

## *Chapter Six*

### *JUDICIARY*

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- ▮ *THE MEANING OF INDEPENDENCE OF JUDICIARY;*
- ▮ *THE ROLE OF INDIAN JUDICIARY IN PROTECTING OUR RIGHTS;*
- ▮ *THE ROLE OF THE JUDICIARY IN INTERPRETING THE CONSTITUTION; AND*
- ▮ *THE RELATIONSHIP BETWEEN THE JUDICIARY AND THE PARLIAMENT OF INDIA.*

## **Why Do We Need an Independent Judiciary?**

An independent judiciary is a cornerstone of a democratic society and plays a vital role in upholding the rule of law, protecting citizens' rights, and ensuring justice is administered fairly.

Here are several reasons why an independent judiciary is crucial:

1. **Checks and Balances:** An independent judiciary acts as a check on the powers of the executive and legislative branches of government. It ensures that the government's actions, laws, and policies adhere to the Constitution and do not infringe upon citizens' rights. This system of checks and balances is essential for preventing abuse of power.
2. **Protection of Rights:** The judiciary safeguards individual rights and liberties by interpreting and applying the law impartially. It ensures that every citizen, regardless of their background or status, has access to justice and can seek redress for grievances.
3. **Fair and Impartial Adjudication:** An independent judiciary is free from external pressures and political interference. Judges can make decisions based solely on the merits of the case and legal principles, without fear of reprisal or bias. This impartiality is crucial for ensuring a fair trial and just outcomes.
4. **Legal Certainty:** An independent judiciary provides legal certainty by interpreting and clarifying the law. This helps create a stable legal framework within which individuals and businesses can conduct their affairs, fostering economic growth and development.
5. **Protection of Minorities:** In diverse societies, an independent judiciary serves as a bulwark against the tyranny of the majority. It safeguards the rights of minorities, ensuring that their interests are not trampled upon by the majority's will.

6. **Constitutional Adherence:** The judiciary plays a pivotal role in upholding the Constitution. It has the authority to strike down laws or government actions that are unconstitutional. This power ensures that the Constitution remains the supreme law of the land.
7. **Justice and Accountability:** An independent judiciary can hold the government accountable for its actions. It can order investigations into allegations of corruption, human rights abuses, or misconduct by public officials, ensuring that those responsible are held to account.
8. **International Reputation:** A country with a strong and independent judiciary earns international respect and credibility. It is seen as a nation that values the rule of law and human rights, which can enhance its diplomatic and economic relations with other countries.
9. **Public Confidence:** An independent judiciary instills confidence in the legal system among citizens. When people believe that they can seek justice impartially through the courts, they are more likely to obey the law and have faith in the democratic process.

An independent judiciary is indispensable for upholding democracy, protecting individual rights, ensuring justice, and maintaining the rule of law. It serves as a critical pillar of a just and accountable society, providing a legal framework within which citizens can live, work, and prosper with confidence in their rights and freedoms.

## Independence of Judiciary in India

The independence of the judiciary in India is a fundamental principle that underpins the functioning of the legal system and the protection of citizens' rights.

**Here are seven key points highlighting the independence of the judiciary in India:**

1. **Constitutional Framework:** The Indian Constitution establishes an independent judiciary as a separate and distinct organ of the state. It defines the powers and functions of the judiciary and ensures its autonomy from the executive and legislative branches.
2. **Appointment and Tenure:** Judges of the Supreme Court and High Courts are appointed through a rigorous process. The President of India appoints judges based on recommendations from the collegium system, which consists of senior judges. Judges hold office until they reach a specific retirement age, ensuring security of tenure.
3. **Immunity from Political Influence:** The judiciary is insulated from political influence, and judges are prohibited from engaging in political activities during their tenure. This separation from politics helps maintain impartiality.
4. **Judicial Review:** The judiciary in India possesses the power of judicial review, enabling it to review and strike down laws, policies, or actions of the government if they violate the Constitution. This power serves as a critical check on the actions of the executive and legislative branches.
5. **Judicial Independence:** Judges are expected to be independent in their decision-making, and they are not influenced by external pressures,



including political or economic considerations. This independence ensures that judgments are based on legal principles and justice.

6. **Financial Autonomy:** The judiciary has financial autonomy, which means that its budget is not subject to approval by the government. This financial independence helps ensure that the judiciary can function without undue financial constraints.
7. **Public Confidence:** The judiciary in India enjoys a high level of public confidence. Its decisions are respected, and the institution is seen as a guardian of citizens' rights. This trust is essential for upholding the rule of law and the democratic system.

The independence of the judiciary in India is a vital component of the country's democratic framework. It guarantees that justice is administered impartially, the rule of law is upheld, and citizens' rights are protected, contributing to a just and accountable society.

