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 Topic - Polity Mock 3
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① Judicial review is the power of Supreme court to review the constitutionality of legislative and executive enactments.

Types of Judicial review

uphold the fundamental rights

uphold the rule of law

proactive nature of judiciary

Apart from this judiciary reviews its own judgements to keep up with the time. As per Golaknath Case (1967), Parliament could not amend fundamental rights. However in Keshwanand Bharati Case (1974) SC deflected from its view and gave amending power to parliament.

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Supreme court in Minerva Mills case (1980) said that Judicial Review is the ^{part of} basic structure of the constitution. SC, in again, IR Coelho (2007) judgement reiterated its position and ~~declared~~ declared that just by keeping the law in 9th schedule it doesn't become immune to judicial review.

Recent activism in farm laws is also an eg. of judicial review. To this days, it becomes one of the most important tools in the hands of judiciary to uphold the law of the land.

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② 73rd Constitutional amendment
1992, gave local bodies a
constitutional recognition. It
spans from Article 243-243O of
our constitution.

As per this amendment, there
has to be a gram sabha which
is to consist of all adult people
of the village who will be an
equal participant in the develop-
ment process.

Positive role played by gram sabha

-) Increment in political participation
- (o) awareness increased.
- (o) Social audit by people. eg:-
Rajasthan.
- (o) Participation in election of Sarpanch

However there are some discrepancies as well which are:-

- (.) People are not well aware about their rights as well as obligations.
- (.) Used as pawn by elite sections.
- (.) Not technologically sound.

To remove these, we must bring in strict rules so that people are empowered in real sense. In the words of Gandhiji → The voice of people is the voice of God and the voice of Gram Sabha is voice of people.

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(3) Governor is a constitutional head of a state in whose name executive function of a state takes place (Article 153, 154):

Governor is appointed by the president with no security of tenure of its own, which makes the office more as an arm of the centre.

Recent examples of Kerala, Maharashtra and west Bengal put a dent on the post of governor.

Some of the instances where its seems that governor is a centre's agent

(•) Reserving bills for President (Art 201).

no tenure
centre
can
emergency
govt

- (o) Dismissal of State Government without probing the possibility of a possible ministry.
- (o) writing to President for invocation of state emergency (A-356) without concrete evidence.
- (o) Misuse of Discretionary powers under A163.

Way out :-

- (o) Governor is a constitutional office as per SC and not a centre's. This must be followed in letter and spirit.
- (o) As per Sarkaria Commission (1988) Governor should be a person outside of state and who is not very much engaged in local politics.
- (o) As per Punchhi Commission (2007) on centre-state relations Governor

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should be chosen ^{by a} committee
comprising of PM, leader of
opposition and CM of that state. so
that there are less chances of
friction

(*) In Neelam Rabiya case. SC said
that Governor has to act as per
advice of state COM. even in
discretionary power, the choice cant be
arbitrary and fanciful.

Governor is a nominated
and CM and his council of
minister is an elected body. To keep
this thing in mind, Governor
must remain detached and guide
for the state.

4) Tribunals were added to the constitution by 42nd amendment 1976 following Swaran Singh committee's recommendation. They were established to provide more venues of justice to people.

Under 323 A → tribunals for administrative purposes by parliament (CAT, SAT, JAT).
323 B → tribunals for all other reasons by parliament or state legislatures.

Problems in functioning:-
(i) Justices where in order to ensure haste, justice component has been overlooked.

(ii) against the separation of power member appointed by centre and

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centre being the largest party in many litigation. It creates conflict of interest.

(*) Lack of manpower. In CAT, 27 out of 64 vacancies are unfulfilled.

(*) despite haste, there has been pendency in many cases -

In Chandra Kumar judgment (1997), SC mooted the idea of having a National Tribunal Commission which will overlook

the functioning of all tribunals. It was also preserve separation of power doctrine way forward.

(*) setting up of National Tribunal Commission.

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(.) filling up of vacancies with qualified manpower.

(.) High court to be the last resort for further appeal thus relieving SC of extra burden.

(.) expanding more benches to ensure haste as well as quality.

It is important to maintain sanctity of institutions which provide justice to people.

It is also given in our Directive principles of state policy.

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(5.) 15th Financial Commission set up for year 2021-2026 recommended

linked grants
money reaches to
PPE
more

₹4.36 kr as grant to local bodies. in which ~2kr is for village local bodies and left 1 for urban local bodies

In our country we have always grappled with the problem of 3F → Fund, Function, functionaries. Local bodies are also facing the same issue.

Some of the issues are:-

- (.) Lots of money is in the form of tied grant. Where local bodies are not independent. (around 50%).
- (.) Inadequate timely devolution of fund to all level
- (.) local bodies inability to

mobilize their own sources esp in urban local bodies

(o) lack of transferred subjects by the states.

Fiscally empowered local bodies

- maintain accountability
- ~~can~~ development as per local needs
- consider development as their own. ↑ the feeling of ownership
- More participation of people.

Way forward:-

- (o) More mobilisation of taxes on their own.
- (o) More untied grants.
- (o) Competitive federalism at local level.

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It was a Gandhian dream to establish Ranrajya in the country. Local Bodies were fulcrum of that so it is our bounden duty to empower them both administratively and fiscally. (Act 40).

6.) Judicial outreach is the proactive attitude adopted by judiciary. whereas Judicial restraint is defined by staying within the defined limits.

Art 142 imposes responsibility on Supreme court to do complete justice to people which gives it a basis to go for Judicial activism.

Why Judicial overreach is needed.

- ↳ to uphold the constitution
- ↳ to keep a check on legislature and executive

↳ To protect the fundamental rights of people.

↳ To help state in becoming a welfare state.

Why Judicial outreach is harmful →

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→ Legislature and executive is manned by people having expertise in their areas which judiciary might not be aware of.

(o) Relinquishing separation of power doctrine which is ^{one of} the important tenets of our constitution.

(.) Judiciary itself is not a perfect-
institution with so many pendencies of cases.

(o) Judicial overreach might turn into judicial adventurism which will create chaos in system.

Recent eg. of ^{ordering} ~~staying~~ on farm laws, giving direction to Centre on various issues such as setting up of Committee of bad bank etc shows activist attitude of judiciary.

While It is important for judiciary to do complete justice to the people, It also has to keep in mind that the other branches are directly elected by people. So any judgement must be made in good spirit