



Judicial Review

Why in News

Recently, the [Supreme Court \(SC\)](#) refused to treat the **Central Vista project** as a unique one requiring greater or heightened **judicial review**.

- The **SC** 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**.
- The **Central Vista project** of New Delhi includes **Rashtrapati Bhawan, Parliament House, North and South Block, India Gate, National Archives** among others.
- The Indian Constitution **adopted the Judicial Review** on **lines of the American Constitution**.

Key Points

▪ Judicial Review:

- It is a type of **court proceeding** in which a judge **reviews the lawfulness of a decision or action made by a public body**.
 - In other words, judicial reviews are a **challenge to the way in which a decision has been made**, rather than the rights and wrongs of the conclusion reached.
 - **Concepts of Law:**
 - **Procedure Established by Law:** It means that a law enacted by the legislature or the concerned body is valid only if the correct procedure has been followed to the letter.
 - **Due Process of Law:** It is a doctrine that not only checks if there is a law to deprive the life and personal liberty of a person but also ensures that the law is made fair and just.
 - India follows **Procedure Established by Law**.
- It is the **power exerted by the courts of a country to examine the actions of the legislatures, executive and administrative arms of government and to ensure that such actions conform to the provisions of the nation’s Constitution**.
- Judicial review has **two important functions, like, of legitimizing government action and the protection of constitution against any undue encroachment by the government**.
 - Judicial review is considered a **basic structure of the constitution** ([Indira Gandhi vs Raj Narain Case 1975](#)).
 - 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.

▪ Types of Judicial Review:

- **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.**

- **Review of Administrative Actions:**

- This is a tool for **enforcing constitutional discipline** over administrative agencies while exercising their powers.

- **Review of Judicial Decisions:**

- This review is used to correct or make any change in previous decisions by the judiciary itself.

- **Importance of Judicial Review:**

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

- **Problems with Judicial Review:**

- It **limits the functioning of the government.**
- 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 rather than of powers is followed.**
 - The concept of separation of powers is not adhered to strictly. However, a system of **checks and balances** have been put in place in such a manner that the judiciary has the power to strike down any **unconstitutional laws passed by the legislature.**
- The judicial opinions of the judges once taken for any case becomes the standard for ruling other cases.
- Judicial review can harm the public at large as the judgment may be **influenced by personal or selfish motives.**
- Repeated interventions of courts can **diminish the faith of the people in the integrity, quality, and efficiency of the government.**

Constitutional Provisions for Judicial Review

- There is no direct and express provision in the constitution empowering the courts to invalidate laws, but **the constitution has imposed definite limitations upon each of the organs, the transgression of which would make the law void.**
- The **court is entrusted with the task of deciding whether any of the constitutional limitations has been transgressed or not.**
- Some provisions in the constitution supporting the process of judicial review are:
 - **Article 372 (1)** establishes the judicial review of the pre-constitution legislation.
 - **Article 13** declares that any law which contravenes any of the provisions of the part of Fundamental Rights shall be void.
 - **Articles 32 and 226** entrusts the roles of the protector and guarantor of fundamental rights to the Supreme and High Courts.
 - **Article 251 and 254** states that in case of inconsistency between union and state laws, the state law shall be void.
 - **Article 246 (3)** ensures the state legislature's exclusive powers on matters pertaining to the State List.
 - **Article 245** states that the powers of both Parliament and State legislatures are subject to

the provisions of the constitution.

- **Articles 131-136** entrusts the court with the power to adjudicate disputes between individuals, between individuals and the state, between the states and the union; but the court may be required to interpret the provisions of the constitution and the interpretation given by the Supreme Court becomes the law honoured by all courts of the land.
- **Article 137** gives a special power to the SC to review any judgment pronounced or order made by it. An order passed in a criminal case can be reviewed and set aside only if there are errors apparent on the record.

Way Forward

- With the power of judicial review, the courts **act as a custodian of the fundamental rights.**
- With the growing functions of the modern state, **judicial intervention in the process of making administrative decisions and executing them has also increased.**
- When the judiciary surpasses the line of the powers set for it in the name of judicial activism, it could be rightly said that the judiciary then **begins to invalidate the concept of separation of powers set out in the Constitution.**
- **Making laws is the function and duty of the legislature**, to fill the gap of laws and to implement them in a proper manner is responsibility of the executive. So that the only work remaining for the judiciary is interpretations. Only a **fine equilibrium between these government bodies can sustain the constitutional values.**

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