

LM - 4011

TECHNIQUES OF JUDICIAL CONTROL

Objectives of the Course

This Course aims at a systematical study of Judicial Review in the background of Constitutional and Administrative Laws. There is a tremendous increase in the scope and ambit of Judicial Review and this Course is intended to give an overview of the intricacies of the same, its justifications and limitations. Further, the remedial aspects of Judicial Review in the context of administrative and quasi-judicial actions will form part of the study. The Course will also critically analyze the origin and development of Public Interest Litigation, also known as Social Action Litigation from a Constitutional perspective.

Course Outline

UNIT I- Judicial Review: Evolution and Evaluation

- Judicial Review: Origin and its various aspects
- Constitutional Basis of Judicial Review
- Judicial Review and Parliamentary Democracy
- Judicial Review of Legislation

Required Readings:

1. V. S. Deshpande, *Judicial Review of Legislation*, (1975) Ch. I pp. 13 - 25 and 34 - 47.
 2. Upendra Baxi, *The Indian Supreme Court and Politics*, (1980), pp. 1 - 30.
 3. H. M. Seervai, *Position of Judiciary Under the Constitution of India*, (1970), Ch. I. pp. 1-27.
 4. Eugene Rostow, "The Democratic Character of Judicial Review", 66 *Harvard Law Review* 193 (1953).
 5. Aharon Barak, "A Judge on Judging: The Role of A Supreme Court in A Democracy", 116 *Harvard Law Review* (2002) 16 - 162.
- *Marbury v. Madison*, 5 US (1 Cranch) 137.
 - *Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299.
 - *J. R. Raghupathy v. State of A. P.* (1988) 4 SCC
 - *L. Chandra Kumar v. Union of India* AIR 1997 SC 1125.

UNIT II - Judicial Review of Constitutional Amendments

- Amending Power of Parliament
- Distinction between 'Amendment of the Constitution' and 'Law'
- Constitutional Amendments: Scope of Judicial Review
- The Doctrine of Basic Structure

Required Readings:

1. Upendra Baxi, *Courage. Craft and Contention*, (1985) Ch. III
 2. H. M. Seervai, *Constitution of India*, (1988) Ch. XXX, pp 3109 - 3172.
 3. D. Conrad: "Constituent Power, Amendment and Basic Structure of the Constitution: A Critical Reconsideration" 1977 - 78 DLR I - 47.
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- *Keshavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.
 - *Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299.
 - *Minerva Mills v. Union of India*: AIR 1980 1789
 - *I.R. Coelho v. State of Tamil Nadu*, AIR 2007 SC 861.

UNIT III – Judicial Review of Administrative Action

- Writs and Constitution of India
- Grounds for Judicial Review
- Judicial Review: Nature, Scope and Relief
- Limitations of Judicial Review

Required Readings:

1. M. P. Jain & S. N. Jain, *Principles of Administrative Law*, pp. 399-408.
 2. D D Basu, *Administrative Law*. (2006) Ch. 17, pp. 42J-449.
 3. V. S. Deshpande "Standing and Justifiability", 13 JILI 153-188 (1971).
 4. Upendra Baxi, *Laches and the Right of Constitutional Remedies: Quis Questoriet Issu Custodes...*, Alice Jaco, (Ed.), *Constitutional Developments Since Independence*, p. S59 (1975).
 5. Markendey Katju, "Administrative Law and Judicial Review-of Administrative Action", (2005) 8 SCC (J) 25 - 34.
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- *Baker v. Carr*, 369 US 188 (1962)
 - *Powell v. McCormack*, 395 US 486 (1969)
 - *Mora V. Mc Namara*, 389 us 934 (1_967)
 - *J.M. Desai v. Roshan Kumar*, AIR 1976 SC 578
 - *S. P. Gupta v. Union of India*, AIR 1982 SC 149
 - *Tilokchand v. H.B. Munshi*, AIR 1970 SC 898

UNIT III - Statutory Judicial Remedies

- Injunctions
- Declaratory Actions
- Damages
- Effect of Exclusion Clauses

Required Readings:

1. M. P. Jain & S. N. Jain, *Principles of Administrative Law*, pp. Ch. XVIII
2. I.P. Massay, *Administrative Law*, pp. 240-249 & 278-287, (1990)
3. U.P.D. Kesari, *Administrative Law*, Ch.13

UNIT V- Judicial Activism and Public Interest Litigation

- Characteristics of Judicial Activism and PIL/SAL
- Judicial Activism and Separation of Powers
- Judicial Activism and Human Rights
- Judicial Activism and Judicial Overreach

Required Readings:

1. T. R. Andiyarjina, *Judicial Activism and the Constitutional Democracy in India*, pp. 29-54, (1992)
 2. Upendra Baxi (Ed.), "Taking Suffering Seriously: Social Action Litigation in the Supreme Court", *Judges and the Judicial Review*, pp. 239- 315, (1985).
 3. Upendra Baxi, "Judicial Discourse: Dialectics of the Face and the Mask", 35 JILI I-I 2 (1993).
 4. Rajeev Dhavan, "Law as Struggle: Public Interest Law in India", 36 JILI 3623-308 (1994).
 5. A S Anand, "Judicial Review - Judicial Activism - Need for Caution", 42 JILI 149 - 159 (2000)
- *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.
 - *National Textile Workers Union v. P.R. Ramakrishna*, AIR 1983 SC 75.
 - *Consumer Education and Research Centre v. Union of India*, AIR 1995 SC 992.