IN THE SUPREME COURT OF INDIA
ADVOCATES-ON-RECORD EXAMINATION – JUNE 2019
PAPER I – PRACTICE AND PROCEDURE

Time:- 3 Hours
Total Marks:- 100

Instructions For The Candidates

A. It is advised that the candidates read all questions before answering.
B. Questions 1 to 3 in Part I carry total 20 marks each. Candidates are required to answer any Two Questions in full [i.e. both (a) and (b) of the same question] from Part I.
C. Questions 4 to 9 in Part II carry 10 marks each. Candidates are required to answer any Four Questions from Part II.
D. Question 10 in Part III carries 20 marks and is compulsory [Candidates are required to answer any 10 out of 20 sub-questions included in Question 10].

PART I
(Answer any Two Questions from Part I)

1. (a) Does the Supreme Court of India possess 'Original Jurisdiction' for deciding disputes? What are the pre-conditions required to be fulfilled for invoking the Original Jurisdiction of the Supreme Court [i.e. who can invoke it, against whom, and in what kind of disputes etc.] ?

(b) Articles 132, 133, 134 and 134A of the Constitution of India and Part II of the Supreme Court Rules, 2013 deal with the 'Appellate Jurisdiction' of the Supreme Court. Briefly explain the different types of cases where the Appellate Jurisdiction vests with the Supreme Court and the appeals can be filed before it. Also explain the requirements to be fulfilled under the above-mentioned provisions for invoking the Appellate Jurisdiction of the Supreme Court.

[10 marks for (a) + 10 marks for (b) = 20 marks]

2. (a) What is the nature of a Petition filed under Article 136 of the Constitution of India, i.e. does it fall in the Original Jurisdiction or Appellate Jurisdiction or any other jurisdiction of the Supreme Court ? Under what circumstances can the remedy of filing a Special Leave Petition under Article 136 of the Constitution of India before the Supreme Court be invoked by a person ? Whether an order granting "Leave" in the SLP can be subsequently revoked by the Supreme Court on any ground ?

(b) What are the basic requisites for filing a Writ Petition under Article 32 of the Constitution of India ? Briefly explain different writs which the Supreme Court can issue in a petition under Article 32.

[10 marks for (a) + 10 marks for (b) = 20 marks]

3. (a) What is a Curative Petition ? On what grounds can a Curative Petition be filed ? What is the procedure required to be followed for filing of a Curative Petition ?

(b) On what grounds can a recusal application praying for recusal by a Judge be filed by a party to a litigation in the Supreme Court ?

[10 marks for (a) + 10 marks for (b) = 20 marks]

PART II
(Answer any 4 Questions from Part II)

4. 'X' filed an SLP challenging the judgment of the High Court. When the SLP was taken up for hearing, 'X' sought liberty to withdraw the SLP and file a Review Petition before the High Court. The said liberty was granted and the SLP was dismissed as withdrawn. However, when 'X' filed the Review Petition, it was dismissed by the High Court.

   a. Is it open to 'X' to file an SLP once again?
   b. If yes, which order should be challenged by 'X' before the Supreme Court?

[10 marks]

5. Order V of the Supreme Court Rules, 2013 provides for "Business in Chambers" and vests certain powers in a Single Judge sitting in Chambers ["Chamber Judge"] and also in the Registrar. Describe the types of proceedings which can be heard by a Single Judge

sitting in Chambers and proceedings which can be heard by the Registrar. Does the Chamber Judge have any appellate powers ?

[10 marks]

6. Is it open to the High Court to entertain a Review Petition seeking review of its order when the SLP filed against the said order has been dismissed by Supreme Court ? Does it make a difference if the Review Petition was filed before the dismissal of the SLP ?

[10 marks]

7. (a) What is the difference between intervention and impleadment ? Can an intervention application be decided by a Chamber Judge ? What are the rights of a person whose intervention application has been allowed ?

(b) Explain the mandatory requirements required to be fulfilled before filing an Affidavit on behalf of any party in the Supreme Court ?

[5 marks for (a) + 5 marks for (b) = 10 marks]

8. What is the procedure,as per Supreme Court Rules, 2013, for filing of a Transfer Application under Article 139A of the Constitution? What are the documents which are required to be filed alongwith any such Transfer Application ?

[10 marks]

9. Briefly explain the procedure for filing an SLP / Appeal on behalf of an indigent person, as per the Supreme Court Rules, 2013. Describe the concessions available to indigent persons under the said Rules.

