
- ▶ Separation of powers is based on the idea that each branch of govt should be able to exert power to any other branch without due process of law, each branch of govt. should have a check on the powers of the

▶ **Concepts of Law:**

- ▶ **Procedure Established by Law:** It means that a law enacted by the legislature or the concerned body is valid only if the correct procedure has been followed to the letter.
- ▶ **Due Process of Law:** It is a doctrine that not only checks if there is a law to deprive the life and personal liberty of a person but also ensures that the law is made fair and just.
- ▶ India follows **Procedure Established by Law.**

▶ EVOLUTION OF JUDICIAL REVIEW:

- ▶ The Doctrine of Judicial Review was for **the first time propounded by the Supreme Court of America**. Originally, **the constitution of United States did not contain an express provision for judicial** review but it was assumed by the *Supreme Court of United States in the historic case of Marbury vs Madison 2. LEd.60*. Chief Justice Marshall observed that "the constitution is either superior paramount law, unchangeable by ordinary means or it is on a level with ordinary legislative acts and like other acts is alterable when the legislature shall please to alter it..... Certainly all those who framed witten constitutions contempellate them as forming the fundamental and paramount law of the nationand consequently the theory of every such government must be that an act of the legislature repugnant to the constitution is void.... It is emphatically the provonce and duty of the judicial department to say what the law is".

- ▶ In India the power of judicial review was exercised by the courts prior to the commencement of the constitution of India. The British Parliament introduced Federal System in India by enacting **the Government of India Act 1935**. Under this act both the **Central and State legislatures** were given plenary powers in their respective spheres. They were supreme in their allotted subjects like British Parliament. The Act of 1935 established the Federal Court so **as to function as an arbiter in central and state relationship**. The Federal Court was also **empowered to scrutinize the violation of the constitutional directions regarding the distribution of powers on introduction of federalism in India**. The power of judicial review was not specifically provided in the constitution but the **constitution being federal, the Federal court was entrusted impliedly with the function of interpreting the constitution and determine the constitutionality of legislative acts**.

- ▶ *Granville Austin in his book The Indian Constitution - Corner Stone Of a Nation* said that " the judiciary was to be an **arm of the social revolution** upholding the **equality that indians has longed for during colonial** days, but had not gained not simply because the regime was colonial, and perforce repressive, but largely because the british had feared that social change would endanger their rule.... The courts were also idealized becuae, as guardians of the constitution there would be expression of the new law created by indians for indians. **judicial review, assembly members believed, was ' an essential power for the courts of a free India, with a federal constitution'.**"

Types of Judicial Review

- ▶ **1. Reviews of Legislative Actions:**
- ▶ This review implies the power to ensure that laws passed by the legislature are in compliance with the provisions of the constitution
- ▶ **2. Review of Administrative Actions:**
- ▶ This is a tool for enforcing constitutional discipline over administrative agencies while exercising their powers
- ▶ **3. Review of Judicial Decisions:**
- ▶ This review is used to correct or make any change in previous decisions by the judiciary itself.

Features of Judicial Review

- ▶ This power is used by both the SC and HCs
- ▶ But the final power to determine the constitutional validity of any law is in the hands of the SC

JR of both Central and State Laws

- ▶ It can be conducted in respect of all central and state laws, the orders and ordinances of the exe. And constitutional amendments

Limitations

- ▶ JR cannot be conducted in respect of the laws incorporated in **the 9th** schedule of the Constitution
- ▶ This was brought on 1952 to abolish Zamindari system
- ▶ Contains list of laws that cannot be challenged in courts
- ▶ 90% of laws are about agriculture and landholding

It covers laws and not political issues

- ▶ It applies only to the questions of law
- ▶ It cannot be exercised in respect of political issues

It is not Automatic

- ▶ The SC does not use the power of JR of its own
- ▶ It can use it only **when any law or rule is specifically challenged before it or when during the course of hear in a case the validity** of any law is challenged before it

Decision's in JR Cases

- ▶ The SC can decide:
- ▶ 1 the law is **constitutional valid**. In this case the law continues to operate as before, or
- ▶ 2 the law is **constitutionally invalid**. In this case the law ceases to operate with effect from the date of the judgment
- ▶ 3 **Only some parts or part of the law is** invalid
- ▶ In this case only invalid parts or part becomes non-operative and other parts continue to remain in operation
- ▶ However, if the invalidated parts is so vital to the law that other parts cannot operate without it, then **the whole of the law gets rejected**

JR Decision gets implemented from the date of Judgment

- ▶ When a law gets rejected as unconstitutional **it ceases to operate from the date of judgment**
- ▶ All activities performed on the basis of the law before the date of the judgment declaring it invalid, continue to remain valid.

