The power of the judiciary to control administrative and even legislative actions derive their force from the law and the Constitution. Under Article 175 of the Constitution of Pakistan, 1973, there is Supreme Court of Pakistan, the High Courts and such other courts, as may be established by law. Now the rule of law in Pakistan is well established. The obligations of the Courts in Pakistan are, therefore, exclusively and directly to the law and the Constitution, and by large they have always conducted themselves accordingly. During the Martial Law also the ordinary courts have been providing relief to the common citizens generally with the aid of qualified counsel on both sides.

2. The courts at all levels are required, through proceedings in proper form, to scrutinize the exercise of public power. They enjoy full protection under the Judicial Officers (Protections) Act, 1950, for their actions in their judicial capacity. There is also in Pakistan a jurisdiction provided to the High Courts under Article 199 of the Constitution which is akin to that of the British High Court of Justice in the prerogative jurisdiction. Article 199 is intended to replace the writs of habeas corpus, certiorari, mandamus, prohibition and quo warrants which are in use in England. In Part-II of our Constitution those writs have been enshrined in Articles 8 to 28. The citizens of Pakistan appear to be making, within their means, the maximum possible use of the facility scrutiny by the Courts of the exercise of public power is called the judicial review of administrative actions.

3. The Supreme Court is vested with power to scrutinize, at the appellate stage, all matters of complaint regarding the use or irregular use of public power by any authority of state howsoever. Alongside this is the power given to the High Courts to pronounce upon the constitutionality and validity of all laws, and the guarantee that the executive authorities will act in aid of the courts by giving effect to its orders.

4. It would thus be seen that in the broad context of the administrative process, the role of judicial institutions appears to be sporadic and peripheral. The law, in its unending task of reconciling the interests of government and governed, demarcates sets of relationships and areas of activities in which claim and controversies may be resolved and grievances redressed through the medium of the Courts. The issues thus committed to the jurisdiction of the Courts are likely to be excluded, many that are thought to be of
paramount importance for the conduct of the government, to the individual citizen who seeks to vindicate his own legal claims against the Administration.

5. Let us now take stock of the situation by considering briefly the definitions of ‘Judicial’ adopted in particular legal contexts.

6. First in importance is the meaning of “Judicial” for the purposes of availability of order of certiorari and prohibition and the duty to observe the rules of natural justice. Breach of the rules of natural justice is a ground for awarding an order of certiorari and prohibition. It may issue to the statutory bodies on other grounds e.g. excess of jurisdiction allegations of breach of the rules of natural justice may be raised in other forms of proceedings. The courts might have chosen to adopt different definitions of “Judicial” for each of these three purposes” one for determining when certiorari and prohibition may issue on grounds other than violation of natural justice and; yet another for determining when a body is under a duty to comply with natural justice in cases where its conduct is impugned otherwise than certiorari or prohibition. The Courts have not in fact been drawn into making such elaborate refinements, and they have generally made the tacit assumption that “Judicial” is to be defined uniformly for each of these purposes.

7. The conception of “Judicial” may be either narrow or broader in its effect. A public authority may exceed its powers by adopting an improper procedure as well as by going wrong on a matter of substance. Substantive ultra vires may relate to matters of law and fact or to matters of discretion. Discretionary powers must be exercised for the purposes for which they were granted; relevant considerations must be taken into account and irrelevant consideration disregarded. They must be exercised in good faith and not arbitrarily or capriciously. If the repository of the power fails to comply with these requirements, it acts ultra vires. These assumptions have conditioned the scope of judicial review of questions of law and fact, on the one hand, and question of discretion, on the other, and it is, therefore, convenient to treat review of discretionary powers.