[10 marks]

PART III

10. This is a compulsory question. Answer any 10 questions from the following **[2 marks each]**:-

    a. What steps are required to be taken by the AOR representing the Petitioner after issuance of notice in a Special Leave Petition ?

    b. Briefly describe the various types of information in relation to any pending case which can be accessed from the website of the Supreme Court.

c. As per the Supreme Court Rules, 2013, how many copies of the Petition are required to be filed in the case of (i) an Appeal, (ii) an SLP,and (iii) a Writ Petition before the Supreme Court ?

d. What is a Caveat and how is it lodged ? What is the benefit of lodging a Caveat ?

e. While drafting an SLP, you come across a document which was not part of the records of the Court below but is relevant for the adjudication of the case. What steps would you take ?

f. Is it necessary for a person whose conviction has been upheld by the High Court to surrender before filing an SLP ? Can it be waived / exempted and if so, by whom ?

g. What is the procedure to seek an adjournment in a matter which is listed in the Cause List of the Supreme Court?

h. Briefly explain the procedure laid down under the Supreme Court Rules, 2013 for search or inspection of the pleadings and documents on record in any case pending before the Supreme Court.

i. Who can apply for obtaining the certified copy of any pleading(s) in any proceedings before the Supreme Court ? Whether any person who is not a party to any case can also apply for obtaining certified copy of any pleading(s) etc. ?

j. Is there any special requirement under the Supreme Court Rules, 2013 in relation to the books of account to be maintained by an Advocate-on-Record ?

k. What is the difference between an Application for Review, Application for Recall and Application for Modification of an Order ?

l. If your client seeks to change his / her Advocate-on-Record, what are your duties and what are the duties of the new Advocate-on-Record engaged by your client ?

m. In a petition alleging commission of criminal contempt against your client, notice is issued by the Supreme Court.

What would be your advice to your client for further steps to be taken in the contempt petition ? Would it be mandatory for your client to appear before the Court when the contempt petition is listed ?

n. What is the prescribed period of limitation for filing an SLP ? Is there any limitation period for filing a Writ Petition before the Supreme Court under Article 32 of the Constitution of India ?

o. What is a "Statement of Case" ? Is it mandatory to file a "Statement of Case" ? Can it be waived and if the answer is in the affirmative, then who would be empowered to exempt filing of the "Statement of Case" ?

p. Does the Supreme Court play any role in conduct of an inquiry against a member of a Public Service Commission ?

q. How many electors are required for challenging the election of (i) the President of India (ii) the Vice-President of India in the petition to be filed before the Supreme Court u/s 14 and 14A of the Presidential and Vice-Presidential Elections Act, 1952 ?

r. Does the Constitution of India oblige the Supreme Court to render opinion on any reference being made to it ? If so, who can seek that opinion ? Would it be open to the Supreme Court to decline to render its opinion ?

s. Is Supreme Court a Court of Record ? Are the powers of the Supreme Court to punish for contempt of itself restricted by the provisions of the Contempt of Courts Act, 1971 ?

t. What types of orders can a Vacation Judge sitting singly pass in a Petition under Article 32 of the Constitution involving a substantial question of law as to the interpretation of the Constitution ? Can the Vacation Judge sitting singly pass a final judgment in any such Article 32 Petition ?

[2 marks X 10 = total 20 marks]

THE END

SUPREME COURT OF INDIA
ADVOCATES-ON-RECORD EXAMINATION - JUNE 2019
PAPER-II – DRAFTING

Time – 3 Hours
Total Marks - 100

Instructions:

1. **Question I is mandatory**
2. **Attempt any three questions from Questions II to VI.**
3. **All questions carry equal marks.**
4. **30 minutes extra time will be provided for reading the question paper.**

Question-1

The river Chandrapura originates in the State of Malgudi and flows west towards the Arabian Sea after crossing over the State of Jamawat. In 1970 an agreement was entered into between the two States whereby and whereunder the State of Malgudi was allowed to set up a dam on the river in its own territory and inside its boundary on the condition that every year a total quantity of 7.25 TMC (thousand meter cube) of water would be released from the said dam to the State of Jamawat. It is the contention of Jamawat that supplies are guaranteed even in bad years or drought and even if there is less rainfall in the catchment area of the river, the State of Malgudi has to ensure the stipulated flow of water to the State of Jamawat.

Pursuant and in terms of the said agreement and acting upon its terms and conditions, the State of Malgudi has set up a dam within its boundary on the said river. From year to year the State of Malgudi has been supplying the stipulated quantity of water to the State of Jamawat.

It is the contention of the State of Jamawat that during the year 2018-19 the State of Malgudi has acted contrary to the terms of the agreement and has failed and neglected to supply the stipulated quantity of water to the State of Jamawat. The said State of Jamawat has suffered huge losses both in its agricultural output which is depending on the irrigation from the waters of the said river as well as in power which is generated at the bottom of the flow of the water in the State of Jamawat by turbines which have been instituted there with huge public investment. The State of Jamawat has approached you to file an original suit before the Supreme Court of India both for specific performance of the contract in future and for damages caused by the failure on the part of the State of Malgudi to supply the stipulated quantity of water. It has been ascertained that in the affected areas agricultural output has gone down by 40% by reason of such non supply which the State of Jamawat have estimated to be having a value of approximately Rs.100 crores. The inability to produce electricity has caused its further loss in the year in question amounting to a sum of approximately Rs.50 crores.

