Q # 01: Explain the doctrine of judicial review.

1) Introduction

- In the United States, judicial review is the ability of a court to examine and decide if a statute or treaty violates the provisions of existing law of the United States Constitution. Judicial review is one of the most important features of the U.S constitution. It is the power of the Supreme Court to declare unconstitutional to an act of the congress which is in the opinion of the court is contrary to the constitution. Judicial review is an exercise of the court which stops congress or executive authority to becoming more powerful or from unlawful usage of their powers.

2) Meaning of Judicial review

- Judicial review is the power of Supreme Court which is used to determine constitutional validity of a legislative act, treaty or other law making.

3) Judicial review in U.S constitution

The U.S constitution has not expressly granted the power of judicial review to the courts but it seems that this power has been granted indirectly in its provision.

- According to Article III
  - The judicial power shall be vested in Supreme Court and in inferior courts

- According to Article VI
  - According to this Article, all treaties made or shall be made under the U.S constitution, the U.S constitution shall be supreme law of the land and judges are bound that anything does not happen contrary to U.S constitution

4) Origin of judicial review

The power of judicial review was exercise by the court for the first time in 1803, in the following case

A. Leading case of Marbury vs madison 1803

1. Facts of the case

1) Marbury was appointed as a justice of peace, in the district of Colombia by President Adam, on the last day of his office, but the commission didn’t be delivered to him
2) The next president and his secretary Madison refused to deliver the commission of Marbury
3) Marbury petitioned a writ in Supreme court under the judiciary act of 1798
2. Decision of the case

- It is written by Justice Marshall that Marbury, definitely, had a right to his commission. But, more importantly, the Judiciary Act of 1789 was unconstitutional. In Marshall's opinion, Congress could not give powers to the Supreme Court to issue an order granting Marbury's commission. Therefore, the Supreme Court could not force Jefferson and Madison to appoint Marbury, because it did not have the power to do so.

3. Brief arguments of chief justice marshal

1) The constitution is the supreme law of the land and the judges are bound to give value to it.
2) When courts are called to give value to a statute passed by congress if it is against the interest of country, court must give value to the latter statute.
3) The powers of the legislatures are defined and limited therefore, legislature should not breach their limits because constitution is written.

5) Significance of judicial review

- This power of Supreme Court or inferior courts prevents constitution from executive power, from congress as well as from all other superior politicians to use their arbitrary decision. By this power courts develops constitution according to the need of time.

6) Application of judicial review

Following are the application of judicial review

1) Judicial review apply on federal and state law
2) It also apply to constitution of the state
3) It also applies on the treaties made by the federal
4) It also applies on orders issued by the federal and the state of executive authorities

7) Reason for judicial review

Following are the reason for the exercise of powers of judicial review

1) To keep the congress and the president within the limits of their powers
2) To increase the authority of Federal government
3) To defend the right of the property
4) To defend civil liberties and rights

8) Important cases of judicial review

Following are the important cases of judicial review

1) In McCollum vs. Maryland, the supreme court declared the state law, unconstitutional in which tax was imposed on the circulating notes of the bank.
2) In 1952 the supreme court declared unconstitutional another law passed by the congress, and gave authority to federal government to take over steel mill of the state

9) Criticism on judicial review
The excessive use of powers of judicial review has raised the criticism on it

I. Supreme court’s sovereignty
- The critics fight that the Supreme Court has expended its authority by using this power and due to this it has become more powerful in legislation

II. One man domination
- There is no power above them that can control their decisions, or correct their errors. There is no authority that can remove them from office for any errors or lower their salaries, and in many cases their power is superior to that of the legislature

III. Vague test of constitutionality
- Everything which is against the constitution is unconstitutional but analysis by judicial review is very vague test of constitutionality

IV. Social progress
- The usage of power of judicial review of the supreme on constitutional questions, often jam the wheel of social progress and becomes the reason of unwanted delay in official administration

V. Stress only on legal aspects
- The judges pay more stress on legal aspect and not relies upon social aspects of life such as economic etc. while declaring law unconstitutional

VI. Domination of judiciary
- The power of judicial review of the supreme court to invalidate any law passed by the congress, indirectly is the rejection of the mandate of the people

10) Conclusion
- The judicial power of the Supreme Court has not made the supreme court the father of the constitution but it has vested in the final authority of legislation. Courts by this authority can interfere with the acts and policies of other two organs of the government