

IN THE SUPREME COURT OF INDIA
Advocate-on Record Examination - June 2016

PAPER-I

PRACTICE AND PROCEDURE

Time: 3 Hours.

Total Marks:-100

INSTRUCTIONS

- (1) Question No.1 is compulsory.
- (2) Answer any five questions from the remaining questions.
- (3) Where a question is divided into sub questions, the marks allotted to each sub question are clearly indicated.
- (4) Weightage will be given for conceptual clarity, brevity and reference to case laws where applicable.

1. Describe briefly the various jurisdiction exercised by the Supreme Court with reference to the constitutional /statutory provisions for the same, the period of limitation for filing and the court fees payable on the same.

25 marks

2.
 - (a) Describe briefly the power of the Supreme Court to punish for contempt including for contempt of itself.

5 marks
 - (b) Discuss briefly Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975.

5 marks
 - (c) Given that a contempt is for willful violations and disobedience of the orders of the Court, who can be arrayed as a respondent contemnor.

5 marks

3.
 - (a) Discuss the concept of a curative petition

5 marks
 - (b) When is it permissible to file a curative petition.

5 marks
 - (c) What are the procedural requirements to be observed while filing such a petition.

5 marks

4. If a relevant and material document in support of a case has not been made a part of the record of the Court below,

- (a) Would you annex the document with the Special Leave Petition?
3 marks
- (b) How would you introduce such a document for perusal before the Supreme Court?
3 marks
- (c) Draft a specimen affidavit in support of additional documents.
3 marks
- (d) Draft an affidavit of the petitioner in support of a Special Leave Petition.
3 marks
- (f) Draft a certificate by the Advocate-on-Record necessary under the Supreme Court Rules that the Special Leave Petition is based only on the records of the Courts below.
3 marks
5. Describe briefly the guidelines laid down by the Supreme Court for maintaining review petition in civil and criminal matters. 15 marks
6. (a) Does the judgment or order of a High Court merge in an order made on a petition for Special Leave under Article 136 of the Constitution? Give reasons. 5 marks
- (b) Does a summary dismissal by a non-speaking order on a petition for Special Leave to Appeal against judgment of the High Court amount to approval or affirmation thereof. 5 marks
- (c) Does a non-speaking order dismissing a petition for Special Leave constitute *res judicata*? Give reasons.
5 marks
7. (a) What is the meaning of "question of law", "substantial question of law" and a "substantial question of law as to interpretation of the Constitution"? 9 marks
- (b) Write short notes on the following:
- (1) Powers of a Chamber Judge; 2 marks
- (2) Powers of a Registrar; 2 marks

(3) Difference between intervention and impleadment; 2 marks

8. (a) What is the meaning of the following terms:

(i) Habeas corpus; 2 marks

(ii) Mandamus; 2 marks

(iii) Prohibition; 2 marks

(iv) Quo warranto; and 2 marks

(v) Certiorari. 2 marks

(b) What is the difference in the scope of power conferred on the Supreme Court and on the other Courts, which are competent to issue the above said writs?

5 marks

SUPREME COURT OF INDIA

ADVOCATES-ON-RECORD EXAMINATION, 2016

PAPER-II
[DRAFTING]

TOTAL: 100 MARKS

TIME: 3 HOURS

Instructions:

1. Attempt any four questions.
2. Each question carries equal marks.
3. 40 minutes extra time shall be provided for reading the question paper.

QUESTION 1:**BRIEF FACTS:**

1. The Petitioner is a Syrian national who was arrested and later on prosecuted under Sections 22 and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 allegedly for carrying 1 kg 400 grams of heroin as a member of crew of Syrian Airlines.
2. He is supposed to have arrived at Amritsar Airport at about 6 p.m. on 1.08.1997. He presented himself before the authorities under the Customs Act, 1962 for customs clearance. He was carrying a carton with him said to be containing grapes. The cardboard walls of the said carton were said to have two layers. As some concealment in between the layers was suspected by one Kulwinder Singh, an Inspector of the Customs Department, the Petitioner was asked as to whether he had been carrying any contraband or any other suspicious item. The reply was negative, therefore a search was purported to have been conducted.
3. Raja, who examined himself as PW-1 before the trial court, allegedly asked the Petitioner as to whether he intended to be searched by a Magistrate or a Gazetted officer of the Customs Department. The petitioner exercised his option for the latter. Thereafter one Shri K.K. Menon, Superintendent of the Customs Department and two independent witnesses, Manmohan Singh and Alam were sent for. Shri K.K. Menon disclosed his identity to the Petitioner as a Gazetted officer working in the Customs Department.
4. The layers of the walls of the carton were thereafter separated. From there 22 packets of polythene containing brown powder were allegedly recovered. The same was weighed. The gross weight of the packets was found to be 1 kg. 400 grams. Homogeneous samples from each packet in small quantities were taken weighing 5 gms. each. They were purported to have been sealed with a seal bearing No. 122 of the Customs Department. The cardboard carton was also sealed with the same seal. The recovered item being of brown colour was taken in possession vide recovery memo (Ex. PB), Panchanama (Ex. PC) prepared by Shri Kulwinder Singh. The entire bulk was put into cotton bags and sealed.
5. Although the Petitioner had all along been in the custody of the Customs Department, he was formally arrested at about 3 p.m. on 2.08.1997, i.e., 15 hours after the recovery having been effected. Grounds of arrests allegedly were supplied to him. His body was also searched wherefore his jamatalashi was prepared which was marked as Ex. PE.
6. The petitioner is alleged to have confessed his guilt on 2.08.1997 as also on 4.08.1997 before duly notified customs authorities.
7. The Samples were sent to the Central Forensic Laboratory on 5.08.1997. The weight of the said samples was found to be 8.7 gms. The document is said to have been tinkered with, as the words "net weight" were crossed and converted into 'gross weight'.
8. The alleged contraband was found to be of white colour containing Diacetyl Morphine. The report was submitted on 2.09.1997; on the basis whereof a complaint Ex. PL was filed in the Court.
9. The petitioner was therefore charged and put on trial having been charged under Sections 22 and 23 of the Act. The contraband articles were produced before the Magistrate on 30.01.1999. The purpose for production is mired in controversy. Whereas the Petitioner's case was that the same was done for the purpose of authentication, but according to the prosecution, it was produced for the purpose of obtaining a judicial order for destruction thereof. No order, however, was passed by the learned Magistrate for destruction of the contraband. No application for destruction was also filed.