Draft an original suit under Article 131 of the Constitution of India based on the above instructions given by the State of Jamawat.

Article 131 of the Constitution is set out below:

131. Original jurisdiction of the Supreme Court

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute
(a) between the Government of India and one or more States; or
(b) between the Government of India and any State or States on one side and one or more other States on the other; or
(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends: Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagements, and or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute

Question II

A&B, both being Indian citizens and holding Indian passports, got married in New Delhi in the year 2010 and thereafter shifted to the United States of America on temporary work visas. In due course A&B had two children. The elder one 'C' being born in 2012 and the younger one 'D' being born in 2014. In or about 2016 the marriage between A&B broke up due to irreconcilable issues and the parties separated. The children continued to stay with their mother B.

Shortly thereafter A took the elder child C to stay with him for the week-end on the condition that he would return the child to B on Sunday the night. However, A did not return the child and on the other hand left USA for India with the child without any prior information to B or her consent or

permission. B thereupon approached the appropriate court in USA and the court ordered that B be granted sole legal and physical custody of the child C and declared that no visitation rights be given to A in view of his conduct.

A on arriving in Delhi filed proceedings before the family court under the Guardian and Wards Act 1890 for custody of C. B on the other hand invoked the writ jurisdiction of the High Court of Delhi seeking a writ of habeas corpus against A for custody of the child alleging that he was in illegal and unlawful charge of the child.

During the time that it took for the matter to be heard and disposed of, the child C was admitted to a reputed school in Delhi and grew up in a congenial environment amongst relatives and grandparents and was exposed to a natural process of growing in the association of his elders, friends, peers and play mates. A and B remained in touch in relation to the children. The children also remained in touch with each other.

The High Court delivered judgment on the application under Article 226 of the Constitution placing reliance upon the principle of comity of courts and the doctrine of most intimate contact. It returned a finding with the most intimate contact with the parties and their children was the court in USA and directed A to produce the child in court on the date fixed for consequential handing over of his custody to the Respondent. The court rejected the contention that it should only look at the welfare of the child and that the welfare of the child required him to remain in Delhi.

In these circumstances, draft a Special Leave Petition to be filed before the Hon'ble Supreme Court setting out: (a) brief synopsis of the core issue involved in the matter (without list of dates and events); and (b) the relevant questions of law and grounds in support of the reliefs sought. In this context, the candidate may also take into consideration the fact that India is not a signatory to the Hague Convention on Civil Aspects of International Child Abduction of 1980.

Question III

State A has legislated a State Police Act which contain inter alia the following Sections:

Section 2(14)

"place of public amusement" means any place, where music, singing, dancing, or any diversion, or game, or the means of carrying on the same is provided and to which the public are admitted and includes a race course, circus, theatre, music hall billiard room, bagatelle room, gymnasium, fencing school, swimming pool or dancing hall;"

Section 2(15)

"place of public entertainment" means any place to which the public are admitted and where any kind of food or drink is supplied for consumption on the premises by any person owning or having an interest in or managing such place and includes a refreshment room, eating house, coffee house, liquor house, boarding house, lodging house, hotel, tavern, or a shop where wine, beer, spirit, arrack, toddy, ganja, or other kind of liquor or intoxicant or any kind of food or drink is supplied to the public for consumption in or near such shop;"

Section 40:

Power to make orders for regulation of traffic and for preservation of order in public places, etc. – (1) The Commissioner and the District Magistrate, in areas under their respective charges or any part thereof, may make, alter or rescind orders not inconsistent with this Act, for –

(i) licensing or controlling places of public amusement or entertainment;

(ii) prohibiting the keeping of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity;

(iii) regulating the means of entrance and exit at places of public amusement or entertainment or assembly and providing for the maintenance of public safety and the prevention of disturbance threat;

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(x)(i) licensing or controlling with such exceptions as may be specified, the musical, dancing, mimetic, or theatrical or other performances for public amusement, including meals and tamashas;

(ii) regulating in the interest of public order, decency or morality or in the interest of general public, the employment of artists, and the conduct of the artists and the audience at such performances;

(iii) prior scrutiny of such performance by a Board appointed by the Government or by an Advisory Committee appointed by the Commissioner or the District Magistrate in this behalf;

(iv) regulating the hours during which and the places at which such performance may be given;"

In exercise of powers under Section 40, the Police Commissioner of the town of Rangaluru issued an order called The Regulation of Public Amusement Order 2009 calling upon the Restaurant Owners who were displaying live band music in their restaurants to obtain licenses for running their restaurant and playing, live music band. Writ Petitions were filed by the Restaurant Owners contending that restaurants could not be treated as place of public amusement as defined under Section 2(14) of the Act. This

contention was ultimately upheld by the Hon'ble Supreme Court and, therefore, notices given to the Restaurant owners under the said regulation order was struck down.

