

AOR EXAMINATION  
(2021)  
Paper - I

**Total marks: 100**

**PART - I**

(Answer all questions from Part - I, each question is of 10 marks)

1. What are the different jurisdictions exercised by the Supreme Court of India. Briefly explain them along with their source in the Constitution of India?
2. According to Article 141 of the Constitution of India law declared by Supreme Court shall be binding on all Courts (within the territory of India and according to Article 142 of the Constitution of India, the Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice: -
  - (i) Therefore, in doing complete justice can the Supreme Court pass orders de hors the applicable statutory provisions?
  - (ii) Can the Supreme Court while passing orders under Article 142 of the Constitution of India fulfil legislative gaps?
3.
  - (i) Can the powers of the Supreme Court under Article 136 of the Constitution of India be overridden by a legislative enactment?
  - (ii) Can the right to file a petition under Article 136 of the Constitution of India be nullified because the tenant has given an undertaking to vacate the premises before the High Court?
  - (iii) What are the legal effects of dismissal in limine of a Special Leave Petition under Article 136 of the Constitution of India?
4. Does the power of the Supreme Court to issue a writ under Article 32 of the Constitution of India and that of High Courts under Article 226 of the Constitution of India form part of the basic structure of the Constitution and can never be taken away? Explain by giving case law?

## PART -II

(Answer any four questions from Part - II, each question is of 10 marks)

5. A Public Interest Litigation is filed in the Supreme Court under Article 32 of the Constitution of India and must follow the same procedure as is prescribed for filing an Article 32 Petition, but are there any specific requirements to be followed in drafting a Public Interest Litigation under Article 32 ?
6. Article 137 of the Constitution of India expressly confers upon the Supreme Court the power to review its own judgments. Which order of the Supreme Court lays down the grounds to be taken for a Review Petition in a proceeding arising out of the civil matters? And which grounds should be taken in a Review Petition filed in a criminal proceeding?
7. (a) What is the difference in powers of the Supreme Court under Section 25 of the Code of Civil Procedure, 1908 and an Application of Transfer under Section 406 of the Code of Criminal Procedure, 1973 ?  
(b) Does the right of dominus litis eclipse the demand for transfer of a case?
8. Explain the essential features of Order XLVIII of the Supreme Court Rules, 2013 ?
9. The Supreme Court of India has framed a Scheme, pursuant to the provisions of Section 11 (12) (a) of the Arbitration and Conciliation Act, 1996, under this Scheme the request to the Chief Justice of India is to be made in writing. What are the specific facts to be stated in the said request ?

### PART - III

(Answer any 10 questions from this Part, each question is of 2 marks)

10. If a Vakalatnama is executed in presence of the Advocate-on-Record, is it necessary for him to certify that it was executed in his presence ?  
However, if a Vakalatnama is already executed in presence of a Notary or an Advocate, what is the Advocate-on-Record required to do if he accepts the same ?
11. Every Advocate-on-Record is to keep such Books of Account as may be necessary and distinguish in connection with his/her practice as an Advocate-on-Record but which are the two important Books of Account he is required to keep in accordance with Order IV, Rule 7d(i)(ii) of the Supreme Court Rules, 2013.
12. For the purposes of Supreme Court Rules what will construe misconduct or conduct of unbecoming of an Advocate-on-Record, according to Order IV, Rule 10 explanation (a), (b) and (c) ?
13. Is it necessary for an Advocate-on-Record to employ a registered Clerk, and notify the Registrar and Secretary, Supreme Court Bar Association for that purpose ?
14. An Application has been filed by Advocate-on-Record for exemption from filing of certified copies of judgments, decrees, orders, certificates or orders, granting a certificate, where would such an Application be listed ?
15. In a Special Leave Petition filed by you in a criminal matter, where would an Application for surrendering by the accused be listed, and how many opportunities can an accused avail of on this count ?
16. Under the provisions of Order VI, Rule 1 proviso which are the categories of matters that may be heard and disposed of finally by a Judge sitting singly.

17. You filed a Special Leave Petition under Article 136 of the Constitution before a Vacation Judge in vacation raising a substantial question of law relating to interpretation of the Constitution, can the Vacation Judge finally dispose of that Special Leave Petition ?
18. What is the difference between intervention and impleadment ?
19. (a) The Supreme Court of India issues Notice in a Special Leave Petition, you are Advocate-on-Record of the Petitioner, what steps have to be undertaken by you so that the Notice is issued by the Registry ?
- (b) Do you need to deposit a process fee ?
- (c) If so, how much and where ?
- (d) How do you ensure that notice is served?
- (e) When is an Affidavit of Service necessary ?
- (f) Who prepares the Affidavit of Service and what are its essentials ?
20. The power of the Supreme Court to punish for contempt, including for contempt of itself flows from which Article of the Constitution ? Does the Supreme Court have the power to punish for contempt not only the High Courts and the subordinate Courts but also tribunals like Income Tax Appellate Tribunal (ITAT) ?
21. Please illustrate briefly whether the Supreme Court Rules, 2013 for e-filing Petitions in the Supreme Court have been suitably amended. What is the procedure for e-filing in the Supreme Court ?
22. What is the meaning of obiter dicta, can you cite a case in which this dicta has been applied by the Supreme Court ?

23. What is the difference between the doctrine of stare decisis and res judicata as regards the binding nature of judgments ?
24. Does a summary dismissal by a non-speaking order of a petition for Special Leave against a judgment or order of High Court to approval or alternance thereof ?
25. What is the practice when a Two Judges Bench differs from a decision rendered by another Bench of two, three, or five Judge ?
26.
  - (a) What is a Court of Record ?
  - (b) Is the Supreme Court a Court of Record ?
  - (c) Under what power and when were the rules for Supreme Court of India were first made ?
27. The Supreme Court of India exercises plenary power under Article 136 of the Constitution of India, explain?
28.
  - (a) Is there a Mediation Centre in Supreme Court premises ?
  - (b) Can the Supreme Court compel parties to appear before the Supreme Court Mediation Centre ?
29. What are the Certificates necessary to be filed along with a Curative Petition and what is the limitation for filing this petition in the Supreme Court ?

