

JUDICIARY

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

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.

Q3: What are the different provisions in the Constitution in order to maintain the independence of judiciary?

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

- ☞ What is the case about?
- ☞ Who has been the beneficiary in the case?
- ☞ Who is the petitioner in the case?
- ☞ Visualise what would have been the different arguments put forward by the company.
- ☞ What arguments would the farmers have put forward?

➤ Supreme Court orders REL to pay Rs 300 crore 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.

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 fulfill 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.

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.”

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. ∠Åj 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.

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

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

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

Answers

Answer 1:

- i. The independence of the judiciary is maintained in the following ways:
- ii. Judges are generally not removed before the age of retirement. They are removed only in exceptional cases.
- iii. Parliament has no say in the appointment of judges.
- iv. Thus, the odd ones here are:
- v. Chief Justice of the Supreme Court is consulted in the appointment of other judges of Supreme Court.
- vi. iii Judge of a High Court cannot be transferred to another High Court.

Answer 2:

The independence of the judiciary does not mean that the judiciary is not accountable to anyone.

The judiciary has to work according to the laws written in the constitution. Any kind of misbehaviour and incapacity of the judges can lead to their removal from the post. The judges have to write and explain the grounds of their decision made in the court. They cannot rule one way today and the opposite tomorrow in the same case. The judiciary cannot interfere in the sphere of legislature and executive. The system has to function independently while having accountability to the Constitution.

Answer 3:

The different provisions in the constitution in order to maintain the independence of judiciary are:

- The conduct of the judges cannot be discussed in the parliament.
- The legislature is not involved in the process of appointment of judges.
- The judges have fixed tenure that ensures that they can work fearlessly. They can be removed only in exceptional cases.
- The removal of judges of the Supreme Court and the High Courts is extremely difficult.
- The approval of the legislature is not required for salaries and allowances of the judges.
- The authority of the judges protects them from any unfair criticism and the judiciary can penalise those who are guilty of contempt of court.

- The instructions of the judiciary have to be followed by the legislature and executive of the country.

Answer 4:

The case is about the loss borne by the farmers in the production of chikoo because of the pollution generated by the thermal power plant of Reliance Energy.

The farmers have been the beneficiary in the case.

The chikoo growing farmers are the petitioner in the case.

☞ The different arguments put forward by the company would be as follows:

- Thermal power plants are needed to produce electricity to meet growing energy needs.
- The thermal power plant should be set up outside the main city lest pollution affects large area and population.
- The thermal power plant has generated employment in the region. Therefore, it has helped in solving the problem of employment up to some extent and also has contributed in the economy.

☞ The arguments that the farmers would have put forward are as follows:

- The loss in the production of the chikoo has adversely affected the agriculture and economy of the region
- The shutting down of fishing industry has created unemployment in the region.
- The increased pollution has affected the agricultural and fishing industries as well as health of people and animals of the region.
- The forests have been destroyed as a result of pollution.

Answer 5:

- ❖ The governments at different levels are the state government and the central government, represented by the chief minister and the Union petroleum minister respectively.
- ❖ The Supreme Court has played an active role in upholding public interest by instructing authorities to take steps to curb pollution.
- ❖ The action of the judiciary is an example of judicial activism and writ jurisdiction. The executive is concerned with the implementation of the directives of the judiciary.
- ❖ The main policy issue in this case was the transition of public and commercial transport vehicles to a cleaner fuel of CNG. The government also sought to implement a dual fuel policy instead of a single fuel for the entire transportation system. The legislative aspect was the passage of law mandating the switching of all

commercial vehicles to CNG and setting standards for the same. The debatable part was the interference of judiciary in directing this action. Failure to comply would have led to penalties. The Supreme Court interpreted the law to provide for a clean environment to the citizens of Delhi. Judicial activism pressurised the executive to implement them at the earliest. The issues related to implementation were norms for pollutants and the timeframe for converting the transport to CNG that was the domain of the executive.

Answer 6:

The differences between the judicial system in India and Ecuador can be cited as:

Unlike the judges in Ecuador, Indian judges have to follow the instructions and rulings of higher courts in previous cases.

Indian judges have to provide a written decision that explains the legal basis of a ruling.

An Indian judge may not rule one way today and in the other way tomorrow in the same case and he has to give explanation of the decision of every ruling in written form.

Answer 7:

Advisory

Original

Appellate

Answer 8:

❖ Public interest litigation can help the poor in the following ways:

- It can seek to protect the fundamental rights and better the living conditions of the poor.
- It can allow public spirited citizens, social organisations and lawyers to file cases on behalf of those who cannot approach the courts.
- The judiciary can also consider the cases on the basis of newspaper reports and postal complaints received by the court.
- The courts can direct the executive to comply with its orders and provide remedial action to the aggrieved party whose rights have been violated.
- PILs have also expanded the idea of rights and thus, have led to formation of new norms for public good like clean air and water that have benefitted the entire society.

Answer 9:

Judicial activism can lead to a conflict between the judiciary and the executive because of the interference of the judiciary in the domain of the executive. Issues related to pollution, investigation of cases against corruption and electoral reforms that are ordinarily handled by the executive under the control of the legislature, are being resolved by the judiciary. Judicial activism also violates the democratic principle of respecting the powers and jurisdiction of each organ of government as it confers extraordinary powers on the judiciary.

Thus, the balance between the three organs of the government has become very delicate.

Answer 10:

- Judicial activism is related to the protection of fundamental rights as it has made the judiciary more approachable by the common people seeking justice.
- The Supreme Court has the power to remedy the violation of fundamental rights by issuing writs of Habeas corpus and mandamus or by reviewing and declaring certain laws as unconstitutional.
- The public interest litigation helps the poor to fight against discrimination. ☐ Inhuman working conditions, sexual exploitation of the children, blinding of the jail inmates by the police are some of the cases that have been considered by the courts, which has made rights meaningful and useful for the poor and disadvantaged people.
- Issues related to better living conditions, like clean air and water and pollution free environment, have also helped in the expansion of the scope of fundamental rights.