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Separation of Powers and Judicial Review

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Separation of Powers and Judicial Review

What stops Parliament from passing a law that tramples your rights? A court can strike it down. That power is judicial review. It is the reason power in India is split between three organs and not held by one.

Must know: organs, judicial review and Article 50

1 What are the three organs, and is the split strict in India?

Government does three jobs. It makes laws, runs the country and settles disputes. Three organs share these jobs. They are the legislature, the executive and the judiciary.

Who does what?

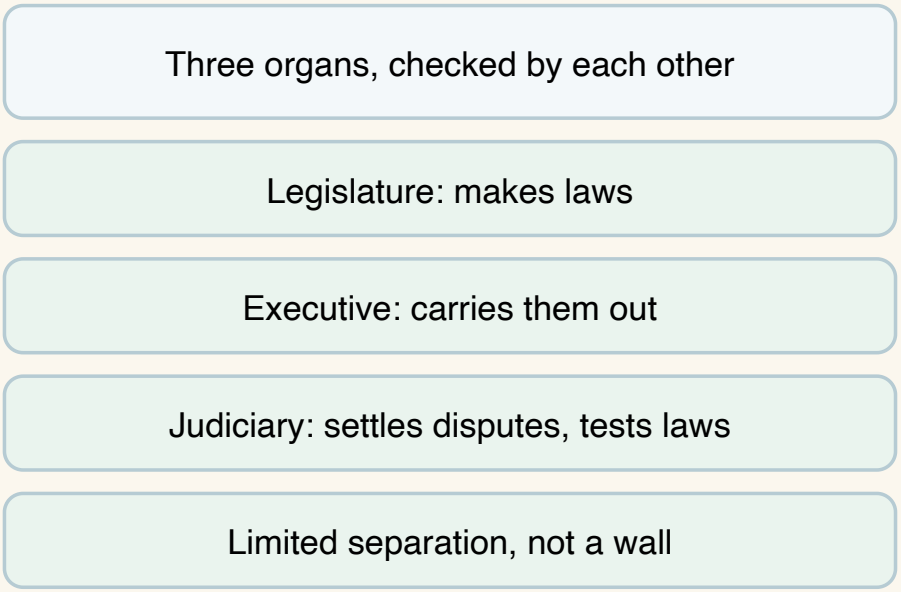
- **Legislature:** Parliament and the State legislatures make the laws.
- **Executive:** ministers and officials carry the laws out day to day.
- **Judiciary:** courts settle disputes and test whether laws follow the Constitution.

Is the wall between them rigid?

No. NCERT says the Constitution rests on “limited separation of powers and checks and balances”. Each organ has a clear area of work. Parliament is supreme in making laws and amending the Constitution. The executive is supreme in carrying them out. The judiciary is supreme in settling disputes and deciding whether laws match the Constitution.

India’s ministers also sit in the legislature. So the two overlap. The exam trap is to call the separation complete.

> **Quick check 1.** In India, ministers also sit in the legislature, so the executive and legislature overlap. *(True or False?)* See answer ↓



Each organ has a clear area. None is fully walled off. Original explanatory diagram.

Sources: ncert.nic.in; en.wikipedia.org

2 What is judicial review, and what does it check?

Judicial review is the power of the Supreme Court and High Courts to test a law against the Constitution. If a law does not fit, the court declares it unconstitutional and inapplicable. NCERT says the term “judicial review” is nowhere in the Constitution. The power is implied because India has a written constitution.

Which laws can be reviewed?

- Laws that break fundamental rights. Article 13 is the base for this.
- Laws that break the federal division of powers. A State can challenge a Central law on a State subject.
- Laws passed by State legislatures as well as Parliament.

How do writs fit in?

Article 32 lets a person go to the Supreme Court to enforce fundamental rights. Article 226 gives High Courts a similar power. NCERT says a writ and judicial review are different things. A writ restores a right. Review tests a law.

