

EVALUATION INDICATORS

1. Alignment Competence
2. Context Competence
3. Content Competence
4. Language Competence
5. Introduction Competence
6. Structure - Presentation Competence
7. Conclusion Competence

Overall Macro Comments / feedback / suggestions on Answer Booklet:

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‘Need of the hour: an active judiciary or
an activist judiciary’

Madras High Court in a recent judgement directed the state government of Tamil Nadu for loan waiver of farmers as a relief measure for drought-affected farmers. In one another instance Allahabad high court, declared River Ganga and Yamuna ‘a living entity’, invoking their Activist spirit.

The question arises is, has time come for judiciary to dawn the role of an activist? Or such an adventure ~~is~~ will threaten the other pillars of democracy, shaking the entire institution in itself.

Judiciary in the country have gradually evolved and I have slowly shed the shackles of it's role as passive agent. It can be traced back to the famous 'Keshavnand Bharati Case', where by a thin margin, our Supreme Court established a 'Basic structure doctrine' and hereby defending the essence of our constitution, against legislative overreach and hence, Saving Indian Democracy.

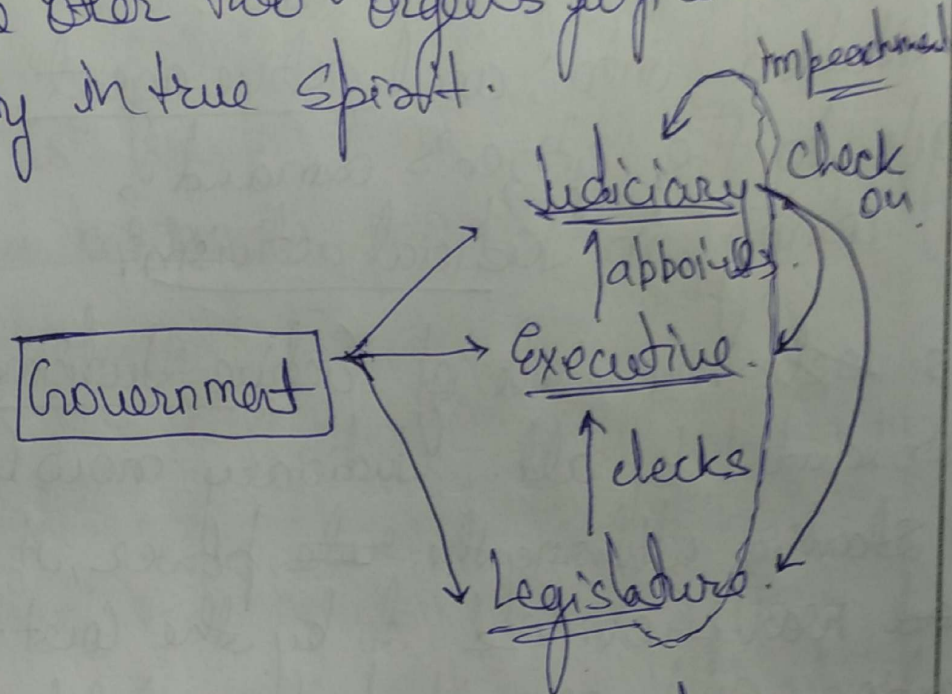
Years later, in late 1970s, a unique tool in the form of '~~Public activist~~ Public Interest litigation' was born, whereby courts in the country took active role in protecting the rights of hitherto untouched section. From here on, courts entertained plea

of marginalised section ~~on behalf of~~
~~to~~ filed by other litigants on
 their behalf. It finally made the
 institution into an active agent,
 agile to the citizen's demand,
 coming in 'Judicial activism'.

This ~~new~~ new role of 'active Judiciary'
 was lauded by all. Judiciary now
~~had~~ starting utilising the ~~state~~ power, it
 had now provided to by the Const-
 itution and provided a right
 check over the other two organs
 of government.

