

IN THE SUPREME COURT OF INDIA
Advocate-on-Record Examination June-2015

Paper-I

PRACTICE AND PROCEDURE

Time: Three Hours

Total Marks: 100

- | | | Marks |
|----|---|--------------|
| 1 | (a) What is the difference between a Writ of Mandamus and a Writ of Certiorari ?
Please frame the prayers in the case of both the aforesaid Writs. | 15 |
| | (b) What is the difference between the scope of power conferred on the Supreme Court under Article 32, and the power exercised by the High Courts under Article 226 ? | |
| 2. | (a) Is the power exercised by the designate of the Chief Justice under Section 11 of the Arbitration and Conciliation Act, 1996 an administrative or judicial power ?
Please explain with reference to relevant case law. | 10 |
| | (b) Does the decision passed by the designate of the Chief Justice under Section 11 have precedential value ? | |
| 3. | Explain the jurisdiction of the Supreme Court under :- | 15 |
| | (a) Article 139(A) of the Constitution.
(b) Section 25 of the C.P.C.
(c) Section 406 of the Cr.P.C. | |
| 4. | Explain the concept of a "Curative Petition", with reference to relevant case law. Also, set out the procedural requirements of a Curative Petition with reference to relevant provisions of the Supreme Court Rules. | 10 |
| 5. | If a two Judge Bench of the Court while hearing a case is of the opinion that an earlier decision of a co-ordinate bench requires reconsideration, what is the procedure to be followed ? Would the procedure change if the earlier decision was by a | 5 |

three Judge Bench or a five Judge Bench ?

6. Answer any five :-

20

(a) What is the period of limitation for filing a Special Leave Petition?

What is the Court Fee payable on a Special Leave Petition?

Is there any difference in the Court Fee payable in the case of a civil and criminal matter?

(b) If your client is directed to make a deposit of an amount with the Registrar of the Court, can a commission be recovered on the said amount ? Please explain with reference to relevant provisions from the Supreme Court Rules, 2013.

(c) Explain the requirement of the Verification clause with reference to the relevant Supreme Court Rules.

In the event that your client does not understand English, is it necessary to certify that the contents have been explained to the deponent in the vernacular language?

(d) In a case where Death Sentence has been confirmed or awarded by the High Court, what is the minimum number of Judges prescribed by the Supreme Court Rules for hearing the appeal with respect to the same ?

(e) If an appeal is dismissed in default of the appearance of the Advocate on Record, what is the period of limitation prescribed by the Supreme Court Rules for presenting a petition for restoration of the appeal?

(f) Where the High Court grants Certificate of Fitness under Article 132 (1), or Article 133 (1), or Article 135, what is the period of limitation for filing the appeal before the Supreme Court ?

(g) If a petition is filed by a minor, what are the procedural requirements to be followed ?

(h) What is the period of limitation for filing an appeal from an order passed by the National Consumer Disputes Redressal Commission?

What is the Court Fee payable on filing of such an appeal ?

Is any amount required to be deposited along with the Appeal ... Explain with reference to relevant Supreme Court Rules.

7. If it appears to the President of India that a question of law or fact has arisen which is of such public importance that it is expedient to obtain the opinion of the Supreme Court, what are the provisions made by the Constitution for this purpose ? 10

8. (a) What is the concept of an Advocate being an "Officer of the Court" ? 15
(b) What are the duties and functions of the Registrar ?
(c) What is the nature of business transacted by a Chamber Judge of the Supreme Court ?

7/c

SUPREME COURT OF INDIA

ADVOCATES-ON RECORD EXAMINATION, 2015

PAPER -II
[DRAFTING]

TOTAL : 100 MARKS

TIME : 3 HOURS

Instructions :

1. Attempt any four questions.
2. Each question carries equal marks.
3. Candidates need not draft the cause title of the facts but only the grounds and prayers.
4. 30 minutes extra time shall be provided for reading the question paper.
5. Question No. 2 at Page 21 of the Question Paper should be read as Question No. 8

7. OK (1)

Question No: 1

Ms. AB is an employee of XYZ India, the Indian branch of a global environmental group. In February 2015, Ms. AB in the course of her employment, was to travel to France from Delhi to speak to French parliamentarians on the issue of rights of Indian tribal communities adversely impacted by a coal mining project in central India partly financed by a French company. She was however detained at the airport just as she was about to board her flight. An Immigration Officer approached her and told her that she could not travel outside India. Her baggage was then retrieved from the airplane, and an endorsement to the effect "off load" was made on her passport. The only information tendered to her was that she was detained because her name was included in the "data base" of individuals who were not allowed to leave the country.

Ms. AB then moved the High Court of Delhi under Art.226 of the Constitution, contending that the detention had violated her fundamental right to travel, free speech and expression and to practice her profession and that the State could not impose travel restrictions on its citizens without due authority of law. The respondent, Union of India, countered that its action of issuing Look Out Circulars was backed by the necessary authority, contained in an Office Memorandum. As per Clause 8 of the OM, LOCs could be issued against persons falling in the following categories: "counter intelligence suspects, terrorists, anti-national elements, etc. in larger public interest". In this case, since Ms. AB intended to articulate her criticism of Indian economic policy before a committee of foreign parliamentarians, her act could only be construed as an anti-national activity. It was submitted that such an act had the potential of adversely impacting India's economic policies and prospects at a time it was looking to attract FDI in infrastructure and manufacturing sector. The main intentions of XYZ India was to agitate in coal producing regions. Specific intelligence inputs revealed that XYZ India planned to "take-down" nearly 50000 MW thermal projects by protests funded by foreign sources. It was further submitted that the funding pattern of XYZ International was opaque, and because of that reason it had been placed in the proscribed list of donors under S.46 FCRA. XYZ India had also violated income tax laws. It was submitted that the core foreign policy objective of some countries was issuing annual reports of assessments of human rights violations in other countries, and that these reports were prepared using testimonies of local activists of those countries. These reports are then used to impose sanctions against Countries of Particular Concern (CPC). India has come close to being graded as a Country of Particular Concern. CPC countries have trade, arms and investment sanctions imposed against them and also these reports are used a factor in trade negotiation with those countries. Since the testimony of local activists is a crucial part of such reports, and since such reports cannot be contested by the Government of India, the testimony of Ms. AB would have a dangerous effect of harming India's interests and serving the foreign policy interests of other nations. The deposition of Ms. AB would thus be prejudicial to national interest.