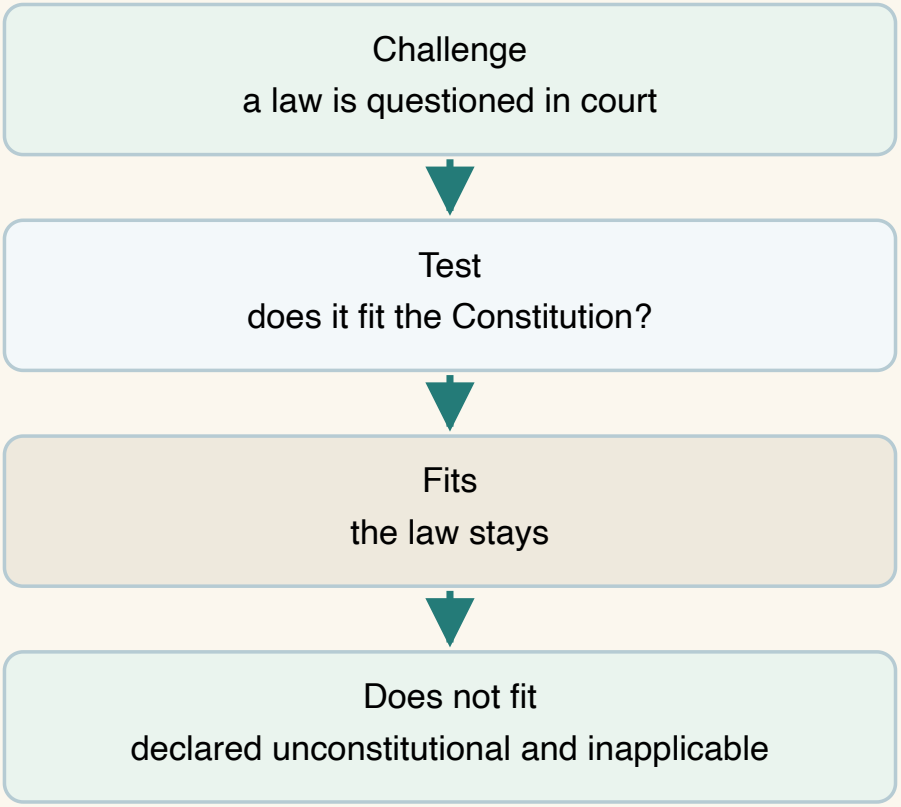
What does review not do?

It asks one question. Is this law within the powers the Constitution gives? It does not ask whether the law is wise. Judges cannot strike down a law only because they dislike the policy. Review of a court's own past judgment is also a separate process.

Has this been asked before?

Yes. UPSC Prelims 2017 asked what judicial review implies. The answer is the power to pronounce on the constitutionality of laws and executive orders. Question 1 below is that question.

> **Quick check 2.** Judicial review lets a court strike down a law only because the judges think it is bad policy. *(True or False?)* See answer ↓



The test is constitutionality, never wisdom. Original explanatory diagram.

Sources: ncert.nic.in; en.wikipedia.org; cdnbbsr.s3waas.gov.in

3 What does Article 50 say about the judiciary?

Article 50 sits in Part IV, the Directive Principles. It says the State “shall take steps to separate the judiciary from the executive in the public services of the State”.