Especially, after the
 'Minerva Mills Case' of 1980, ~~the~~
 Honorable Supreme Court extended
 its domain by taking a wider
 interpretation of Article 21. It
 adopted the doctrine of 'Due process
of law' whereby, the best reason
 providing 'Natural justice'.

Hence, Judiciary effectively evolved itself as an agent of change, ensuring the other two organs fulfill their duty in true spirit.



Hence, this approach of an active judiciary have strengthened the institution of democracy and made it quite mature in the country. Our Constitution envisaged the same role of the three in governance structure, keeping a check on each other.

The Constitution has also provided a separate domain

for working of these organs of government i.e., Separation of power.

Role of Legislature is to make laws as per the nation's requirement, Executive have to implement it while Judiciary need to look out after any dispute arising and uphold the law as per Constitution.

Contention arises when any one organ of the government steps out of its domain. It disturbs the delicate balance on which the three organs are based.

Judiciary as an 'Activist', threatens to do the same. Let's get back to the example presented at the Start.

Is it right for judiciary to intervene in the fiscal matters of a state? Or intervene in a

policy matters or even sometimes deciding a policy matter.

An 'Activist' is someone who takes an active part in being an agent of change. Such a role, if taken by citizen either through civil society or NBO is well accepted. However, Judiciary taking such a stand may be counter productive. It will amount to a role where judiciary will be actively seeking to set policy! Isn't that should be left with legislatures, having the required expertise?

Constitution has provided judiciary with unrestrained power. Article 142 of the Constitution provides for taking any amount of action in order to gain 'complete justice'

Further, it combined with Art. 136 providing for 'Special leave petitions' makes our Supreme Court most powerful of all courts in the world. For example, After the SR Bommai Case, Courts have ~~not~~ assumed power to resist state governments, if removed on malefide intention.

Moreover, Judiciary is burdened with huge 'pendency of case'. ~~Now~~ lakhs of cases are pending in our lower courts. This has led to delay in judgements and cases carry on for years. Recent law commission reports suggests that there are undertrials facing jail terms, lakhs in number. This is all due to lack of timing and space in courts to decide such matters.

It is famously said 'delay in justice is a gross injustice in itself.' An undertrial have do face grave financial losses, health issues and above all mental trauma. It directly violates plethora of fundamental rights under Article 14, 19, 21 and 22.

A delay in execution in law is no law itself. It dwindles people's faith in the institution of law and they start questioning rule of law. And we must mind that 'Rule of law' is very essence of democracy.

The next question to ponder is about the accountability of an institution with such an enormous power. If Judiciary do takes the role of an activist

~~that~~ than there should be required
transparency and accountability.
Do. Or else we may see an
Era of 'Judicial Dictatorship'

After the second and
third judges case, the appointment
of judges to the higher courts have
been most opaque. The system
of collegium have done nothing in
ushering in ~~the~~ transparency. In
order to protect itself from the
executive overreach / interference,
judiciary have locked itself in a
loon walled room, with no visibility
from outside.

The much awaited
National Judicial Commission have
be held unconstitutional. There is
very slow ~~process~~ progress over
'Memorandum of Appointment', with
juggle between Judiciary and