The High Court of Delhi in its judgment held that the decision to detain Ms. AB was illegal and violated her right under Art.21 and Art. 19(1)(a) of the Constitution. Relying in *Maneka Gandhi v Union of India* and *Satwant Singh Sawhney vs D. Ramarathnam, Asstt. Passport Officer, Government of India, New Delhi* & Ors it upheld the right to travel abroad as a fundamental right. It was held that the right to free speech and expression included the right

to dissent and criticize and that travelling abroad and espousing views that may be contrary to the developmental policies of the government would not put a person in the anti-national category. It was observed that while the respondent did not approve of the view expressed by civil rights activists in foreign forums which portrayed, according to the respondent, an inaccurate picture of the state of India's human rights, Ms. AB's right to travel abroad and interact with relevant stakeholders could not be impeded only because it did not match the policy perspective of the executive. The fact of the executive disagreeing with the views of Ms. AB on the rights of tribal communities impacted by a coal mine cannot be a reason to prevent her from exercising her fundamental right to travel abroad and thereby, in effect, disable her from expressing her views on the subject and stifling dissent. It was held that the core aspect of democracy is the freedom of an individual to be able to freely operate within the framework of the laws enacted by the Parliament.

The actions of the respondent could not be construed as a reasonable restriction which would pass muster of Art. 19(2) of the Constitution. Reasonable restrictions spoken of in Article 19(2) of the Constitution do not advert to anti-national activities. For anti-national activities to be brought within the limitation of Article 19(2), it would have to have a close nexus with the security of the State. Relying on *Romesh Thappar Vs. State of Madras* it was observed that security of the State can only be an "aggravated form of prejudicial activities" which endangers the very existence of the State or in the very least threatens the life and limb of its citizens. Therefore, if the expression, "anti-national elements" found in clause 8 of the 2010 O.M. is to be brought within the four corners of clause (2) of Article 19, its meaning will have to be confined to activities of persons who fall in the category of "counter intelligence suspects" and/ or terrorists.

It was further held that even if it were accepted that respondents could have issued an LOC for the stated purpose, by sourcing its power under clause 8 of 2010 O.M., the exercise of the power in Ms. AB's case was fatally flawed, as the expression 'anti-national' takes colour from the preceding term/expression. Since the clause confers exceptional power on the State, which is to be exercised in the larger national interest, it cannot be given a meaning wider than the purpose for which the power is vested in the State functionaries. Therefore, a person falling in the category of an anti-national element, in the absence of any other guideline contained in the 2010 O.M., can only be that person, who projects, a present and imminent danger to the national interest. Travelling abroad and espousing views, without any criminal intent of the kind adverted to above, cannot put Ms. AB in the category of an anti-national element. There was thus no basis for the respondents to issue a LOC qua Ms. AB. The LOC qua Ms. AB was ordered to be quashed and set aside, the endorsement "off load" in the passport was to be expunged and the respondent were to remove Ms. AB's name from the data base of individuals not permitted to leave the country.

Ms. AB then approached the Passport Authority with an application to expunge the remark "off loaded" from her passport and also furnished a certified copy of the judgement to the Authority. She also approached the Ministry of Home Affairs to remove her name from the data base.

on behalf of

3

As the Union of India, draft a Special Leave Petition against the judgment of the High Court. Along with the SLP, also draft an application for stay of the operation of the judgement explaining the urgency of the matter and the need for a stay.

Relevant Law:

Article 19-

19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Ms.AB, a senior IAS officer along with her husband Mr.BA, another senior IAS officer, attended a dinner party of a colleague in July 2014. There were 20-25 other couples, including Mr. AC, the Director General of Police, Delhi and his wife. Around 10 PM in the night, Ms.AB was sitting with a group of other women Mr. AC then came and sat in the vicinity, next to few other ladies. Soon, all the women sitting to the right and left of him started getting up and leaving.

Mr. AC then called out to Ms. AB and said, "Ms.AB, come and sit here, I want to talk to you about something." She got up from her chair and made to sit down on the chair next to him. However, Mr. AC suddenly pulled the chair she was going to sit on very close to his chair. Ms. AB then pulled the chair away and tried to sit down again, however Mr. AC again repeated his actions. Feeling uncomfortable, Ms.AB immediately left and went back to her original seat. Mr. AC then came and stood directly in front of her, with his legs about four inches from her knees. He made an action with the crook of his finger asking her to get up and come along with him. Ms. AB strongly objected to his behavior and told him to get away from her. He, however, paid no heed to her objection and again ordered her to get up and come with him. Ms. AB, seeing that Mr. AC had blocked the way and that she could not get up without her body touching his body, pushed her chair back, got up and turned to leave. Then Mr. AC slapped her posterior on the full presence of the other women and guests.

Ms.AB then informed a Police Officer, who had then apprised the Governor of Delhi. Since it did not result in the registration of a case against Mr. AC, Ms. AB then formally lodged a FIR ten days after the incident. A few months later her husband Mr. BA lodged a complaint in the Court of the Chief Judicial Magistrate for the same offences, alleging inter alia that Mr. AC being a high ranking police officer, the Delhi Police had not arrested him and that they had not conducted a fair and impartial investigation, and he had filed the complaint fearing that the police would conclude the investigation treating the case as untraced.

Mr. AC then moved the High Court of Delhi under S.482 CrPC for quashing the FIR and the complaint. He contended that there was complete absence of *mens rea* or guilty mind for outraging the modesty of Ms. AB and such an act could not possibly be intended to be done in front of so many other people, and furthermore the sudden accidental slip even if indulged in by the petitioner was to be ignored in terms of S.95 of IPC.

By its order dated 27.04.2015, the High Court of Delhi quashed the FIR and the complaint. The following reasons were given by the High Court for quashing the FIR:-

1. The allegations did not disclose any cognizable offence, as there was no *mens rea*. The petitioner did not intend to outrage the woman's modesty, nor did he do it with the knowledge that she would be outraged. The reaction of the woman alleging harassment is not relevant for determining the existence of *prima facie* case against the accused, as the culpable intention of the accused is the crux of the matter.
2. The nature of the harm allegedly caused to Ms. AB did not entitle her to complain about the same, in view of S.95, IPC as no person of ordinary sense and temper would complain of such a harm.

- 3. The allegations were unnatural and improbable
- 4. The Investigating Officer did not apply his mind to the allegations made in the FIR, for if he had done so he would have found that there was no reason to suspect commission of a cognizable offence, which was the sine qua non for starting an investigation under S.157 CrPC
- 5. There was an unreasonable and unexplained delay of 10 days in filing the FIR.

On behalf of

As Ms. AB, file a special leave petition against the judgment of the High Court of Delhi.