8. In considering the scope of judicial review, a further broad distinction must be drawn: ministerial, legislative and executive or administrative powers, on the one hand and judicial powers, on the other. The validity of exercise of ministerial administrative, and legislative powers affecting the legal interest of individuals is always open to challenge in the courts, unless judicial review has been excluded, directly or indirectly, by the relevant statute. The executive findings or orders cannot be upheld on the ground
that they are **res-judicata**. Nor, in general, can the consequence of the strict application of **ultra vires** doctrine be avoided by invoking the law of **estoppel**.

9. From the earliest times the courts of common law in England had asserted a right to determine the proper jurisdiction of courts administering other systems of law and to contain them within that jurisdiction by writs of prohibition. But it was not until the seventeenth century that the modern conception of the judicial review had emerged. The distinction between excess of jurisdiction and erroneous exercise of jurisdiction came to be drawn in cases where an inferior statutory tribunal was directly attacked by means of certiorari.

10. The theory of jurisdiction may now be stated as follows: jurisdiction means authority to decide. Whenever a judicial tribunal is empowered or required to inquire into a question of law or fact for the purpose of giving a decision thereon, its findings on it cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal.

**The Ultra Vires Doctrine**

11. The term “Ultra Vires” was first generally used to denote excess of legal authority by independent statutory bodies and railway companies in the middle years of the nineteenth century, though the main features of the doctrine to which the powers of common-law corporation. The term came to be used in relation to municipal corporations, then to the other new types of local government authorities, and finally to the crown and its servants and even to inferior judicial bodies.

**Characteristics of British Administrative Law.**

12. There is no constitutional minimum of judicial review in British law and it is open to the Parliament to attempt to exclude the jurisdiction of courts by using apt statutory language. The courts have for quite sometime tended to modify the practice of using formula purporting directly to interpret and refused to go behind the assertion of the competent authority that it was in fact honestly satisfied as to the existence of conditions precedent to the exercise of its powers. In principle judicial restraint has won decisive victory over judicial activation in a field where the contest might well have been an even one. And behind the practice of judicial self-restraint lies a partly concealed policy decision- a decision that ministerial responsibility to parliament shall be deemed by the
courts to be an appropriate safeguard against the erroneous exercise of widely framed statutory powers.

Scope of Power of Judicial Review Under Article 199 of the Constitution of Pakistan, 1973

13. I may now approach the question very briefly as to the extent and limits of power of judicial review conferred upon the High Courts by Articles 199 of the Constitution.

14. The language of Article 199 of 1973 Constitution for the purpose of examining its extent and limits is though comparable to the British writ jurisdiction but Article 199 of 1973 Constitution is significantly different from that jurisdiction. Nonetheless the judgments of English Courts on writ jurisdiction on their extent and limits may serve as a historical background. In fact, those judgments are constantly being called in aid of the interpretation of Article 199 ipid. Reference may be made to the precedents of (1) Presiding Officer V. Sadruddin (PLD 1967 SC 569) (2) Muhammad Hussain V. Sikandar (PLD 1974 SC 139) (3) Jamal Shah’s case (PLD 1966 S.C.I) and Rahim Shah’s case (PLD 1973 SC 24).

Judicial Review of Errors Arising out of Right of Hearing, Limitation etc. The Concept of Natural Justice

15. The English Law recognizes but two principles of natural justice: that “an adjudicator be disinterested and unbiased” and that “Parties be given adequate notice and opportunity to be heard”.

16. No one who has slightest acquaintance with legal systems prevalent the world over will suggest that those elements of judicial procedure which are now regarded as hallmark of a civilized society; have been generally enforced or even generally regarded as proper.