**SUPREME COURT OF INDIA  
ADVOCATE-ON-RECORD EXAMINATION- 2021**

**TIME:3HOURS  
TOTAL MARKS:100**

**PAPER-II - DRAFTING**

**INSTRUCTIONS:**

1. ATTEMPT ONE QUESTION ONLY FROM EACH OF THE SECTIONS I, II, III & IV
2. ALL QUESTION CARRY EQUAL MARKS.
3. 30 MINUTES EXTRA TIME IN ADDITION TO 3 HOURS TO WRITE THE ANSWERS SHALL BE ALLOWED FOR READING THE QUESTION PAPER.

**SECTION: I  
QUESTION 1: OPTION 1**

**NOTE: A BRIEF SYNOPSIS WITH SHORT CAUSE TITLE IS NEEDED BUT THE LIST OF DATES AND AFFIDAVIT ARE NOT NECESSARY IN THIS QUESTION.**

1. A (Vendor), an owner of a plot and B (Vendee) entered into an agreement dated 28.12.2012 for sale of a plot of land for construction of a house in Jaipur City. The Agreement witnessed the following conditions: The total consideration would be Rs. 20 lakhs. B would pay an advance of Rs. 2 Lakhs on 28.12.2012, at the time of entering into the Agreement, A would supply the original title documents for examination of B on 30.12.2012. B would, upon the examination of documents, and measurement of the property, pay a further sum of 8 lakhs. The parties would thereafter execute the sale deed on 26.01.2013 whereupon B would pay a balance sum of 10 lakhs. It was specifically mentioned that time was of the essence of the Agreement.
2. However, even though B made the requisite payment on 28.12.2012, A did not supply the title deeds to B, as agreed, on 30.12.2012. On 26.01.2013, B, on his part, paid a sum of Rs. 4 lakhs to A in furtherance of the Agreement, even though A did not produce the title deeds. It is relevant to note that as on this date, A was in possession of the property and all the mutation documents, electricity and water bills were in the name of A.
3. On 27.02.2016, B issued a notice to A for specific performance of the Agreement. 'A' issued a reply on 29.02.2016 stating that due to the reluctance of B to ensure payment of the amounts due, A had executed a sale deed dated 25.01.2015 in favour of C and C is now the owner of the property.
4. Aggrieved, B instituted a suit against A on 04.03.2017 for specific performance of the agreement dated 28.12.2012 as well as for the cancellation of the sale deed dated 25.01.2015, without impleading C as a party before the trial court. A contested the suit, claiming that C was a necessary party and without the impleadment of C, the suit was liable to be dismissed. The trial court heard

the matter and considered the issues on merits. It examined the Plaintiff as PW1 on 12.08.2017, and in his cross-examination, he admitted that he was going through financial difficulties during the period. The trial court, after framing issues, was pleased to decree the suit on 01.02.2019, finding that:

- (i) a subsequent purchaser was not a necessary party to the suit;
- (ii) time was not of the essence of the agreement between the parties;
- (iii) The suit was filed within the period of limitation prescribed for specific performance;
- (iv) The Plaintiff was ready and willing to perform his obligations under the Agreement.

5. Aggrieved, A preferred a first appeal being RFA No.1114/2019 dated 01.04.2019, before the High Court. The High Court on a re-appreciation of evidence did not agree with the findings of the Trial Court by judgment dated 04.03.2020.. It was found,

*"9. Learned counsel for the respondent relied on a three- Judge Bench decision of the Hon 'ble Supreme Court in Kasturi vs. Iyyamperumal and others - (2005) 6 SCC 733. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for*

*specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit.*

*10. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the sale deed in favour of C demonstrates that he was not a necessary party in the suit as it was for C to take an active interest in the suit and plead his case.*

*14. ... The Plaintiff could not prove either his readiness or willingness to perform his obligations under the Agreement of sale. It is settled law that the expressions 'readiness' and 'willingness' refer to the capacity to pay so far as the expression 'readiness' is concerned and the intention to go through with the transaction as reflected in the expression 'willingness'. These are the meanings of the expressions 'readiness' and 'willingness' as held in various judgments of the Supreme Court and one such judgment of the Supreme Court in this regard is in the case of JP. Builders and Another v. A. Ramadas Rao (2011) 1 SCC 429. We will therefore have to examine as to whether the plaintiff was always ready and willing to enter into the sale deed till the time of the present final arguments and from the date of entering into the agreement to sell. It is clear that since A made regular payments, over and above what was due from him, he was both ready and willing to execute the obligations under the Agreement. Therefore, on this count, the Ld. Trial Court did not commit any error.*

*15 . On account of limitation too, the Trial Court does not commit any error. Article 54 of the Limitation Act, 1963, prescribes limitation for a suit of specific performance as running from either of the two following dates:*

*"The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. In the present case, no such date was fixed and the first date from which the plaintiff was refused performance was only on 29.02.2016. Therefore, the limitation period would begin from the said date."*

6. Aggrieved, B requires a special leave petition to be drafted in the case. Set out a brief synopsis of the core issues involved in the matter, the relevant questions of law and grounds as well as the grounds on interim relief and the interim relief claimed.

**SECTION: I**  
**QUESTION 1: OPTION 2**

**NOTE: A BRIEF SYNOPSIS WITH SHORT CAUSE TITLE IS NEEDED BUT THE LIST OF DATES AND AFFIDAVIT ARE NOT NECESSARY IN THIS QUESTION.**

