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SUBJECT:	ESSAY TEST- 2	Test Code:	9	3	0
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Medium Hindi/Eng.	ENGLISH	Registration Number	1	4	2 0 7
Center	CHANDIGARH (ONLINE)	Date	2	0-0	8-1 7

INDEX TABLE				INSTRUCTIONS
Q. No.	Page No.	Maximum Marks	Marks Obtained	- Do furnish the appropriate details in the answer sheet (viz. Name, Registration Number and Test Code). उत्तर पुस्तिका में सूचनाएं भरना आवश्यक है (नाम, प्रश्न-पत्र कोड, विद्यार्थी क्रमांक आदि)। - All questions are compulsory. सभी प्रश्न अनिवार्य हैं। - The number of marks carried by a question/part is indicated against it. प्रत्येक प्रश्न/भाग के अंक उसके सामने दिए गए हैं। - Answers must be written in the medium authorized in the Admission Certificate, which must be stated clearly on the cover of this Question-Cum-Answer (QCA) Booklet in the space provided. No marks will be given for answers written in medium other than the authorized one. प्रश्नों के उत्तर उसी माध्यम में लिखे जाने चाहिए जिसका उल्लेख आपके प्रवेश पत्र में किया गया है और उस माध्यम का स्पष्ट उल्लेख प्रश्न-सह-उत्तर (क्यूसीए) पुस्तिका के मुख्य पृष्ठ पर अंकित निर्दिष्ट स्थान पर किया जाना चाहिए। उल्लिखित माध्यम के अतिरिक्त अन्य किसी माध्यम में लिए गए उत्तर पर कोई अंक नहीं मिलेंगे। - Word limit in questions, if specified, should be adhered to. प्रश्नों में शब्द सीमा, जहाँ विनिर्दिष्ट है, का अनुसरण किया जाना चाहिए। - Any page or portion of the page left blank in the Question-Cum-Answer Booklet must be clearly struck off. उत्तर पुस्तिका में खाली छोड़ा हुआ पृष्ठ या उसके अंश को स्पष्ट रूप से काटा जाना चाहिए।
Total Marks Obtained:				

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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.

2.

3.

4.

5.

6.

All the Best

SECTION-A

NEED OF THE HOUR : AN ACTIVE JUDICIARY OR AN ACTIVIST JUDICIARY

"Curb on diesel vehicles 10 years old plying in NCR..., ban on firecrackers after 10..., ban on iron ore mining in Goa..., BCCI to comply with all Lodha panel recommendations, ... CBI enquiry in 2G scam to be under Supreme court supervision"

These are the headlines often seen in newspapers highlighting active role of Judiciary in ensuring true democracy in the country. All these indicate the proactive as well as reactive stances of Indian Judiciary towards wide plethora of issues. But then it poses a question - "do we need an active judiciary or an activist judiciary?"

First and foremost is the need to understand the difference between the two. An active judiciary emanates from the concept of judicial review which empowers the higher judiciary to review the legislations and executive rules and regulations in the light of constitution.

This power is provided under Article 32 and Article 147 is right to constitutional remedies for violation of fundamental rights and review jurisdiction of Supreme court. This power was held to be a part of the basic structure of the constitution by Supreme court in Keshavanand Bharti v/s State of Kerala, 1973 case.

This scenario was further strengthened with the emergence of Public interest litigation (PIL) mechanism which diluted the principle of locus standi. This judicial review

translates into judicial activism when the Judiciary ventures into the domain of law making and implementation, depriving the Executive and legislature of their constitutionally assigned roles.

It is often argued that present scenario demands an active Judiciary to wake up Executive and legislature from their slumber and take a proactive role in policy domain. such a role is positive in the sense that it is mostly driven by public interest and welfare of society. It aims to address the policy domains where the government has either failed or taken inadequate measures resulting in public grievances.

eg: Supreme court framed guidelines for prevention of sexual harassment at workplace case in Vishakha case, 1997, due to absence of any strong law in this regard.

It also serves the value of filling in the void in government policies especially in the sectors which are crucial from welfare point of view like health, education, social security schemes etc.

Apart from public interest domain, such judicial pronouncements also serve the value of initiating reforms in crucial sectors like defence, public order, economy etc. through guidelines or decrees issued by the judiciary.

eg: In Prakash Singh case, 2007, supreme court gave 7 guidelines regarding police forces reforms ranging from stability of tenure at top posts to Police complaints authority etc.

such guidelines act as beacon for initiating steady reforms.

Also these pronouncements adds substance to public policies and help other 2 organs

in more efficient public service delivery. Moreover an active judiciary is also essential to maintain the constitutional order in the country. This is done by validating the laws in light of constitution and verifying whether it adheres to the basic tenets of the fundamental law of the land. This is line with the dreams of our constitution makers - Judiciary acting as a checking institution on inactivity or tyranny of other 2 state organs.

