

Role of the Judiciary

EXERCISE [PAGE 51]

Exercise | Q 1. (A) 1. | Page 51

Choose the correct alternative and complete the following statement.

_____ is the first country to create Independent Judiciary.

1. India
2. United States
3. United Kingdom
4. Soviet Union

Solution: United States is the first country to create Independent Judiciary.

Exercise | Q 1. (A) 2. | Page 51

Choose the correct alternative and complete the following statement.

The primary function of the judiciary is _____.

1. making laws
2. executing laws
3. adjudication
4. make appointments

Solution: The primary function of the judiciary is adjudication.

Exercise | Q 1. (B) | Page 51

Identify the incorrect pair in every set, correct it and rewrite.

1. Written Constitution - India
2. Judicial Review - United Kingdom
3. Independent Judiciary - United States

Solution: Judicial Review- USA

Exercise | Q 1. (C) 1. | Page 51

State the appropriate concept for the given statement.

Petition regarding important public concern -

Solution: Petition regarding important public concern - **Public Interest Litigation (PIL)**

Exercise | Q 1. (C) 2. | Page 51

State the appropriate concept for the given statement.

The process of removal of judges -

Solution: The process of removal of judges - **Impeachment**

Exercise | Q 1. (C) 3. | Page 51

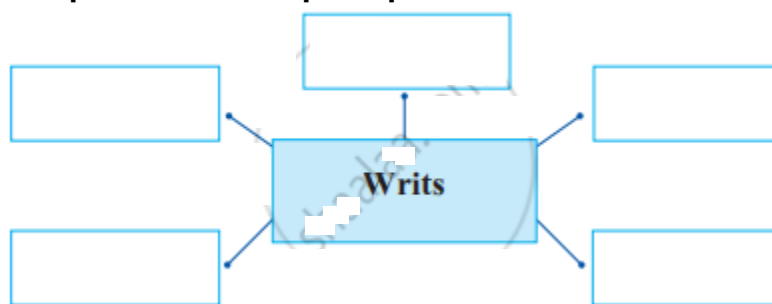
State the appropriate concept for the given statement.

Cases can be heard for the first time only in certain courts -

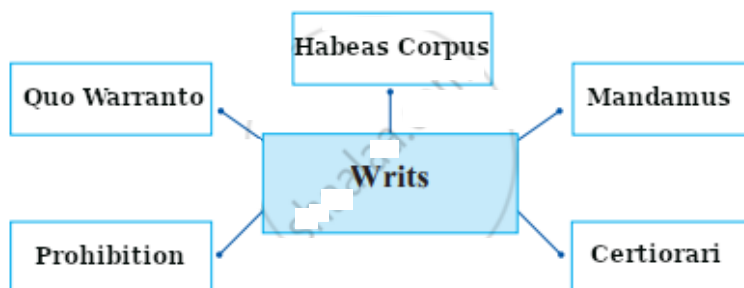
Solution: Cases can be heard for the first time only in certain courts - **Original Jurisdiction**

Exercise | Q 2 | Page 51

Complete the concept map.



Solution:



Exercise | Q 3.1 | Page 51

State whether the following statement is true or false with reasons.

There is no need to approve appointment of judges by the Senate in the United States.

1. True
2. False

Solution: This statement is False.

Reason: The Judges of the Supreme Court of America and the courts subordinate to it are appointed by the President of the USA. These appointments can be confirmed only after the Senate gives its approval.

Exercise | Q 3.2 | Page 51

State whether the following statement is true or false with reasons.

In India judiciary is independent.

1. True
2. False

Solution: This statement is True.

Reason: Provisions for judicial independence are provided in the Indian Constitution. This includes provisions related to appointment, tenure, salary, and allowances, removal from office, etc., of judges so that the judiciary acts in a free and fair manner.

Exercise | Q 4.1 | Page 51

Explain the co-relation between the following.

Judiciary and Executive

Solution: The judiciary and executive are both organs of the government. The main function of the executive is the implementation of laws and policies while the functions of the judiciary include interpretation of law and adjudication. In India, judges are appointed by the President (nominal executive). Traditionally, these appointments were made after consulting with the existing government (ministry). However, to maintain judicial independence, the collegium of judges recommends names for appointment to the President.

There are many instances where the executive is a party to a dispute either as the plaintiff or as the defendant. Given the power of the Government, any legal dispute between it and one or more citizens is usually unequal. There is a possibility that the Government would use its powers to secure a favourable decision. This is where the independence of the Judiciary becomes important. An independent judiciary ensures that all those who appear before it are treated on an equal plane, and thus makes sure that decisions are in accordance with the law.

Exercise | Q 4.2 | Page 51

Explain the co-relation between the following.