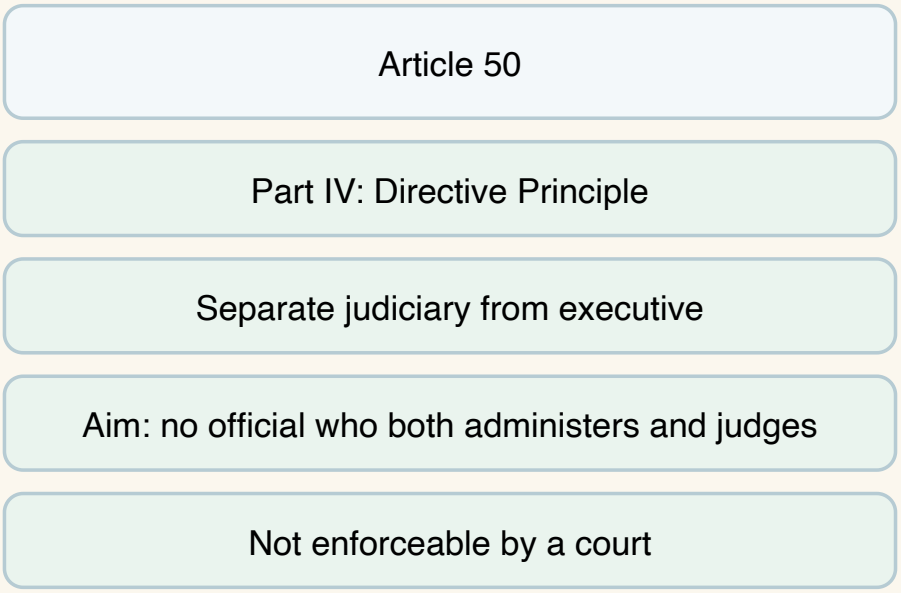
Why does the text say “public services”?

Earlier, one official could run a district and also act as its magistrate. That official would judge cases about the administration he belonged to. Article 50 aims to end that overlap.

Can a court enforce Article 50?

No. Directive Principles are not enforceable by any court. Exams still cite Article 50 as the constitutional basis for a separate judiciary.

> **Quick check 3.** A court can directly enforce Article 50 because it is part of the Directive Principles. *(True or False?)* See answer ↓



A goal for the State, cited in exams. Original explanatory diagram.

Sources: cdnbbsr.s3waas.gov.in; en.wikipedia.org

Good to know: the idea and the comparison

4 Who first argued for separating the powers?

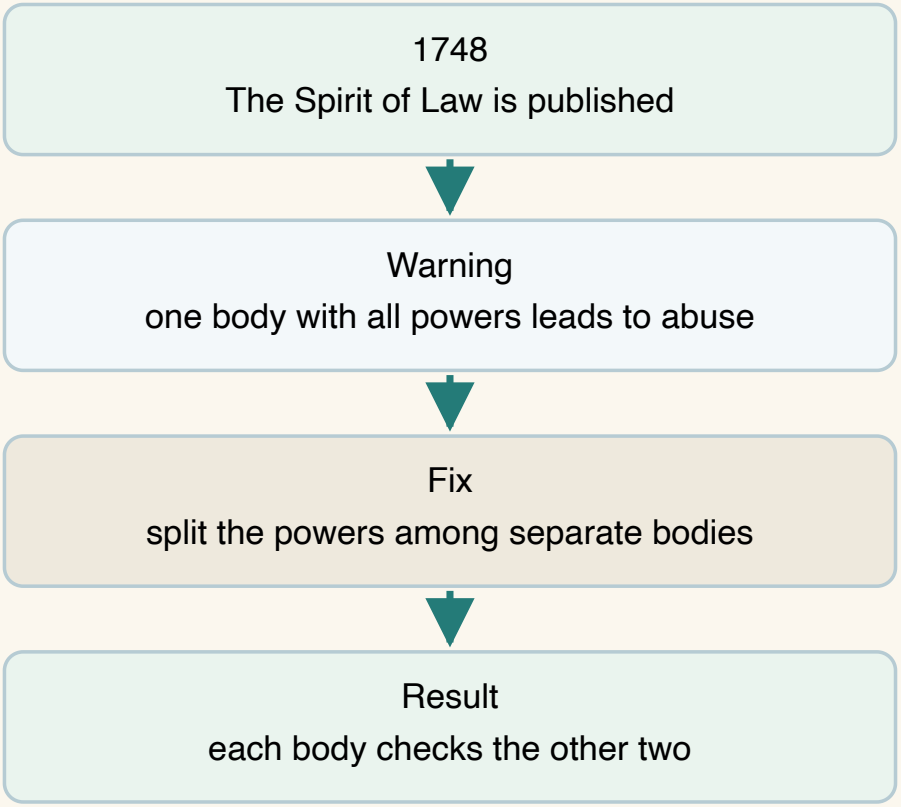
The French thinker Montesquieu published “The Spirit of Law” in 1748. Many exam books link the doctrine to him. His warning was simple. If one body makes laws, runs the state and judges disputes, abuse follows sooner or later.