In 2019, the Police Commissioner of City A in the State issued an order called the Regulation of Public Entertainment Order 2019 under the same Section 40 referred to above. The said order contains inter alia following clauses :-

"2. Definitions:

b) 'Cabaret' means a form of dance performed in a place of public entertainment by dancers or artists or any other person as a part of musical entertainment;

d) 'Discotheque' means a facility provided at a place of public entertainment to customers or patrons for singing or dancing of whatever form or both;

j) 'Live band' means music, live or recorded, provided at a place of public entertainment, whether or not accompanied by any form of dancing including cabaret.

Clause 3

3. Obligation to obtain a Licence:- No person shall open or maintain a place of public entertainment like live band, cabaret, discotheque without obtaining a licence under the provisions of this Order from the Licensing Authority:

Providing that no such licence shall be necessary for places of public entertainment like refreshment room, eating house, coffee house, boarding house, lodging house, hotel, tavern or shop where wine, beer, spirit, arrack or any other kind of liquor, intoxicant or any kind of food or drink is supplied to the public for consumption on the basis of a valid licence obtained under the relevant provisions applicable for establishing and maintaining such places of public entertainment and also supplying the abovementioned things or services and where live band, cabaret or discotheque or any other activity of a similar nature is not performed:

Provided further that no such licence shall also be necessary to conduct Yakshagana, bayalata (field drama), Bharathanatyam, Folk Art, music recital, vocal or instrumental like Veena, Mrudana etc.

Clause 4

4. Application for Licence: (1) Every person applying for a licence to maintain a place of public entertainment shall make an application in form No.1 along with the documents specified therein and his three recent photographs.

(2) An application can be obtained from the Licensing Authority on payment of the specified fee under clause 18 of this Order. (3) While submitting the application, the applicant shall appear in person before the Designated Authority and satisfy him that all the required information and documents have been furnished along with the application.

Clause 5

5. Inspection of the premises- The Licensing Authority or any officer not below the rank of Inspector of Police, as may be authorized by the Licensing Authority may for the purpose of granting licence, if necessary, hold an inspection of the site or premises. The Licensing Authority or the Officer so authorized may, if need be, seek assistance of any other authority or authorities during such inspection.

Clause 7

Grant or refusal of Licence: (1) The Licensing Authority shall while deciding to grant or refuse a licence under this Order have regard to the following aspects, namely:

(a) the interest of public in general;

(b) the status and antecedents of the applicant;

(c) availability of parking place commensurate with the seating capacity;

(d) the possible adverse impact on law and order;

(e) vicinity of the place to educational or religious institutions. For this purpose vicinity shall mean within a distance of 200(two hundred) metres;

(f) that the entertainment does not in any way incite religious feelings;

(g) that the materials used for the structure do not pose any kind of fire hazard;

(h) that the proposed entertainment does not promote public gambling or the premises shall not be used a gaming house or does not encourage prostitution or allow the use of narcotic substances or permit any other illegal activity;

(i) that the licensee shall not organize or allow performance of shows which are immoral, obscene or indecent and ensure that there is no obscenity or indecency in dress, movement or gesture or that the performers indecently expose their person;

(j) the licensee shall not permit any obscene or objectionable posters or pictures to be exhibited;

(k) that the proposed premises do not cause obstruction, inconvenience, annoyance, risk, danger or damage to the residents or to passerby of such premises;

(l) that all adequate precautions have been taken in the premises in respect of which the licence is to be granted to provide for the safety, convenience and comfort of the persons attending the programmes therein. (2) The Licensing Authority on being satisfied and subject to the provisions of this Order, may grant a licence to the applicant in Form-II on such terms and conditions, and for such period subject to such restrictions as the Licensing Authority may determine. No licence shall be granted for a period exceeding one year. A licence can be renewed for a period not exceeding one year at a time:

Provided that where the Licensing Authority refused to grant licence, it shall do so for reasons to be recorded in writing and that order shall be communicated to the applicant:

Provided further that the licensee may conduct any show or public entertainment only between 10.00 hrs.and 23.30 hrs. However, the licensing authority at his discretion may permit conducting of shows or public entertainment beyond 23.30 hrs. on special occasions not exceeding three such occasions in a year for each licence.

Provided further that additional conditions may be imposed by the Licensing Authority during the period of Licence for reasons to be recorded in writing and communicate the same to the licensee.

Clause 8

Seating arrangements:-

(1) The licensee shall not accommodate more than twenty persons per nine square meters in the place of public entertainment:

Provided that the entrance, passage, corridor, gangway and stage shall be deducted for the purpose of calculating the seating accommodation.

(2) There shall be an open space of not less than five feet wide on any two sides of the premises where live band or discotheque is performed.

(3) There shall be at least one emergency exit in addition to the normal doorway fitted with doors which open outwards.

(4) There shall be openings sufficiently wide enough to ensure good ventilation or there shall be provision for sufficient good air condition.

(5) One W.C. and one urinal separate for men and women each for every fifty persons or less shall be provided.