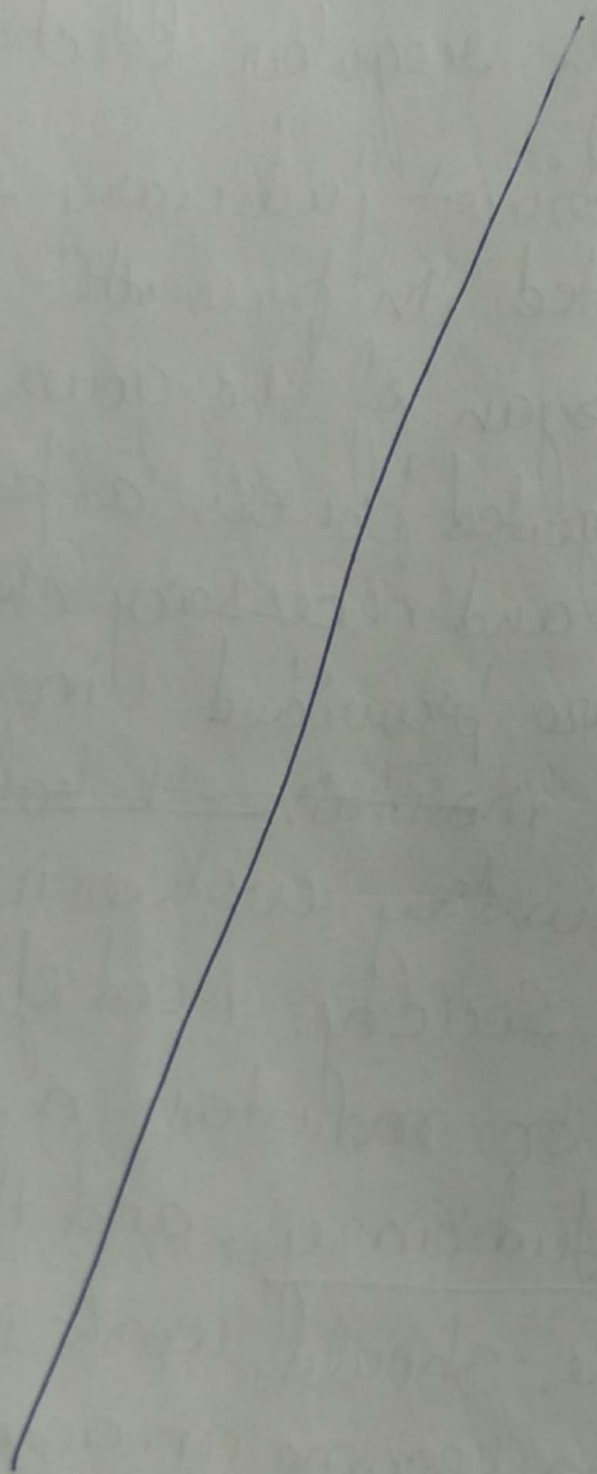
executive over a number of issue.
Moreover, high courts have stalled
any action over appointment of
judicial officers through 'All India
Judicial Services', citing interference
in their domain.

Hence, taking these all in
account, an activist judiciary
may be a dangerous trend.

~~The~~ Further, being a mature
democracy's member Executive
and legislature have shown their
will to change as per the require-
ment of time. A number of progressive
legislatures have been passed,
enabling the progress of citizen.
Moreover, legislature are controlled
by political parties, representing
views of different section of people.

They are more vigilant to changing demand. Their accountability is ensured through regular elections.

Hence, an activist judiciary is not advocated in present scenario. Each organ of the government have been delegated powers as per their expertise and necessary checks and balances are provided in constitution to ~~maintain the balance~~ ensure the country evolves into a progressive society. Need of the hour is to maintain a restraint by judiciary, and the three organs should work in tandem to become an agent of change in coordination with each other in harmony.



True modernism is freedom of mind,
not slavery of taste.

Rabindra Nath Tagore, in his famous Essay, arguing against the 'pseudo-modernism', provided by Imperial countries quoted the above. What he meant was, modernism is actually independence of thought and action, what they've provided for is mere 'westernisation'. These ~~in~~ European powers are actually dictating, what they deem to be 'right'.

The term 'modernism', got its origin somewhere in late 15th century, when Europe saw a period of 'Renaissance'. It saw a rejuvenation in the art and culture in the region, starting from

Italy, place for erstwhile 'The Great Roman Empire'.

After this survival, world gradually started dawning in new outlook. There was a great vigour of looking every custom and rituals through the lens of 'logic' and 'reasoning'. The Europe was coming out of the shackles of 'Dark Age', which kept the continent deprived of ~~enlightenment~~ enlightenment for centuries.