The Concept of “Audi Alteram Partem”

17. No proposition can be more clearly established than the one that a man cannot incur the loss of liberty or property for an offence by judicial proceedings until he has had a fair opportunity or answering the case against him. This rule was perhaps first enunciated in R.V. Chancellor of University of Cambridge (1723) and till date it holds as good as when it was enunciated. This right may be provided by the statutory
instrument or it may rest upon natural justice. In Pakistan, in one of his celebrated judgments, Late Homood-ur-Rehman, Chief Justice reiterated a very salutary rule of natural justice that "Whenever any person or body of persons is empowered to take decisions after ex-post facto investigation into facts which would result in consequences affecting, property or other rights of any person, then the absence of any express words in the enactment giving such power, including the application of principles of natural justice, the courts of law are inclined generally to imply that power so given is coupled with the duty to act in accordance with such principles of natural justice as may be applicable in the facts and circumstances of a given case (University of Dacca V. Zakir Ahmad) (PLD 1965 SC 90). The rule applies to judicial as well as administrative actions of these bodies, especially where proceedings taken may affect the person or property or other rights of the parties concerned in the dispute. The question is not whether the authority concerned is a judicial or quasi-judicial authority; the true question is whether the act being performed by the said authority is or is not a judicial function or function of judicial nature.

Exclusion of Audi Alteram Partam

18. By no means every act or decision affecting individuals rights has to be preceded by notice and opportunity to be heard. British Parliament may, by apt words, expressly dispense with the need for notice or hearing, as by permitting the demolition of buildings "without any .................. notice or other formality or alteration of educational scheme without notice to the parties affected unless the competent authority thinks it desirable".

19. The right to notice or hearing was held, in the context of Britain, to be wholly or partly excluded by any of the following factors, or by a combination of two or more of them:-

i) Where the functions of authority concerned are held not to be judicial.

ii) Where the authority in which is vested the power to decided is entrusted with a wide discretion.

iii) Where legislation expressly provides for notice and hearing for certain purposes but imposes no procedural requirement for other purposes.

iv) Where action taken constitutes disregard of a privilege as distinct from interference with a right.

v) Where to impose an obligation to disclose relevant information to the party affected would be prejudicial to the public interest.
vi) Where an obligation to give notice and a hearing would obstruct the taking of prompt preventive remedial action.

vii) Where the conduct of the party affected makes it impracticable to give him notice or opportunity to be heard.

viii) Where the matter in issue is the monetary value of interest at stake is too trivial justify an implication that opportunity to be heard is not afforded before action is taken.

Discretionary Powers --- Judicial Discretions

20. The concept of a judicial discretion, which was not confined to courts in the strict sense in British legal system was later stated by Lord Mansfield to import a duty to be “fair, candid and unprejudiced; not arbitrary, capricious or biased; muchless, warped by resentment, or personal dislikes”.

21. It follows that a discretionary power which is prima facie unfettered may be held to be subjected to implied limitation set by common law. The broad principles of judicial discretion adumbrated in the dicta particularly relevant to the scope of review of discretions vested in courts, or tribunals analogous to courts, from which a right of appeal lies to the superior court. The scope of review may be conditioned by a variety of factors: the working of discretionary power, subject-matter to which it is conferred, the materials available to the court and in the ultimate analysis, whether a court is of the opinion that judicial influenced by the form of proceedings in which review is sought.

22. A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that court is being placed in its individual judgment and discretion it must exercise that power personally unless it has been expressly empowered to delegate it to another.

Judicial Remedies Against the Administrative Actions.

23. The principal judicial remedies to be considered against the administrative action to be only touched now are the order of certiorari, prohibition and mandamus and the equitable remedies of injunction and declaration. These can conjointly be in essence called as the prerogative writs.
(A) **Civil Action for Declaration**

As has been stated above one who has an immediate personal interest in the performance of a public duty may bring following actions for a declaration as to the scope of that duty:-

(B) Action for Mandatory Injunction.
(C) Action for Specific Performance.
(D) Action for Damages.
(E) Action for Mandamus.

**Conclusion**

From what has been stated by me today, in order to understand the concept of judicial review of the administrative actions and for determination of its true scope and extent, the concept of jurisdiction, in its various aspects, must be clearly understood. This is because the courts, exercising the power of judicial review, are not only judges of the other statutory authorities jurisdiction, but as an independent branch of the Government, namely, the Judiciary, are also the judges of their own jurisdiction.