In public domain it allows judiciary to widely interpret the rights of citizens.

eg: Article 21 has been expanded in its meaning, ambit and scope to the largest extent due to an active judiciary. It has added meaning and dignity to right to life and personal liberty.

Further another aspect of an active judiciary

is creating public awareness regarding legal and policy issues because only a well informed citizenry can truly uphold the democratic principles of republic state. It also enables them to hold the government accountable for policy lapses and laxity in implementation. They provide a yardstick to measure government performance.

Having said all these, creates a picture that an active judiciary is the ultimate necessity of our country. But a perfect analysis require the other side of picture as well.

There is a fine line between judicial review and judicial activism which is often blurred resulting in frequent overreach. Such an overreach was not at all desired by our constitution makers as it breaches the separation of powers between state organs

provided explicitly under Art. 50 and also a part of basic structure of constitution. It is understood that Judiciary is just to give teeth to legislations for their effective implementation. It is not a representative rather an appointed body and hence has no right to hijack over the domains of other two organs.

This overreach is visible rampantly nowadays from various pronouncements interfering in government schemes.

eg: Recent order banning liquor sale within 500 m of national and state highways has been a case of judicial overreach.

this judicial overreach carries with it a potential risk of turning into judicial tyranny and imposing its will on the public and government.

eg: compulsory singing / playing of national

anthem in cinema halls and Vande Matram in schools of Tamil Nadu creates forced nationalism.

Further there are many complex issues which require expert staff especially from government to address it in a wholesome manner but judicial activism reduces its importance.

eg: Supreme court directing on interlinking of rivers which is a complex, specialised engineering issue.

Many of these decisions are aimed at addressing government inefficiency and promoting good governance but these are not the ultimate motives of conferring this power on judiciary. Further it creates interruption in ongoing or proposed government schemes and plans.

On the administrative side, it creates confusion as there comes into play two lines of command for administrators,

further retarding policy implementation. Additionally it creates extra burden on infrastructure both in terms of cost and time. It poses a question of finance for judicial manoeuvres.

Apart from the other two organs, judicial activism poses several questions on judiciary itself. It compels judiciary to go populist in its approach and hence reducing the quality of decisions. This vulnerability creates security threats for judges and hence inherently jeopardises the independence of entire judicial system.

Another related issue of appointment and accountability of judges. The NJAC Act, 2015 and the accompanying amendment was declared unconstitutional and void by supreme court. This amounts to conflict of interest as judges are deciding over their own appointment being accountable to none.

Hence a complete picture creates a dilemma over what is required and what is ought to be done. There are several way outs to address this dilemma. Firstly the principles of natural justice should be strictly adhered to in letter and spirit.

while exercising judicial review the court should keep in mind that it only verifies the constitutional validity of laws and not giving any binding guidelines to government over policy issues. suo moto uptake of such matters shall be avoided and any change shall only be given prospective effect.

Another dimension is, court should find out ways to validate the law if one of the interpretation allows for such scope.

Our constitution makers borrowed this concept of judicial review from US constitution. But it was not in the absolute

sense of the term. Rather it was thought of to be a balancing factor alongwith Parliamentary sovereignty. Though it is a mechanism of checks and balances but judiciary should not try to insulate itself from such checks and balances.

Presently there are several cases ranging from right to privacy (Aadhar issue), triple talaq (uniform civil code) etc. which are subjudice under supreme court. In all these cases the Judiciary should try to maintain the balance between judicial overreach and judicial restraint which are nothing but 2 sides of the same coin.

Judiciary has always been a hope of light for aggrieved people and judiciary should not malign this trust by resorting to overt judicial activism.

SECTION - B

ORGAN DONATION : PRACTICALITIES AND ETHICAL CONUNDRUMS

Philanthropy has always been an ideal human virtue and most evidently manifested through charity and donation. Since the dawn of human civilization, donations in terms of money, resources, skills and other intangible gestures have shown their effectiveness in adding value to the lives of poor and needy. Modern times have shown a new dimension to this sphere in terms of "organ donation".

Organ donation refers to the harvesting of human organs like kidney, liver, heart etc. after the death of individual and transplanting them in the person who is in need. Rapid advancement in science and technology have enabled such complex transplantations.

Organ donation has multiple benefits associated with it. Firstly it enables the patients suffering from organ failure to revive back. It also enables the physically disabled persons to lead a meaningful life, thus offsetting their natural inabilities to large extent. Hence the foremost advantage is saving of precious human lives and improving the lives of Divyang people.