What was his fix?

He wanted the three powers split among separate bodies. Each body should be strong enough to check the others. No institution should be trusted to restrain itself.

Wikipedia calls him the principal source of the modern theory of separation of powers.

> **Quick check 4.** Montesquieu published "The Spirit of Law" in 1748. *(True or False?)* See answer ↓



No institution is trusted to restrain itself. Original explanatory diagram.

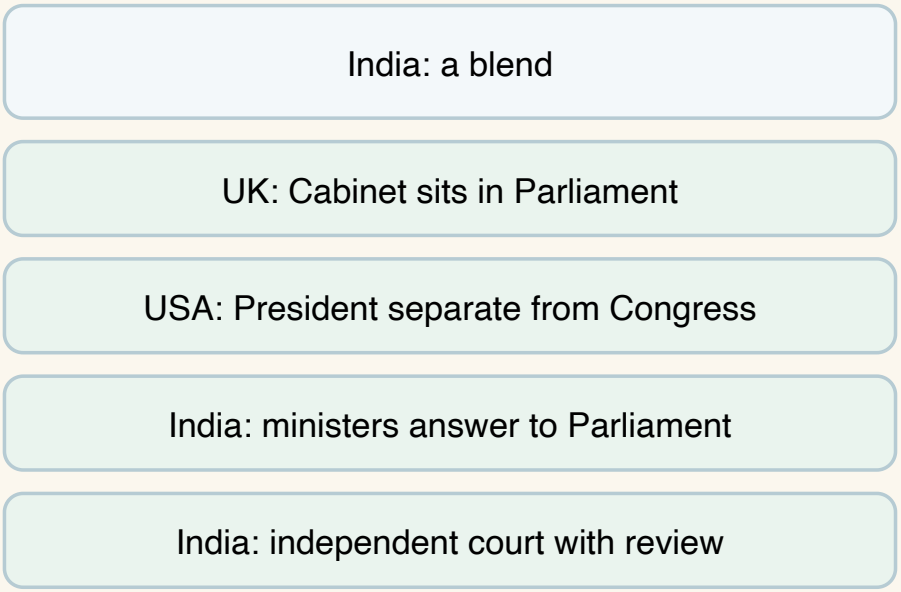
Sources: en.wikipedia.org

5 How does India compare with the UK and the USA?

- **United Kingdom:** the Prime Minister and Cabinet sit in Parliament. The government stays only while Parliament backs it.
- **United States:** the President is elected separately and is not a member of Congress. The President can serve against a hostile Congress.

- **India:** ministers come from Parliament and answer to it, like Britain. But India also has an independent court with real review power, closer to the American model.

Exams like this three-way comparison. India borrows a different piece from each system.



A different piece from each system. Original explanatory diagram.

Sources: ncert.nic.in; en.wikipedia.org

Great to know: PIL, activism and independence

6 What is Public Interest Litigation, and how did it begin?

Normally only a person whose rights were violated could go to court. Around 1979 that changed. The Supreme Court began to hear cases filed by others on behalf of people who could not reach it easily. These came to be called Public Interest Litigation, or PIL.

Which cases opened the door?

