

6. Judiciary

Q1. What are the different ways in which the independence of the judiciary is ensured? Choose the odd one out.

- (i) Chief Justice of the Supreme Court is consulted in the appointment of other judges of Supreme Court.
- (ii) Judges are generally not removed before the age of retirement.
- (iii) Judge of a High Court cannot be transferred to another High Court
- (iv) Parliament has no say in the appointment of judges

Answer: The ways in which the independence of judiciary is ensured are:

- (i) The judges have a fixed tenure. Judges are generally not removed before the age of retirement.
- (ii) Parliament has no say in the appointment of judges.

Statements(i) and (iii) are odd ones out from the given statements.

Q2. Does independence of the judiciary mean that the judiciary is not accountable to any one? Write your answer in not more than 100 words.

Answer:

The independence of judiciary does not mean that judiciary is not accountable to anyone but it means:

- (a) No other organ of the government would restrain the functioning of judiciary
- (b) The judges can perform their functions without any fear or favouritism.
- (c) Judiciary is accountable to the Constitution of India, to the people of India and to the democratic traditions.

Q3. What are the different provisions in the constitution in order to maintain the independence of judiciary?

Answer:

Independence of Judiciary

- The independence of judiciary means that other organs of government should not interfere in the functioning and decisions of the judiciary.
- Judiciary can perform its duties without any favor or fear.

Various provisions in constitution to ensure independence of judiciary are as follows:

1. Parliament has no say in the appointment of judges.
2. The judges enjoy a fixed tenure as they hold office till the age of their retirement and the constitution prescribes very difficult procedure for exceptional cases if required.
3. The action and decisions of the judges are not found guilty of the contempt of court.
4. The salaries and allowances of the judges are not subjected to the approval of the legislature as per the constitution.
5. The judiciary can penalize them who are found guilty of the contempt of court.
6. The constitution specifically bars the parliament from discussing the conduct of the judges except the impeachment proceedings.

Q4. Read the news report below and identify the following aspects:

1. What is the case about?
2. Who has been the beneficiary in the case?
3. Who is the petitioner in the case?
4. Visualize what would have been the different arguments put forward by the company.
5. What arguments would the farmers have put forward?

Supreme Court orders REL to pay Rs. 300 crores to Dahanu farmers Our Corporate Bureau
24 March 2005

Mumbai: The Supreme Court has ordered Reliance Energy to pay Rs. 300 crore to farmers who grow the chikoo fruit in the Dahanu area outside Mumbai. The order comes after the chikoo growers petitioned the court against the pollution caused by Reliance's thermal power plant. Dahanu, which is 150 km from Mumbai, was a self-sustaining agricultural and horticultural economy known for its fisheries and forests just over a decade ago, but was devastated in 1989 when a thermal power plant came into operation in the region. The next year, this fertile belt saw its first crop failure. Now, 70 per cent of the crop of what was once the fruit bowl of Maharashtra is gone. The fisheries have shut and the forest cover has thinned. Farmers and environmentalists say that fly ash from the power plant entered ground water and polluted the entire eco-system. The Dahanu Taluka Environment Protection Authority ordered the thermal station to set up a pollution control unit to reduce sulphur emissions, and in spite of a Supreme Court order backing the order the pollution control plant was not set up even by 2002. In 2003, Reliance acquired the thermal station and re-submitted a schedule for installation process in 2004. As the pollution control plant is still not set up, the Dahanu Taluka Environmental Protection Authority asked Reliance for a bank guarantee of Rs. 300 crores.

Answer:

1. A case of pollution by Reliance Thermal Plant.
2. The farmers have been beneficiary
3. The chikoo growers of Dahanu The main contention of Dahanu Taluka Environment Protection authority and the Supreme Court was setting up of a pollution control plant. Reliance acquired the plant in 2003, so it pleaded for further extension of time limit for setting up of pollution control unit. The pollution was not wholly of its making as it had acquired the plant in 2003. Accordingly, it had argued for the reduction of penalty.
4. The farmers might have argued that since Reliance had failed in its commitment to install the pollution control unit in 2004, it did not have intentions to do it, so it must be penalized to some greater extent.

Q5.

Read the following news report and,

- . Identify the governments at different levels
- . Identify the role of Supreme Court
- . What elements of the working of judiciary and executive can you identify in it?
- . Identify the policy issues, matters related to legislation, implementation and interpretation of the law involved in this case.