1. One Mr. X was involved in the trade of plastic goods by way of a sole proprietorship by name M/s XYZ. The sole proprietorship entered into various agreements for supply of goods in the course of its business. At the same time, for commercial reasons, Mr. X promoted a Company limited by shares by name PQR Pvt. Ltd., for the purpose of owning the assets on which the plant of M/s XYZ is situated. It is to be noted that Mr. X was the Managing Director and majority shareholder in the Company.
2. On 01.01.2014, M/s XYZ entered into an agreement with M/s ABC under which a company promoted by Mr. X, viz., PQR Pvt.Ltd. stood as a corporate guarantor. As per the terms of the Agreement,
  - a. M/s XYZ was to supply 1,00,000 units of goods to M/s ABC by 01.10.2014 at the rate of Rs. 10,000/- per unit;
  - b. M/s ABC was to pay an advance of Rs.2,00,00,000/- (Rupees two crores) as an advance amount for the supply of plastic goods;
  - c. If M/s XYZ were to commit a default on the supply, PQR Pvt. Ltd. would be required to repay Rs. 2,00,00,000/- plus compound interest at the rate of 12 percent per annum;
  - d. M/s XYZ was to certify the genuineness and quality of the product at the time of supply of the goods.
3. Due to floods in the area of the plant, M/s XYZ was unable to supply the goods within time. Therefore, M/s ABC issued various letters to PQR Pvt. Ltd. and M/s XYZ beginning from 01.11.2014 seeking the refund of the moneys paid by M/s ABC to it. By letter dated 14.12.2014, M/s ABC also sought to invoke the guarantee given by PQR Pvt. Ltd. in order to satisfy the debts.
4. PQR Pvt. Ltd. sought to clear the debts by making regular payments of Rs.25,00,000/- (rupees twenty five lakhs) to M/s ABC, every six months. Thus, the arbitration did not take off. However, M/s ABC agreed that PQR Pvt. Ltd. may make the payments as suggested by it to clear the loan, as suggested by it in the letter. Accordingly, PQR Pvt. Ltd. made payments of Rs.75,00,000/- over an eighteen month period from 01.01.2015 to 01.06.2016. Thereafter, no payments were made by PQR Pvt. Ltd. to M/s ABC. At the same time, PQR Pvt. Ltd. acknowledged the liability in its balance-sheets and accounts for each year, without any caveats and unequivocally.
5. On 01.07.2019, M/s ABC sought to invoke the Insolvency and Bankruptcy Code ["IBC"], 2016 due to the non-repayment of the amounts due to it from PQR Pvt. Ltd. Therefore, M/s ABC issued a notice under Section 8 of the IBC to PQR Pvt. Ltd. stating that an amount of Rs. 1.25 Crores plus interest

compounded at 12 percent annually remained unpaid by PQR Pvt. Ltd. PQR Pvt. Ltd. issued a reply to the notice, stating that:

(i) the period of limitation to invoke the IBC had expired, and thus the notice was time-barred;

(ii) PQR Pvt. Ltd. was not a Corporate Debtor as the Principal Debtor was not a Body Corporate covered by the IBC.

(iii) In any case, the amount claimed by M/s ABC was much more than the amount agreed to be paid by PQR Pvt. Ltd. in its letter dated 01.01.2015, as no interest component was agreed upon.

6. Due to the non-payment of the debt due, M/s ABC filed an application under Section 9, IBC before the Adjudicating Authority, Delhi. The Adjudicating Authority allowed the application and directed the initiation of the Corporate Insolvency Resolution Process. The Adjudicating Authority found that:

a. A corporate guarantor of an individual can be proceeded against by an operational creditor in light of the judgment of the Supreme Court in *Laxmi Pat Surana v. Union Bank Of India & Anr.* (2021 SCC Online SC 267) where it was held,

*"21. It may be useful to also advert to the generic provision contained in Section 3(37). It postulates that the words and expressions used and not defined in the Code, but defined in enactments referred to therein, shall have the meanings respectively assigned to them in those Acts. Drawing support from this provision, it must follow that the lender would be a financial creditor within the meaning of the Code. The principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of expression "corporate debtor" in Section 3(8) of the Code.*

*22. Thus understood, it is not possible to countenance the argument of the appellant that as the principal borrower is not a corporate person, the financial creditor could not have invoked remedy under Section 7 of the Code against the corporate person who had merely offered guarantee for such loan account. That action can still proceed against the guarantor being a corporate debtor, consequent to the default committed by the principal borrower. There is no reason to limit the width of Section 7 of the Code despite law permitting initiation of CIRP against the corporate debtor, if and when default is committed by the principal borrower. For, the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively."*

b. The debt was not time-barred in light of the judgment of the Court in *Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal* (2021 SCC Online SC 321) where it was held,

*"32. A perusal of the aforesaid Sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgements made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in *Bengal Silk Mills* (supra), that there is a compulsion in law to prepare a balance sheet but*

no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act."

c. The alleged dispute in the amounts to be paid was not a pre-existing dispute. The Authority relied on *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.*, (2018) 1 SCC 353 where it was held,

"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a cheque or otherwise received payment from the corporate debtor [Section 8(2)(b)]. It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2). This application is to be filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents and records that are required under the said form. Under Rule 6(2), the applicant is to dispatch by registered post or speed post, a copy of the application to the registered office of the corporate debtor. Under Section 9(3), along with the application, the statutory requirement is to furnish a copy of the invoice or demand notice, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Apart from this information, the other information required under Form 5 is also to be given. Once this is done, the adjudicating authority may either admit the application or reject it. If the application made under subsection (2) is incomplete, the adjudicating authority, under the proviso to sub-section (5), may give a notice to the applicant to rectify defects within 7

days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid operational debt after the invoice [Section 9(5)(i)(b)] or the invoice or notice of payment to the corporate debtor has been delivered by the operational creditor [Section 9(5)(i)(c)], or that no notice of dispute has been received by the operational creditor from the corporate debtor or that there is no record of such dispute in the information utility [Section 9(5)(i)(d)], or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor [Section 9(5)(i)(e)], it shall admit the application within 14 days of the receipt of the application, after which the corporate insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the application is incomplete and has not been completed within the period of 7 days granted by the proviso [Section 9(5)(ii)(a)]. It may also reject the application where there has been repayment of the operational debt [Section 9(5)(ii)(b)], or the creditor has not delivered the invoice or notice for payment to the corporate debtor [Section 9(5)(ii)(c)]. It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility [Section 9(5)(ii)(d)]. Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected [Section 9(5)(ii)(e)]."

7. Aggrieved, PQR Pvt. Ltd. filed a statutory appeal before the NCLAT which came to be allowed finding that:

"15. The Operational Creditor is claiming that the Debt due is more than Rs. 1 lac. If, it may also be due for payment as it will be becoming the job of IRP to reconcile and get the disputed amount segregated and the claim can be counted provided the application meets the criteria of Section 8 & 9 of the Code. The Object of the Code is not recovery of money but to bring out of insolvency and maximization of value of assets of the Corporate Debtor. It is also very much clear that if there is a dispute as per relevant provisions of the Code, it is incumbent on the Adjudicating Authority to reject the petition/application as per the provisions of the Section 9 of the Code. It is also very much clear in this case that there is a dispute of the Debt and dispute resolution mechanism is also provided in the purchase order. Since the I&B Code, 2016 debars the application of the Code for recovery of money as well as if there is a dispute then also petition /application requires to be rejected. ...