Relevant sections of the Indian Penal Code, 1860:

S. 95. Act causing slight harm

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

S.166 A. Whoever, being a public servant,-

- a. knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other, or
- b. knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
- c. fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable 2 of 1914. offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

S. 354 A. Sexual Harassment and Punishment for Sexual Harassment

- 1. A man committing any of the following acts—
 - i. physical contact and advances involving unwelcome and explicit sexual overtures; or

- ii. a demand or request for sexual favours; or
- iii. showing pornography against the will of a woman; or
- iv. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Relevant sections of the Code of Criminal Procedure, 1973

S. 157. Procedure for investigation

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that— (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements to that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

Mr. A is a businessman who married Ms. B, a housewife. After a few years of marriage, Mr. A started a relationship with Ms. C, a Public Relations officer who worked in the Company founded by Mr. A. Ms. C was aware of the fact that Mr. A is a married man. Mr. A promised Ms. C he would divorce his wife, Ms. B, and marry Ms. C instead. Ms. C began openly dating Mr. A and left her job as a Public Relations officer.

Ms. C would go to Mr. A's house in Mayur Vihar, and gradually began living there. Ms. C became pregnant as a result of her relationship with Mr. A, but Mr. A insisted on Ms. C having an abortion. Mr. A beat her when she refused to have the abortion, leading to birth of a premature baby girl (Baby D). Mr. A refused to marry Ms. C. Ms. C was devastated by these developments, and she left the Mayur Vihar flat with the baby.

Ms. C and Baby D approached a Magistrate's court claiming Residence, monetary relief for loss of earnings, and compensation under the Protection of Women from Domestic Violence Act, 2005 ("PWDVA"). The Magistrate's Court referred the matter for mediation, where Mr. A offered to take custody of Baby D. However, Ms. C refused on the grounds that the child is a young girl who needs her mother. Ms. C also submitted that Mr. A has perpetrated physical violence on her and she does not trust him to take care of the child.

The Magistrate's Court observed that as Ms. C was aware of the fact that Mr. A was a married man, she should have not entered into a relationship with him. The Court observed the fact Ms. C entered into a relationship with a married man speaks of Ms. C's bad character. Further, as Mr. A was not otherwise qualified to enter into a legal marriage with Ms. C, they were not in a 'domestic relationship'. The Sessions Court upheld this order of the Magistrate's court. The High Court upheld the order of the lower court by referring to *D. Velusamy vs. D. Patchaiammal* (2010) 10 SCC 469, wherein the Supreme Court laid down the following tests for determining whether a couple is in a 'relationship in the nature of marriage' or not:

- (a) *The couple must hold themselves out to society as being akin to spouses;*
- (b) *They must be of legal age to marry;*

8

- (c) *They must be otherwise qualified to enter into a legal marriage, including being unmarried;*
- (d) *They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.*

The High Court also referred to *IndraSarma vs. VKV Sarma* 2013 (14) SCALE 448, where the Supreme Court held that “...the Appellant, having been fully aware of the fact that the Respondent was a married person, could not have entered into a live-in relationship in the nature of marriage.” As in *IndraSarma* the Appellant knew the Respondent was a married man, the SC held that the relationship would not fall within the definition of a “domestic relationship” under section 2 (f) of the PWDVA

Ms. C and Baby D approach you to file an appeal against the order of the High Court of Delhi in the Supreme Court on behalf of Baby D. Baby D is now a five year old girl. Ms. C submits that Baby D has an independent right to reliefs under the PWDVA and its rights are not concerned with the fact of Mr. A's marriage.

Relevant provisions under PWDVA are:

Section 2 (b) of the PWDVA defines “child” to mean “any person below the age of eighteen years and includes any adopted, step or foster child”.

Section 2 (f) of the PWDVA defines “domestic relationship” to mean “a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”.

Section 12 – Application to Magistrate – (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act;

Section 19 – Residence orders – (1) While disposing of an application under sub section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order –

9

- (a) Restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) Directing the respondent to remove himself from the shared household;
- (c) Restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) Restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) Restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- (f) Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

Section 20 – Monetary reliefs – (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to –

- (a) The loss of earnings;
- (b) The medical expenses;
- (c) The loss caused due to the destruction, damage or removal of any property from the control of the aggrieved persons; and
- (d) The maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force.

Section 22 – Compensation orders – In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass

10

an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

Draft the SLP for Baby D through a next of friend to represent the child. Baby D seeks Residence, Maintenance and Compensation under the PWDVA. Also draft an application on behalf of the child Baby D for leave to appeal to the Supreme Court as she was not a party to the original application under the PWDVA

Question No 4

11

Question on Comity of Courts and International Commercial Arbitration

AXN, a company registered in Mauritius, entered into an agreement with MTV, a company based in Singapore, on 25.03.2012 regarding the television and media rights pertaining to the Indian Football League (a country league football championship) to be held in India from October, 2013 to December, 2013. Under that agreement, MTV was supposed to pay Rs 450 crores to AXN as facilitation fees and any dispute under the agreement was to be referred to the International Chamber of Commerce ('ICC') for arbitration to be held in Singapore before a single arbitrator. The agreement further contained a clause that no party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute, until such matter shall have been submitted to arbitration provided therein, and then only for the enforcement of the arbitrator's award.

On 25.12.2012, MTV wrote to AXN annulling the agreement on the ground that it was voidable due to misrepresentation and fraud. On 28.12.2012, acting under the agreement, AXN requested for arbitration to ICC, Singapore, which issued notice to MTV to file its response to the request for arbitration made by AXN. Meanwhile, on 30.12.2012 MTV filed a suit in Bombay High Court for a declaration that since the agreement stood annulled, AXN was not entitled to invoke the arbitration clause in the agreement and also sought temporary injunction against AXN from continuing with the arbitration proceedings under the ICC:

On 02.02.2013, a bench of Single Judge of the Bombay High Court dismissed the suit on the ground that it was for the arbitrator to decide whether the agreement was void on account of fraud and misrepresentation and the Court could not interfere in matters governed by the arbitration clause. On the issue of jurisdiction, the Single Bench observed the Bombay High Court had jurisdiction to entertain the suit, by virtue of Section 9, Code of Civil Procedure, 1908, whereby the Courts in India have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is expressly or implied barred. Since no decision of a foreign court existed in the instant case, due to which the Indian Courts should refrain from exercising their jurisdiction, it was not affected by the rule of comity of courts, wherein the Courts of one State or jurisdiction will give effect to the laws and judicial decisions of another State, out of deference and mutual respect. However, the Court held that such jurisdiction ought to be exercised in light of Sections 44 and 45 of the Arbitration and

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Conciliation Act, 1996, wherein when a judicial authority is seized of a matter in respect of which parties have made an agreement referred to in Section 44, shall at the request of one of the parties, refer the parties to arbitration, unless the said agreement is null and void, inoperative or incapable of being performed. Accordingly, the Court referred the matter to arbitration.