## Appointment of Judges in India

The appointment of judges in India is a process designed to ensure the selection of competent and impartial individuals who will serve on the bench. This process is governed by established procedures and principles to maintain the independence and integrity of the judiciary. Here is an overview of the appointment of judges in India:

1. **Collegium System:** The primary method of appointing judges to the Supreme Court and High Courts in India is the collegium system. This system consists of a collegium of senior judges who recommend candidates for judicial appointments. The composition of the collegium varies but typically includes the Chief Justice of India and four of the most senior judges.
2. **Recommendation:** When a vacancy arises in the judiciary, the collegium recommends candidates based on their legal acumen, expertise, and suitability for the role. These recommendations are sent to the President of India for approval.
3. **Executive Review:** The President has the authority to either accept the collegium's recommendations or seek further clarification. In practice, the President usually follows the collegium's recommendations.
4. **High Court Appointments:** For appointments to the High Courts, the collegium consists of the Chief Justice of the respective High Court, the Chief Justice of India, and other senior judges. Recommendations for High Court appointments are sent to the Governor of the concerned state or Union Territory.
5. **Transparency:** The collegium system, while criticized for a lack of transparency, aims to ensure judicial independence by keeping political interference at bay. However, there have been calls for more openness in the appointment process.

6. **Security of Tenure:** Judges appointed to the Supreme Court and High Courts enjoy security of tenure until they reach a specified retirement age. This ensures that they can make independent decisions without fear of removal due to external pressures.
7. **Judicial Review:** The judiciary has the power of judicial review, enabling it to strike down laws or executive actions that are inconsistent with the Constitution. This power serves as a critical check on the actions of the government.
8. **Public Trust:** The appointment process aims to maintain the public's trust in the judiciary. Judges are expected to be impartial and free from political influence, thereby upholding the rule of law.

While the collegium system has been the subject of debate and reform discussions, it remains the dominant method for appointing judges in India. The goal is to select individuals who are best qualified to uphold justice, protect the Constitution, and maintain the independence and integrity of the judiciary.

## Collegium System in India

The Collegium System is a unique method of appointing judges to the higher judiciary in India, including the Supreme Court and High Courts. It is a system that has evolved over time and plays a pivotal role in judicial appointments, ensuring the independence and integrity of the judiciary. Here's an overview of the Collegium System:

## **1. Evolution and Background:**

- The Collegium System was not originally part of the Indian Constitution but developed through judicial interpretations over the years.
- In the early years of India's independence, judges were primarily appointed by the executive branch, led by the President in consultation with the Chief Justice of India and the Governor of the respective states for High Court appointments.
- The system underwent significant changes in the 1980s and 1990s due to concerns about political interference in judicial appointments. These concerns led to the emergence of the Collegium System.

## **2. Composition of the Collegium:**

- The Collegium typically consists of the Chief Justice of India and a group of the most senior judges in the Supreme Court.
- In the case of High Court appointments, the Collegium includes the Chief Justice of the concerned High Court along with the Chief Justice of India and other senior judges.

## **3. Recommendation Process:**

- When a vacancy arises in the higher judiciary, the Collegium deliberates and recommends candidates for appointment.
- The recommendations are based on factors such as the candidate's legal expertise, seniority, reputation, and suitability for the role.
- The recommendations are sent to the President of India for approval.

#### 4. Executive Review:

- The President has the constitutional authority to either accept the Collegium's recommendations or seek further clarification.
- In practice, the President usually follows the Collegium's recommendations, ensuring that the appointment process remains judicially dominated.

#### 5. Criticisms and Debates:

- The Collegium System has faced criticism for its lack of transparency and accountability, as the selection process is not open to public scrutiny.
- Critics argue that reforms are needed to make the process more transparent and to address concerns related to arbitrariness and favoritism.

#### 6. Importance of Judicial Independence:

- The Collegium System is primarily aimed at safeguarding the independence of the judiciary from political interference.
- It ensures that judges are selected based on their legal acumen and integrity, rather than political affiliations.

#### 7. Legal Challenges and Reforms:

- Over the years, there have been legal challenges to the Collegium System, and discussions on reforming the process have taken place.
- The debate often revolves around finding a balance between maintaining judicial independence and introducing more transparency and accountability.

Collegium System is a distinctive feature of the Indian judicial landscape. While it has been instrumental in preserving the independence of the judiciary, it remains the subject of ongoing discussions and potential reforms aimed at addressing its shortcomings and increasing transparency in the appointment process.