16. The Hon'ble Apex Court in *K. Kishan v. Vijay Nirman Co. (P) Ltd.*, (2018) 17 SCC 662 clearly held, that "22. Following this judgment, it becomes clear that operational creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. The alarming result of an operational debt contained in an arbitral award for a small amount of say, two lakhs of rupees, cannot possibly jeopardise an otherwise solvent company worth several crores of rupees. Such a company would be well within its rights to state that it is challenging the arbitral award passed against it, and the mere factum of challenge would be sufficient to state that it disputes the award. Such a case would clearly come within para 38 of

*Mobilox Innovations [Mabilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353; (2018) 1 SCC (Civ) 311], being a case of a pre-existing ongoing dispute between the parties. The Code cannot be used in terrorem to extract this sum of money of rupees two lakhs even though it may not be finally payable as adjudication proceedings in respect thereto are still pending. We repeat that the object of the Code, at least insofar as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist. "*

"18. Since Hon 'ble Apex Court has clearly laid down the mechanism to be operated by Operational Creditor in terms of Section 8 & 9 of the Code, it is very clear that the undisputed debt is sine qua non of initiating CIRP as also the debt should be due and payable. Since, the order of Adjudicating Authority in the present case, as enumerated above, does not meet the above criteria and hence the appeal needs to be allowed. We are not passing any comment on the merit of the dispute between the parties and the parties are free to approach appropriate forum for recovery or dispute resolution."

There was no adjudication on the merits of the matter by the NCLAT.

8. Aggrieved, M/s ABC requires a Civil Appeal to be drafted in the case. Set out a brief synopsis of the core issues involved in the matter, the relevant questions of law and grounds as well as the grounds on interim relief and the interim relief claimed.

## SECTION: II QUESTION 2: OPTION 1

**DRAFT A COMPLETE SPECIAL LEAVE PETITION (CRL) WITH A BRIEF SYNOPSIS. NOTE THAT LIST OF DATES, AFFIDAVIT, CAUSE TITLE, CERTIFICATE ETC. ARE NOT REQUIRED TO BE DRAFTED IN THIS QUESTION.**

1. The case of the prosecution is that on 19.12.2015 at about 9.15 pm, information was received by PS Rahimpur, U.P from the police control room to the effect that a girl had been kidnapped in a blue coloured BMW near Kali Chowk and car is proceeding towards Haryana. PW-19-SI went to the spot, where the statement of complainant, PW-I, a friend of victim girl named Ms. X. was recorded. As per the complaint. PW- I was returning home along with her friends Ms. X and Ms. Y and when they reached near Kali Chowk, a blue BMW came from behind and one boy opened the door of the car and pulled Ms. X forcibly inside the car. There were about 3-4 persons in the car. On the basis of the complaint, FIR was initially registered under Section 363 IPC.

2. The police made efforts to trace the victim girl Ms. X, aged about 19 years but in va in. That on 24.12.2015, PW 12-Inspector on petrolling duty intercepted blue BMW, which was being driven by Mr. A. On suspicion, Mr. A was brought to PS by PW-12, where PW-21 made enquiry from Mr. A. Mr. A made voluntary statement confessing that he along with his brother Mr. B and his friend Mr. C had kidnapped Ms. X, committed rape on her, killed her and threw her dead body

in the fields near Rajapur, in Haryana. Mr. A was arrested and thereafter Mr. B and Mr. C were also arrested. Their voluntary statements were recorded, which were to the same effect.

3. PW-21 searched the car and seized Jack and Panna from the boot of the car and sent them for examination. PW-21 along with his crime team and two accused Mr. B and Mr. C left to search dead body. Mr. A was left at police station. ASI PW-22 of Haryana police along with his crime team was present at the spot. The dead body was recovered from the field as pointed out by Mr. B and Mr. C. The crime team of UP found hair strand from the body of the deceased and one purse consisting of ATM card, driving licence, school leaving certificate of Mr. A.

4. PW-18 who conducted autopsy found 20 injuries consisting of incised wound, lacerated wound, burnt wounds, contusions etc. The injury shows that deceased was brutally beaten up and hot linear objects was placed upon her body. The head injury was found sufficient to cause death. The Doctor opined that the head injury could be caused by Panna.

5. CFSL team inspected the car on 26.12.2015 and seized hair strand from inside the car and also seized car seat covers. CSFL results show that a) Blood stains on the jack matched with DNA profile of deceased b) The hair strand lifted from rear seat of the car and blood spot collected from seat cover matched with the DNA profile of the deceased c) The DNA extracted from the semen spot found from the car matched with the DNA profile of Mr. A. d) Human Semen was also found in the vaginal swab of the deceased matched with Mr. B and Mr. C. and e) The DNA extracted from the hair strand lifted from the body of deceased matched with DNA profile of Mr. B.

6. The charges were framed under Sections 365, 367, 376 (2)(g), 302, 201 IPC r/w Section 34 IPC. The prosecution examined PW-1 to PW-23. The witnesses PW-1, PW-2, PW-3 deposed about the kidnapping of the deceased in blue BMW. PW-5 is the owner of the BMW car, who deposed that the car was in possession of Mr. A, who was his driver at the relevant time. PW-10 and 11 are witnesses in whose presence the disclosure statements were made by Mr. A, B and C and for recovery of dead body with articles. PW-10 and 11 turned hostile. The disclosure statements were made by Mr. A, B and C before IO- PW-21. PW-12, ASI. PW-15, 16, and 17 are police personnel from Haryana, who were present at the spot when UP police reached the spot. PW-14 is CFSL examiner. PW-18 is doctor. PW 19, 20 and 21 are team members who went to Haryana to find dead body.

7. The Learned District Judge, by its judgment and order dated 15.02.2017, convicted all the accused and sentenced them to undergo RI for five years each under Section 365 IPC. Section 367. RI for ten years for offence punishable under Section 376(2)(g) IPC and RI for life imprisonment under Section 302 IPC. The learned judge held that prosecution has proved the charges beyond reasonable doubt by proving each circumstance independently.