- **Hussainara Khatoon v. State of Bihar (1979):** it was about undertrial prisoners in Bihar who had spent years in jail. Advocate Kapila Hingorani filed it.
- **Sunil Batra v. Delhi Administration (1980):** a Tihar inmate wrote to Justice Krishna Iyer about torture. The judge turned the note into a petition.
- **Bandhua Mukti Morcha v. Union of India (1984):** Justice Bhagwati wrote that the problems of the poor need a different judicial approach.

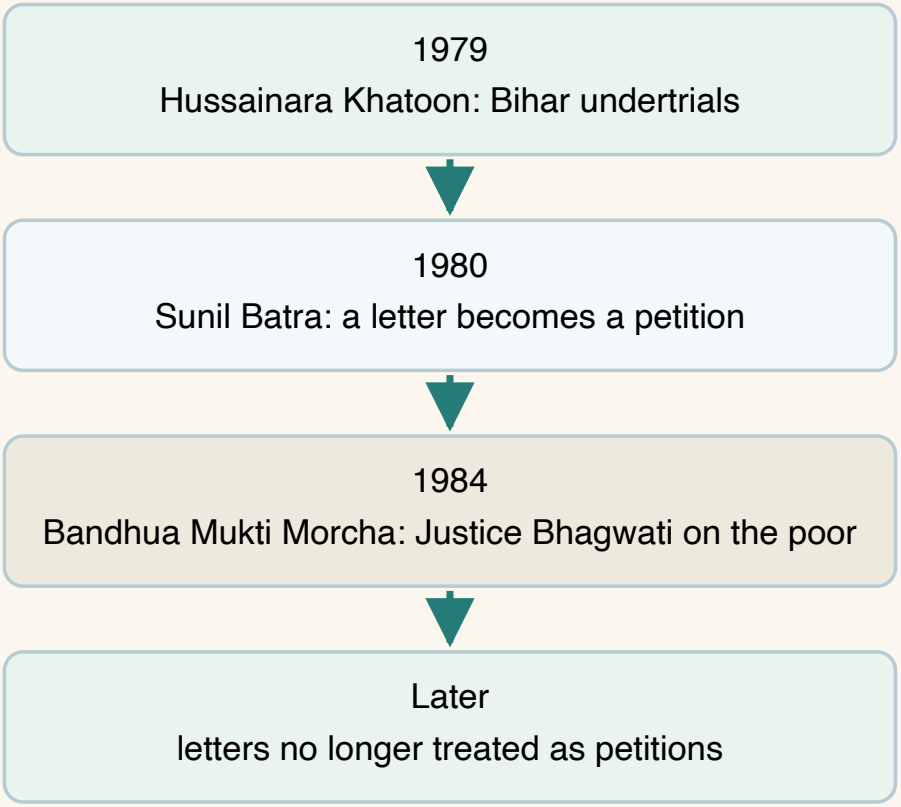
What changed after PIL?

NCERT says courts also began to act on newspaper reports and postal complaints. It adds that the Court later abandoned the practice of treating letters as petitions. PIL widened rights to include clean air and water. It also let public-spirited citizens and groups file for the poor.

Exam questions sometimes ask where PIL originated. A common exam answer is the USA. For India itself, the key dates are 1979 and the early 1980s.

Has this been asked before?

The earlier version of this lesson listed two exam questions. SSC 2024 asked where PIL originated, and the answer given was the USA. CDS II 2017 named Justice P. N. Bhagwati as the judge linked with PIL in India. Bhagwati headed the bench in Hussainara Khatoon in 1979 and became Chief Justice later.



A narrow rule of standing was widened. Original explanatory diagram.