On appeal against the order of the single judge, the Division Bench of the Bombay High Court set aside the order and passed an order of temporary injunction restraining the arbitration by ICC on 12.12.2013. The Division Bench held that the impugned agreement was void under the Indian Contract Act, 1872 for being against the public policy, insofar as it restricted the right of the parties to approach the Courts for appropriate relief. It was also void for being an agreement in restraint of the legal proceedings, in light of Section 28 of the Indian Contract Act. The Division Bench also held that the only the Court can go into the allegations of fraud and misrepresentation, which cannot be decided by the arbitrator.

Against the order of the Division Bench of the Bombay High Court, AXN has approached the Supreme Court of India, via Special Leave Petition under Article 136 of the Constitution challenging both the jurisdiction of the Bombay High Court to entertain the suit as well as the grant of temporary injunction against AXN to proceed with arbitration under ICC.

Drapt the SLP under Art 136 of the Const in behalf of AXN
The relevant laws in this regard are:

Section 9, CPC: Courts to try all civil suits unless barred.

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II].- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]

Section 44, Arbitration and Conciliation Act, 1996:

44. *Definition.- In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960-*

(a) *in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and*

(b) *in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.*

45. **Power of judicial authority to refer parties to arbitration.**- *Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.*

Section 23, Indian Contract Act, 1872: 23. What consideration and objects are lawful, and what not

The consideration or object of an agreement is lawful, unless –

It is forbidden by law; or

is of such nature that, if permitted, it would defeat the provisions of any law, or

is fraudulent; or involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

28. Agreements in restraint of legal proceedings, void -

Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to the extent.

Exception 1: Saving of contract to refer to arbitration dispute that may arise. This section shall not render illegal contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subject shall be referred to arbitration, and that only and amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2: Saving of contract to refer question that have already arisen – Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to reference to arbitration.

Ques no. 5

One Ms.X having practised for fifteen years and also worked as special public prosecutor for CBI, got selected as Additional District and Session Judge. Seeing her performance, high court gave her additional responsibility of most sensitive cases of crime against women, sexual abuse of children and designated her as Special Judge. She was also handed over the charge of the Chairman of Vishakha Committee. Unfortunately one high court Judge started sexually harassing her. He called her through wife of another officer to dance on an item song on his 25th marriage anniversary. She politely refused but in the ongoing function he whispered sexually colored remarks in her ear. The lady judge clearly reacted to him that his behaviour is unwelcome but he continued to sexually harass her on other occasions. As a result, she clearly ignored the high court Judge and showed her anguish to him for his unwelcome behaviour and gestures. Knowing this that the lady judge will not succumb to his illegal demands, he being the administrative and portfolio judge started victimizing the lady judge through district judges. The lady boldly faced all the victimizations and harassments and devoted herself completely in disposing the backlog of cases. On this, the high court judge became more vindictive and agitated. The high court judge was aware of the fact that the husband of the lady is working in another city and it would be difficult for him to visit his wife more frequently. The high court judge was also aware of the fact that both the daughters of the lady judge are very intelligent and under compulsion and to secure the future of her daughters, she will either keep her daughters in the present place of posting or send them to the husband's place and will go alone to the remote place to continue with her job. Using his administrative powers got the lady judge transferred to a very remote place in mid academic session of her class 12 daughter against the transfer policy. The lady judge filed two representations, one for her extension till the completion of her daughters academic session and another to transfer to any place where she can find a good educational institution for her class 12 daughter. The lady judge was well aware of the fact that as per the transfer policy, her representations were permitted only if they

were recommended by the portfolio judge. Therefore, finding no way she called the high court judge and prayed to recommend her representation. She pleaded not to harass her anymore as he is like her elder brother but the high court judge threatened her that as she had not fulfilled his desires, he will now spoil her career. Meantime, the lady judge on the advice of another senior Judges of the same high court made serious efforts to meet Chief Justice of the high court. However, the private secretary of the Chief Justice every time informed her that Chief Justice had refused to meet her. Next day, she received refusal of both her representations from the high court with the directions to immediately join the place of transfer. Left with no option, the lady judge resigned under the threat given by the high court judge, the hostile atmosphere and consequential adversities.

The lady judge even after resignation made serious effort to meet Chief Justice of high court so that she can appraise the factual situation and the sexual harassment she had faced to the Chief Justice, but everytime she was informed that Chief Justice was not ready to meet her. Two days later, she received acceptance of her resignation and then she came to her house. When her family came to know about her forceful termination for not submitting herself to her superior high court Judge, the elders of the family advised her to report the matter to Chief Justice of India.

The Hon'ble Chief Justice of India after receiving letter by a lady judge, immediately directed the Chief Justice of the high court to report. The Chief Justice of that high court on receiving the letter from Chief Justice formed a two member committee of the same high court judge to probe into that matter to probe, overruling the procedure laid down by Hon'ble supreme court as -"In house procedure"

The two member committee called the lady judge and her husband to depose with the direction not to make any inquiry from anyone except secretary of the committee. The lady judge replied and challenged the constitution of two member committee

. She also annexed the copy of In house procedure along with her letter but the committee paid no heed to her letter and send her another letter saying that last opportunity was being given to her. The committee continued to record the statement of High court judge and other judges who were harassing her in connivance.

The in house procedure laid down by Hon'ble Supreme court withreference to Judges of the High Court, is accordingly being extracted hereunder:

" HIGH COURT JUDGE:

A complaint against a Judge of a High court is received either by the Chief justice of that High Court or by the Chief Justice of India (CJI). Some times such a complaint is made to the President of India. The complaints that are received by the President of India are generally forwarded to the CJI. The Committee suggests the following procedure for dealing with such complaints:-

- (1) Where the complaint is received against a Judge of a High Court by the Chief Justice of that High Court, he shall examine it. If it is found by him that it is frivolous or directly related to the merits of a substantive decision in a judicial matter or does not involve any serious complaint of misconduct or impropriety, he shall file the complaint and inform the CJI accordingly. If it is found by him that the complaint is of a serious nature involving misconduct or impropriety, he shall ask for the response thereto of the Judge concerned. If on a consideration of the allegations in the complaint in the light of the response of the Judge concerned, the Chief Justice of the High Court is satisfied that no further action is necessary he shall file complaint and inform the CJI accordingly. If the Chief Justice of the High Court is of the opinion that the allegations contained in the complaint need a deeper probe, he shall forward to the CJI the complaint and the response of the Judge concerned along with his comments.
- (2) When the complaint is received by the CJI directly or it is forwarded to him by the President of India the CJI will examine it. If it is found by him that it is either frivolous or directly related to the merits of a substantive decision in a judicial matter or does not involve any serious complaint of misconduct or impropriety, he shall file it. In other cases the complaint shall be sent by the CJI to the Chief Justice of the concerned High court for his comments. On the receipt of the

complaint from CJI the Chief Justice of the concerned High court shall ask for the response of the judge concerned. If on a consideration of the allegations in the complaint in the light of the response of the Judge concerned the Chief justice of the High Court is satisfied that no further action is necessary or if he is of the opinion that the allegations contained in the complaint need a deeper probe, he shall return the complaint to the CJI along with a statement of the response of the Judge concerned and his comments.