8. The A, B and C filed appeals before the High Court. The contentions raised by Mr. A are that he has no connection with the alleged crime and he has been falsely implicated. The arrest of Mr. A in the manner stated is improbable. Mr. A was taken for the recovery of dead body and therefore, the disclosure statement is not admissible in evidence. There are no fingerprints picked/found from the car or from the Jack and panna. There are no

blood stains on the Punna. There is nothing to connect the accused to weapon said to have been used for the offence. The owner of the car has used the car from 19.12.2015 to 24.12.2015 and did not notice any stains or hair strand. The inspection and seizure by CFSL is one week later and PW-14 found no seal on the door of car nor the keys of the car was under any seal. The High Court dismissed the appeals.

9. Mr. A has approached you to draft special leave petition (criminal) on his behalf challenging his conviction.

**SECTION:II**  
**QUESTION 2: OPTION 2**

**DRAFT A COMPLETE SPECIAL LEAVE PETITION (CRL). WITH BRIEF SYNOPSIS. NOTE THAT LIST OF DATES, AFFIDAVIT, CAUSE TITLE, CERTIFICATE ETC ARE NOT REQUIRED TO BE DRAFTED IN THIS QUESTION.**

1. Mr. A availed loan facility from Bank to purchase Audi Car in January 2015 and executed hypothecation agreement along with irrevocable PO. Mr. A defaulted in payment to the bank and Bank initiated its process for taking control / possession of the said car to recover its dues from the sale of the said car in October 2016.
2. After demonetization policy was announced on 08.11.2016, one car was intercepted on 29.11.2016 near Delhi border by police. The occupant was found in possession of unaccounted and unauthorized demonetized currency notes worth Rs. four Crore. FIR was registered for offences punishable under Section 420, 120-B IPC against the occupant.
3. On investigation, it is found that Mr. A had floated four fictitious companies with his associates including occupant of the car. The demonetized notes worth about 10 crore were deposited in the accounts of four fictitious companies during the period 10.11.2016 to 21.11.2016 in consideration of cash and gold so as to project the same as untainted money. As per IO, certain recoveries including gold were made from Mr. A and his associates, which are the "proceeds of the crimes".
4. The information was conveyed to Enforcement Authorities and case was registered under Prevention of Money Laundering Act, 2002 (PMLA for short). After investigation, the Enforcement Authorities presented complaint under Section 45 of PMLA to Special Court, which took cognizance. Simultaneously, on the basis of reasons to believe recorded in writing, provisional attachment order was passed and properties of Mr. A including audi car were attached.
5. The Adjudicating Authority issued a notice under Section 8 to the bank to show cause as to why Audi car be not attached. After hearing, the Adjudicating Authority confirmed the attachment order. The Appellate Tribunal set aside the order of the adjudicating authority and directed the vehicle to be returned to the bank holding that bank is entitled to dispose of the car and to recover the balance amount due to it under the loan contract as per law. The Appellant Tribunal held that the loan facility pre-dated the allegations of money laundering and the finance used for its acquisitions do not represent "proceeds of crime". It was also held that Bank has

first charge over the hypothecated property under SARFAESI Act, which will prevail over PMLA. The Bank has acted bonafide with due diligence. There is no referene of the equivalent value or the tainted property.

6. The Enforcement Authorities filed criminal appeal under Section 42 of PMLA. The Hon'ble High Court allowed the appeal holding that

a) The empowered Enforcement Officer has power to attach not only "tainted property.. but also any other asset or property of equivalent value of the offender or money-laundering.

b) The PMLA, by virtue of Section 71 has the overriding effect over other existing laws in the matter of dealing with "money-laundering" and "proceeds of crime" relating thereto.

c) If the property of a person other than the one accused of (or charged with) the offence of money laundering i.e. a third party, is sought to be attached and there is evidence available to show that such property before its acquisition was held by the person accused of money-laundering (or his abettor), or it was involved in a transaction which had interconnection with transactions concerning money-laundering, the burden of proving facts to the contrary so as to seek release of such property from attachment is on the person who so contends.

d) That an order or attachment under PMLA is not illegal only because a secured creditor has a prior secured interest (charge) in the property, within the meaning of the expressions used in RDBA and SARFAESI Act.

e) The Audi car is sought to be attached and subjected to eventual confiscation on account of they being the alternative attachable properties or deemed tainted properties, which is permissible in law.

7. The relevant provisions of law are set out for ready reference. The Bank has approached you for drafting Special leave petition (Criminal) to challenge the Impugned judgment.

## **The Prevention of Money Laundering Act, 2002 (15 of 2003)**

**Section-2. Definitions.-** In this Act, unless the context otherwise requires,—

(a) xxx xxx

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property 3[or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4[or abroad];

**5. Attachment of property involved in money-laundering.—**4[(1)Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a

Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in 1[first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.];

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under 3[sub-section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

*Explanation.*—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

## 8. Adjudication.—

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an 1[offence under section 3 or is in possession of proceeds of crime], it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized 2[or frozen] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or 3[record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall—

(a) continue during 1[investigation for a period not exceeding 2[three hundred and sixty-five days] or] the pendency of the proceedings relating to any 3[offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and]

4[(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the 5[Special Court];]

6[*Explanation.*—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.]

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the 7[possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.]

8[(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.]

9[(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:]

1[Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.]

**Section-71. Act to have overriding effect,-**

The provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

**The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,**

**Section-35.** The provisions of this Act to override other laws,- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

**The Recovery of Debts due to Banks and Financial Institutions Act, 1993.**

**Section-34, Act to have overriding effect.-**

- (1) Save as provided under sub-section (2), the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
- (2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984)[, the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industrial Development Bank of India Act, 1989 (39 of 1989)]

**SECTION: III**

**QUESTION 3: OPTION 1**

**NOTE: A SHORT CAUSE TITLE AND BRIEF SYNOPSIS ARE NEEDED BUT THE LIST OF DATES AND THE AFFIDAVIT ARE NOT NECESSARY IN THIS QUESTION.**

1. All India Non-Gazetted Work-Charged Employees Union, represent about 50,000 non-gazetted work-charged employees of state A. They worked without interruption as work-charged employees of state A for 30 years or more since 1980s and came to be regularized in 2011 onwards. Thereafter, some of them superannuated 2014 onwards but were declined pension and other retirement benefits on the ground that they lacked requisite years of regular service for 22 years in regular employment under pension rules of state A. The relevant rule 3 of the State of A Retirement Benefit Rules, 1961 at the material time read as follows:

"3. In these rules, unless there is anything repugnant in the subject or context, a 'Qualifying service' means service which qualifies for pension being the one rendered for at least 22 years in substantive office on a permanent establishment in accordance with the provisions of the Civil Service Regulations and/or continuous temporary or officiating service under the Government of A followed without interruption by confirmation in the same or any other post except the service in work charged establishment."

