

Judicial Review

Judicial Review refers to the power of the Judiciary to review and determine the validity of a Law or an Order. This is an important topic in the UPSC syllabus because it is often seen in the news. There are many examples of judicial review. This article shares more details on the concept of Judicial Review and examples related to it.

Judicial Review – Latest updates

The Supreme Court has refused to treat the Central Vista project as a unique one requiring a greater or “heightened” judicial review. The New Delhi’s Central Vista project includes Parliament House, Rashtrapati Bhavan, India Gate, North and South block among others. Go through the detailed information on [Central Vista Project](#) on the linked page.

1. The Supreme Court said the government was “entitled to commit errors or achieve successes” in policy matters without the court’s interference as long as it follows constitutional principles.
2. It is not the court’s concern to enquire into the priorities of an elected government. Judicial review is never meant to venture into the mind of the government and thereby examine the validity of a decision.

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Judicial Review

Judicial review is defined as the doctrine under which executive and legislative actions are reviewed by the judiciary. Even though we have in India the principle of separation of powers of the three arms of the State, namely, the executive, the legislative and the judiciary, the judiciary is vested with the power of review over actions of the other two arms.

1. Judicial review is considered a basic structure of the constitution (Indira Gandhi vs Raj Narain Case).
2. Judicial review is the power of the courts to consider the constitutionality of acts of organs of Government and declare it unconstitutional if it violates or is inconsistent with the basic principles of the Constitution.
3. This means that the power of the legislature to make laws is not absolute and that the validity and constitutionality of such laws are subject to review by the courts.
4. Judicial review is also called the interpretational and observer roles of the [Indian judiciary](#).
5. The Indian Constitution adopted the Judicial Review on lines of the American Constitution.
6. Suo Moto cases and the Public Interest Litigation (PIL), with the discontinuation of the principle of Locus Standi, have allowed the judiciary to intervene in many public issues, even when there is no complaint from the aggrieved party.

Judicial Review and Constitution

According to Article 13(2), the Union or the States shall not make any law that takes away or abridges any of the fundamental rights, and any law made in contravention of the aforementioned mandate shall, to the extent of the contravention, be void.

1. Judicial review is called upon to ensure and protect [Fundamental Rights](#) which are guaranteed in Part III of the Constitution.
2. The power of the [Supreme Court of India](#) to enforce these Rights is derived from Article 32 of the Constitution. This provides citizens the right to directly approach the SC to seek remedies against the violation of Fundamental Rights.

Judicial Review Classification

We can classify judicial review into three categories. They are:

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 is seen in the Golaknath case, bank nationalisation case, Minerva Mills case, privy purse abolition case, etc.

Importance of Judicial Review

- It is essential for maintaining the supremacy of the Constitution.
- It prevents the tyranny of executives.
- It maintains the federal balance.
- It is essential for checking the possible misuse of power by the legislature and executive.
- It is essential for securing the independence of the judiciary.
- It protects the rights of the people.

Examples of Judicial Review

IT Act Section 66(A)

In 2015, the SC struck down Section 66(A) of the amended Information Technology Act, 2000. This provided the punishment for sending “offensive” messages through a computer or any other communication device like a mobile phone or a tablet. A conviction could fetch a maximum of three years in jail and a fine. This was repealed by the SC on the grounds that this section fell outside Article 19(2) of the Constitution, which relates to freedom of speech.

Golaknath Case (1967)

The questions, in this case, were whether the amendment is a law; and whether Fundamental Rights can be amended or not. SC contented that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13, and that to amend the Fundamental rights a new Constituent Assembly would be required. Also stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution.

This case is also sometimes cited as an example of [Judicial Activism](#).

Limitations of Judicial Review

There are some limitations on the judiciary on exercising its power of judicial review. In fact, when the judiciary crosses its threshold and interferes in the executive’s mandate, it can be called judicial activism, which when furthered can lead to judicial overreach. Some of the limitations of judicial review are mentioned below.

1. Judicial Review limits the functioning of the government. It is only permissible to the extent of finding if the procedure in reaching the decision has been correctly followed but not the decision itself.
2. The judicial opinions of the judges once taken for any case become the standard for ruling other cases.
3. It is designated only to the higher courts like the Supreme Court and the High Courts.
4. Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.
5. The judiciary cannot interfere in political questions and policy matters unless absolutely necessary.
6. The judgments can be influenced by personal or selfish motives, hence, Judicial review can harm the public at large.
7. It violates the limit of power set to be exercised by the constitution when it overrides any existing law.
 - In India, a separation of functions is followed rather than the separation of powers.

- The concept of separation of powers is not adhered to strictly in the judicial review. However, a system of checks and balances has been put in place in such a manner that the judiciary has the power to strike down any unconstitutional laws passed by the legislature.

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UPSC Questions related to Judicial Review

Q1

What is the Purpose of Judicial Review?

The purpose of judicial review is to make sure that laws passed by the legislature are not unconstitutional. It is also used to enforce constitutional discipline over administrative agencies.

Q2

Is Judicial Review mentioned in Indian Constitution?

The term 'judicial review' is not mentioned in the Constitution. However, it provides for the concept of judicial review.

Q3

What is the Difference between Judicial Review and Writ?

Writs are issued by the higher courts upon violation of Fundamental Rights, whereas judicial review is the power of the court to review and validate laws passed. Read more on [Writs](#) in the given link.

Q4

Can High Courts do Judicial Review?

The High Court can exercise judicial review in addition to administrative control over the lower courts within its limits.