## Structure of the Judiciary in India

The judiciary in India is a hierarchical and independent system responsible for interpreting and upholding the law, protecting individual rights, and ensuring justice. It is one of the three pillars of democracy, alongside the executive and legislative branches. The structure of the Indian judiciary consists of several levels and tiers, each with specific roles and responsibilities.

### 1. Supreme Court of India:

- The Supreme Court is the highest judicial authority in India and serves as the apex court.
- It is located in New Delhi and is headed by the Chief Justice of India (CJI).
- The Supreme Court is primarily an appellate court, with the authority to hear and decide appeals from High Courts and other special courts.
- It has both original and advisory jurisdiction, enabling it to handle cases of national importance and provide legal advice to the President of India.

### 2. High Courts:

- Each state and union territory in India has its own High Court, except for some smaller union territories, which may share a High Court.



- High Courts serve as the highest judicial authority at the state or union territory level.
- A Chief Justice heads each High Court, and the President appoints other judges based on the advice of the Collegium System.
- High Courts handle cases involving state and union territory laws, as well as appeals from lower courts within their respective jurisdictions.

### 3. District Courts:

- District Courts are located in various districts across the country and are headed by District Judges.
- They are the primary trial courts responsible for handling civil and criminal cases within their territorial jurisdiction.
- District Courts have both original and appellate jurisdiction, depending on the nature and value of the cases.

### 4. Subordinate Courts:

- Below the District Courts are various subordinate courts, including Magistrate Courts, Civil Judge Courts, and Criminal Courts.
- These courts handle cases that fall within their specific jurisdiction and have limited original and appellate authority.

### 5. Specialized Tribunals:

- India has several specialized tribunals, such as the National Green Tribunal (NGT), National Company Law Tribunal (NCLT), and various administrative and quasi-judicial bodies.
- These tribunals address specific areas of law and have been established to expedite justice in those domains.

#### 6. Supreme Court and High Court Benches:

- To ensure accessibility to justice, the Supreme Court and some High Courts have benches in different regions of the country.
- These benches handle cases from their respective regions, reducing the need for litigants to travel long distances.

## Jurisdiction of the Supreme Court of India

The Supreme Court of India, as the highest judicial authority in the country, possesses extensive jurisdiction that encompasses a wide range of matters. Its jurisdiction is defined in the Constitution of India, and it plays a crucial role in interpreting and upholding the law.

Here's an in-depth look at the various dimensions of the Supreme Court's jurisdiction:

#### 1. Original Jurisdiction:

- The Supreme Court has original jurisdiction in certain types of cases, primarily those of federal or inter-state significance.

- Original jurisdiction cases include disputes between the Government of India and one or more states or between two or more states.
- These cases are filed directly in the Supreme Court without prior adjudication in lower courts.

## **2. Appellate Jurisdiction:**

- The primary role of the Supreme Court is that of an appellate court.
- It hears and decides appeals from judgments and orders of High Courts and other subordinate courts, both in civil and criminal cases.
- Appellate jurisdiction extends to cases involving substantial questions of law or matters of public importance.

## **3. Advisory Jurisdiction:**

- The President of India can seek the Supreme Court's advisory opinion on issues of national importance.
- While advisory jurisdiction is rarely invoked, it allows the President to obtain the court's advice on constitutional and legal matters.

## **4. Writ Jurisdiction:**

- The Supreme Court has the power to issue writs, including habeas corpus, mandamus, prohibition, certiorari, and quo warranto.
- Writs are crucial for protecting fundamental rights and ensuring that government actions are within the bounds of the law.

- Writ jurisdiction extends to individuals, public authorities, and the government.

### 5. Review Jurisdiction:

- The Supreme Court has the authority to review its own judgments and orders.
- A review petition can be filed if there is an error apparent on the face of the record or if a new material fact comes to light.
- Review jurisdiction ensures that justice is served even after a final judgment.

### 6. Constitutional Jurisdiction:

- The Supreme Court is the guardian of the Constitution and has the power of judicial review.
- It can strike down laws, executive actions, or government decisions that violate the Constitution's provisions.
- Constitutional jurisdiction plays a vital role in upholding the rule of law and protecting citizens' rights.

### 7. Public Interest Litigation (PIL):

- The Supreme Court has expanded its jurisdiction to entertain PILs, enabling individuals and organizations to bring matters of public interest before the court.
- PILs have been instrumental in addressing various social and environmental issues.

# Article 137 of the Indian Constitution: Review and Curative Petitions

Article 137 of the Indian Constitution deals with the power of the Supreme Court of India to review its own judgments and orders. It is a crucial provision that allows for the correction of errors, if any, in the judgments and orders passed by the highest court in the land.