Sources: ncert.nic.in; en.wikipedia.org

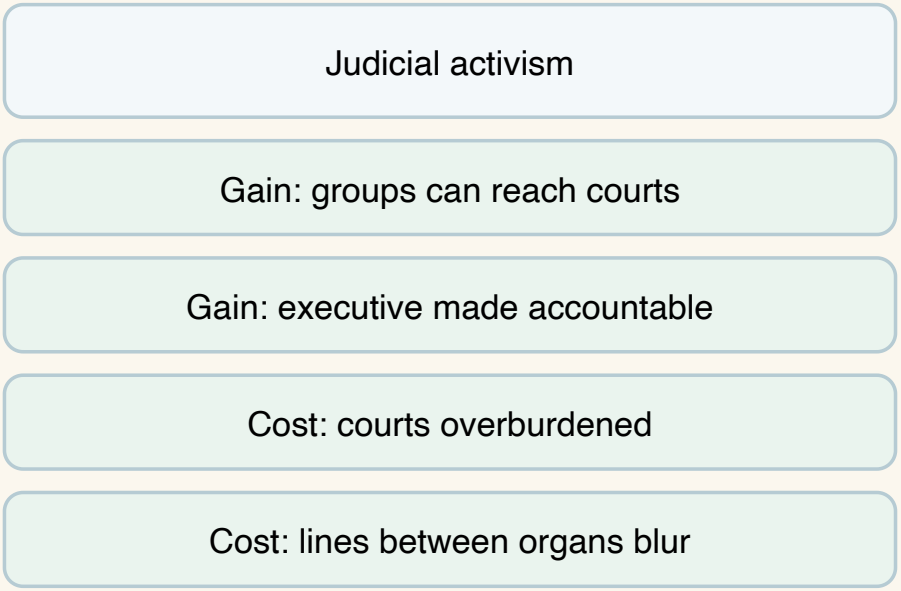
7 Is judicial activism good or bad for the separation of powers?

NCERT lists real gains. Activism opened the courts to groups. It forced the executive to be accountable. It also made elections fairer, for example when candidates had to file affidavits on assets and education.

What are the costs?

- It has overburdened the courts.
- It has blurred the line between the executive, the legislature and the judiciary.
- Cutting pollution or probing corruption is not exactly the court's job, NCERT says.

NCERT concludes that activism has made the balance among the three organs "very delicate". The line to remember is simple. Enforcing an existing law is one thing. Writing new policy from the bench is another.



Enforcing a law is not the same as writing policy. Original explanatory diagram.

Sources: ncert.nic.in; en.wikipedia.org

8 How is judicial independence protected, and what did the NJAC case decide?

NCERT lists several safeguards. The legislature has no part in appointing judges. Judges have a fixed tenure till retirement. Their salaries are not subject to a vote of the legislature. Contempt of court protects them from unfair criticism.

How is a judge removed?

Article 124(4) allows removal of a Supreme Court judge only for proved misbehaviour or incapacity. Each House of Parliament must pass an address. It needs a majority of the total membership and two-thirds of those present and voting.



The Supreme Court of India, where the NJAC and Kesavananda Bharati cases were decided. Photo: Subhashish Panigrahi, CC BY-SA 4.0, via Wikimedia Commons. Resized.

How did the collegium arise?

Between 1982 and 1998 the Supreme Court revisited the meaning of “consultation” with the Chief Justice. NCERT says the Court finally arrived at a collegial procedure. The Chief Justice recommends names in consultation with senior judges.

What happened to the NJAC?