10. At the trial, the following witnesses were examined on behalf of the State:
- PW-1 -Inspector Customs (Complainant and investigating officer)
 - PW-2 - Superintendent-Customs (A Gazetted Officer)
 - PW-3 - Inspector, Customs Department (Deposited sample)
 - PW-4 -Deputy Commissioner Custodian of case property from 1-8-97 to 4-8-97
 - PW-5 -Inspector Incharge- Malkhana
11. The petitioner in his examination under Section 313 of the Code of Criminal Procedure in categorical terms denied that the carton belonged to him. He also retracted from his alleged confession.
12. The trial Court i.e the Additional Sessions Judge by his order and judgment dated 7.06.2000 convicted the Petitioner under Sections 22 and 23 of the Act and sentenced him to undergo rigorous imprisonment for 10 years and also imposed a fine of Rs. 1 lakh on him.
13. By way of the impugned order the High Court of Punjab and Haryana dismissed the appeal filed by the Petitioner by a judgment and order dated 9.06.2006.
14. 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
 - the relevant Questions of Law and Grounds in support of the reliefs sought;

RELEVANT STATUTORY PROVISIONS:

A. THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Section 2

(xiv) - defines "narcotic drug" to mean coca leaf, cannabis (hemp), opium poppy straw and includes all manufactured drugs.

(viiiia) - "Illicit traffic", in relation to narcotic drugs and psychotropic substances, has been defined, inter alia, to mean:

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in Sub-clauses (i) to (iii); or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in Sub-clauses (i) to (iv);

(viiia) - "Commercial quantity" has been defined to mean any quantity greater than the quantity specified by the Central Government by notification in the official gazette.

****Commercial quantity prescribed for heroin is only 250 gms.**

(ix) - "International Conventions" have been specified in Section 2(ix) of the Act.

Section 8

8. Prohibition of certain operations. No person shall—

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made

thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

[Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]

Section 9

9. Power of Central Government to permit, control and regulate.

(1) Subject to the provisions of section 8, the Central Government may, by rules

(a) permit and regulate—

(i) the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import inter-State, export inter-State, use or consumption of coca leaves;

(ii) the cultivation (such cultivation being only on account of Central Government) of the opium poppy;

(iii) the production and manufacture of opium and production of poppy straw;

(iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;

(v) the manufacture of manufactured drugs (other than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(vi) the manufacture, possession, transport import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;

(vii) the import into India and export from India and transshipment of narcotic drugs and psychotropic substances;

(b) prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in clause (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) empower the Central Government to fix from time to time the limits within which licences may be given for the cultivation of the opium poppy;

(b) require that all opium, the produce of land cultivated with the opium poppy, shall be delivered by the cultivators to the officers authorised in this behalf by the Central Government;

(c) prescribe the forms and conditions of licences for cultivation of the opium poppy and for production and manufacture of opium; the fees that may be charged therefor; the authorities by which such licences may be granted, withheld, refused or cancelled and the authorities before which appeals against the orders of withholding, refusal or cancellation of licences shall lie;

(d) prescribe that opium shall be weighed, examined and classified according to its quality and consistence by the officers authorised in this behalf by the Central Government in the presence of the cultivator at the time of delivery by the cultivator;

(e) empower the Central Government to fix from time to time the price to be paid to the cultivators for the opium delivered;

(f) provide for the weighment, examination and classification, according to the quality and consistence, of the opium received at the factory and the deductions from or additions (if any) to the standard price to be made in accordance with the result of such examination; and the authorities by which the decisions with regard to the weighment, examination, classification, deductions or additions shall be made and the authorities before which appeals against such decisions shall lie;

(g) require that opium delivered by a cultivator, if found as a result of examination in the Central Government factory to be adulterated, may be confiscated by the officers authorised in this behalf;

(h) prescribe the forms and conditions of licences for the manufacture of manufactured drugs, the authorities by which such licences may be granted and the fees may be charged therefor;

(i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefor;

(j) prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India or transhipped; the forms and conditions of certificates, authorisations or permits, as the case may be, for such import, export or transhipment; the authorities by which such certificates, authorisations or permits may be granted and the fees that may be charged therefor.

Section 22

22. Punishment for contravention in relation to psychotropic substances

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Section 23

23. Punishment for illegal import in to India, export from India or transhipment of narcotic drugs and psychotropic substances

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorisation issued thereunder,

imports into India or exports from India or tranships any narcotic drug or psychotropic substance shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine, which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Section 37

Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail

Section 39

Power of court to release certain offenders on probation.—

(1) When any addict is found guilty of an offence punishable under section 27 1[or for offences relating to small quantity of any narcotic drug or psychotropic substance] and if the court by which he is found guilty is of the opinion, regard being had to the age, character, antecedents or physical or mental condition of the offender, that it is expedient so to do, then, notwithstanding anything contained in this Act or any other law for the time being in force, the court may, instead of sentencing him at once to any imprisonment, with his consent, direct that he be released for undergoing medical treatment for de-toxification or de-addiction from a hospital or an institution maintained or recognised by Government and on his entering into a bond in the form prescribed by the Central Government, with or without sureties, to appear and furnish before the court within a period not exceeding one year, a report regarding the result of his medical treatment and, in the meantime, to abstain from the commission of any offence under Chapter IV.

(2) If it appears to the court, having regard to the report regarding the result of the medical treatment furnished under sub-section (1), that it is expedient so to do, the court may direct the release of the offender after due admonition on his entering into a bond in the form prescribed by the Central Government, with or without sureties, for abstaining from the commission of any offence under Chapter IV during such period not exceeding three years as

the court may deem fit to specify or on his failure so to abstain, to appear before the court and receive sentence when called upon during such period.

Section 42

Power of entry, search, seizure and arrest without warrant or authorisation.—

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act: Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

Section 43

Power of seizure and arrest in public place

Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation

For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

Section 50

Conditions under which search of persons shall be conducted.—

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female. 1[(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

.....