(3) After considering the complaint in the light of the response of the judge concerned and the comments of the Chief justice of the high court, the CJI, if he is of the opinion that a deeper probe is required into the allegations contained in the complaint, shall constitute a three member Committee consisting of two Chief justices of High Courts other than the High Court to which the Judge belongs and one High Court Judge. The said Committee shall hold an inquiry into the allegations contained in the complaint. The inquiry shall be in the nature of a fact finding inquiry wherein the Judge concerned would be entitled to appear and have his say. But it would not be a formal judicial inquiry involving the examination and cross-examination of witnesses and representation by lawyers.

(4) For conducting the inquiry the Committee shall devise its own procedure consistent with the principles of natural justice.

(5)(i) After such inquiry the Committee may conclude and report to the CJI that (a) there is no substance in the allegations contained in the complaint, or (b) there is sufficient substance in the allegations contained in the complaint and the misconduct disclosed is so serious that it calls for initiation of proceedings for removal of the Judge, or (c) there is substance in the allegations contained in the complaint but the misconduct disclosed is not of such a serious nature as to call for initiation of proceedings for removal of the Judge.

(ii) A copy of the Report shall be furnished to the judge concerned by the Committee.

(6) In a case where the Committee finds that there is no substance in the allegations contained in the complaint, the complaint shall be filed by the CJI.

(7) If the Committee finds that there is substance in the allegations contained in the complaint and misconduct

disclosed in the allegations is such that it calls for initiation of proceedings for removal of the Judge, the CJI shall adopt the following course:-

- (i) the Judge concerned should be advised to resign his office or seek voluntary retirement;
- (ii) In a case the judge expresses his unwillingness to resign or seek voluntary retirement, the chief justice of the concerned High Court should be advised by the CJI not to allocate any judicial work to the judge concerned and the President of India and the Prime Minister shall be intimated that this has been done because allegations against the Judge had been found by the Committee to be so serious as to warrant the initiation of proceedings for removal and the copy of the report of the Committee may be enclosed.

(8) If the Committee finds that there is substance in the allegations but the misconduct disclosed is not so serious as to call for initiation of proceedings for removal of the judge, the CJI shall call the Judge concerned and advise him accordingly and may also direct that the report of the Committee be placed on record

further to In House procedure; In India, *The Restatement of Values Of Judicial Life* was formulated at the Conference of Chief Justices held in 1999 to serve as a guide to be observed by Judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice. One of the values noted there is:

"1. Justice must not merely be done but it must also be seen to be done (emphasis added). The behavior and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception, has to be avoided."

16. *"Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him*

which is unbecoming of the high office he occupies and the public esteem in which that office is held."

Another source of judicial ethics in India lies in the oath of a judge as contained in Third Schedule of the Constitution. Article 219 of the Constitution provides

"219. Oath or affirmation by Judges of High Courts: Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule."

The form mentioned in Third Schedule is as follows:

Third Schedule

VIII

Form of oath or affirmation to be made by the Judges of a High Court:—

"I, A.B., having been appointed Chief Justice (or a Judge) of the High Court at (or of)-..... do swear in the name of God that I will bear solemnly affirm true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

Draft a petition for the lady judge under Article 32 challenging the constitution of the two member committee and praying for quashing of said committee as same being in contravention of "In house procedure" along with appropriate prayers such as;

- a. directing the Chief Justice of the High Courtnot to assign any administrative and judicial work to the judge in question.
- b. For a declaration that the order of transferis unlawful, illegal and *non est* as also *mala fide* and has no force of law.
- c. For a declaration that the letter of resignation submitted by a Petitioner is constructive termination in the eyes of law and for a further direction reinstating the Petitioner as an Additional District and Sessions Judge from the date of her resignation, will all consequential benefits;

QUES NO.2

Due to previous enmity, a triple murder of A's family was committed by B. The same was witnessed by A and during the trial, accused persons were threatening A not to depose but A remained affirmed and paid no heeds to such threats. One day B and his younger brother C finding A all alone while working in fields, came there and threatened him. On A's refusal, C instigated B to kill A . B hit gunshot on A and both B and C ran away. Hearing the gunshot, elder brother of A , D ran towards him. He saw B and C running with a gun in their hands. D understood that they had shot hisbrother; A narrated the entire version to D before dying. D lodged a FIR in the nearby police station giving the entire narration of facts against B and C.

Police filed the charge sheet only against B and left C. At the trial, the principal witness D deposed against both B and C, completely in corroboration with his narration of facts at the time of FIR naming both B and C. Thereupon, the session judge using his powers under section 319 of CrPC, made C also an accused.

Accused C approached the High Court against the order of session judge and also filed statements of five witnesses recorded under section 161 of CrPC, to prove his PLEA ALIBI. The High Court took the view that session judge should have considered the statements of witnesses recorded by police under section 161 of CrPC, while considering the evidence of principal witness D before exercising his discretion under section 319 of CrPC.

Section 319 of CrPC is as follows-

319. Power to proceed against other persons appearing to be guilty of offence -

1. Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.
2. Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
3. Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
4. Where the Court proceeds against any person under Sub-Section (1) then-

A. the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

B. subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

PLEA ALIBI is enshrined under section 11 of Evidence Act;

Section 11.

When facts not otherwise relevant become relevant.—Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

(a) The question is, whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore is relevant. The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime. The circumstances are such that the crime must have been committed either by A, B, C or D, every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

The burden of proof to establish PLEA ALIBI lies on the accused at the time of trial according to section 103 of Evidence Act;

section 103.