Secondly it help in creating a healthy citizenry, improving disability records and reducing health burden on government and its finances. All this leads to accelerated economic growth. Further, it allows patients to get treatment within the region and eliminating the need to travel abroad if desired organs are available locally. It reduces health expenditure, improves India's status as a healthcare hub and thus more growth.

Another essential parameter is that organ donations

allows research on advance health treatments and procedures, allows medical practitioners to understand the anatomy of presently untreatable diseases like Alzheimer's, cancer, schizophrenia etc. This improves development of medicines and diagnostic techniques.

But the most crucial and humanistic angle to organ donation is the sense fulfillment that is experienced by the donor. It creates an example how one can contribute to the cause of humanity even after death. Apart from adding meaning to donor's life, it also has an illustrative value for the family, community and society at large. It invigorates and stimulates the collective moralism of society and thereby making it more ethical and value based. This enhanced morality helps in promoting social as well as national solidarity.

Government of India has taken many initiatives like establishing National organ and Tissue

Transplant Organisation (NOTTO) as a centralised agency to establish National tissue and organ banks etc. The transplantation of Human organs Act (THOA) was also amended in 2011 to make it more coherent with present conditions.

However having understood all positivities surrounding organ donation there are many practical constraints that block the way in making it a sustainable practice. Firstly the public awareness regarding such procedures is very low, especially in a developing country like India. It is important to note that in India less than 0.01% of population donate organs which is immensely low given the disease burden faced by the country.

Secondly the poor infrastructure in terms of storage banks for organs and tissues, lack of dedicated lanes for ambulances and emergency vehicles, no explicit code of

conduct regarding procedures to be followed in cases where family denies the retrieval of organs from deceased donor's body. All these kill the most essential factor in organ donation i.e. time. Most of the organs needs to preserved within 45 min-1 hr. of the death of donor, otherwise they are of no use medically.

this is further compounded by lack of technology transfer from developed to developing countries, lack of mass participation, poor implementation of government schemes, low funding of research projects (especially in India where research finance is meagre), lack of skilled personnel to handle the entire chain from organ retrieval, transport, preservation and transplantation including other situational exigencies.

One of the most dark side of this arena involved organs trafficking and smuggling.

A plethora of middlemen are involved in organ trade and they often create nexus with doctors to illegally retrieve organs from patients and sell them at exorbitantly higher prices, especially in international markets. This creates fear psychosis among the people and thereby hampering even wilful organ donation.

Such illegal practices give rise to other crimes like child abductions, human trafficking etc, thus creating a blot over the virtuous activity of organ donation. These organ mafias exploit legal loopholes and play with human bodies to accomplish materialistic goals.

All these practical considerations demotivate the people to go for organ donation. But the issue becomes further more complicated when the ethical and moral dimensions of it are explored.

ethical conundrums are manifested in arguments related to life after death as believed by many religions. People across the world carry out last rites of their close ones with utmost veneration and belief. Organ donation is believed to distort the body which is not acceptable to many families.

Furthermore, these concerns gain more momentum when, many a times the mortal remains returned after organ retrieval are not in proper and unified shape giving an impression that the human life and body are only used for commercial gains without any value associated.

This issue about bodily integrity is interlinked to the right to die with dignity. Many world faiths face the dilemma that whether organ donation is ethical or it causes breach of dignified death of the deceased. This concern drives many families away from the domain

of organ donation. Many a times it gives
rise to legal battles as the donors will is
disputed by both parties creating a complex
arena whereby organ donation as a
virtue is sidelined.

Further there are inherent phobia among
masses, especially in India, about possible
misuse of organs, using them for earning
quick profits through black marketing and
overseas trade. Lack laws to deal with such
menace creates an environment of
impunity.

Additionally the religious preachers and
philosophers also tend to be uninterested in
creating motivation regarding organ donation.
They develop superstitious ideas creating
ethical dilemma for laymen and thus
they abandon the sphere. Falsified theories
are often preached in the name of morals
and religion defeating the very purpose of

establishing it as an universal philanthropic activity.

But even at the end of a tunnel there is always a light of hope. Similarly the arena of organ donation require massive efforts at individual, community, society, governmental and religious level. All stakeholders must work in unison.

Firstly there is urgent need to create massive infrastructural facilities in terms of storage banks for organs and tissues, decentralisation of transplantation agencies, dedicated lanes for ambulances, specialised services through rail and air mode of transport.

Second dimension is related to public awareness which can be carried out through national drives, roping in celebrities to endorse the value of organ donation among masses, developing TV programmes, debates, discussions

on this topic. Employing youth through NSS in promotion activities can help a great deal as we have seen through the example of blood donation drives.

