

# Judicial Review - Indian Polity

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. You will read some judicial review examples and more about this concept in this article.

## 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.

- Judicial review is considered a basic structure of the constitution (Indira Gandhi vs Raj Narain Case).
- 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.
- 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.
- Judicial review is also called the interpretational and observer roles of the [Indian judiciary](#).
- 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.

- Judicial review is called upon to ensure and protect [Fundamental Rights](#) which are guaranteed in Part III of the Constitution.
- 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.

## 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 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.

- 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.
- It is designated only to the higher courts like the Supreme Court and the High Courts.
- The judiciary cannot interfere in political questions and policy matters unless absolutely necessary.

## **UPSC Questions related to Judicial Review**

### **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.

### **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.

### **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 [here](#).

### **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.