Centre, Delhi join hands on CNG issue

By Our Staff Reporter, The Hindu 23 September 2001 NEW DELHI, SEPT. 22. The Centre and the Delhi Government today agreed to jointly approach the Supreme Court this coming week... for phasing out of all non-CNG commercial vehicles in the Capital. They also decided to seek a dual fuel policy for the city instead of putting the entire transportation system on the single-fuel mode "which was full of dangers and would result in disaster." It was also decided to discourage the use of CNG by private vehicle owners in the Capital. Both governments would press for allowing the use of 0.05 per cent low sulphur diesel for running of buses in the Capital. In addition, it would be pleaded before the Court that all commercial vehicles, which fulfil the Euro-II standards, should be allowed to ply in the city. Though both the Centre and the State would file separate affidavits, these would contain common points. The Centre would also go out and support the Delhi Government's stand on the issues concerning CNG. These decisions were taken at a meeting between the Delhi Chief Minister, Ms. Sheila Dikshit, and the Union Petroleum and Natural Gas Minister, Mr. Ram Naik. Ms. Dikshit said the Central Government would request the court that in view of the high powered Committee appointed under Dr. R.A. Mashelkar to suggest an "Auto Fuel Policy" for the entire country, it would be appropriate to extend the deadline as it was not possible to convert the entire 10,000-odd bus fleet into CNG during the prescribed time frame. The Mashelkar Committee is expected to submit its report within a period of six months. The Chief Minister said time was required to implement the court

directives. Referring to the coordinated approach on the issue, Ms. Dikshit said this would take into account the details about the number of vehicles to be run on CNG, eliminating long queues outside CNG filling stations, the CNG fuel requirements of Delhi and the ways and means to implement the directive of the court. The Supreme Court had ...refused to relax the only CNG norm for the city's buses but said it had never insisted on CNG for taxis and auto rickshaws. Mr. Naik said the Centre would insist on allowing use of low sulphur diesel for buses in Delhi as putting the entire transportation system dependent on CNG could prove to be disastrous. The Capital relied on pipeline supply for CNG and any disruption would throw the public transport system out of gear.

Answer:

1. The central government and the Delhi Government.
2. The role of the Supreme Court is to see that the government policies and actions at central as well as states are in tune with the parameters of the pollution control regimes or no. If not-it has to see that the governments comply with these parameters. It is in these regards that the Supreme Court had asked for phasing out all non- CNG commercial vehicles on September, 22, 2001 within a week. Keeping in view the difficulties in implementing it, the Supreme Court later gave a breather to the government that it had never insisted on CNG for taxis and auto rickshaws but it refused to relax the only CNG norms for city's buses.
3. This episode shows that the judicial activism of the court. The Supreme Court was concerned about the environment degradation in the city. To stop the decaying, court directed the Delhi government, for phasing out all non-CNG commercial vehicles in a week. It's duty of the government to ensure a pollution free environment. Here check and balance was also operating between the executive and the judiciary. The judiciary has to see that the government does not bypass its commitments. The Contempt of Court may follow if the government is not able to comply with the direction of the Supreme Court.
4. Due to this report it is necessary to remove pollution. All the commercial vehicles which are fulfilling Euro-2 are allowed to run in the city. Government wants to increase time period to convert its fleet of 10,000 buses into CNG.

Q6. The following is a statement about Ecuador. What similarities or differences do you find between this example and the judicial system in India? "It would be helpful if a body of common law, or judicial precedent, existed that could clarify a journalist's rights. Unfortunately, Ecuador's courts don't work that way. Judges are not forced to respect the rulings of higher courts in previous cases. Unlike the US, an appellate judge in Ecuador (or elsewhere in South America, for that matter) need not provide a written decision explaining the legal basis of a ruling. A judge may rule one way today and the opposite way, in a similar case, tomorrow, without explaining why."

Answer: No similarity is found in this example between Ecuador and India because:

1. In India, judicial decisions play an important role in the form of sources of law-making.
2. The judges give their own interpretations to decide the cases to expand or modify laws.
3. The rulings of the Supreme Court and High court are often quoted by lawyers with effect and authority.
4. In the example given above, it would be helpful if a body of common or judicial precedent existed to clarify a journalist's right. In Ecuador, the judiciary does not work in the same manner, hence judicial decisions do not become the precedents and the judge may rule one way today and the other way tomorrow without explaining why.