2. These work-charged employees through one of the employee member and president of the Union approached the High Court of state A by way of a writ petition under Art.226 to challenge the proviso to above rule in so far as the continuous service in work charged establishment is excluded from computation of qualifying service for pension as discriminatory and sought declaration, inter- alia, that they are entitled to pension and other retirement benefits at par with regular employes of State A on account of long years of continuous service which was more than requisite 22 years of service required under pension rules of state A. The High Court of state A dismissed the writ petition in 2016. The Special Leave Petition was filed by All India Non-Gazetted Work-Charged Employees Union in which leave was granted and the appeal was ultimately allowed by Supreme Court vide a judgment delivered on 4th January, 2020 which held as follows;

"The appointment of the work-charged employee in question had been made on monthly salary in regular pay scale and they were required to cross the efficiency bar also. How their services are qualitatively different from regular employees? No material indicating qualitative difference has been pointed out except making bald statement. The appointment was not made for a particular project which is the basic concept of the work charged employees. Rather, the very concept of work-charged employment has been misused by offering the employment on exploitative terms for the work which is regular and perennial in nature. The work-charged employees had been subjected to transfer from one place to another like regular employees as apparent from documents placed on record. They served for about three decades and more and later on services have been regularized from time to time by different orders. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis for long which amounts to adopting the exploitative device even though their services have been regularized later on. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work charged establishment but have also been deprived of counting of the period for benefits of pension as if no services had been rendered by them in the heydays of their life. It would be highly discriminatory and irrational without rhyme or reason not to count the service of work-charged period in case it has been rendered before regularization. In our opinion, an impermissible classification has been made under said Rule 3. As it would be highly unjust, impermissible and irrational to treat the aforesaid classification in the proviso to the said Rule 3 as valid, we have to strike down the proviso to said Rule 3 to the extent the service in work charged establishment is excluded from computation of qualifying service for pension and hold that services rendered in the capacity of work-charged employees even prior to regularization shall also be counted towards the qualifying service for pension."

3. The state of A complied with above judgment and granted pension in April 2020 to all the erstwhile work-charged employees who worked without interruption for more than 25 years. All these erstwhile work-charged employees have been receiving pension every month since then. By an ordinance dated 15th April 2021 issued a week before the belated budget session of legislature of state of A, the rule for qualifying service is changed with retrospective effect as a result of which the pension and other retirement benefits of all the erstwhile work-charged employees are withdrawn. By a consequential order of 30th April 2021 directions have been issued for recovery of pension and other monetary benefits already disbursed. The Ordinance reads as follows:

"1. This Ordinance, the state of A qualifying Service for Pension and Validation Ordinance, 2021, shall be deemed to have come into force on April 1, 1961.

2. Notwithstanding anything contained in any rule, regulation or Government order for the purposes of entitlement of pension to an employee, "Qualifying Service" means the services rendered by an employee appointed on a temporary or permanent post only in accordance with the provisions of the service rules prescribed by the Government for the post.

3. Notwithstanding any judgment, decree or order of any court, anything done or purporting to have been done and any action taken or purporting to have been taken under or in relation to proviso to rule 3 of the State of A Retirement Benefit Rules, 1961 before the commencement of this Ordinance, shall be deemed to be and always to have been done or taken under the provisions of this Ordinance and to be and always to have been valid as if the provisions of this Ordinance were in force at all material times with effect from April 1, 1961.

4. Save as otherwise provided, the provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Ordinance."

4. This ordinance to amend the rule about qualifying service is yet to be placed for approval before the legislature of the state A but a general order is passed on 1st May 2021 by state of A to discontinue payment of monthly pension with immediate effect. A contempt petition filed by petitioner All India Non-Gazetted Work-Charged Employees Union came to be withdrawn on 5th April 2021 after the Bench hearing the matter observed in course of hearing that there cannot be contempt in exercise of legislative power even if such legislative power is exercised illegally. The Bench hearing the matter refused to convert the contempt petition as writ petition but orally agreed to hear on merit if such writ petition is filed under Article 32 of Constitution of India. However, the said order of 5th April 2021 simply reads;

*"The contempt petition is dismissed as withdrawn. Liberty granted to take appropriate proceedings to challenge the impugned Ordinance."*

5. The All India Non-Gazetted Work-Charged Employees Union contends that this Ordinance is promulgated without urgency and justification to by-pass legislature without addressing the illegal and discriminatory basis in earlier rule 3 to exclude period of continuous work-charge services. Please draft a writ petition with a short cause title but at least six distinct grounds to be filed before Supreme Court of India under Article 32 of Constitution of India along with prayers only for the proposed application for interim relief.

SECTION: III  
QUESTION 3: OPTION 2

**NOTE: A SHORT CAUSE TITLE AND BRIEF SYNOPSIS ARE NEEDED BUT THE LIST OF DATES AND AFFIDAVIT ARE NOT NECESSARY IN THIS QUESTION.**

1. The Noisy National (NN) is a reputed TV Channel with large audience throughout India known for its forthright and bold views telecast with lots of shouting, aggressive symbolism and aplomb. Its main anchor O Rab ji is famous for stylish presentation of political news and views and as independent crusader of public causes which in some quarters is perceived as partisan. The headquarters of NN are based in State of B from where O Rab ji telecast daily shows 'Here And Now' and 'Please Answer' which are immensely popular all over country. The state of B is ruled by a coalition government which is in political opposition to some of the causes espoused by O Rab ji in his various daily shows.

2. In a recent episode near city of Nawab Nagar in state of B, a religious structure encroaching on big public square was put up overnight by some miscreants. The local authorities with police took immediate action to demolish this religious structure very next day. This demolition led to wide spread rumors of communal clashes, violence and loss of life. In fact there was only some tension in city of Nawab Nagar. No untoward incident was reported.