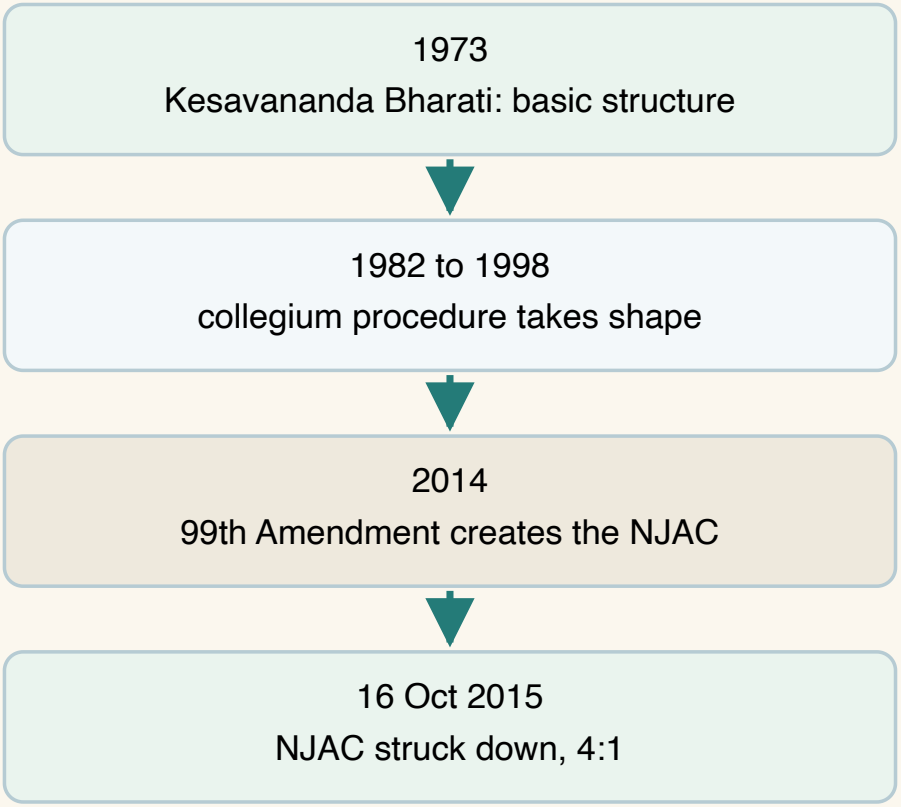
Parliament passed the 99th Amendment in 2014 to create a National Judicial Appointments Commission. On 16 October 2015 the Supreme Court struck it down by a 4:1 majority. It held that the NJAC compromised judicial independence, which is part of the basic structure.

Where does the basic structure come from?

NCERT says the Kesavananda Bharati case of 1973 held that no one, not even Parliament by amendment, can violate the basic structure.

Has this been asked before?

The earlier version of this lesson listed UPSC 2019 as testing the NJAC ruling. The key fact asked is that the Supreme Court struck down the 99th Amendment and the NJAC for violating judicial independence.



The Court defended its own independence. Original explanatory diagram.

Sources: ncert.nic.in; en.wikipedia.org; cdnbbsr.s3waas.gov.in

Review the feedback after each answer. The understanding-check score lasts for this page session.

Reset the checks when you want another attempt. This score is separate from the Native Practice score below.

Questions to think through

Why do we let unelected judges overrule an elected Parliament?

A majority can still pass a law that breaks the Constitution. An independent court can say so. It may do this only on constitutional grounds, not because it dislikes the policy.

Why should a court never review its own department's decisions?

A judge who is part of the administration cannot be neutral about it. Article 50 pushes the two roles apart so judgments stay independent.

Why did the 2015 NJAC ruling matter for the separation of powers?

The Court defended its own independence, even against a constitutional amendment. An independent judiciary is what lets courts check the other two organs fairly.

Why does PIL make some people uneasy?

It overburdens courts. It can also push judges into work that belongs to the executive. NCERT calls the resulting balance delicate.

Practice MCQs

1. In India, Judicial Review implies

A. the power of the Judiciary to review its own judgements given earlier in similar or different cases.

B. the power of the Judiciary to review all the legislative enactments before they are assented to by the President.

C. the power of the Judiciary to pronounce upon the constitutionality of laws and executive orders.

D. the power of the Judiciary to question the wisdom of the laws enacted by the Legislatures.

See answer ↓

2. Article 50 of the Constitution directs the State to take steps to separate which two organs in the public services?

A. The Union from the States

B. The judiciary from the executive

C. The executive from the legislature

D. The legislature from the judiciary

See answer ↓

3. Under Article 124(4), a Supreme Court judge can be removed only for proved misbehaviour or incapacity. What else is required?