Principle of Procedure established by Law

- ▶ JR in India is governed by the principle: ‘procedure Established by Law’
- ▶ Under it the court conducts one test, i.e., **whether the law has been made in accordance with the powers granted by the Constitution to the law-making body and follows the prescribed procedure or not.**
- ▶ It gets rejected when it is held to be **violative of procedure established by law.**

Clarification of Provisions which a rejected law violates

- ▶ While declaring a law unconstitutional, the SC has to cite the provisions of the constitution which it violates
- ▶ The court has **to clearly establish the invalidity** of the concerned law or any of its part.

Importance or Merits of Judicial Review

- ▶ It is essential for maintaining the supremacy of the constitution
- ▶ It is essential for checking the possible misuse of power by the legislature and executive
- ▶ It protects the rights of the people
- ▶ It maintains the federal balance
- ▶ It is essential for securing the independence of the judiciary
- ▶ It prevents tyranny of executives
- ▶ The grant of JR power to the judiciary is also essential for strengthening the position of judiciary. It is also essential for securing the independence of judiciary

- ▶ The power of JR has helped the SC **in exercising its constitutional duties**
- ▶ The possibility of **abuse of** its power by the **Judiciary is very less** because **several checks have** been in existence:
 - ▶ 1 lack of a clear statement of this power in any article of the constitution
 - ▶ 2 the scope of JR stand limited to only legal and constitutional cases
 - ▶ 3 the SC is itself bound by the constitution of India and the parliament can amend the constitution
 - ▶ 4 the grant of specific fundamentals rights to the also limits the scope of JR
 - ▶ 5 the parliament can pass laws and amendments for overriding the hurdles created by JR
- ▶ These limitations can prevent a possible misuse of JR power by the courts

Critical Evaluation or Demerits of JR

- ▶ 1. Undemocratic:-
- ▶ The critics describe JR as an undemocratic system
- ▶ It empowers the court **to decide the fate of the laws** passed by the legislature, **which represents the sovereign, will of the people.**

2. Lack of Clarity

- ▶ The constitution of India does not clearly describe the system of JR
- ▶ It rests upon the **basis of several articles of the constitution**

Source of Administrative Problems

- ▶ When a law is struck down by the **SC as unconstitutional** , the decision becomes effective from the **date on which the judgment is** delivered
- ▶ Now a law can face JR only when a question of its constitutional arises in any case being heard by the SC
- ▶ **Such a case can come before the SC after 5 or 10 more years after the enforcement of that law.**
- ▶ As such **when the court rejects it as unconstitutional** , it creates administrative problems
- ▶ A JR decision can create **more problems than it solves**

Reactionary

- ▶ Several critics regard the JR system as a reactionary system
- ▶ They hold that while **determining the constitutional validity of a law** , the SC **often adopts a legalistic and conservative approach**
- ▶ **It can reject progressive laws enacted by the legislature**

Delaying System

- ▶ JR is a source of **delay and inefficiency**
- ▶ The people in general and law enforcing agencies in particular sometimes decide **to go slow or keep their fingers crossed in respect of the implementation of a law**
- ▶ They prefer to wait and let the SC first decide its constitutional validity in case that may come before it at any time.

Fear of Judicial Tyranny

- ▶ A bench (3or5or9 judges) of the SC hears a JR case
- ▶ It gives a decisions **by a simple majority**
- ▶ Very often, **the fate of a law is determined by the majority of a single judge**
- ▶ In this way a **single judge's reasoning** can determine the fate of a law which had been passed by **a majority of the elected representatives of the sovereign people**

Reversal of its own decisions by the SC

- ▶ It is on record that on **several occasions the** SC reverted its earlier decisions
- ▶ The judgment in the Golaknath case reversed the earlier judgment and the judgment in the Keshwananda Bharti case reversed the judgment in the Golaknath case
- ▶ The same enactment was held valid, then then invalid and then again valid
- ▶ Such reversals reflect the **element of subjectivity in the judgments**