Supreme Court and High Court

Solution: India has a single integrated judicial system, with the Supreme Court at the apex and followed by the High Courts in the States. The Supreme Court controls all courts and tribunals in the territory of India. The High Court controls and supervises the functioning of the subordinate courts e.g., District Courts, in its territorial jurisdiction. The High Courts have Appellate jurisdiction, regarding decisions of the lower courts.

while Supreme Court can hear appeals in civil, criminal, and constitutional cases against decisions of the High Courts. Supreme Court has original Jurisdiction such as in disputes about the election of the President or Vice President which are its exclusive jurisdiction. Both, Supreme Court and High Court have Writ Jurisdiction i.e., they can issue directives or writs such as Habeas Corpus in case of violation of a person's fundamental rights. In case of appointment of judges of High Courts, the President also consults the Chief Justice of the Supreme Court.

Exercise | Q 5.1 | Page 51

Express your opinion of the following.

Judiciary must have a leading role in the appointment of judges.

Solution: One of the main ways to secure judicial independence relates to the appointment of the judges. A judiciary that works under government favour, fear, or pressure i.e., a 'committed judiciary' can never give impartial, fair decisions especially when the government is a party in any dispute. The judges of the Supreme Court and High Courts are appointed by the President of India who is expected to be politically neutral. However according to the 42nd Amendment Act, the President acts on the aid and advice of the Union Ministry. Hence, executive interference in judicial appointments is a real possibility. Since the 1990's, the Supreme Court ruled that the Judiciary must play a leading role in its judicial appointments.

The Supreme Court set up a Collegium consisting of the Chief Justice of India and the four senior-most judges of the court which would recommend names to the President for appointment to the Supreme Court and the High Courts. The Government role in this process has now been minimised.

Exercise | Q 5.2 | Page 51

Express your opinion of the following.

Judicial activism is significant today.

Solution: Judiciary in India has started taking a wider view of its functions. For instance, the courts have allowed individuals to file petitions on matters of important public concern. Such cases are known as Public Interest Litigation (PILs). There have been instances where the courts of their own accord, without anyone complaining or filing a petition, have taken note of matters of public concern (Suo moto). This wider view taken by the Judiciary of its functions has been termed as 'Judicial Activism'. In recent years, Judicial Activism has led to the courts examining the legality of the decision of the executive over a wide variety of issues including the ones referred to above. Moreover, in many instances, they have also either issued orders on what should be done over many issues or have directed the executive to take action about the same in a specified time period.

There has been much debate over Judicial Activism. Some feel that the judiciary was compelled to intervene because the executive was not discharging its functions properly, while others believe that the courts are exceeding their powers by looking into matters which fall within the jurisdiction of the executive or legislative.

Exercise | Q 6 | Page 51

Answer the following in detail with reference to the given points.

Explain the process of judicial review?

- a. meaning
- b. need
- c. when and where it started
- d. Indian context

Solution:

1. **Meaning:** Judicial Review means the power of the Judiciary to examine if any law passed by the legislature or any executive policy or action is consistent with the Constitution or not, and if it is not then to declare it as unconstitutional and hence null and void.
2. **Need:** It becomes necessary to have an institution that would examine whether the laws are consistent with the Constitution or not. That institution should also have the power to declare any law found inconsistent with the Constitution to be invalid and therefore not to be implemented. This would prevent the Legislature from making laws that violate the Constitution. In democracies with written Constitutions, this power is vested in the Judiciary. The Judiciary is not involved in any way in the law-making process. It is an independent body. Hence it has been assigned this power.
3. **When and where it started:** The origins of the power of Judicial Review can be traced to a decision of the Supreme Court of the United States of America given in 1803 in a case known as Marbury vs Madison case. This was for the first time that the American Supreme Court declared a law passed by the United States Congress to be invalid on the grounds that it was inconsistent with the Constitution of the United States. However, it must be noted that the American Constitution does not have any explicit provision that gives the Judiciary the power of Judicial Review. It is an implied power. Till date, the American Supreme Court's power of Judicial Review has been unchallenged. This is SC because it is accepted that such a power is necessary to retain the supremacy of the Constitution.
4. **Indian Context:** The Constitution of India does not explicitly provide the judiciary with the power of Judicial Review. However, like in the United States, these powers are implied. The Supreme Court of India has on many occasions declared laws passed by the Legislature as being inconsistent with the Constitution and therefore unconstitutional. In the Indian context, the real issue has been whether the amendments to the Constitution can be held unconstitutional. The issue was settled by the Supreme Court in the Kesavananda Bharati case (1973). In its judgment, the Court stated that the Constitution of India had a 'Basic Structure'. The Constitutional Amendments passed by the Parliament have to be consistent with this 'Basic Structure', and if they are found to

be not, then the Supreme Court would declare them unconstitutional. The power to declare any Amendments as unconstitutional rests only with the Supreme Court.