

# Supreme Court and the power to stay laws

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The Supreme Court's interim order in the ongoing contestation between large sections of the farmers and the Centre over the new farm laws has drawn a lot of criticism. With this, the finer points of judicial review and its application become an important area of study for UPSC.

**In news:** In its interim order, the Supreme Court put on hold implementation of Farm Laws till further order

**Placing it in syllabus:** Indian Polity

**Dimensions**

- SC orders of stay and reasons given by the court
- Criticisms of the SC orders
- What the SC could have done instead?

## Content

### SC orders of stay and reasons given by the court

- The Supreme Court recently ordered **a stay on implementation of three farm laws**.
- It also **appointed a four-member committee** to sort out issues between agitating farmers and the Union government
- Many have questioned the interim order, particularly the **suspension of action under the laws**. Such suspension is very rarely seen in interim orders of the apex court.

***The SC justified its actions for the following reasons:***

- The court **cannot be said to be completely powerless to grant stay of any executive action** under a statutory enactment

- It made a **distinction between staying a law and staying its implementation** or any action under it.
- The court said, it is only in the **wake of the government's perceived failure that the Court has chosen to intervene**
- The court also cited an order passed by another Bench of the Supreme Court in September 2020 on the **Maratha reservation issue**.
- It had directed that admissions to educational institutions for 2020-21 and appointments to posts under the government shall be made without reference to the reservation provided under the relevant legislation.
- The SC also observed that a **stay on the farm laws' implementation may assuage the hurt feelings of farmers** and encourage them **to come to the negotiating table**.

**Judicial Review under Indian Constitution**In **Article 245**, the role of law-making is conferred on the Legislature and the task of securing the Constitutional Rights is conferred on the Judiciary under **Article 13 and 32**.

**Judicial review** basically means **reviewing and striking down the legislation** that violates the constitution's basic structure.

Under the broad framework of judicial review under the Constitution, the **Supreme Court and High Courts** have the **power to declare any law unconstitutional** if :

- it is ultra vires (or, contrary to any provision) of the Constitution
- it violates any of the fundamental rights,
- it is repugnant to a central law on the same subject or
- has been enacted without legislative jurisdiction.

## **Criticisms of the SC orders**

- The Attorney General argued that laws made by the

legislature should not be ordinarily stayed, because there is a presumption of **constitutionality in favour of the laws**

- Constitutional courts and legal scholars generally disapprove interim orders staying or suspending laws enacted by the legislature.
- They argue that unless there are compelling reasons a law should not be stayed.

### ***The arguments given for this are:***

- Suspending a law made by the legislature **goes against the concept of separation of powers**. The interim orders encroach on to the domain of the other two organs of the state, the legislature and the executive.
- The **validity of a law should be considered normally only at the time of final adjudication**, and not at the initial stage.
- There is a **presumption that every law enacted by any legislature is constitutional** and valid. The onus is on **those challenging it to prove that it is not**
- If there is a lack of constitutional validity, or absence of legislative competence (that is, the legislative body concerned lacks the jurisdiction to enact the law in question)- only then a law can be stayed.

### **What the SC could have done instead?**

- The Court could have chosen to stick to its judicial adjudication role.
- It could have intervened in the form of adjudicating key questions of the constitutionality of the laws.

**Examples of Judicial interference at interim stage**Case law suggests that in some cases, High Courts indeed stayed the operation of some laws. However, the Supreme Court took a contrarian view in these cases.

- In 1984, the Supreme Court set aside an interim stay granted against the operation of a municipal tax (**Siliguri Municipality & Others vs Amalendu Das & Others**)
- In 2013, in the **Health for Millions Trust vs Union of India case**, SC removed the stay on some provisions of and regulations under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003
- The Supreme Court criticised interim orders by some High Courts that stayed the provision, while **upholding the validity of Section 45S of the Reserve Bank of India Act**, which imposed restrictions on unincorporated bodies accepting public deposits

**Mould your thought:** Comment on the power of the courts to grant stay of any executive action in reference to the recent stay on the farm laws by the Supreme Court.

***Approach to the answer:***

- Introduction
- Mention the interim order of the Supreme Court
- Discuss about judicial review powers of SC
- Criticism of the interim order
- Mention the alternatives before the SC in such cases
- Conclusion