3. After about a week of this incident, O Rab ji came on both the shows 'Here And Now' and 'Please Answer' with claim of documentary evidence that the religious structure in question was of origin in antiquity - a claim not generally believed by public and strongly controverted by state of B and its officials. In the show 'Here And Now' telecast for several days, O Rab ji showed selective instances of atrocities on community to which the religious structure belonged and facsimile of documents which are not easily discernible. Likewise, in the show 'Please Answer' O Rab ji questioned the supposed bias of ruling coalition against the community to which the religious structure belonged. However, contrary to anticipation in some quarters, the impact of both the shows remained negligible on general public which remained peaceful. The so-called debates conducted in course of both these shows remained incomprehensible and none of the participants on either side of debate is held accountable.

4. Now the police in several towns of state of B have registered cases u/s. 153-A, 295-A IPC r/w S.34 against NN and O Rab ji for spreading communal disaffection and disturbing religious harmony and peace by outraging the religious feelings. Due to all India presence of NN and fan audience of O Rab ji, some of the other states, in particular all having sympathetic political affiliation to ruling coalition of state of B, have also have registered similar cases. It is surprising that in most of the cases initiated at the instance of private complainants, the language and tenor of original complaints appear similar. The allegations against NN and O Rab ji are now widely reported and summons are stated to have been served on them in respect of some of the cases which may lead to arrest of CEO of NN Shri Shri and O Rab ji. The NN and O Rab ji want to assert their fundamental right to freedom of speech

under Art. 19(1)(a) of Constitution of India and consider these cases as false, motivated and vindictive action on part of ruling coalition of the state of B.

5. Please draft a writ petition to be filed before Supreme Court under Article 32 of Constitution of India on behalf of CEO of NN, Shri Shri and O Rab ji with a short cause title for quashing and /or transfer of all the criminal proceedings to one place and/or omnibus anticipatory bail in all cases raising minimum of six distinct grounds along with prayers only for the proposed application for interim relief.

**SECTION: IV**  
**QUESTION 4: OPTION 1**

**NOTE: A SHORT CAUSE TITLE, BRIEF SYNOPSIS NEEDED BUT THE LIST OF DATES, AFFIDAVIT, CERTIFICATE ETC. ARE NOT NECESSARY IN THIS QUESTION.**

1. The AMAZING CORP is UK based multi-national retail giant engaged in procurement, storage and logistic for distribution to vast number of online customers throughout India. For interstate transport of its inventory, the AMAZING CORP entered into an agreement with READY TO MOVE CO, a start up of young entrepreneurs, for an annual payment of Rs. 100 crores to ferry goods unto one million KM on trucks and other commercial vehicles of transport. This contract has been renewed every year for last five years with an arbitration clause which reads as follows;

"In case of dispute between the parties to this agreement, the same shall be referred for mediation to president of Global Chamber of Commerce failing which for arbitration by sole arbitrator to be appointed by mutual consent of parties"

2. For last few months, AMAZING CORP has been complaining of slackness in services of READY TO MOVE CO on account of repeated breakdowns in vehicles causing big disruptions in delivery schedule, pilferage and loss in transit. The READY TO MOVE CO has been assuring but not able to effectively address these issues as the investment required to renew its existing fleet of vehicles is not materializing due to apprehension that AMAZING CORP may not renew the agreement for next commercial year beginning 1st July 2021. The AMAZING CORP has withheld certain payments due to READY TO MOVE CO and given it a notice for forfeiture of security deposit in sum of Rs. 5 Crores lying with AMAZING CORP. The READY TO MOVE CO has in turn suspended its transport operations for AMAZING CORP pending clearance of outstanding payments and release of security amount.

3. The mediation between the parties has failed after four long sessions with designated mediator. The notice to appoint an arbitrator was given by READY TO MOVE CO. However, the parties are not able to agree for nomination of sole arbitrator. Please draft a petition for appointment of a sole arbitrator by Chief Justice of India under Sec. 11 of the Arbitration and Conciliation Act 1996 on behalf of READY TO MOVE CO.

**SECTION: IV**  
**QUESTION 4: OPTION 2**

**NOTE: IN THIS TRANSFER PETITION WITH SHORT CAUSE TITLE AND A BRIEF SYNOPSIS ARE NEEDED BUT LIST OF DATES, AFFIDAVIT, CERTIFICATE ETC. ARE NOT NECESSARY.**

1. Mr. A and Ms. B got married in Delhi in 2011 and started living along with the parents of Mr. A in Rajauri Garden, Delhi. Ms. B was continuously harassed for dowry by Mr. A and his family. The father of Ms. B purchased one car and gave it to Mr. A hoping that harassment to his daughter would stop. But the harassment still continued as the family of Mr. A wanted father of Ms. B to buy an apartment for them. Ultimately, the father of Ms. B purchased one apartment in Dwarka, Delhi for her in her name. Mr. A and Ms. B shifted to said apartment.
2. Ms. B delivered twins in 2017. After the birth, the demands of the family of Mr. A increased. Ms. B was forced to execute revocable power of attorney, will and agreement to sell in respect of the aforesaid apartment in favour of her husband. In view of continued harassment to her and her children, Ms. B left Delhi and reached her parents place at Mumbai. Mr. A filed petition for restitution of conjugal rights. Ms. B moved an application for transfer of the said petition and case was transferred to Mumbai. Certain criminal cases in connection with demand of dowry and harassment against Mr. A and his family are pending in Courts in Mumbai.
3. Mr. A filed suit OS No. 20/2020 before the High Court of Delhi for permanent injunction against Mr. B claiming himself to be the owner of the aforesaid apartment.
4. Ms. B has approached you to draft Transfer Petition for transfer of suit for permanent injunction from Delhi to Mumbai as she is finding it difficult to defend the same in Delhi due to the small children and other reasons (you can imagine). Ms. B instructs you that even though the suit is related to the property, it is not unconnected to the matrimonial dispute going on between the parties at Mumbai. While drafting the petition, also keep in mind that in order to avoid transfer, Mr. A may ask for appearance of Ms. B through video conferencing and deal with it in transfer petition.