Additionally, there is urgent need to augment the skilled personnel in this sector and develop strong laws with stricter penalties for organ mafias as it will go a long way in addressing concerns among general public. Regarding the ethical concerns there is need to organise public deliberations involving experts, religious leaders, doctors, people's representatives to allay all fears, superstitions etc. and clarify the value of organ donation in improving human life and its quality.

India needs to learn from scandinavian countries in this regard whereby sweden has set an example in delivering best quality organ transplants relying mostly

on domestic organ donations. This has been possible due to efficient storage chains involving private and public sector participation. This is enforced by liberal values of public driven by humanistic orientation over the importance of organ donation in serving humanity.

Today world is advancing towards new techniques of "Xenotransplantation" wherein organs of any animal or human may be transplanted to other human or animal. To catch with this dynamic world India needs to gear up its decks to establish robust organ donation framework in the country. Even^{as} the Indian culture lay great emphasis on "Daan" (donation), it is high time to realise that "Angdaan is Mahadaan" (organ donation is greatest donation).

Section - A

Need of the hour : an active Judiciary or an activist Judiciary

- Active :
1. ✓ slumber E2 L
 2. ✓ voids govt. policies. — Vishakha 1997
 3. ✓ public interest
 4. ✓ constitutional validity of laws ⇒ to maintain constitutional order
 5. ✓ reforms initiation guidelines (Prakash singh case) — 7 guidelines
 6. ✓ public awareness (legal)
 7. ✓ yardstick to measure govt. performance.
 8. ✓ Adds substance to public policy
 9. ✓ wider interpretation to right esp. U/A 21

- Activist :
1. ✓ Overreach — Liquor ban
 2. ✓ tyranny — National Anthem Vande Matram
 3. ✓ Complex issue — Interlinking of rivers (No expertise)
 4. ✓ ^{govt} governance ⇒ interference

5. ✓ Administrative confusion over double command
6. ✓ Separation of power disturbed. (A50)
7. ✓ Interruption in govt. schemes, plans
8. ✓ Additional burden on infrastructure & Administration (cost + time) of home?
9. ✓ Vulnerable to populist pressure
10. ✓ Security of Judges.

Not elected representative

Appointed
JAC
Judicial
A/C issue

Intro: A: 32, 147

Judicial review, PIL

Judicial restraint, Judicial overreach

conclusion: balance b/w the 2

Mexico b/w 2 (Latin American Judicial Review)
checks & balances

Cases →

B.R. Ambedkar A: 32

Way forwards:

1. PNT

2. Judicial review points

(i) ~~ret~~ prospective effect

(ii) No proposal to amendment ⇒ only constitutional validity

(iii) No suo moto uptake.

(iv) If one interpretation is valid give it effect.

3. Part 1 basic structure of constitution
Keshavnanda Bharti case.

4.

Present issue: Right to Privacy, Aadhar.
Triple Talag.

Trust is judicial malice

Section B-

⇒ Organ donation - Practicalities & ethical conundrums

① - defⁿ: organ donation — liver, kidney, heart, skin graft, eyes,

✓ Adv. in science → human benefit

✓ Save human lives

✓ ↓ rate of disability, reduce health burden

✓ improve economy (effective health care system)

✓ Individuals' life becomes meaningful

✓ sense of self-fulfillment to donor
(a lot more can be done after death)

② ✓ Pride for family, example to society & community
to contribute something to society, morality in society

✓ Advance health procedure & practices (resistant value also) ^{values} strong society (solidarity)
↳ Schizophrenia, Alzheimer, Cancer etc.

✓ Reduces medical cost for needy person, no need to travel abroad ⇒ improving status &

✓ Indis. or health capital.

Practicalities: ^{govt. initiation} - NMPRO, Act, Pottery bodies, dedicated tissue banks
^{state govt} - Ambulances, &

1. ✓ No dedicated lane for ambulance : time is essential

2. ✓ Public awareness low

3. ✓ ~~that~~ ^{that} ~~more~~ middlemen involved, organ trade creates fear psychosis

4. ✓ govt. schemes not very effective

(Organ banks not universal present, lack tech., funding, participation). (Storage infrastructure)

- Ineffective implementation compounded by low research funding.
- Skilled personnel to handle all exigencies

Ethical:

1. People & family unwilling due to ethical concerns
 - Life after death
 - body not returned properly (mortal remains)
 - claims after death about will or not
2. Fear among them about misuse of organs.
3. Organ mafia abducts children etc. for selling the organs - black market, (overseas also)
4. ~~Body~~ Bodily integrity of person: right to die with dignity

Way forward:

1. Scandinavian countries especially Sweden. (Example)
2. Ayushman Mahabalan (Vedic culture) (Daan concept)
3. Improved infra (storage, transport)
4. Awareness drives (involve celebrities)
5. Skilled personnel.
6. Strict law against mafia.
7. Ethical issues addressing