(6) Any live band performance within the licensed premises for conducting live band shall be conducted on a stage which shall be properly demarcated from the seating area. There shall be no inter-mingling of performers with customers/guests on or off the stage. There shall be a distance of at least five feet between the stage and first row of seating area.

Clause 9

Notice Board:- (1) Every licensee shall affix or cause to be affixed at some conspicuous place at the place of Public Entertainment a board of suitable size on which shall be written in Kannada and English, the name and address of the licensee and the period of licence.

(2) He shall also specify the seating capacity/maximum capacity of the premises conducting live band, Cabaret, Discotheque, as the case may be.

(3) He shall also exhibit at a prominent place in the premises a photo copy of the licence.

Clause 10

Renewal of Licence:- (1) Every application for renewal of the licence granted under this Order shall be made at least thirty days before the day on which such licence is to expire. The application shall be accompanied by the licence to be renewed and the amount of fee as specified in clause

(2) Where an application is made in accordance with sub-clause (1), the earlier licence shall be deemed to be in force till the renewal or refusal of such licence is communicated to the applicant.

(3) Application for renewal of a licence, not made in accordance with the provisions of this clause, shall be liable to be rejected by the licensing authority.

Clause 11

Licence shall terminate with the transfer of business:- *A licence granted under this Order for maintaining a place of public entertainment shall not be transferable or assignable to any other person. Where such person transfers or assigns his business to any other person or enters into an agreement with another person, involving his giving up of the conduct or control over the business, the licence granted to him shall stand terminated on and from the date of such transaction:*

Provided that in the case of death of the licensee, his heir or legal representatives may make an application within one month from the date of death to the Licensing Authority seeking continuance of the licence for the un-expired term of the licence. No fee shall be charged for such continuance of licence.

Clause 12

Prohibition of change of name:- *A licensee shall not make any change in the name of the establishment or use his premises or allow any other person to use the premises for the purpose of any other type of entertainment which he is not authorized under the licence.*

Clause 13

Power to stop music: *Without prejudice to the conditions specified in the licence, the Licensing Authority may, by a general or special order made in this behalf, direct that no music shall be played or allowed to be played during such time as he may direct.*

Clause 14

Suspension of licence: *If any person maintaining a place of public entertainment permits prostitution or permits persons to meet or remain in such place for the purpose of planning or carrying out an illegal activity or violates any of the conditions of this order, the licensing authority shall have the discretion to suspend the licence for such period as he may think fit and direct such person to close the place for such period as he may specify. The person to whom such direction is issued by the licensing authority shall comply with such direction. However, the period of suspension shall not exceed 30 days at a time.*

Clause 15

Procedure for cancellation of Licence: *No licence granted under this Order shall be cancelled until the holder of the licence has been given a reasonable opportunity of showing cause why his licence should not be cancelled.*

Clause 16

Inspection of Licensed Premises: *Every person maintaining a place of public entertainment shall, at all times allow free access to such place to the Licensing Authority or any police officer not below the rank of a Police Inspector having jurisdiction over the area or authorized by the Licensing Authority to hold inspection as deemed necessary to ensure and satisfy that the Licensee has complied with the provisions of this Order.*

Clause 17

Notice to the Licensing Authority: *Every person shall, as soon as he voluntarily closes the place of public entertainment in respect of which a licence has been granted under this Order, shall intimate such closure to the Licensing Authority.*

Clause 18

Fee: - Licensing Fee for every license per annum, shall be as below:

(i) Fresh License - Rs.20,000/-

(ii) Renewal - Rs.5,000/- "

The Restaurant Owners who have formed an association under the Societies Registration Act wish to challenge the said order of 2019. The

Association has approached you with the instruction to file a writ petition under Article 32 of the Constitution of India. The Association also wishes to contend that it is not necessary for the Association to take license for displaying the live band music in their restaurants and that such bands can perform even without a license under the 2005 Order.

Draft a writ petition under Article 32 of the Constitution of India, along with a short synopsis, challenging the said order of 2019 as being unconstitutional. List of *dates and events is not required.*

Question IV

On 1st of December 1992 three brothers X, Y and Z on hearing some sounds coming from what they considered to be their agricultural lands proceeded to the land. On the way another four relatives and friends also joined them.

On reaching the agricultural plot, they found A, B, C, D & E all standing in and about the said plot of land fully armed and cutting paddy which was growing on the said land. They tried to intervene and stop such removal of paddy. At that stage, they were attacked by A,B,C,D, and E whereupon they retreated somewhat but ultimately were surrounded and severely beaten up with sticks and agricultural implements.

In the course of the event 'X' was seriously injured and succumbed to his injury on the site itself. The other injured persons were removed and sent

to the local hospital by the police who had rushed to the site after receiving a frantic message that some incident was taking place in the village. Some members of the group lodged an FIR in the police station. All persons who had attacked the complainants were charge sheeted for commission of various crimes.

One of the person charge sheeted has also sustained serious injury on his person.