[Here's a detailed explanation of Article 137:](#)

## Definition:

[Article 137 of the Indian Constitution reads as follows:](#)

"Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have the power to review any judgment pronounced or order made by it."

Explanation:

**Power of Review:** Article 137 grants the Supreme Court the authority to review its own judgments and orders. This power is essential to rectify any errors, omissions, or miscarriages of justice that may have occurred in its earlier decisions. Review jurisdiction ensures that justice is served even after a final judgment has been pronounced.

**Limitations:** While Article 137 confers the power of review on the Supreme Court, it is subject to certain limitations and conditions:

Parliament can enact laws specifying the scope and procedure for filing review petitions.

Article 145 empowers the Supreme Court to make rules regulating its practice and procedure, including those related to reviews.

**Review Petition:** A review petition is a formal application filed before the Supreme Court, requesting it to reconsider and review a specific judgment or order. Review petitions are typically filed on the grounds of an "error apparent on the face of the record" or the discovery of "new and important matter or evidence" that was not available during the original proceedings.

**Curative Petition:** In addition to review petitions, the Supreme Court has recognized the concept of curative petitions. A curative petition is filed when the petitioner believes that a gross miscarriage of justice has occurred, and the earlier



judgments/orders require correction. Curative petitions are typically heard by a larger bench of judges.

**Jurisdictional Scope:** Article 137's scope extends to all judgments and orders passed by the Supreme Court. This includes civil, criminal, constitutional, and other matters. The power of review is not limited to specific types of cases.

**Finality of Review:** Once a review petition is heard and decided by the Supreme Court, the judgment or order rendered after the review is considered final and binding, subject to any subsequent curative petitions, if applicable.

**Role in Ensuring Justice:** Article 137 plays a significant role in ensuring that justice is not only done but also seen to be done. It provides a mechanism for correcting mistakes or addressing any issues that may have arisen during the legal process.

Article 137 of the Indian Constitution empowers the Supreme Court to review its own judgments and orders, thereby facilitating the correction of errors and ensuring the fair and just administration of law in the country. Review jurisdiction is a fundamental aspect of the judicial system's commitment to upholding the rule of law and protecting individual rights.

# Article 144 of the Indian Constitution: Civil and Judicial Authorities to Act in Aid of the Supreme Court

Article 144 of the Indian Constitution is a concise but important provision that emphasizes the supremacy of the Supreme Court in matters of law and jurisdiction. It outlines the obligation of civil and judicial authorities throughout India to assist and act in aid of the Supreme Court. Here's a detailed explanation of Article 144:

**Definition:** Article 144 of the Indian Constitution reads as follows:

"Civil and judicial authorities in the territory of India shall act in aid of the Supreme Court."

Explanation:

- Supremacy of the Supreme Court:** Article 144 underscores the paramountcy and authority of the Supreme Court within the Indian legal system. It signifies that the Supreme Court holds the highest position among all civil and judicial authorities in the country.
- Territorial Jurisdiction:** The scope of Article 144 extends to the entire territory of India, emphasizing that all civil and judicial authorities across the nation must uphold the integrity and effectiveness of the Supreme Court.

3. **Duty to Assist:** The primary duty imposed by Article 144 is the obligation of civil and judicial authorities to assist the Supreme Court in fulfilling its functions and maintaining its authority. This assistance can take various forms:

- **Enforcement of Orders:** Authorities are required to enforce the orders, judgments, and directions issued by the Supreme Court promptly and without hesitation.
- **Compliance with Summons:** When the Supreme Court issues summons or notices to individuals or authorities, it is the duty of the concerned parties to respond and appear as required.
- **Implementation of Rulings:** Judicial and administrative bodies must implement and apply the Supreme Court's rulings and decisions in their respective jurisdictions.
- **Preservation of Jurisdiction:** Authorities should refrain from taking actions or decisions that could infringe upon or undermine the jurisdiction and powers of the Supreme Court.

4. **Preservation of Judicial Independence:** Article 144 reinforces the concept of judicial independence by safeguarding the Supreme Court's authority to interpret the law, adjudicate disputes, and protect constitutional rights. It ensures that no other authority or institution can interfere with or obstruct the functioning of the highest court.

5. **Rule of Law:** The provision reflects the principles of the rule of law, equality before the law, and the supremacy of the Constitution. It reinforces the idea

that all citizens and institutions, regardless of their status, must respect and adhere to the Supreme Court's decisions and directions.

6. **Judicial Review:** Article 144 is closely linked to the Supreme Court's power of judicial review. It allows the court to review the actions and decisions of both legislative and executive authorities to ensure they are consistent with the Constitution and the law.