**LONG QUESTIONS (20 MARKS EACH, ATTEMPT 4 OUT OF 8)**

1. What are the different types of duties that an advocate owes to different categories of persons including to the Presiding Officer of the Court? In the event of conflict between different duties, how would an advocate go about resolving such conflict?
2. What is the difference between "professional misconduct" and "other misconduct" occurring in Section 35(1) of the Advocates Act? Discuss with reference to decided cases.
3. What are the punishments that can be imposed on an advocate for misconduct? What principles should be followed in deciding the appropriate punishment to be given in a given case? When can a person be disqualified for enrolment as an advocate?
4. Is it ethical for an advocate to resort to strikes? To what extent is it legal to do so? Discuss with reference to decided cases.
5. What is the role of the legal professional in maintaining public trust in the administration of justice? What changes would you propose to the Bar Council of India Rules to advance such a role of the legal profession?
6. What do you think are the principal unethical or sharp practices in Indian courts? With technological advancement and new areas of legal practice, do you think the Bar Council Rules are sufficient to deal with them? If not, what specific changes would you suggest?

7. What are the rules governing advertising and solicitation by lawyers? Are such rules justified? What changes would you suggest? Does the advent of widespread use of social media make any difference to the situation and does it require a change of approach?
8. What special duties are owed by an Advocate-on-Record of the Supreme Court of India? Discuss with reference to relevant Rules and decided cases. Please set out your views on the necessity or otherwise of the Advocate-on-Record system with reference to decided cases.

**SHORT QUESTIONS (10 MARKS EACH, ATTEMPT 2 OUT OF 4)**

9. To what extent does a lawyer have a duty to promote conciliation and mediation? How is such duty linked to professional ethics?
10. A lawyer may be appointed amicus curiae to assist the Court or to represent a party who has no legal representation. Does the nature of ethical duty cast on the lawyer so appointed as Amicus Curiae vary and if so, how?
11. Your client wants you to take an adjournment of his case on whatever ground possible in order to avoid the hearing of the case and to cause continuation of your interim relief and inconvenience to other side. What would you do?
12. What are the seven lamps of Advocacy propounded by Justice Abbot Parry? Which amongst them would you consider to be most important? Are these lamps relevant in modern day legal practice in India?

QUESTION PAPER IV (2021)

ANSWER ANY SIX QUESTION. ALL CARRY EQUAL MARKS

1. The mandatory registration of FIR under Section 154 of Cr.P.C. will not be in contravention of Article 21 of the Constitution of India - held the Supreme Court in the case of **Lalita Kumari (2014) 2 SCC 01**. Write a note on the,  
(a) types of FIRs;  
(b) significance of FIR Register, General Register and Case Diary; and  
(c) exceptions carved out to conduct a preliminary enquiry before the registration of FIR.
2. Summarise the law laid down in the case of **Municipal Corporation of Ujjain Vs. BVG India Ltd. (2018) 5 SCC 462**, and the High Court's powers regarding:  
(a) the scope of judicial review on the opinion of an expert body on the technical qualifications of a bidder, and  
(b) independent evaluation of technical and financial bids, as appellate authority.
3. How did the "Creamy Layer" principle evolve? Describe its applicability as per the enunciations revisited in **Jarnail Singh Case (2018) 10 SCC 396**.
4. **Gopal Vinayak Godse (AIR 1961 SC 600)** is an authority for "sentence of imprisonment for life means imprisonment for the whole life of the convict's remaining life". How has this sentencing for life imprisonment been extended further in the case of **Union of India Vs. V. Sriharan (2016) 7 SCC 191**? What is the difference between the executive powers under Sections 432 to 435 of Cr.P.C. and the constitutional powers under Articles 72 and 161 of the Constitution of India?
5. What are the sources and eligibility qualifications for appointment to the post of District Judges as set out in Article 233 of the Constitution of India? Elucidate your opinion having regard to the law laid down in **Satya Narain Singh (1985) 1 SCC 225** and **Dheeraj Mor (2020) 7 SCC 401**.
6. Has the policy of Tribunalisation of justice delivery system under Articles 323-A and 323-B of the Constitution of India served effectively the twin purpose of providing speedy and efficacious alternative remedy and to reduce the pendency before the High Courts? Your opinion should reflect the law laid down in the case of **L. Chandra Kumar (1997) 3 SCC 262**, **Roger Matthew (2020) 6 SCC 1** and **Madras Bar Association (2020) SCC Online SC 962**.
7. What are the five golden principles (Panchsheel) laid down in the case of **Sharad Sarda (1984) 4 SCC 116**, for proving the criminal offences on the basis

- of circumstantial evidence? What is the additional golden thread referred to in the administration of criminal justice, in the said case? Would the non explanation in the statement under Section 313 of Cr.P.C., be a link to complete the chain of circumstances?
8. "It is time that Parliament have a rethink on whether disqualification petitions ought to be entrusted to a Speaker as the quasi-judicial authority when such Speaker continues to belong to a particular political party either *de jure* or *de facto*", observed the Supreme Court in the case of **Keisham Meghchandra Singh (2020) SCC Online SC 55**. What are the contributing factors for this enchantment as reflected in the case of **Kihoto Hollohan 1992 Supplement (2) SCC 651** and **Rajendra Singh Rana (2007) 4 SCC 270**?
  9. (a) Who are the financial creditors and operational creditors under the Insolvency and Bankruptcy Code, 2016 and on what grounds the classification made between the financial creditors and operational creditors was upheld by the Supreme Court in the case of **Swiss Ribbons vs Union of India [(2019) 4 SCC 17]**?  
 (b) To what extent did the Supreme Court in the case of **Essar Steel vs Satish Kumar Mishra [(2020) 8 SCC 531]** read down the period of enquiry for the completion of Corporate Insolvency Resolution Process (CIPR)?
  10. (a) Under what circumstances the land acquisition proceedings, initiated under the Land Acquisition Act, 1894, will lapse under Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as interpreted by the Supreme Court in the case of **Indore Development Authority vs Manohar Lal [(2020) 8 SCC 129]**?  
 (b) Also mention the circumstances in which the proceedings will not lapse.
  11. (a) What information were sought under the Right to Information Act, 2005 in the case of Supreme Court of India vs **Subhash Chandra Agarwal [(2020) 5 SCC 481]** and which of them were directed to be furnished?  
 (b) What information are recognised as personal information and cannot be supplied?
  12. (a) On what grounds the right to privacy was held to be a fundamental right in the case of **KS Puttuswamy vs Union of India [(2017) 10 SCC 1] (K.S. Puttuswamy 1)**?  
 (b) Mention the reasons for upholding the validity of Aadhar (Target Delivery of Financial and Other Subsidies, Benefit and Services) Act, 2016 in the case of **KS Puttuswamy vs Union of India [(2019) 1 SCC 1] (K.S. Puttuswamy 2)**.

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