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior

Section 51

Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act

Section 52

Disposal of persons arrested and articles seized.—

(1) Any officer arresting a person under section 41, section 42 section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to—

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

Section 52A provides for disposal of seized narcotic drugs and psychotropic substances; Sub-section (2) whereof reads as under:

(2) Where any narcotic drugs or psychotropic substances has been seized and forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in Sub-section (1) shall prepare an inventory of such narcotic drugs or, psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in Sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any purpose of,-

- (a) Certifying correctness of the inventory so prepared; or*
- (b) Taking, in the presence of such Magistrate, photographs substances and certifying such photographs as true; or*
- (c) Allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.*

Section 54

Presumption from possession of illicit articles

In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—

- (a) any narcotic drug or psychotropic substance or controlled substance;*
- (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;*
- (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or*
- (d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily*

Section 67

Power to call for information, etc.

Any officer referred to in Section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act, —

- a) Call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;*
- b) Require any person to produce or deliver any document or thing useful or relevant to the enquiry;*
- c) Examine any person acquainted with the facts and circumstances of the case.*

THE CUSTOMS ACT, 1962 (52 OF 1962)***Section 110.******Seizure of goods, documents and things.***

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of -

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :

Central Government has issued guidelines in this behalf being Standing Order No. 1 of 1989 dated 13.06.1989 which is in the following terms:

WHEREAS the Central Government considers it necessary and expedient to determine the manner in which the narcotic drugs and psychotropic substances, as specified in Notification No. 4/89 dated the 29th May, 1989 (F. No. 664/23/89- Opium, published as S.O. 381(E)), which shall, as soon as may be, after their seizure, be disposed of, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), (hereinafter referred to as 'the Act'), the Central Government hereby determines that the drugs specified in the aforesaid Notification shall be disposed off in the following manner....

Heroin is one of the items as substances listed for disposal under Section I of the Standing Order.

Paragraphs 3.1 and 6.1 of the Standing Order read as under:

Preparation of inventory

3.1 After sampling, detailed inventory of such packages/containers shall be prepared for being enclosed to the panchnama. Original wrappers shall also be preserved for evidentiary purposes.

Certificate of destruction

6.1 A certificate of destruction (in triplicate (Annexure III) containing all the relevant data like godown entry, no., file No., gross and net weight of the drugs seized etc. shall be prepared and duly endorsed by the signature of the Chairman as well as Members of the Committee. This could also serve the purpose of panchanama. The original copy shall be posted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy will be kept by the Disposal Committee.

QUESTION II:**BRIEF FACTS:**

1. One Ashok Kumar executed a registered Will on 01.01.1920 whereby he bequeathed his self-acquired properties to his wife Nandini Kumar, and to his son Roshan Kumar in the following manner:
 - a. one vacant piece of land admeasuring 2 acres was bequeathed absolutely in favour of his son Roshan Kumar with all rights of alienation, gift, sale etc.
 - b. a dwelling house admeasuring 3000 sq.ft. (wherein Ashok Kumar, his wife and son resided) was bequeathed creating a life interest / limited interest in favour of his wife, to be enjoyed by her during her lifetime, with no right of alienation, gift, sale etc. After the demise of his wife, this dwelling house was to vest absolutely in his son, who would take it with all rights of alienation, gift, sale etc.
2. Ashok Kumar passed away in the year 1925 and thereafter his wife and son continued to reside in the dwelling house until 1930. Thereafter, Roshan Kumar shifted out of the dwelling house and moved to another city and Nandini Kumar came to live in the dwelling house on her own. However, she was maintained by Roshan Kumar who sent her money every month for a comfortable living.
3. Nandini Kumar executed a registered Will on 01.01.1970 whereby she disinherited her son Roshan Kumar and bequeathed the dwelling house absolutely in favour of one Anil Singh, who happened to take care of Nandini Kumar and do the household duties. Interestingly, the Will dated 01.01.1970 reads:

“By virtue of Section 14(1) of the Hindu Succession Act, 1956, the life interest / limited interest in the dwelling house created in my favour under my husband’s will has blossomed into an absolute interest / absolute estate. Therefore, I am entitled to, and capable of disposing of the dwelling house as my own property.”
4. This Will dated 01.01.1970 was however not brought to the knowledge of Roshan Kumar. Nandini Kumar thereafter passed away in the year 1976.
5. Subsequent to the demise of Nandini Kumar, Roshan Kumar executed a Sale Deed dated 01.01.1977 in favour of one Mukul Singh, claiming to be the owner of the dwelling house by virtue of the bequest made in his favour by his father. Thereafter, possession was handed over to Mukul Singh. However, sometime in March 1977, Anil Singh attempted to interfere with Mukul Singh’s peaceful possession and enjoyment of the property and he claimed ownership over the dwelling house under Nandini Kumar’s will dated 01.01.1970.
6. In May 1977, Mukul Singh filed O.S.No. 100 of 1977, a Suit for declaration of Title and permanent injunction restraining Anil Singh from interfering with his peaceful possession before the Hon’ble Subordinate Judge. In the said Suit, Anil Singh filed his Written Statement claiming title under the Will dated 01.01.1970 and raised a plea that the dwelling house was given to Nandini Kumar in lieu of her pre-existing right to maintenance under Hindu law. This was however contested by Mukul Singh on the ground that Ashok Kumar’s Will dated 01.01.1920 did not have any word or phrase stating that the dwelling house was given to Nandini Kumar *“in lieu of her right to maintenance”*, which was the admitted position. Further, no evidence was led to specifically show that the Will granted interest in property in lieu of maintenance.
7. Before the Trial Court the only issue which arose for consideration between the parties was whether Nandini Kumar’s life interest / limited interest in the dwelling house blossomed into an absolute interest by virtue of Section 14(1) of the Hindu Succession Act, 1956 (the “Act”)

or if the case fell under Section 14(2). While the Plaintiff relied on the decision in Mst. Karmi v. Amru, [(1972) 4 SCC 86] to contend that by virtue of Section 14(2) every limited interest created in favour of a Hindu widow does not blossom into an absolute interest, the Defendant relied on the decision in V.Tulasamma & Ors. V. Sessa Reddy (dead) by LRs., [(1977) 3 SCC 99] to contend that every limited interest blossomed into an absolute interest since at that time no absolute interest could be given to a Hindu widow under the law, and further that the limited interest is created in recognition of a pre-existing right to maintenance.