Article 144 of the Indian Constitution serves as a foundational principle that reinforces the Supreme Court's authority and emphasizes the duty of all civil and judicial authorities to support and aid the court in its functions. It is a key element in upholding the rule of law and preserving the independence and integrity of the judiciary in India.

## **Judicial Activism: Definition and Explanation**

Judicial activism is a concept in the field of law and governance that refers to the proactive role played by a judiciary, particularly a nation's highest court, in interpreting and shaping the law, as well as in addressing societal issues, even beyond the traditional boundaries of legal interpretation.

**Here's a comprehensive explanation of judicial activism:**

### **Definition:**

Judicial activism can be defined as the practice wherein a judiciary, particularly the Supreme Court, takes an active and assertive role in interpreting the law, protecting individual rights, and addressing broader social and political issues. It

often involves the court's willingness to expand its powers and influence to achieve these objectives.

**Explanation:**

1. **Broad Interpretation of the Constitution:** Judicial activism typically involves an expansive and dynamic interpretation of a country's constitution. Rather than adhering strictly to the original intent or text, activist judges may interpret the constitution in a way that adapts to contemporary social and political contexts. This allows for the protection and expansion of individual rights and liberties.
2. **Protection of Fundamental Rights:** Judicial activism often focuses on safeguarding fundamental rights enshrined in the constitution. Courts may take it upon themselves to ensure that citizens' rights, such as freedom of speech, privacy, and equality, are upheld, even if it requires challenging legislative or executive actions.
3. **Correcting Injustices:** Activist judges may use their authority to rectify perceived injustices in society. This can involve addressing issues such as discrimination, environmental protection, access to education, healthcare, and social welfare, among others.
4. **Legislative and Executive Oversight:** Judicial activism may extend to reviewing and even striking down laws or executive actions that are deemed unconstitutional. In some cases, courts may issue directives to other branches of government to rectify certain situations.

5. **Public Interest Litigation (PIL):** Judicial activism is often associated with the acceptance of Public Interest Litigation (PIL), where individuals and non-governmental organizations can approach the court directly to seek remedies for public welfare issues. Courts may use PIL to address societal concerns, including those related to human rights, environment, and corruption.
6. **Balancing Powers:** In a democracy, judicial activism can serve as a check and balance on the powers of the legislative and executive branches. By actively engaging in constitutional interpretation and oversight, the judiciary can ensure that these branches adhere to the rule of law and respect constitutional limits.
7. **Controversies and Criticisms:** While judicial activism can be seen as a means to advance justice and societal progress, it is not without controversy and criticism. Critics argue that activist judges may overstep their roles and infringe upon the authority of elected representatives. They may also accuse courts of "legislating from the bench."
8. **Global Perspective:** Judicial activism is not unique to a single country or legal system. It can be observed in various forms across the world, often in democracies with strong judicial institutions.

In conclusion, judicial activism represents a proactive and assertive approach by the judiciary to interpret the law, protect individual rights, and address broader societal issues. It is characterized by a willingness to expand the scope of judicial authority to ensure justice and uphold constitutional principles. While it can be a



powerful force for positive change, it also sparks debates about the proper role of the judiciary in a democratic society.

# Judiciary and Rights: The Role of the Judiciary in Protecting Rights

The judiciary plays a crucial role in upholding and protecting the rights of individuals and communities within a society. It serves as the guardian of constitutional rights and ensures that laws and government actions do not infringe upon those rights. Here's an in-depth exploration of the relationship between the judiciary and rights, along with a definition:

## **Definition:**

Judiciary and rights refer to the integral connection between the judicial branch of government and the preservation and enforcement of fundamental rights and freedoms of citizens as enshrined in the constitution. It involves the judiciary's responsibility to interpret and apply the law to safeguard individual liberties and promote justice.

## **Explanation:**

1. **Protection of Fundamental Rights:** One of the primary functions of the judiciary is to protect the fundamental rights of individuals. These rights may include freedom of speech, freedom of religion, the right to equality, the right to life and personal liberty, and many others. The judiciary ensures that government actions or laws do not violate these rights.

2. **Interpretation of the Constitution:** The judiciary, particularly the highest court in a country, plays a pivotal role in interpreting the constitution. It determines the scope and limitations of various rights, resolving disputes and ambiguities in constitutional provisions. The judiciary's interpretations become precedents for future cases.
3. **Judicial Review:** Judicial review is a fundamental aspect of the judiciary's role in protecting rights. It allows the judiciary to examine the constitutionality of laws and government actions. If a law or action is found to be unconstitutional, the judiciary may strike it down, thereby safeguarding rights.
4. **Checks and Balances:** The judiciary acts as a check on the powers of the legislative and executive branches of government. It ensures that the rights of citizens are not undermined by governmental actions, legislation, or policies. This system of checks and balances prevents abuses of power.
5. **Public Interest Litigation (PIL):** In many countries, including India, public interest litigation allows individuals and organizations to approach the judiciary directly to seek remedies for violations of rights, environmental concerns, or other matters of public interest. The judiciary's involvement in PIL cases can result in the protection of collective rights.
6. **Enforcement of Court Orders:** Once the judiciary issues judgments or orders to protect rights, it is responsible for ensuring the enforcement of these decisions. This involves monitoring government agencies and authorities to ensure compliance with court rulings.