The defense taken in the course of the trial by the accused was that they were the owners of the land in question and were going about their job of cutting the paddy when they were attacked by X, Y, Z and others due to which they sustained injuries. Faced with the same they exercised their right to private defense.

The Trial Judge acquitted the accused for the commission of all offences except Section 148 of the Indian Penal Code for which he sentenced all of them to rigorous imprisonment for three years.

On appeal the High Court allowed the State's appeal. A, B, C & D were convicted under Section 302 read with Section 34 and were sentenced to rigorous imprisonment for life. E, F, G and H were convicted under Section 326 read with Section 34 of Indian Penal Code and were sentenced to undergo rigorous imprisonment for five years. The said accused A, B, C & D have approached you to prefer an appeal against the judgment of the High Court.

Certain other facts may be noted:-

(a) There was an existing dispute with regard to the plot of land in question between the accused on the one hand and the complainant group on the other . It appears that the complainant party was in possession of part of the said land and in respect of the balance, the accused persons were claiming title. Proceeding under Section 135 of the Criminal Procedure Code was pending before the Executive Magistrate at the relevant point of time. There was no proper demarcation between the land occupied by the complainant and the land purchased by the accused. Enmity between the two groups about the possession of the said land was, therefore, not in dispute.

(b) There were concurrent findings of fact arrived at by both the courts below that the accused were liable under Section 148 of IPC for forming unlawful assembly.

(c) The witness accounts were almost photographic in nature and matched each other perfectly even though admittedly they were running away from the place of occurrence in a state of panic.

(d) The injuries on the accused persons had not been explained by the prosecution.

(e) They were discrepancies in the story of the complainants. Whereas it was stated by the prosecution witness that they had approached the place of occurrence from the eastern side, the deceased was found on the northern side of the place of occurrence.

(f) As far as C was concerned, he was not involved in the land dispute between the parties. There is no mention in the First Information Report that C had exhorted others to attack and finish of the complainant group, even though in the course of the evidence such an allegation was made by the witnesses.

(g) As far as D is concerned the prosecution merely established that he inflicted a blow on the deceased leg which was not the cause of his death.

Prepare a criminal appeal petition, along with a synopsis, against the judgment of the High Court containing the grounds on which you challenge the High Court judgment. List of dates and events is not required.

Question V

Global Hospitality Ltd (GHL)runs a five star hotel in Indoor in which apart from rooms and restaurants there are various facilities including banqueting facility. The hotel obtains its electricity connection from the local electricity distribution company Southco which is run by the State.

Because of frequent power shortages, which was affecting its business, the hotel decided to purchase generator sets from Genco, a generator manufacturing company of international repute located in the United States of America. The terms and conditions on which the hotel was

obtaining electricity from Southco stated that no generator sets could be installed without the permission of Southco.

When the contract was signed between GHL and Genco it was stipulated that the contract was subject to permission being obtained from Southco. Even though no permission was forthcoming from Southco, a senior officer of GHL wrote a letter to Genco to the effect that the said condition stood deleted. However, no steps were taken by GHL to open a letter of credit in favour of Genco without which Genco was under no obligation to start manufacturing the generator under the contract.

Despite the same, Genco alleged that it had manufactured the generator and called on GHL to take delivery thereof. GHL pointed out that it had not open the letter of credit and, therefore, Genco should not have manufactured the genset. GHL refused to accept delivery of the genset.

The contract between Genco and GHL contained an arbitration clause to the effect that disputes arising out of or in relation to the contract would be referred to arbitration before a Tribunal of three persons, one each to be appointed by the parties and the Chairman to be appointed by the two nominated arbitrators. GHL took the defence that it could not lawfully purchase a generator without the permission of Southco and hence the contract had been frustrated and rendered impossible of performance. It also disputed that Genco had in fact manufactured the generator sets at all. The arbitration proceedings were held and by a majority of 2:1 GHL was directed to pay the price of the generator sets to AGC.

The said award has been upheld by the trial court as well as the High Court on appeal.

Draft a special leave petition, along with a synopsis, challenging the order of the High Court upholding the award in favour of Genco-. It may be assumed that Arbitration and Conciliation Act 1996 as amended up-to-date is applicable to the arbitration in question. List of dates and events is not required.

Statutory Provisions

Section 34 of the Arbitration and Conciliation Act which set out the ground on which the award may be challenged is set out below:-

Section 34 of THE ARBITRATION AND CONCILIATION ACT, 1996

34 Application for setting aside arbitral award. —
(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
(2) An arbitral award may be set aside by the Court only if—
(a) the party making the application furnishes proof that—
(i) a party was under some incapacity, or
(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was

in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
(b) the Court finds that—
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
(ii) the arbitral award is in conflict with the public policy of India.
Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.
(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.
(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

Question VI

On or about 15th of January 2019 one Manoj belonging to a political party by the name and style of Peoples Party of India visited his native village in Haryana to meet with his party workers in the light of the elections which were about to be held in the coming months. He visited the village to attend a meeting with his party workers. After concluding the meeting in the party office, when the said Manoj along with several party workers came out into the public street in front of the party office, they were attacked by several persons belonging to the opposite political party named the National Party of India. During the attack one of the members of the group belonging to the

National Party fired his pistol and shot Manoj. Manoj was hit with a bullet on his head and died on the spot. His party workers were also assaulted.

