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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:

1.

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All the Best

Section A.

'Need of the hour: An active judiciary, or an activist judiciary'

An independent judiciary is one of the strongest pillars of democracy. The judiciary ensures that the popularly elected legislative does not overstep the limits of our magna carta, the Indian Constitution.

The Indian judiciary is known world over for taking a proactive stance in various situations to ensure full justice is done. However, the changing dimensions of the role of the judiciary begs the question - where is the fine line to be drawn between an active judiciary, and conduct which is activist in nature?

An active judiciary is one which takes a proactive stance. It does

not sit over government apathy - Instead, it regularly offers wake up calls to government entities to perform their duties properly.

An active judiciary provides confidence to the people. It gives them hope that they will get justice from an impartial institution.

An active judiciary provides an important check on the government. It ensures that the popularly elected government upholds the rule of law. The presence of an active judiciary looms large over the government and acts as a factor forcing the government to take legally correct decisions.

An active judiciary is essential to maintain separation of powers. It further ensures that the government policies and other laws do not just remain on

paper, but are actually enforced. It therefore safeguards the rights of people by ensuring the corresponding obligations are carried out.

Since independence, our judiciary has had a very active role in upholding the constitution. During the dark phase of the 1970s emergency era, the judiciary has been an impartial guardian of the rule of law.

The active nature of the judiciary received great impetus in the 1980s, wherein Public Interest Litigation was introduced as a tool to seek justice on behalf of many. PIL had lowered rules of admissibility, which ensured justice for people who otherwise could not have approached the Court.

The active judiciary expanded

the ambit of Article 21 Right to life by bringing in various aspects to it not mentioned explicitly in the constitution.

This ensured a heightened emphasis on environment protection, which was hitherto not being given due attention. It brought to us progressive judgments such as the Vishakha Case wherein the Convention against discrimination of women was read into the Indian law.

Yet, overtime, a feeling has been developing that in its quest to be active, the judiciary might be turning into an activist judiciary.

An activist judiciary refers to a state of affairs where

the judiciary, in its quest to ensure justice, may pass certain orders where an apparent overstepping of limits occurs.

The constitutional scheme in India ensures that the Parliament and State legislatures pass laws; and the judiciary should only check their constitutionality.

However, we are increasingly coming across instances of judicial legislation - overbroad guidelines being passed which becomes the law of the land by virtue of Article 142, and has to be followed.

While judicial legislation may have a noble intention and a noble goal to achieve, the question to be asked is

whether our Constitution allows for such a role of the judiciary?

The judiciary is not elected, but instead appointed by an opaque collegium system. Therefore, it lacks popular mandate. Any directions laid down by the Courts which are in ^{the} nature of being judicial legislation run the risk of overstepping the separation of powers.

Further, many of such overbroad orders passed are on essential policy subjects involving technical aspects. The judiciary lacks the expertise to frame any broad guidelines in every case that comes before it.

Additionally, some of the orders in the nature of legislation are practically unimplementable. Because the judiciary, unlike the legislature, lacks the personnel to assess the ground level situation before framing any directions, - there is a risk that the directions may never be enforced.

There is also a growing caution against PILs, with many experts describing PILs as being double edged swords. This because, while usually PILs result in orders that bring people relief from government apathy, sometimes the orders passed might be highly unfavourable to the general populace.

The most recent example

of the judicial legislation in the highway liquor ban case exposed many of the flaws with judicial legislation and activism.

The order led to many states denotifying state highways as city roads. It also led to loss of livelihood of a large section of people. Further, there is no evidence of the efficacy of the order in curbing drunk driving.

The Need for Balance

The above mentioned is not to say that any form of laying down guidelines is inherently bad in nature. Guidelines laid by the higher judiciary on judicial conduct and the apt manner of trial of cases

are always a welcome step. Such guidelines are within the expert domain of the judiciary, legislation on such a subject will always be lacking.

The need of the hour is that of a balanced judiciary. A judiciary which is proactive in its efforts to provide justice while not being overzealous and activist.

The judiciary should remain impartial in administering justice and securing rights. Its conduct should be in line with the constitution. It must strive to be proactive without coming across as overstepping its boundaries.

The judiciary must not pass orders that are populist in

nature. In order to uphold the dignity of the institution, care must be taken to not tarnish the faith people have in the judiciary by coming across as favouring one view points more than the other based on populism. The standard for passing orders must always remain the Constitution.

The importance of having an active judiciary cannot be overstated. Yet, to ensure a healthy democracy, the judiciary must not overstep its boundary as this might lead to a conflict between the democratically elected government and the judiciary.

The Way Ahead

A fine balance needs to be maintained whereby the judiciary remains active without being activist. Care must be taken to remember that the role of the Court is that of an impartial judge, before whom activists come with their cases. The court cannot afford to become an activist itself.

A number of steps can be taken to this end.

First, training and workshops for all judges to not overstep their boundaries, as was done in the 'populist' national anthem judgment.

Second, emphasis needs to be made

to ensure judges are not affected greatly by media reports. They must decide only on the basis of the evidence before them.

Third, the judges must be brought under RTI, and a body needs to be created to exercise oversight over the judiciary. This will bring to light any vested interests behind judicial activism.

Fourth, the active role of the judiciary should be bolstered in criminal cases.

The judiciary must take a proactive role in ensuring impartial and quick investigation and speedy justice.

Fifth, where the purported judicial legislation is inevitable, the judiciary should take help from experts. This will ensure that the guidelines are enforceable.

The role of an independent, impartial judiciary is of utmost relevance in a healthy democracy.