7. **Preserving Minority Rights:** The judiciary often plays a vital role in safeguarding the rights of minority groups, protecting them from discrimination, and ensuring their equal treatment under the law.
8. **Balancing Rights:** In cases where there is a conflict between different rights or interests, the judiciary must carefully balance these competing considerations. For example, the right to free speech may be balanced against the right to privacy or protection from hate speech.
9. **International Human Rights:** In some instances, the judiciary may refer to international human rights treaties and conventions to interpret and protect rights. International human rights standards can influence domestic judicial decisions.
10. **Legal Precedent:** Judicial decisions set legal precedents that guide future cases. Landmark rulings on rights-related issues can have a significant impact on the legal landscape, often leading to social and legal change.

Judiciary serves as a vital institution in ensuring that the rights and freedoms of individuals are respected, protected, and enforced within a society. Its role extends to interpreting the constitution, conducting judicial review, and issuing judgments that have far-reaching implications for the preservation of rights and the rule of law.

# Judiciary and Parliament: Interplay, Definition, Cases, Issues, and Controversies

The relationship between the judiciary and the parliament is a fundamental aspect of democratic governance. It involves the complex interplay between two branches of government responsible for interpreting and making laws. Here, we explore this relationship, provide a definition, highlight key cases, issues, and controversies associated with it:

## Definition:

Judiciary and Parliament refer to the interaction between the judicial branch and the legislative branch within a democratic system. It encompasses the judiciary's role in interpreting and scrutinizing laws passed by the parliament, ensuring their constitutionality and protecting the rights of citizens.

## Interplay:

1. **Judicial Review:** One of the primary functions of the judiciary is judicial review, which allows the courts to examine the constitutionality of laws passed by the parliament. If a law is found to be inconsistent with the constitution, the judiciary can declare it null and void. This power ensures that parliament does not violate the constitutional rights of citizens.

## Key Cases:

1. **Marbury v. Madison (1803):** In the United States, this landmark case established the principle of judicial review. The Supreme Court held that it had the authority to review and invalidate laws passed by Congress if they were found to be unconstitutional.
2. **Kesavananda Bharati v. State of Kerala (1973):** In India, this case is famous for defining the basic structure doctrine. The Supreme Court ruled that while parliament had the power to amend the constitution, it could not alter its basic structure, which included fundamental rights.

### Issues:

1. **Conflict of Powers:** One of the central issues in the relationship between the judiciary and parliament is the potential for a conflict of powers. Parliament creates laws, while the judiciary interprets them. Disagreements may arise when the judiciary invalidates legislation passed by parliament.
2. **Scope of Judicial Review:** There is often debate about the extent to which the judiciary can review and strike down laws. Questions about the scope of judicial review can lead to controversies.
3. **Balance of Powers:** Striking the right balance between the powers of parliament and the judiciary is a perpetual issue. Both branches must respect their constitutional roles while ensuring that individual rights are protected.

### Controversies:

1. **Legislating from the Bench:** Critics argue that judicial overreach occurs when the judiciary encroaches on the legislative domain by striking down laws. They accuse judges of "legislating from the bench."

2. **Constitutional Amendments:** Conflicts have arisen when parliament attempts to amend the constitution in ways that some argue may affect its basic structure. These disputes often end up in the courts.
3. **Conflict Resolution:** Courts frequently serve as the final arbiter in disputes between parliament and other branches of government. This can lead to tensions and controversies when political decisions are subjected to judicial scrutiny.

Relationship between the judiciary and parliament is a critical aspect of democratic governance. It involves the judiciary's role in interpreting and reviewing laws passed by parliament to ensure their constitutionality and protect individual rights. Key cases, issues, and controversies in this relationship continue to shape the balance of powers and the protection of fundamental rights within democratic systems.

**1. What are the different ways in which the independence of the judiciary is ensured? Choose the odd ones out.**

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

**Answer**

The odd one out among the ways in which the independence of the judiciary is ensured is:



- Parliament has no say in the appointment of judges.