Burden of proof as to particular fact.—The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration;

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

(b) B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

The settled law by the Honourable Supreme Court in Rajendra Singh vs. State of UP and another AIR 2007 SC 2786 : at para 15, observed -

“ The words of section 319 are plain and the meaning clear . Where, in the course of inquiry or trial of,, it appears to the court from the evidence that a person not arrayed as an accused has committed any offence for which that person could be tried together with the accused, the Court may proceed against that person. be it noted the court need not to be satisfied that he has committed an offence but it only needs to appear. The expression used is 'may' and not 'shall' the legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction. There are no reason to curtail the power of this court to do justice to the victim and to the society and is only the judicial discretion the court to decide to proceed or not to proceed against a person in terms of section 319 of the court.

Hon'ble Supreme Court in Rajendracase(supra) also observed for PLEA ALIBI at para 6 and 7-----“ that the statements under section 161 of CrPC recorded by police is not a substantive

24

piece of evidence and wholly inadmissible evidence for PLEA ALIBI. Section 103 of the evidence act says that the burden is on the accused to prove if he wishes the court to believe that at the time in question, he was elsewhere. This could be done by leading evidence in trial and not by filing some affidavits."

The state has approached you for filing a special leave petition. Is there any substantial question of law which can be raised on behalf of the state?

Draft a special leave petition under Article 136 raising relevant grounds and confine your petition to questions of law and grounds.

Organisation XYZ is an organisation dedicated to the cause of release of bonded labourers in the country. It approaches you for filing a PIL in the Supreme Court. The facts of the case and the related legal provisions are the following:

XYZ made a survey of some of the stone quarries in Ghaziabad district near the city of Delhi and found that there were a large number of labourers from Maharashtra, Madhya Pradesh, Haryana and Rajasthan who were working in these stone quarries under "inhuman and intolerable conditions" and many of whom were bonded labourers. XYZ has documented that in the mines of a powerful industrialist, Mr. ABC, Ghaziabad District, a large number of labourers were languishing under abject conditions of bondage for last about ten years, and XYZ gave the names of 80 labourers belonging to the aforementioned States of India. XYZ also annexed to its document, statements in original bearing the thumb marks or signatures as the case may be of these bonded labourers.

According to XYZ, besides these cases of bonded labour, there are innumerable cases of fatal and serious injuries caused due to accidents while working in the mines, while dynamiting the rocks or while crushing the stones. The workers are afflicted with diseases, particularly tuberculosis due to dust and pollution and worse, they are not provided with any medical care, what to speak of compensating the poor worker for injury or for death. No cases are registered against the mine owners or the lessees for violation of safety rules under Mines Act.

While carrying out its survey, it was alleged by the State of U.P and Mr. ABC that XYZ was acting at the behest of ABC's competitors. State of U.P. never admitted the existence of bonded labour despite several remonstrations by XYZ. Thus, XYZ fears that its locus standi to file the petition will be contested.

Note: Wages paid to the bonded labourers are below the minimum wages. The State of U.P. has not established any Vigilance Committees under Section 13 of Bonded Labour System (Abolition) Act 1976.

Article 21 of the Constitution: Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 23: Prohibition of traffic in human beings and forced labour.—

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Article 32: Remedies for enforcement of rights conferred by this Part.—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Article 39: Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41: Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42: Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.

Guidelines for filing PIL as per State of Uttaranchal v. Balwant Singh Chauhal and Ors. (2010)3SCC402:

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

Section 2 (1)(j) of Mines Act, 1952: "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on

Section 18. Duties and responsibilities of owners, agents and managers:-

(1) the owner and agent of every mine shall each be responsible for making financial and other provisions and for taking such other steps as may be necessary for compliance with the provisions of this Act and the regulations, rules, bye-laws and orders made thereunder.

(2) The responsibility in respect of matters provided for in the rules made under clauses (d), (e) and (p) of section 58 shall be exclusively carried out by the owner and agent of the mine and by such person (other than the manager) whom the owner or agent may appoint for securing compliance with the aforesaid provisions.

(3) If the carrying out of any instructions given under sub-section (2) or given otherwise than through the manager under sub-section(3) of section 17 results in the contravention of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder, every person giving such instructions shall also be liable for the contravention of the provision concerned.

(4) Subject to the provisions of sub-sections(1), (2) and (3) the owner, agent and manager of every mine shall each be responsible to see that all operations carried on in connection with the mine are conducted in accordance with the provisions of this Act and of the regulations, rules, bye-laws and orders made thereunder.

Section 21: Medical appliance:

(1) In every mine there shall be provided and maintained so as to be readily accessible during all working hours such number of first-aid boxes or cupboards equipped with such contents as may be prescribed.

(4) In every mine there shall be made so as to be readily available such arrangements as may be prescribed for the conveyance to hospitals or dispensaries of persons who, while employed in the mine suffer bodily injury or become ill.

Section 22 of Minimum Wages Act, 1948: Penalties for certain offences. Any employer who

- (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or
- (b) contravenes any rule or order made under section 13, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both: Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

Section 2 (f) of Bonded Labour System (Abolition) Act 1976: "bonded labourer" means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt;

Section 4: Abolition of bonded labour system

(1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour.

(2) after the commencement of this Act, no person shall-

- (a) make any advance under, or in pursuance of, the bonded labour system, or
- (b) compel any person to render any bonded labour or other form of forced labour.

Section 13: Vigilance Committees.-

(1) Every State Government shall, by notification in the Official Gazette, constitute such number of Vigilance Committees in each district and each Sub-Division as it may think fit.

Section 16. Punishment for enforcement of bonded labour.- Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.

Section 18. Punishment for extracting bonded labour under the bonded labour system.- Whoever enforces, after the commencement of this Act, any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependant of such person is required to render any service under the bonded labour system shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day for which the bonded labour was extracted from him.

Section 3 of the Workmen's Compensation Act, 1923: Employer's liability for compensation

- (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

Section 4A. Compensation to be paid when due and penalty for default.—

- (1) Compensation under section 4 shall be paid as soon as it falls due.

29

- (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

On 1st November, 2003, 5 heavily armed men stormed the Parliament of India and shot indiscriminately, killing 25 people including the policemen and journalists. All 5 gunmen were shot and killed on spot by the police. On 13th November, 2005, the police picked up one person named A, for planning this attack on the Parliament. Two others N and S too were arrested by the police for helping A execute the terror plan.

On 1st January, 2004, charges were framed against all three under various sections of Prevention of Terrorism Act, 2002 ("POTA"), Explosive substances Act, 1908, and Indian Penal Code, 1860 ("IPC"), which included waging of war against the Government of India and conspiracy to commit the same (Section 121 of IPC); murder (Section 300 of IPC) and criminal conspiracy (Section 120A and Section 120B); collecting arms with the intention to wage war against state (Section 122); under POTA - for abetting terrorist acts, Section 3 (3) and harboring terrorists, Section 3 (4); and membership of a terrorist gang, Section 3 (5) and possession of unauthorized arms etc. under Section 4 (b); and under Section 3 and 4 of the Explosive Substances Act, 1908.