8. The Trial Court, vide a judgment and decree dated 01.01.2000 identified the field of operation of the decisions in **Tulasamma's case** and **Karmi's case** and held that:

“Tulasamma's case was a case where the Hindu Widow was allotted properties expressly in lieu of her maintenance and satisfaction of her maintenance. The decision arose in the context where a Hindu widow had obtained a decree for maintenance against the brother of her deceased husband, and while executing the said decree, a compromise had been entered into whereby the Hindu widow was allotted immovable properties by her husband's brother with a limited interest therein with no power of alienation at all. Later, the Hindu widow alienated a part of the immovable properties allotted to her, which came to be challenged on the ground that the Hindu widow had got only a restricted estate under the terms of the compromise and that interest could not be enlarged into an absolute interest by virtue of Section 14(2) of the Act. This was however negated since the immovable property had been granted in lieu of the widow's maintenance.

On the other hand, in Karmi's case a Hindu widow succeeded to the self-acquired properties of her husband on the strength of a will where under she was given life estate in the properties. In those circumstances the Supreme Court held that the Hindu widow having succeeded to the properties of her husband on the strength of that will cannot claim any rights in these properties of her husband over and above that given to her under that will and that the life estate given to her under the will cannot become an absolute estate under the provisions of the Hindu Succession Act. It was a decision rendered by three judges of the Supreme Court. The decision in Karmi's case was not referred to in Tulasamma's case, though both the decisions are rendered by three Hon'ble Judges of the Supreme Court. When Karmi's case applied on all fours with the facts in the case on hand, Tulasamma's case cannot be applied to the facts of the present case.”

9. In the First Appeal, viz., A.S.No. 1774 of 2000 filed by the Defendant before the Hon'ble High Court, the Hon'ble High Court vide a judgment dated 01.04.2016 reversed the Trial Court's decision holding that:
- a. Section 14(2) does not say anything with regard to the property acquired by a female Hindu;
 - b. Karmi's case is not adequately reasoned and does not lay down any principle of law, particularly since Section 14(1) & Section 14(2) of the Hindu Succession Act was not expressly mentioned in that case. In Shakuntala Devi v. Kamla & Ors., (2005) 5 SCC 390 (also a decision rendered by three Hon'ble Judges), the Hon'ble Supreme Court had upheld the Hon'ble High Court's holding that Karmi's case stood superseded by the later judgment in Tulasamma's case.
 - c. Ashok Kumar had created the life estate in favour of Nandini Kumar as it was the duty of the husband to maintain his wife during her life time and she had a pre-existing right and therefore S.14(2) is inapplicable. Though there are no specific words in the Will dated 01.01.1920 that in lieu of maintenance the life estate has been created, under S.14(1) of the Act, in whatever form a limited interest is created in favour of a Hindu female, who is having a pre-existing right of maintenance, it becomes absolute right after the Hindu Succession Act came into force;

10. Against the aforementioned decision of the Hon'ble High Court, no second appeal lies and therefore the Plaintiff wishes to file a Special Leave Petition before the Hon'ble Supreme Court.
11. **Draft a Special Leave Petition to be filed before the Hon'ble Supreme Court setting out:**
- a. a brief Synopsis of the core issue involved in the matter
 - b. the relevant Questions of Law and Grounds in support of the reliefs sought;
 - c. Explore the grounds relating to interpretation and application of Section 14(1), Section 14(2), and the effect of Section 30 of the Hindu Succession Act, 1956
 - d. Explore the scope of operation of the judgments of the Hon'ble Supreme Court, and the effect of failure to adduce evidence that the Will granted interest in property in lieu of maintenance.

RELEVANT STATUTORY PROVISIONS:

12. Section 14 of the Hindu Succession Act, 1956 reads:

14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

13. Section 30 of the Act reads:

30. Testamentary Succession.—

Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so "disposed of by him or by her", in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this [section.]

QUESTION III:**BRIEF FACTS:**

1. Shirish Khurana (Respondent No. 2), Shruti Khurana (Respondent No. 3) and Paresh Khurana (Respondent No. 4) are respectively the son, daughter and husband of the first respondent, Parineeta Khurana. The first respondent is the owner of lands bearing Survey Nos. 13, 14 and 15, the second respondent is the owner of lands bearing Survey Nos. 16 and 18 and the third respondent is the owner of Survey Nos. 19 and 20, all situated in Palasuni Village, Khurda District in all measuring 25 acres.
2. The said lands along with the trees, wells, pump houses, farm godowns, perimeter fence and some furniture, are together referred to as the "scheduled properties".
3. Respondents 1 to 4 entered into an agreement of sale dated 13-6-1979 with the Petitioner herein, Sumesh Gupta, for sale of the scheduled properties, at a price of Rs 12,000 per acre (in all Rs 3,00,000). On the date of the agreement, Rs 1,00,000 was paid as advance to the respondents, which was duly acknowledged in the agreement.
4. Under the agreement, the mode of payment of the balance of Rs 2,00,000 (Rupees two lakhs only) was as under:
 - (a) Rs 1,00,000 (one lakh only) on or before 14-8-1979
 - (b) Rs 50,000 (fifty thousand only) on or before 20-10-1979
 - (c) Rs 50,000 (seventy-five thousand) on or before 30-12-1979
5. It was also contemplated in the agreement that the payments on due dates is the essence of the contract and in case of failure on the part of the party of the second part, the party of the first part shall cancel the agreement. The Respondents herein delivered the property to the Petitioner in trust to hold the same as caretaker, until the vendors received the entire sale price.
6. On 13.7.1979, the fourth respondent, in a letter addressed to the Petitioner, acknowledged the receipt of further amount of Rs 25,000 paid on various dates as advance for the said transaction relating to sale of the said 25 acres of land. By the said letter, he agreed that in case the transaction of sale remained unconcluded or got cancelled because of the default on the part of the sellers or buyers under the agreement dated 13-6-1979 or because of defective title, the entire amount of Rs 1,25,000 received by him as advance would be refunded within three months thereof.
7. In pursuance of the said agreement the Petitioner paid further amounts of Rs 75,000 on 14-8-1979 and of Rs 25,000 on 15-10-1979. The balance of Rs 25,000 in regard to the instalment payable on 20-10-1979 and the last instalment of Rs 50,000 payable on or before 30-12-1979 was not paid by the Petitioner.
8. Respondents 1 to 3 caused a notice dated 4-3-1980 to be issued through their counsel to the appellant, cancelling the agreement dated 13-6-1979, on the ground of default in paying the balance of the sale consideration, in exercise of their right to cancel the agreement on such default.
9. The Petitioner sent a reply dated 7-8-1981 through the counsel contending that time was never intended to be the essence of the agreement though it was formally mentioned in the agreement that time was of the essence; that the respondents had failed to produce the original documents of title in spite of repeated demands and therefore it was agreed between the Petitioner's husband and the fourth respondent during discussions held in September 1979 in the presence of witnesses, that the original documents would be made available as soon as possible and the Petitioner should pay the balance only thereafter, and that the sale