The other options listed are mechanisms that help ensure the independence of the judiciary:

- The Chief Justice of the Supreme Court's consultation in the appointment of other judges ensures that the judiciary has a say in its composition.
- The practice of not removing judges before the age of retirement helps prevent arbitrary removals that could compromise independence.
- The restriction on transferring judges of a High Court to another High Court is aimed at safeguarding their independence from executive influence.

**2. 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

No, the independence of the judiciary does not mean that it is not accountable to anyone. While the judiciary must be independent in its decision-making and free from undue influence, it is still accountable through various mechanisms:

- Judges are accountable to the Constitution and the law.
- Judicial decisions can be subject to appeals and reviews within the legal framework.
- The judiciary is accountable for its conduct through mechanisms like impeachment or disciplinary procedures.

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

Answer

Provisions in the Indian Constitution to maintain the independence of the judiciary include:

- **Security of tenure:** Judges of the Supreme Court and High Courts have a fixed tenure until they reach a certain age and can only be removed through a complex process of impeachment.
- **Appointment process:** The involvement of the judiciary and the executive (through the President) in the appointment of judges ensures checks and balances.
- **Salaries and allowances:** These are charged on the Consolidated Fund of India to protect judges from arbitrary reductions.
- **Conduct and discipline:** The Constitution provides for the removal of judges on grounds of proven misbehavior or incapacity, but this process is rigorous and aimed at maintaining the judiciary's independence.

4. 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 ecosystem. 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

## Case Overview:

- **The case is about** pollution caused by Reliance Energy's thermal power plant in the Dahanu area, located outside Mumbai.
- **The beneficiaries** in this case are the farmers who grow chikoo fruit in the Dahanu region.
- **The petitioners** in the case are the chikoo growers who approached the Supreme Court to seek redress for the pollution caused by the power plant.

## Arguments by the Company (Reliance Energy):

- Reliance Energy may have argued that the pollution caused by their thermal power plant was not the sole or primary factor behind the agricultural decline in the region.
- They might have contended that they had taken steps to address the pollution issue by submitting a schedule for the installation of a pollution control unit in 2004.
- The company may have also argued that the farmers' claims of severe pollution were exaggerated or not scientifically substantiated.
- They might have asserted that the decline in agriculture could be attributed to various factors beyond their control.

## Arguments by the Farmers:

- The farmers likely argued that the operation of the thermal power plant led to pollution, particularly the contamination of ground water with fly ash, which had a direct adverse impact on agriculture.

- They might have presented scientific evidence and studies linking the decline in crop yields and the deterioration of the eco-system to the pollution caused by the power plant.
- The farmers probably stressed the loss of their livelihoods and the devastating impact on the region's agricultural and horticultural economy.
- They might have invoked environmental laws and regulations to support their case and emphasized the failure of the company to comply with pollution control orders.

This case represents a classic conflict between environmental concerns and industrial development, with the judiciary serving as the arbiter in determining the extent of liability and responsibility of the company in causing pollution and its impact on the livelihoods of the affected farmers.

#### 5. Read the following news report and,

1. Identify the governments at different levels
2. Identify the role of Supreme Court
3. What elements of the working of judiciary and executive can you identify in it?
4. 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**

#### **Governments at Different Levels:**

- The Central Government (Union Government).
- The Delhi Government (State Government).

#### **Role of the Supreme Court:**

- The Supreme Court is mentioned as the judicial authority that has been involved in the case. It had earlier prescribed certain norms related to the use of Compressed Natural Gas (CNG) for public transportation in Delhi.

#### **Elements of the Working of Judiciary and Executive:**

- The judiciary, represented by the Supreme Court, has issued directives related to the use of CNG in public transportation, indicating its role in interpreting and enforcing laws and regulations.
- The executive, consisting of the Central Government and the Delhi Government, is responsible for implementing the court's directives and formulating policies related to transportation and fuel usage.
- The decision to approach the Supreme Court jointly reflects cooperation between the executive branches at both the central and state levels to address the issue.



## Policy Issues, Matters Related to Legislation, Implementation, and Interpretation:

- The policy issue involves the phasing out of non-CNG commercial vehicles in the Capital and the adoption of a dual fuel policy.
- Matters related to legislation include the need to amend or create regulations to accommodate the use of low sulfur diesel, the Euro-II standards, and the extension of deadlines for transitioning to CNG.
- Implementation concerns revolve around the practical aspects of transitioning public transportation to CNG and ensuring a smooth supply of CNG.
- Interpretation of court directives is a critical aspect, particularly regarding whether the Supreme Court insisted on CNG for taxis and auto-rickshaws.

This case demonstrates the interplay between the judiciary, which interprets and enforces laws, and the executive, responsible for policy formulation and implementation, in addressing an environmental and transportation-related issue in the city of Delhi. It also highlights the need for coordination and cooperation between different levels of government to address complex policy and environmental challenges.