Yet, the very guardians of our Constitution cannot be allowed to subvert the spirit of Constitution by breaching the separation of powers.

Hence, the judiciary must remain active without turning activist.

Because, if one organ of the polity is allowed to overstep its boundaries with ease, it will lead to complacency when another organ does the same.

The high ideals of our Constitution and the proper roles of all three

pillars of polity must never be
forgotten in the quest for
safeguarding & expanding rights.

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Modernism : Freedom of mind, not slavery of taste.

Modernism refers to the modern world, signifying a break from the past. While the glories of the past have been written about much, it was felt that some parts of the past needs to be discarded.

The past was characterised by the lack of a rational outlook. People were highly superstitious and believed in a variety of supernatural things. There were restrictions on expression, on occupation. The mobility of people to shift in and out of various social classes was restricted.

In contrast, modernity implied the advent of scientific, rational thinking. It implied a break from traditions and superstitions which had no basis.

Modernity implied the ideas of liberty, equality and fraternity. There were to be no unreasonable restrictions on liberty. The inherent equality of all humans was recognised.

Modernity offered people a chance to question the things that were hitherto accepted unquestioned. It allowed for exchange of ideas, dismantling of many social inequalities.

Modernity was marked by a substantial increase in the way humans began using their neural capacities. It was marked by inventions, discoveries and birth of new philosophical movements.

The essence of modernity implied the freedom of the human mind from the cage of baseless social restrictions.

However, over time, the actual idea behind modernity was lost. Due to colonialism and imperialism by countries who had modernised first, for those who were colonised, the idea of modernity became tied to a certain way of life.

This way of life was characterised by cultivation of certain 'tastes' that were seen as being modern.

These tastes related to all aspects of life. From how we dress, what we eat, what our habits and leisure hobbies are, everything came under the lens of modernity.

The colonised population, riddled with inferiority complex, started blindly aping these habits of those who seemed modern. Anything that was not modern was rejected, including the beneficial traditional cultural values.

With passage of time, this

attitude became cemented. The idea of modernity came to be associated with a certain way of life.

What people failed to realise was that blindly aping 'modern' tastes was nothing but a reversal to the past of following certain practices without questioning them. Without realising, people became slaves to tastes & habits that were considered modern.

Fortunately, people are now realising that modernity's essence lies in freedom of thought. They are therefore questioning the slavery of taste. Beneficial traditions are being adopted and embraced, and a certain cultural pride is discernible.

Freedom of thought encompasses the greatest human liberty. It allows us to think and express

ourselves without fear. Our constitution too recognises this right to freedom of speech and expression with certain reasonable restrictions.

Freedom of mind:- allows us to reach the pinnacle of our human mind's capability. It allows us to make advances in all fields by giving us the power to think, and act on it.

The importance of freedom of mind and human development can be seen from the example of medical sciences in India. In Ancient India, Charak and Sushruta performed experiments on dead bodies and were able to advance significantly in medicine.

Yet, during the Gupta period, anyone who touched a dead body was deemed to be an outcast. This restriction led to chilling of any thoughts and curiosity about human body, which ultimately led to decline in scientific prowess.

Despite there still being present a lingering slavery to taste, modernity comprising of freedom of thought along with pride in one's own culture is being witnessed.

In the field of education, slavery of taste meant only reading western sources. However, we now have Vedic Maths making ripples in the west.

The traditional scriptures which were discarded in search of modernity are being embraced by great intellectuals of our times. The best selling book 'Difficulty of being good' by Guncharan Das links modern dilemmas with the philosophy of ancient texts.

That ancient scriptures need to be essentially discarded to progress and reform society was disproved as long ago as in the 19th century. Raja Ram Mohan Roy used ancient scriptures to show that sati is not mandated by Hindu religion. The same is being done now by scholars who are showing that the Quran does not permit triple talaf.

The slavery of tastes ensured people take to expensive gym memberships and zumba classes in order to remain fit. Yet, the modern west has embraced the Indian Tradition of Yoga, even preferring it over other methods of remaining fit. We know that modernity is not about blindly discarding our age old traditions when we see the greatest intellectuals of West promote Yoga.

The slavery of taste is also evident in our food habits. People discarded eating desi ghee and certain other Indian food preparations. They preferred eating out, eating fast food. That well educated dieticians are now bawling

attention to the health benefits of desi ghee, shows that modernity is not about blindly following certain tastes.

The way we dress is also deeply influenced by modernity and our notions of it. While everyone has the right to dress in whatever they deem fit, the unnecessary disregard of traditional dresses is a symptom of the slavery of taste.

When successful politicians of our times; successful scientists of ISRO are women dressed in beautiful silk sarees, who enjoy and respect their tradition as much as they

have expertise and knowledge in their respective fields, we know that modernity is not about being a slave to taste.

It is the modernity which allowed the women to study, work, think and apply their knowledge which is the need of the hour. Whether they are intellectuals dressed in a saree or in a short dress is only a superficial concern.

At the same time, we need to ensure that the culture of modernity as freedom of thought and not slavery, is safeguarded.

First, we must safeguard

the right to freedom of speech and expression. The minority voices must not be allowed to be drowned by the din of the majority.

Second, confidence must be built in people that living in a democracy, they have the capacity to exercise the rights guaranteed to them under the constitution.

Third, suitable campaigns must be conducted to make people aware that modernity is not about what you eat, what you wear. Rather, it is about having modern ideas that guide one to success.

The power of the human mind is infinite. It must

be allowed to reach its
heights through freedom of
mind, freed by any
shackles that slavery of
taste bring to us.