A. A simple majority in the Lok Sabha only

B. An order of the Prime Minister

C. An address by each House passed by a majority of total membership and two-thirds of those present and voting

D. A decision of the Chief Justice alone

See answer ↓

4. Which case, filed in December 1979 on behalf of Bihar undertrial prisoners, is remembered as an early Public Interest Litigation?

A. Hussainara Khatoon v. State of Bihar

B. Sunil Batra v. Delhi Administration

C. Bandhua Mukti Morcha v. Union of India

D. Kesavananda Bharati v. State of Kerala

See answer ↓

5. NCERT says the Supreme Court later abandoned which practice that had followed the Sunil Batra case of 1980?

A. Treating letters as petitions

B. Hearing PILs filed by groups

C. Issuing writs under Article 32

D. Declaring laws unconstitutional

See answer ↓

6. The Supreme Court struck down the National Judicial Appointments Commission on 16 October 2015. By what majority?

A. 5:0 with one abstention

B. 4:1

C. Unanimously

D. 3:2

See answer ↓

7. Which Supreme Court case of 1973 held that no one, not even Parliament by amendment, can violate the basic structure of the Constitution?

A. Golaknath v. State of Punjab

B. Kesavananda Bharati v. State of Kerala

C. A. K. Gopalan v. State of Madras

D. Minerva Mills v. Union of India

See answer ↓

8. NCERT describes the Indian Constitution as resting on which principle for the three organs of government?

A. Limited separation of powers with checks and balances

B. Complete separation of powers

C. Fusion of all powers in Parliament

D. Supremacy of the executive

See answer ↓

Answer Key

1. **C.** Judicial review is the power of the Supreme Court and High Courts to test a law against the Constitution. A law that does not fit is declared unconstitutional. It does not judge whether a law is wise. It is not a check before the President signs a bill. Review of a court's own past judgment is a separate process. ↑ Q1
2. **B.** Article 50 says the State shall take steps to separate the judiciary from the executive in the public services of the State. It is a Directive Principle. Courts cannot enforce it directly. ↑ Q2
3. **C.** Article 124(4) needs an address by each House of Parliament. Each address needs a majority of the total membership of that House. It also needs two-thirds of the members present and voting. The President then passes the order. This hard process protects judicial independence. ↑ Q3
4. **A.** Hussainara Khatoon v. State of Bihar was about prisoners who had spent years in jail without trial. Advocate Kapila Hingorani filed it. NCERT calls it one of the early PILs. Sunil Batra came in 1980. Bandhua Mukti Morcha came in 1984. ↑ Q4
5. **A.** In Sunil Batra a Tihar inmate sent a note to Justice Krishna Iyer, who turned it into a petition. NCERT says the Court later abandoned the practice of considering letters. PIL itself continued. ↑ Q5
6. **B.** A Constitution Bench struck down the NJAC by a 4:1 majority. It held that the NJAC compromised judicial independence, a part of the basic structure. The collegium system stayed in place. ↑ Q6
7. **B.** NCERT says Kesavananda Bharati (1973) ruled that there is a basic structure that no one can violate, even by amendment. The Court also kept for itself the right to decide what is part of it. ↑ Q7
8. **A.** NCERT calls it a delicate principle of limited separation of powers and checks and balances. Each organ has a clear area of work. The organs still check one another. ↑ Q8

Quick-check answers

1. **True.** India follows the parliamentary model, so the separation is limited, not complete. ↑ 1
2. **False.** Review checks constitutionality only. Wisdom of policy is not the test. ↑ 2

3. **False.** Directive Principles are not enforceable by any court. Exams still cite Article 50 for a separate judiciary. ↑ 3
4. **True.** The book is the main source linked to the separation of powers. ↑ 4

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