should be completed within a reasonable time of handing over the documents; and that as a token of such understanding, a further advance of Rs 25,000 was received on 15-10-1979. The Petitioner also denied the claim of the respondents that the Petitioner had got examined the documents of title and satisfied herself about that title at the time of entering into the agreement of sale.

10. This brought forth a rejoinder dated 26-8-1981 from Respondents 1 to 3 through their counsel. They denied the claim of the Petitioner that there was a variation in the term regarding payment of balance consideration in specified instalments. They also denied that such a variation was agreed at a meeting held in September 1979. They reiterated that the time was the essence of the contract and that the agreement was executed only after the Petitioner had satisfied herself about their title and the respondent's husband had in fact taken true copies of all the documents together with the encumbrance certificate up to 1978, and in those circumstances, the question of the Petitioner again seeking any document of title did not arise. They contended that they were not bound to deliver the original documents before payment of the entire price. It was pointed out that payment of instalments relating to sale consideration stipulated in the agreement did not depend upon the Petitioner satisfying herself about the title after scrutinising the documents of title and that the Petitioner had unconditionally agreed to pay the entire consideration on the due dates mentioned in the agreement.
11. In this factual background the Petitioner filed a suit against Respondents 1 to 4 for a permanent injunction restraining the respondents, their men and agents from in any way interfering with her peaceful possession and enjoyment of the suit properties, seeking a decree for specific performance of the agreement of sale dated 13-6-1979 and a direction to Respondents 1 to 4 to execute a sale deed after receiving the balance; for return of Rs 2,25,000 paid as advance along with the interest from the date of the agreement to the date of payment.
12. The suits were resisted by the defendants contending that time was of the essence of the term regarding payment of sale price and that the agreement was cancelled as a consequence of default committed by the Petitioner in paying the balance sale price in terms of the agreement.
13. The following issues were framed in the suit:
 - i. Whether the plaintiff is entitled to the permanent injunction as prayed for against the defendants?
 - ii. Whether the plaintiff has committed breach of the contract by way of default in payment and thus was lacking in readiness and willingness to perform his part of the contract?
 - iii. Is time essence of the contract?
 - iv. If so, whether the termination of the contract by the defendant is valid?
 - v. Is not the plaintiff entitled to specific performance?
 - vi. To what relief are the parties entitled?
 - vii. Whether the plaintiff is entitled to return of the said amount of Rs 2,25,000?
14. After considering the oral and documentary evidence, a learned Single Judge of the High Court, by his common judgment dated 17-10-1990, dismissed the suit.
15. Aggrieved by the said judgment, the Petitioner filed an appeal and the Division Bench of the High Court dismissed the said appeal by judgment dated 18-5-2001, affirming the judgment of the trial court.

16. The learned Single Judge and the Division Bench, after exhaustive consideration of the evidence, have recorded the following findings of fact:

- i. Respondents 1 to 3 entered into an agreement dated 13-6-1979 agreeing to sell 25 acres of land to the plaintiff for a consideration of Rs 3,00,000 and received in all, Rs 2,25,000 as advance.
- ii. The plaintiff had taken a letter from the fourth respondent with the understanding that if the sale did not take place, the amount should be refunded.
- iii. The time for payment of the balance sale price stipulated in the agreement of sale was the essence of the contract.
- iv. The plaintiff's claim that in September 1979, the clause regarding payment schedule was modified by an oral agreement under which it was agreed that the instalments due on 20-10-1979 and 30-12-1979 could be paid after the defendants satisfied the plaintiff about their title to the property agreed to be sold, was not established by the plaintiff. The terms of the agreement remained unaltered.
- v. The plaintiff committed breach by failing to pay the sum of Rs 50,000 due on 20-10-1979 (except Rs 25,000 paid on 15-10-1979) and the sum of Rs 50,000 due on 30-12-1979 and the defendants were therefore justified in cancelling the agreement on 4-3-1980.
- vi. The defendants did not deliver possession of the properties agreed to be sold, to the plaintiff in part-performance of the agreement of sale dated 13-6-1979. However, the defendants delivered the property to the Plaintiff in trust to hold the same as caretaker, until the vendors received the entire sale price. Therefore, when the agreement was cancelled, the plaintiff became liable to return the suit scheduled properties to the defendants.
- vii. As per the terms of the agreement, the defendants had no obligation to produce the original title deeds or proof of clearance of loans, before the plaintiff paid the entire sale consideration.
- viii. The plaintiff failed to establish her readiness and willingness to complete the sale in terms of the agreement and she was not entitled to the relief of specific performance.

17. Feeling aggrieved by the judgment of the Division Bench, the Petitioner filed a Special Leave Petition before the Hon'ble Supreme Court raising a contention, amongst others, whether the time stipulated for payment of balance consideration was the essence of contract and whether the defendants were justified in cancelling the agreement, when the time schedule stipulated for such payment was not adhered to?

18. It was, inter alia, contended by the Petitioner in the Special Leave Petition that time is not of the essence of the contracts relating to immovable properties and that notwithstanding default in carrying out the contract within the specified period, specific performance will ordinarily be granted, if having regard to the express stipulation of the parties, nature of the property and surrounding circumstances, it is not inequitable to grant such relief.