The trial court sentenced all three to death on 2nd February, 2005.

On 10th February, 2005, the convicts appealed to the High Court of Delhi, N and S were let off for insufficiency of evidence against their involvement while A's death sentence was confirmed. Challenging the High Court's judgment, on 15th March, 2006, A appealed to the Supreme Court of India through a Special Leave Petition ("SLP").

In the SLP to Supreme Court, Mr. R, Senior Counsel, who appeared for A, raised the following grounds:

1. Non-invocation of POTA while FIR was filed (it was added later), and so there was manipulation of FIR by not showing the POTA offences,
2. Recording of confessions was coercive and contrary to established principles of law,
3. The Trial Court and High Court's judgments were based on the 'circumstantial evidence', as he was not directly involved in the attack on Parliament,
4. Admissibility of intercepted conversation between the accused persons was highly questionable,
5. He was not given proper legal support to defend himself:

The court-appointed junior lawyer did not visit even once in jail, he did not summon any witnesses in A's defense, and he did not cross-examine the prosecution witnesses. When A protested the junior lawyer's appointment, the trial Court judge insisted that the lawyer continue as 'amicus curiae', a friend of the court. What this means is that A was unrepresented, while the court had a friend to assist it. The appointment of an amicus curie is not sufficient and it cannot be a substitute for legal aid. By law, the court is meant to maintain a list of lawyers who can be appointed for an accused. But in A's case, no one was chosen from that list to represent him.

At the trial stage, A named four lawyers whom he wished to have defending him. But the Judge said those 4 lawyers declined to represent him. However, there is no evidence to this declination by those 4 lawyers.

The Right to legal aid commences with the arrest and continues through the trial and all appeals. A was denied this right. Until he made the 'confession' in full media glare and surrounded by police, he had no lawyer.

The clinching evidence of this denial came at the stage of sentencing. There was hardly any argument made at that stage to indicate the mitigating circumstances which could have led to a lesser sentence.

As held in *Hussainara Khatoon & Ors v. Home Secretary, State of Bihar*, 1980 SCC (1) 81, the State is legally obligated to provide *comprehensive* and *effective* legal aid and in A's case, by not providing a competent defense lawyer, the State has violated A's fundamental right to free legal aid, which has totally jeopardized the whole case. This denial of legal aid amounts to grave miscarriage of justice.

However, the Supreme Court dismissed A's SLP and ruled as the following:

- That they cannot find fault with the Investigating Officers in going slow in bringing POTA into picture. At any rate, it may be a case of bona fide error or overcautious approach. Once the action of the police authorities in deferring the invocation of POTA is held to be not mala fide, it is not possible to countenance the contention that the provisions of POTA especially those contained in Chapter V and Section 52 ought to have been complied with even before 19th December.
- The question whether Section 120B of IPC applies to POTA offences or Section 3(3) alone applies is not a matter on which a definite conclusion should be reached ahead of the trial. It is not uncommon that the offence alleged might seemingly fall under more than one provision and sometimes it may not be easy to form a definite opinion as to the Section in which the offence appropriately falls. Hence, charges are often framed by way of abundant caution. Assuming that an inapplicable provision has been mentioned, it is no ground to set aside the charges and invalidate the trial.
- The terminology in POTA is different and the view which we hold is that Section 32 of POTA does not enable the Court to take into account the confession of the co-accused. The confession of a co-accused ought not be brought within the sweep of Section 32(1). A confession to the police officer by a person in police custody is not within the realm of

Section 30 of the Evidence Act and therefore such a confession cannot be used against the co-accused even under Section 30 of the Evidence Act.

- The non-compliance with the judicial custody requirement does not per se vitiate the confession, though its non-compliance should be one of the important factors that must be borne in mind in testing the confession.
- Those who committed the offences pursuant to the conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy; but, the non-participant conspirators cannot be found guilty of the offence or offences committed by the other conspirators.
- The call records are admissible and reliable and rightly made use of by the prosecution, and the illegality or irregularity in interception does not affect its admissibility in evidence there being no specific embargo against the admissibility in the Telegraph Act or in the Rules.
- The trial Judge did his best to afford effective legal aid to the accused A when he declined to engage a counsel on his own. We are unable to hold that the learned counsel who defended the accused at the trial was either inexperienced or ineffective or otherwise handled the case in a casual manner. The criticism against the counsel seems to be an after thought raised at the appellate stage. It was rightly negated by the High Court.
- A was associated with the deceased terrorists in almost every act done by them in order to achieve the objective of attacking the Parliament House. He established close contacts with the deceased terrorists. Short of participating in the actual attack, he did everything to set in motion the diabolic mission. *As is the case with most of the conspiracies, there is and could be no direct evidence of the agreement amounting to criminal conspiracy.* However, the circumstances cumulatively considered and weighed, would unerringly point to the collaboration of the accused A with the slain terrorists.
- Upholding the death sentence, the Court said, this incident which resulted in heavy casualties, had shaken the entire nation and the *collective conscience* of the society will only be satisfied if the capital punishment is awarded to the offender.

Challenging the ruling of the SLP, A filed a Review Petition but that too was dismissed by circulation.

As laid down by the Supreme Court in the case of *Rupa Ashok Hurrah v. Ashok Hurrah*, 2002 (4) SCC 388, even after dismissal of a review petition under Article 137 of the Constitution, Supreme Court, may entertain a Curative Petition and reconsider its judgment/order, in exercise of its inherent powers in order to *prevent abuse of its process*, to *cure gross miscarriage of justice* and such a petition can be filed only if a Senior Advocate certifies that it meets the requirements of this case.

Grounds under which it can be filed are:

1. Where there is violation of principles of Natural justice in that the aggrieved party filing a curative petition was not a party to the lis but the judgment adversely affected his interest or if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice.
2. Where in the proceedings a learned judge failed to disclose his connection with the subject matter or the parties, giving scope for an apprehension of bias and the judgment adversely affects the petitioner.

In addition to the above grounds, the 'curative petitioner' must aver specifically that the grounds mentioned in the Curative Petition had been taken in the Review Petition and that such review had been dismissed by circulation. Such a petition is to be first circulated, in chambers, before a Bench comprising of three senior most judges and such serving judges who were members of the Bench which passed the judgment/order, subject matter of the petition.

Considering the grounds taken by A and subsequent observations made in judgment of the Supreme Court, you are now required to draft a Curative Petition under Article 142 of the Constitution of India challenging the dismissal of his Review Petition and also, draft a certificate of a Senior Advocate advising that this is a fit case for a Curative Petition.