What led to this modernism? Such a change in the outlook of society requires a complete new thinking i.e., 'freedom of mind'. The age saw ideas coming out in ~~the~~ different art forms like paintings, sculptures, architecture etc., not limiting itself to mere few.

This free flow of ideas ultimately culminated into formation of a new political system i.e., 'democracy' with values of Liberty, Equality and Fraternity as its basic. The picture had been something entirely different if we had were enslaved by available privileges i.e., caste

we can take examples from our own history, which was pushed into a feudal society, because of the ruling class worked free thinking, liberal ideas and scientific reasoning, resulting into a stagnant society, which was way backward compared to contemporary developments in Europe. This lack in 'modernity' ~~is~~ made us an English slave for two centuries.

India used to be a vibrant land with intermixing of various thoughts and culture, resulting in a rich heritage, known world over. Many travellers from distant land come here to study this great land. Many invaders dreamt of conquering it, such was its glory.

However, gradually the rulers started taking things for granted and due to our slavery to taste, our modern outlook started declining and as a result we lagged behind the race of 'Modernism'

Europeans look upon themselves, to 'modernise' the world. Many scholars in order to justify colonialism, showed the

conquest as a quest to help their fellow human civilize and come up at their par. Rudyard Kipling termed it as 'White Man's Burden'.

Though, the choices they provided can't be termed as 'True modernism', as their notion of beauty and practice of high culture was an enslavement. It belied the modern idea of equality and there were ~~disse~~ gross discrimination, especially on racial ground. These so called 'civilized' people were flourishing ~~of~~ on the blood of fellow humans, living in a walled chamber, filled with the things of their 'taste'.
In the contemporary world, this

false notion of modernism, still exists at some level. We're living in an era of 'neo-colonialism', where few western countries are dominating the global economic system. These countries, with the help of Bretton Woods institution are now proposing a world, so called 'modern' in their views, with limited choices.

Provisions like free trade, consumption-based life-style seems great but we're being limited to our choices.

There is no course for action for technology transfer or free movements of services, which in real can benefit third world nations. Hence, we are made to choose among few, ensuring our taste.

This protective stance, with
respective national interests at helm,
can't be 'Modernism'. It's a
myopic view of the above idea,
but is used by every other
nation. Even China's grand
ambition of 'One belt-one road'
initiative, needs to be seen only
through this lens.

Such a narrow view
is not there in the world only
but also in our country itself.
The 'Syncretic tradition' of our
country, which made ourselves
truly modern is at stake
today. There is a growing
yearning for 'Nationalism', whose
re-definition is an enslavement
of our taste. It is being presented
as if by curbing dissent and
free idea, we will be progressive

Soon, but it's going to work back-ward. By not allowing freedom of respective minds, we are actually challenging democracy itself.

Our modernism is in great danger when, a student from a prestigious university is charged for sedition.

Globally too, we are seeing an era of 'Post-truth', where objective facts are less influential in shaping public opinion, than appeals to emotion and personal belief. ~~In~~ Today, it's easy to cherry-pick data and come to whatever conclusion one desires.

Repeated assertion to a particular point make people believe it, without questioning its ~~authenticity~~ authenticity.

Many people like to hear what they believe, without looking the other side of it, a typical example of enslavement of taste.

So, we have seen how a bondage to one's ~~low~~ taste can set a harmful precedent. It severely suppresses the society's ability to question, leading to one with stagnation. As it is satisfied with what it has. There is no innovation, discovery or progress and the society doesn't evolve.

Hence, what is desired is a mix of our culture of knowledge, wisdom and spirituality with western rational and scientific thinking. Such a mix will go a long way in ensuring a society that is modern in true spirit.

The issue can be concluded by following: —

‘Let noble thoughts come to me from all directions’

— Rig Veda.