19. **Draft a counter affidavit in response to the special leave petition.**

RELEVANT STATUTORY PROVISIONS:

INDIAN CONTRACT ACT, 1872:

Section 51 – Promisor not bound to perform, unless reciprocal promisee ready and willing to perform:

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

SECTION 52 - Order of performance of reciprocal promises:

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

SECTION 53 - Liability of party preventing event on which the contract is to take effect:

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented: and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

SECTION 54 - Effect of default as to that promise which should be performed, in contract consisting of reciprocal promises:

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

SECTION 55 - Effect of failure to perform at a fixed time, in contract in which time is essential:

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential: If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon: If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.

TRANSFER OF PROPERTY ACT, 1882**SECTION 34 - Transfer conditional on performance of act, time being specified:**

Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of

the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

SECTION 55 - Rights and liabilities of buyer and seller:

In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:—

(1) The seller is bound—

(a) to disclose to the buyer any material defect in the property [or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it. The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or

the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission. An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

QUESTION IV:**BRIEF FACTS:**

1. Accused No. 1 Sharad, Accused No. 2 Sumit and Accused No. 3 Amit were running a chit fund in which successful members were given various household articles, clothes and accessories.
2. The chit fund transaction was conducted once a week in the shop of Accused No. 3 Amit and also at Chandi Temple at Cuttack.
3. The prosecution case is that on 17-3-2014, one such transaction was held at about 7.00 p.m. in which one Chandan, PW-1, the successful bidder, was given a bronze vessel.
4. Chandan gave away the vessel as it was old and demanded a new vessel. But the request was refused by the proprietors of the chit fund and a quarrel ensued between Chandan and the aforesaid accused persons.
5. It is further the prosecution case that at about 10.00 p.m. on the same day i.e. 17-3-2014, near Chandikhol bypass, when Chandan, along with his friends Abhijit (PW-2), Ruchit (PW-3) and Soumya, was proceeding, Accused 1 to 3 above-mentioned, along with Accused Nos. 4 to 6, formed themselves into an unlawful assembly and armed with weapons like knives, rippers and stones attacked the aforesaid persons.
6. It is alleged that when the quarrel was going on, deceased Soumya intervened and tried to stop the quarrel. Accused 2 Sumit took out a knife from his pocket and stabbed Soumya on the left side of his chest, due to which Soumya slumped and fell on the ground.
7. Complainant Abhijit, PW-2, along with PW-3, Ruchit, carried Soumya in an autorickshaw to the Medical College & Hospital, Cuttack. On the way to hospital, Soumya breathed his last.
8. The accused persons after committing assault, threw the clubs and rippers at the spot and ran away. At about 11.30 p.m., PW 4, Prakash Mishra, Station House Officer, Cuttack received an information about the incident of rioting.
9. On being intimated by Constable PW 5, Sanatan, about the rioting and the injured being admitted to the Hospital at Cuttack, PW 6, Prakash Mishra, Station House Officer, went to the hospital and learnt that Soumya had died and the other three injured persons were taking treatment.
10. It is alleged that PW 2 Abhijit, who was present in the hospital, was questioned by PW 4. The information given by him was recorded in writing as per Ext. P-1 as complaint and was registered as FIR No. 57 of 2014 for offences punishable under Sections 143, 147, 148, 324 and 302 read with Section 149 IPC.
11. Inquest over the dead body of deceased Soumya was done and the dead body was sent for post-mortem examination.
12. PW 7, Dr. Sarangi who conducted the post-mortem opined that the injuries were ante-mortem in nature and found a punctured wound over the left 3rd intercostal space extending from medial edge of the chest obliquely downwards and medially 2' x 2' size with clean-cut margin and fat protruding through the wound the depth of which was 3½ inches. Likewise, injuries to PWs 1, 2 and 3 were also proved by PW 8, Dr. Himanshu Das.
13. After completion of investigation, all the accused were charged for offences punishable under Sections 143, 147, 148, 324, 302 read with Section 149 IPC.

14. In order to substantiate its case, the prosecution arrayed 8 witnesses. PWs 1, 2 and 3 were portrayed as eyewitnesses and shown to be injured persons to support the case of the prosecution as to the chit transaction, the incident which took place at about 7.00 p.m. on 17-3-2014 as also the assault at 10.00 p.m. on the same day. However, PW-1 Chandan turned hostile and was not examined by the prosecution.
15. The learned Additional Sessions Judge, however, considering (a) contradictions and discrepancies in the deposition of eyewitnesses, (b) non-examination of Chandan who was the root cause of quarrel (c) conflicting version as to injury sustained by Accused 1, Sharad, (d) presence of the deceased and injured witnesses at the Chandikhol bypass at 10.00 p.m., (e) mudammal knife not being the same with which the deceased was assaulted, (f) medical evidence as to injuries sustained by prosecution witnesses and other circumstances, held that in the facts and circumstances of the case, it could not be conclusively established that the prosecution had proved the case against the accused beyond reasonable doubt. He, therefore, held that the accused were entitled to benefit of doubt and accordingly acquitted them.
16. In an appeal against an order of acquittal by the State, the High Court reversed the order of the trial court. It observed that on careful examination of evidence of PWs 2 and 3, it was clearly established that deceased Soumya was done to death by Accused 2 and PWs 1 to 3 sustained injuries in the course of incident. It was also held by the High Court that contradictions and variations were of minor nature which did not affect substratum of the prosecution case and evidence of PWs 2 and 3 had remained totally unshaken and there was a ring of truth running through their testimony which inspired confidence notwithstanding trivial omissions and discrepancies, which did not go to the root of the matter.
17. Each of the accused persons were convicted for the offences punishable under Sections 143, 147, 148, 324 and 302 read with Section 149 of the Indian Penal Code. The said accused persons were sentenced to undergo imprisonment for life and also to pay a fine of Rs.5,000/-, in default, to undergo further imprisonment for a period of one year. As regards conviction for the offences punishable under Section 143, 147, 148 and 324 read with Section 149 of the Indian Penal Code is concerned, no separate sentence was imposed in view of the sentence awarded for the offence under Section 302 of the Indian Penal Code.
18. Being aggrieved by the order of conviction and sentence of the Hon'ble High Court, the appellants seek to file a criminal appeal before the Hon'ble Supreme Court.
20. **Draft a criminal appeal on behalf of the Accused persons whose order of acquittal by the trial court has been reversed by the high court setting out:**