In the FIR which was filed against the assailants who were responsible for the death of Manoj, it was inter alia mentioned that a leader of National Party, one Babu Ram had been visiting the village from time to time in the run up to the election and had been giving public speeches exhorting the public to defeat the Peoples Party candidates. In the course of his speeches he had complained that he had come to learn that the workers of Peoples Party had been going around threatening the voters of the village with dire consequences if they did not vote for the Peoples Party. He had stated in the course of his public speeches that the National Party workers and he himself would not spare anybody from the opposite party who were intimidating the voters. The last of such meeting had taken place ten days prior to the incident.

Babu Ram had come to learn that the FIR filed against the assailants included reference to his political speeches. Apprehending that the local police might take action against him and anticipating arrest, he approached the High Court of the State praying for anticipatory bail under the provisions of Section 438 of the Code of Criminal Procedure 1973. In his application he contended that he was in no way responsible for the action taken by the local party workers.

Babu Ram was a well known journalist and TV commentator before he had joined the National Party and had become one of the State level leaders of

the party. He was highly educated holding a Masters Degree in Journalism and Mass Communication. He was about 50 years of age married with three children. His eldest son was 28 years old and was married with a family of his own. He was working as a teacher. The youngest son was 18 years old and completed his education. His second son was 24 years old and had just taken a job in a commercial house in the State capital. Babu Ram himself was a resident of the State capital and had his own apartment in which he resided along with members of his family. He had substantial assets mostly in the form of fixed deposits and mutual funds.

Babu Ram had never been convicted in any court in respect of any cognizable offence and his moral character was not considered to be compromised in any manner. He was in charge of the campaign of his party in several districts of the State comprising of almost 1/3 of the districts of the State.

Peoples Party was at that point of time the party in power in the State in question and the National Party was in opposition therein. In the course of his campaigns the Home Minister of the State who was a member of the Peoples Party was known to have made caustic remarks against Babu Ram including a statement which had been made a couple of months back that he would have Babu Ram behind bars before the date of the election.

The High Court rejected the application for anticipatory bail. The High Court has in its judgment has inter alia taken the view that there were no

exceptional or unusual circumstances involved in the case in question which would require the court to grant anticipatory bail under Section 438 of CRPC.

Thereupon Babu Ram has approached you to prepare an appropriate appeal petition against the order of the High Court. You are required to draft the grounds on which, according to you, the judgment rejecting the anticipatory bail is wrong and why anticipatory bail should be granted to Babu Ram in the facts and circumstances of the case.

SUPREME COURT OF INDIA

ADVOCATE-ONRECORD EXAMINATION

JUNE, 2019

QUESTION PAPER III

ADVOCACY AND PROFESSIONAL ETHICS

TOTAL MARKS: 100

TIME ALLOWED 3 HOURS

A. All questions carry equal marks of 20.
B. Answer any four questions out of questions 1 to 10.
C. Question 11 is compulsory.
D. Discussion of decided cases and citation of relevant case will have added value.

1. "The 'sub-judice' principle is a gag on freedom of speech and expression". "Subjects and issues involved in cases which are sub-judice are not to be freely commented upon." Examine these statements constitutionally and legally. Is it a professional obligation to defend freedom of speech in sub-judice matters? Or Is it a breach of professional ethics to make and disseminate views on sub-judice matters?
2. What is the distinction between morality and professional ethics? It is said morals are customs established by a group of individuals or community and ethics defines the character of an individual. Explain how character is relevant to professional ethics and vice versa.
3. It is often said that the adversarial system of administration of justice is responsible for conflict of values, as it renders the legal profession a mere

mouth piece or a hired gun of the respective parties to the litigation process. Examine this with illustrations.

4. What according to you are the unethical practices that are bound to affect the high quality and integrity of legal services in the Supreme Court of India? Is there a need to strengthen the Bar Council of India Rules in this regard?
5. As long as determined law breakers, high profile offenders and unrepentant criminals are extended lavish professional services, support and guidance, the Criminal Justice system will continue to be lopsided and corroded. Do you agree with this proposition? Examine the scope of professional obligations and ethics with reference to the Constitution and decided cases.
6. Critically examine the provisions of the Advocates Act relating to professional and other misconduct. In the light of the principles enunciated in the decided cases, do you suggest any fundamental changes in the law to advance higher standards of professional ethics?
7. What are the ethical issues involved in the use of social media, accessing, storing and use of privileged information by Advocates? Given the nature of social media and the intricate problems involved in its regulation, do you consider it appropriate that there should be special rules for lawyers in this domain.
8. In the "Wealth of Nations" Adam Smith makes the famous observation that. "it is not from the benevolence of the butcher, brewer or the baker, that we expect our dinner but from their regard to their own interest" Adam Smith explains how each one of them, though with their eyes solely to their own advantage, produces by means of an invisible hand an addition to the public good. Can it be said that in contrast to Smith's tradesmen, it is part of the lawyer's job to be directly concerned with the public good and the rules of conduct should provide for this?
9. It is said that law is a compromise between moral ideas and practical possibilities. Can it be said that the same is true of legal ethics, particularly in

the midst of competing responsibilities to clients, courts and to the society generally? Is a lawyer's normal human desire to provide for herself and her family a relevant consideration?