**6. 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

The statement about Ecuador's judicial system highlights several differences compared to the judicial system in India:

1. **Absence of Common Law Precedent:** In Ecuador, there is no body of common law or judicial precedent that can clarify a journalist's rights. In contrast, India follows a common law legal system, and judicial decisions and precedents play a significant role in shaping and clarifying the law.
2. **Judicial Discretion:** In Ecuador, judges have significant discretion, and they are not required to respect rulings of higher courts in previous cases. This differs from India, where the doctrine of judicial precedent, also known as stare decisis, establishes a hierarchy of court decisions. Lower courts are generally bound to follow the decisions of higher courts, creating a more predictable legal environment.
3. **Lack of Written Decisions:** Ecuadorian appellate judges are not obligated to provide written decisions explaining the legal basis of their rulings. In India, judges typically provide written judgments that serve as legal precedents and provide a rationale for their decisions.
4. **Inconsistent Rulings:** The statement suggests that in Ecuador, a judge may rule differently in similar cases without providing an explanation. In India,

consistency in judicial decisions is generally expected, and departures from established legal principles are subject to scrutiny.

7. Read the following statements: Match them with the different

jurisdictions the Supreme Court can exercise – Original, Appellate, and Advisory.

1. 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.
2. In order to resolve the dispute about river Cauvery the government of Tamil Nadu wants to approach the court.
3. Court rejected the appeal by people against the eviction from the dam site.

Answer

Here's the matching of the given statements with the different jurisdictions of the Supreme Court:

1. "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."
  - **Advisory Jurisdiction:** This statement pertains to a legal question the government wants advice on, and the Supreme Court can exercise its advisory jurisdiction to provide such guidance.
2. "In order to resolve the dispute about river Cauvery, the government of Tamil Nadu wants to approach the court."
  - **Original Jurisdiction:** This statement involves a dispute between two states, namely Tamil Nadu and Karnataka, regarding the sharing of

the Cauvery River's waters. In such interstate disputes, the Supreme Court can exercise its original jurisdiction to resolve the matter.

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

- **Appellate Jurisdiction:** This statement refers to the Supreme Court's role in hearing appeals from lower courts or tribunals, making it an example of the Supreme Court's appellate jurisdiction.

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

#### Answer

**Public interest litigation (PIL) can help the poor in several ways:**

- Access to Justice:** PIL allows individuals or groups, including the poor who might not have the resources to pursue legal cases, to seek justice and protection of their rights without incurring significant financial burdens.
- Protection of Rights:** It enables marginalized and economically weaker sections of society to raise issues related to their rights, welfare, and well-being. PIL can address matters such as land rights, labor rights, food security, housing, and healthcare, which are critical for the poor.
- Accountability:** PIL can be a tool for holding governments and public authorities accountable for their actions or inactions in implementing policies and programs aimed at poverty alleviation and social justice.
- Policy Reforms:** Successful PIL cases can lead to policy reforms and changes in government practices that benefit the poor. For example, a PIL may lead to the

formulation of pro-poor policies or the reallocation of resources to poverty eradication programs.

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

**Answer**

Judicial activism can potentially lead to conflicts between the judiciary and the executive due to the following reasons:

- a. **Interference in Executive Domain:** When the judiciary takes an active role in directing executive actions or policy decisions, it may be perceived as encroaching upon the executive's domain. This can lead to tensions between the two branches of government.
- b. **Policy Disagreements:** Judicial activism often involves the judiciary questioning or reevaluating government policies. Disagreements over policy matters can create conflicts between the judiciary, which seeks to protect rights and enforce the law, and the executive, which is responsible for policy implementation.
- c. **Accountability:** When the judiciary holds the executive accountable for lapses in governance or violations of rights, it may be met with resistance from the executive, leading to conflicts over the enforcement of court orders.

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

## Answer

Judicial activism is closely related to the protection of fundamental rights. It has helped expand the scope of fundamental rights in several ways:

- a. **Expanding Definitions:** Through judicial activism, the courts have interpreted fundamental rights liberally, broadening their definitions and applicability. This has led to greater inclusiveness and protection of rights.
- b. **Enforcement:** Courts have actively enforced fundamental rights, ensuring that they are not merely theoretical concepts but practical safeguards for citizens.
- c. **New Rights:** Judicial activism has recognized new rights that were not explicitly mentioned in the Constitution, such as the right to a clean environment, right to privacy, and right to education.
- d. **Policy Intervention:** Courts have intervened in policy matters to ensure that government policies are in line with fundamental rights. For example, they have ordered governments to provide food to the hungry or shelter to the homeless.

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