SUPREME COURT OF INDIA
ADVOCATE-ONRECORD EXAMINATION
JUNE, 2015
QUESTION PAPER III
ADVOCACY AND PROFESSIONAL ETHICS

TOTAL MARKS: 100

TIME ALLOWED 3 HOURS

Answer any four out of questions 1 to 8 which carry 20 marks each.

Questions 9 to 12 carry 10 marks each. Answer any two out of 9 to 12.

Answer should be brief and pointed. Marks may be deducted for unduly long answers. Illegible handwriting may result in deduction of marks.

1. The special and peculiar position of an advocate imposes upon her/him duties in several directions:

“Though she/he represents a client and owes duties to her/him, she/he is also an officer of the court and a counsellor to it with special duties to discharge. At the same time, as a member of the sister/brotherhood of the lawyers, she/he has responsibilities to the profession and to his brother law. She/he also owes duties to the opponent as a co-operator with the court in its search for truth. She/He owes duties to her/his client and to herself/himself. She/he is also under obligation to the public and to the State.” (Professional Conduct and Advocacy – K. Krishnaswami Aiyar)

Explain with reference to the Rules of the Bar Council of India?

2. It is said that the word ethics etymologically means 'character' or that which relates to it, as distinct from what relates to the intellect. It is further said that ethics is science of morals and morals are the practice of ethics. Is there a distinction between professional conduct and professional ethics? Explain.
3. The duty to the Court is owed not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its Supreme importance. The Supreme Court is a constitutional Court and the final Court of appeals. How will you as a Supreme Court lawyer harmonize the duty to the Court and acting in the best interests of the client?
4. What are the aspects of an Advocate's duty to a client? "In giving opinions, counsels' duty is to 'act as Judge, responsible to God and man, as also especially to their employers, to advise them soberly, discreetly and honestly to the best of their ability, though the certain consequence be the loss of large prospective gains." Explain with respect to the need to adhere to high standards of professional ethics.
5. Explain the duty of the Advocate to desist from placing before the Court unsound arguments, incorrect pleadings, not citing adverse judgments, with reference to the duty of the advocate towards promotion of Rule of Law and Fairness?
6. If there is a large amount of indeterminacy in the law, it is lawyers who are largely responsible for creating and exploiting it...."why should you expect the ethics of the game to be different from the game itself" (Karl Llewellyn – 1930) Critically examine the above statements.

7. The personal opinion of an Advocate regarding the guilt of a person shall not come in the way of the Advocate acting in defence of the person accused of a crime? Explain.
8. "...It is true that an advocate is competent to settle the terms of his engagement and his fee by private agreement with his client but it is equally true that if such fee is not paid he has no right to retain the case papers and other documents belonging to his client. Like any other citizen, an advocate has a right to recover the fee or other amount payable to him by the litigant by way of legal proceedings but subject to such restrictions as may be imposed by law or the rules made in that behalf....." Per R.P. Sethi, J. in R.D. Saxena v. Balram Prasad Sharma, (2000) 7 SCC 264.

Discuss:

- (a) Whether the case papers belonging to the client can be equated to goods?
 - (b) Whether entrustment of the case papers by a client to his lawyer amounts to "goods bailed" to such lawyer within the meaning of Section 148 of the Contract Act, 1872?
 - (c) Whether Section 171 of the Contract Act, 1872 will apply to a lawyer's "lien" in respect of unpaid fees?
9. Elucidate with reference to decided cases the meaning and scope of the words, "professional or other misconduct" occurring in Sub-Section (1) of Section 35 of Advocates Act, 1961?
 10. What are the powers of the State Bar Council and Bar Council of India in relation to disciplinary proceedings against an Advocate in misconduct?

In the context of appeal to Bar Council of India, explain the position regarding person aggrieved by an order of the Disciplinary Committee of the State Bar Council.

11. What is the role of the Advocate in promotion of the provisions of Article 39A of the Constitution?
12. Explain the relevance and importance of mediation as in the best interests of the client and the role of lawyers in promotion thereof?

ADVOCATE-ON-RECORD EXAMINATION MAY, 2015

PAPER IV: LEADING CASES

Total Marks: 100

Answer any four questions. All questions carry equal marks, i.e., 25 each.

1. What is your understanding of the concept of "Leading Cases" and why only certain cases are considered as Leading cases and not others? Among the leading cases prescribed for the A.O.R. Examination, which is the most leading case according to you and why?
2. What are the points of difference between the majority and the minority among the nine Judges who decided *Indra Sawhney v. UOI* 1992 Supp (3) SCC 217? Do you agree with the law declared by the majority of Judges or the view taken by the dissenting Judges? Indicate your view issuewise.
3. Do you notice any nexus between the following decisions:
A.R. *Antulay v. R.S. Nayak*: 1988 (2) SCC 602; and
Rupa Ashok Hurra v. Ashok Hurra: 2002(4) SCC 388?
If so, what is the nexus? To what extent the law declared in A.R. *Antulay's* case has been advanced further in *Rupa Ashok Hurra*?
4. What are the reasons for constituting a Bench of nine Judges for deciding *Supreme Court Advocate-on-Record Association v. UOI* which is reported in 1993 (4) SCC 441? What was the law declared in *S.P. Gupta v. Union of India* (1982) 2 SCR 365 and what is the law declared by the larger Bench in this case? Indicate which judgment, according to you, has correctly interpreted the relevant provisions of the Constitution, mentioning the provisions and their purport? Are

there any subsequent developments in this area?

5. In *Ashok Kumar Thakur v UOI*: 2008 (6) SCC 1 decided by a Bench of five Judges, four separate judgments have been pronounced. Point out the issues involved in this case and the area of agreement and disagreement, if any, among the Judges and which of the four judgments appeals to you most and why?
6. What is the law declared by the Constitution Bench in *State of West Bengal v. Committee for the Protection of Democratic Rights*: 2010 (3) SCC 571? What are the rival contentions advanced by the counsel appearing for the parties before the Bench and what are the questions which arose for consideration? Has this judgment any impact on the federal character of the Constitution?
7. What are the facts of the case and the questions of law which arose for decision in *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158? Who are the modern-day "Neros" referred to in the judgment and the reason for such reference?
8. Are there any exceptions to the rule that Courts merely declare the law and do not make law? Illustrate with reference to the law declared and directions given in the following cases:
D.K. Basu v. State of West Bengal: (1997) 1 SCC 416
and *Vishaka v. State of Rajasthan*: 1997 (6) SCC 241.