10. Examine the fitness and relevance of the demand that no person can be admitted to the practice of law without passing a test for "character and fitness." If you were to be the examiner, what would you suggest for the conduct of such a test?

11. Write short notes on any two of the following:

(a) The meaning of the words "reason to believe""occurring in Section 35(1) of the Advocates Act, 1961.

(b) The scope of Rule (10) of Order IV of the Supreme Court Rules 2013, conferring power on the Supreme Court to remove the name of Advocate-on-record from the Register of Advocates maintained by the Court, vis-a-vis the disciplinary powers under the Advocates Act, 1961.

(c) "The jurisdiction of the Supreme Court under Article 129 for initiating contempt proceedings and the power under Section 35 of the Advocates Act, 1961 are different."

(d) The judgments of the Supreme Court in:

(i) C. Ravichandra Iyer vs. Justice A.M. Bhattacharjee (1995) 5 SCC 457;

(ii) Rajiv K. Garg vs. Shanti Bhushan (1995) 1 SCC 3.

Supreme Court

Advocates-on-Record Examination – June, 2019

Question Paper-IV (Leading Cases)

Total Marks: 100 **Time Allowed: 3 hours**

Attempt any five questions. All questions carry equal marks.

1. What is the scope of power with the High Court under Article 226 of the Constitution in directing investigation by any specialized agency? Would the High Court be restricted by statutory requirements in exercise of its jurisdiction under Article 226? What is the effect of the exercise of a power and transfer of investigation to an agency other than the state police by the High Court under Article 226 of the Constitution on the federal character of our Constitution? Discuss with reference to State of West Bengal vs. Committee for Protection of Democratic Rights, (2010) 3 SCC 571.

2. The RTI Act brought about revolutionary change in the individual's right to information and has its inbuilt safeguards and limitations. There are also restrictions in the Official Secrets Act, 1928 and Conduct Rules governing government servants on release of information held by government. What is the impact of Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors., (2011) 8 SCC 497 on the nature of information to be granted under the RTI Act to an individual?

3. The Supreme Court in Rupa Ashok Hurra vs. Ashok Hurra & Anr., (2002) 4 SCC 388 explained the contours of the inherent power of the Court to remedy injustice

and referred to entertain a curative petition. In the 2013 Rules, the Supreme Court has included Order XLVIII on Curative Petition. Discuss the contours of curative jurisdiction in Rupa Ashok Hurra vs. Ashok Hurra, (2002) 4 SCC 388 and its interplay with A.R. Antulay vs. R.S. Nayak & Anr., (1988) 2 SCC 602, if any.

4. In Dilip K. Basu vs. State of West Bengal & Ors., (1997) 1 SCC 416, the Court gave directions regarding the rights of an accused. Some of these already find mention in the Cr. P.C. 1973. What is the interplay and overlap of the directions in D.K. Basu with existing Cr. P.C. 1973 provisions and the effectiveness of remedy provided by D.K. Basu's case in the event of breach of such directions in the decision with illustrative examples, if available?

5. What are the contours of Article 21A of the Constitution and the Right to Education Information Act as discussed in both the majority view and the partial dissent in Society for Un-aided Private Schools of Rajasthan vs. Union of India & Anr., (2012) 6 SCC 1 ?

6. Special Reference 1 of 2012, (2012) 10 SCC 1 was considered by the Supreme Court though a review petition in the 2G case, *i.e.* Centre for Public Interest Litigation vs. Union of India, 2012 (2) SCALE 180 was withdrawn. What is the impact of the Special Reference decision on the allocation of natural resources and contracts by government and the scope of judicial review of economic policy and financial matters post the judgment.

7. Vodafone International Holdings BV vs. Union of India, (2012) 6 SCC 613 dealt with tax demands on a foreign corporation. Is the utilization of corporate structures for tax avoidance permissible? Please clarify the distinction between tax avoidance and tax evasion as explained in the decision.

8. In Maneka Gandhi vs. Union of India, (1978) 1 SCC 248, the Court changed the concept of consideration of fundamental rights in Chapter III of the Constitution and took a different view than A.K. Gopalan vs. The State of Madras, Union of India, AIR 1950 SC 27. Please discuss the salient features of Maneka Gandhi's case in terms of its interpretation of Part III – Fundamental Rights and the concept of procedure established by law vis-à-vis due process of law and the interplay of fundamental right of the citizens.