The Questions of Law and Grounds:

- a. **dealing with powers and legal principles which the appellate court ought to be guided by while dealing with an appeal against an order of acquittal;**
- b. **demonstrating as to why the appellate court was not justified in reversing the order of acquittal of the trial court in the facts and circumstances of the instant case.**

RELEVANT STATUTORY PROVISIONS:

INDIAN PENAL CODE, 1860:

Section 143 - Punishment:

Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section 147 – Punishment for rioting:

Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 148 – Rioting armed with deadly weapon:

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 149 - Every member of unlawful assembly guilty of offence committed in prosecution of common object:

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Section 302 – Punishment for murder:

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Section 324 – Voluntarily causing hurt by dangerous weapons or means:

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CODE OF CRIMINAL PROCEDURE, 1973:**Section 372 - No appeal to lie unless otherwise provided:**

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

Section 374 - Appeals from convictions:

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,-

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.

Section 378 - Appeal in case of acquittal:

(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court, or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

379 - Appeal against conviction by High Court in certain cases

Where the High Court has, on appeal reversed an order of acquittal of an accused person convicted him and sentenced him to death or to imprisonment for life or to imprisonment for ten years or more, he may appeal to the Supreme Court.

Power of the Appellate Court:

On receiving such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper; Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement: Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

SUPREME COURT (ENLARGEMENT OF CRIMINAL APPELLATE JURISDICTION) ACT, 1970

Section 2 - Enlarged appellate Jurisdiction of Supreme Court in regard to criminal matters

Without prejudice to the powers conferred on the Supreme Court by clause (1) of Art. 134 of the Constitution, an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court-

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years;

(b) has withdrawn for trial before itself any case from any Court Subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years.

QUESTION V:**BRIEF FACTS:**

1. The Information Technology Act was enacted in the year 2000 with a view to give a fillip to the growth of electronic based transactions, to provide legal recognition for e-commerce and e-transactions, to facilitate e-governance, to prevent computer based crimes and ensure security practices and procedures in the context of widest possible use of information technology worldwide. However, a rapid increase in the use of computer and internet had given rise to new forms of crimes like, sending offensive emails and multimedia messages, cyber terrorism, breach of confidentiality and leakage of data by intermediary, e-commerce frauds like cheating by personation—commonly known as phishing, identity theft, frauds on online auction sites, etc. So, penal provisions were required to be included in the Information Technology Act, 2000. Also, the Act needed to be technology-neutral to provide for alternative technology of electronic signature for bringing harmonisation with Model Law on Electronic Signatures adopted by United Nations Commission on International Trade Law (UNCITRAL).
2. Keeping in view the above, the Government had introduced the Information Technology (Amendment) Bill, 2006 in the Lok Sabha on 15-12-2006. Both Houses of Parliament passed the Bill on 23-12-2008. Subsequently the Information Technology (Amendment) Act, 2008 received the assent of President on 5-2-2009 and was notified in the Gazette of India. Accordingly, the section 66-A and section 69-A were added to the Information Technology Act, 2000.
3. Mr. Ashok Randive and Mr. Anil Shivade are political rivals advocating different political ideologies. While the former has always canvassed that people from other States should not migrate to their State, the latter has always advocated that people from other States should be welcomed to their State with open arms. While Ashok Randive is an incumbent Minister, Anil Shivade is the head of the Opposition Party, however, fresh polls are to be conducted in two months. During one of the poll drives, Ashok Randive gave a speech on 01.01.2012 which came to be heavily criticised by Anil Shivade's son, Aman Shivade on his personal blog (www.freespeech.blogspot.com) and also on a post in the popular social media website – Facebook. In both these posts, it was mentioned that Ashok Randive should be removed from his Ministership as he was propagating hatred among members of different regional groups and his speeches were likely to result in internal disturbances in the State affecting its normal life.
4. Immediately thereafter, an FIR No. 1 of 2012 was registered on 02.01.2012 against Aman Shivade under Section 66-A and Section 69-A of the Information Technology Act, 2000 as amended and for using the social media and the internet as an activist platform. Takedown Notices were also sent by the Cyber Crimes Unit to the offices of the companies owing the domain blogspot.com and facebook.com to takedown the posts made by Aman Shivade on a vague pretext that the said post on the blog and social media was capable of inciting riots and commission of cognizable offences within the State.
5. The aforesaid actions of registration of FIR and issuance of take down notices was widely reported in the press and came to heavily criticized by a free speech society on the ground that the State was employing an insidious form of censorship which impaired the core value of freedom of speech contained in Article 19(1)(a) of the Constitution of India.
6. Apprehending arrest by the police officials and being subject to a prosecution which he believes to be motivated, Aman Shivade has approached you to file a Writ Petition before the Hon'ble Supreme Court.

7. Draft a Writ Petition to be filed before the Hon'ble Supreme Court *inter alia*

- a. setting out a brief Synopsis of the core issues involved in the matter;
- b. challenging the constitutionality of Section 66-A and Section 69-A on the grounds of violation of freedom of speech guaranteed under Article 19(1)(a);
- c. raising grounds relating to interpretation and application of Section 66-A and Section 69-A to the present factual matrix, and seeking quashing of the FIR dated 02.01.2012 and also interim reliefs;

NOTE: The Writ Petition to be drafted will be deemed to have been filed on 20.01.2012

RELEVANT STATUTORY PROVISIONS:

CONSTITUTION OF INDIA

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

Article 32

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 clause (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

INFORMATION TECHNOLOGY ACT, 2000

66. Computer related offences.—If any person, dishonestly or fraudulently, does any act referred to in Section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

Explanation.—For the purposes of this section—

(a) The word 'dishonestly' shall have the meaning assigned to it in Section 24 of the Indian Penal Code (45 of 1860).

(b) The word 'fraudulently' shall have the meaning assigned to it by Section 25 of the Indian Penal Code (45 of 1860).

66-A. Punishment for sending offensive messages through communication service, etc.—

Any person who sends, by means of a computer resource or a communication device—

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,

shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation.—For the purposes of this section, terms 'electronic mail' and 'electronic mail message' means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message."