Q7. Read the following statements: Match them with the different jurisdictions the Supreme Court can exercise - Original, Appellate, and Advisory.

.The government wanted to know if it can pass a law about the citizenship status of residents of Pakistan-occupied areas of Jammu and Kashmir.

. In order to resolve the dispute about river Cauvery the government of Tamil Nadu wants to approach the court.

.Court rejected the appeal by people against the eviction from the dam site.

Answer:Original jurisdiction: The cases which can be directly considered by the Supreme Court without going to the lower courts earlier.

Appellate Jurisdiction: The Supreme Court is the highest court of appeal against the decisions of the High Court but it should be certified that the case is fit for appeal.

Advisory Jurisdiction: The president can refer any matter which is of public interest but it is not binding on the president to accept the advices as it is.

- The government wanted to know if it can pass a law about the citizenship status of residents of Pakistan-occupied areas of Jammu & Kashmir. It is an advisory function.
- In order to resolve the dispute about river Cauvery the government of Tamil Nadu wants to approach the court. It is an original jurisdiction.
- Court rejected the appeal by people against the eviction from the dam site. It is an appellate jurisdiction.

Q8. In what way can public interest litigation help the poor?

Answer: In simple words, public interest litigation (PIL) means that the person and associations other than the sufferers have the right to seek justice on their behalf.

The concept states that a person can seek justice not only for himself but for any other means that has undergone a similar change.

- Since 1979, the court has changed the trend for the poor in the situation or case, if the case was filed by others on behalf of aggrieved persons.
- This case involved an important issue of public interest which involved the betterment of life of the poor.
- Even the voluntary organizations sought judicial intervention for protection of existing rights of the poor.
- Public Interest Litigation (PIL) is a tool. For judicial Activism which include protection of environment, prohibition of trafficking especially of women, bonded labour, grievances of weaker sections and relief for under trail prisoners in jail, etc.
- The problems of the poor are of different kinds which can be solved by the intervention of Supreme Court. After filing Public Interest Litigation (PIL).

Q9. Do you think that judicial activism can lead to a conflict between the judiciary and the executive? Why?

Answer: Agree, judicial activism can lead to a conflict between judiciary and the executive because judicial activism has a great impact on the political system.

- Judicial activism makes the electoral system much easier by making it free and fair.
- The courts guided the candidates to file an affidavit which gives details of their assets and income along with educational qualifications to let the voters know about them and to make executive more accountable.
- This gives dissatisfaction to the candidates and judicial activism has blurred the line of distinction between the executive and legislature on the one hand and the judiciary on the other. The court has been involved in resolving issues which belong to the executive.
- Reducing air or sound pollution or investigating cases of corruption or bringing about electoral reform is not duty of judiciary; these are the duties to be performed by the executive. Hence, sometimes judicial activism can lead to a conflict between the judiciary and executive.

Q10. How is judicial activism related to the protection of fundamental rights? Has it helped in expanding the scope of fundamental rights?

Answer: The constitution of India grants the following Fundamental Rights to its citizens All the said fundamental rights are protected under the 'Right to constitutional Remedies' (Articles 32 and 226) by providing the writs of



- Habeas corpus
- Mandamus
- Quo warranto
- Prohibition
- Certiorari
- The Supreme Court can declare the concerned law as unconstitutional and therefore non-operational. (Article 13).
- The power of judicial review of the Supreme Court on the ground that they violate the fundamental rights.
- Hence, judiciary is enabled to protect the constitution effectively and the rights of citizens as well.
- The practice of entertaining the Public Interest Litigation as also further added to the power of the judiciary in protecting the rights of citizens.

Various writs under Right to Constitutional Remedies

1. Habeas Corpus

- (a) If somebody is taken into custody against the spirit of laws.
- (b) The detainer is ordered to produce the detainee before the court.

2. Mandamus:

- (a) Issued by Supreme Court to the lower court, official, etc.
- (b) It protects the right of petitioner and to get duties done by authority against whom writ is issued.

3. Quo warranto:

- (a) Issued to individual who has usurped a public office.

(b) Through the writ, the person is asked to hold the said office.

4. Prohibition:

(a) Issued by a higher court to a lower court.

(b) It is issued when either the lower court exercises the power beyond its limitations.

5. Certiorari:

(a) Issued along with the writ of prohibition

(b) Higher court orders a lower court to send the records concerned with a care therewith to the former.