69-A. Power to issue directions for blocking for public access of any information through any computer resource.—

(1) Where the Central Government or any of its officers specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine."

Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 (made in exercise of the powers conferred by clause (z) of sub-section (2) of section 87, read with sub-section (2) of section 69A of the Information Technology Act 2000, (21 of 2000))

3. Designated Officer.—

The Central Government shall designate by notification in Official Gazette, an officer of the Central Government not below the rank of a Joint Secretary, as the "Designated Officer", for the purpose of issuing direction for blocking for access by the public any information generated, transmitted, received, stored or hosted in any computer resource under sub-section (2) of section 69A of the Act.

4. Nodal officer of organisation.—

Every organisation for the purpose of these rules, shall designate one of its officer as the Nodal Officer and shall intimate the same to the Central Government in the Department of Information Technology under the Ministry of Communications and Information Technology, Government of India and also publish the name of the said Nodal Officer on their website.

5. Direction by Designated Officer.—

The Designated Officer may, on receipt of any request from the Nodal Officer of an organisation or a competent court, by order direct any Agency of the Government or intermediary to block for access by the public any information or part thereof generated, transmitted, received, stored or hosted in any computer resource for any of the reasons specified in sub-section (1) of section 69A of the Act.

6. Forwarding of request by organisation.—

(1) Any person may send their complaint to the Nodal Officer of the concerned organisation for blocking of access by the public any information generated, transmitted, received, stored or hosted in any computer resource:

Provided that any request, other than the one from the Nodal Officer of the organisation, shall be sent with the approval of the Chief Secretary of the concerned State or territory to the Designated Officer:

Provided further that in case a Union territory has no Chief Secretary, then, such request may be approved by the Adviser to the Administrator of that Union territory.

(2) The organisation shall examine the complaint received under sub-rule (1) to satisfy themselves about the need for taking of action in relation to the reasons enumerated in sub-section (1) of section 69A of the Act and after being satisfied, it shall send the request through its Nodal Officer to the Designated Officer in the format specified in the Form appended to these rules.

(3) The Designated Officer shall not entertain any complaint or request for blocking of information directly from any person.

(4) The request shall be in writing on the letter head of the respective organisation, complete in all respects and may be sent either by mail or by fax or by e-mail signed with electronic signature of the Nodal Officer:

Provided that in case the request is sent by fax or by e-mail which is not signed with electronic signature, the Nodal Officer shall provide a signed copy of the request so as to reach the Designated Officer within a period of three days of receipt of the request by such fax or e-mail.

(5) On receipt, each request shall be assigned a number alongwith the date and time of its receipt by the Designated Officer and he shall acknowledge the receipt thereof to the Nodal Officer within a period of twenty four hours of its receipt.

7. Committee for examination of request.—

The request alongwith the printed sample content of the alleged offending information or part thereof shall be examined by a committee consisting of the Designated Officer as its chairperson and representatives, not below the rank of Joint Secretary in Ministries of Law and Justice, Home Affairs, Information and Broadcasting and the Indian Computer Emergency Response Team appointed under sub-section (1) of section 70B of the Act.

8. Examination of request.—

(1) On receipt of request under rule 6, the Designated Officer shall make all reasonable efforts to identify the person or intermediary who has hosted the information or part thereof as well as the computer resource on which such information or part thereof is being hosted and where he is able to identify such person or intermediary and the computer resource hosting the information or part thereof which have been requested to be blocked for public access, he shall issue a notice by way of letters or fax or e-mail signed with electronic signatures to such person or intermediary in control of such computer resource to appear and submit their reply and clarifications, if any, before the committee referred to in rule 7, at a specified date and time, which shall not be less than forty-eight hours from the time of receipt of such notice by such person or intermediary.

(2) In case of non-appearance of such person or intermediary, who has been served with the notice under sub-rule (1), before the committee on such specified date and time, the committee shall give specific recommendation in writing with respect to the request received from the Nodal Officer, based on the information available with the committee.

(3) In case, such a person or intermediary, who has been served with the notice under sub-rule (1), is a foreign entity or body corporate as identified by the Designated Officer, notice shall be sent by way of letters or fax or e-mail signed with electronic signatures to such foreign entity or body corporate and any such foreign entity or body corporate shall respond to such a notice within the time specified therein, failing which the committee shall give specific recommendation in writing with respect to the request received from the Nodal Officer, based on the information available with the committee.

(4) The committee referred to in rule 7 shall examine the request and printed sample information and consider whether the request is covered within the scope of sub-section (1) of section 69A of the Act and that it is justifiable to block such information or part thereof and shall give specific recommendation in writing with respect to the request received from the Nodal Officer.

(5) The designated Officer shall submit the recommendation of the committee, in respect of the request for blocking of information alongwith the details sent by the Nodal Officer, to the Secretary in the Department of Information Technology under the Ministry of Communications and Information Technology, Government of India (hereinafter referred to as the "Secretary, Department of Information Technology").

(6) The Designated Officer, on approval of the request by the Secretary, Department of Information Technology, shall direct any agency of the Government or the intermediary to block the offending information generated, transmitted, received, stored or hosted in their computer resource for public access within the time limit specified in the direction: Provided that in case the request of the Nodal Officer is not approved by the Secretary, Department of Information Technology, the Designated Officer shall convey the same to such Nodal Officer.

9. Blocking of information in cases of emergency.—

(1) Notwithstanding anything contained in rules 7 and 8, the Designated Officer, in any case of emergency nature, for which no delay is acceptable, shall examine the request and printed sample information and consider whether the request is within the scope of sub-section (1) of section 69A of the Act and it is necessary or expedient and justifiable to block such information or part thereof and submit the request with specific recommendations in writing to Secretary, Department of Information Technology.

(2) In a case of emergency nature, the Secretary, Department of Information Technology may, if he is satisfied that it is necessary or expedient and justifiable for blocking for public

access of any information or part thereof through any computer resource and after recording reasons in writing, as an interim measure issue such directions as he may consider necessary to such identified or identifiable persons or intermediary in control of such computer resource hosting such information or part thereof without giving him an opportunity of hearing.

(3) The Designated Officer, at the earliest but not later than forty-eight hours of issue of direction under sub-rule (2), shall bring the request before the committee referred to in rule 7 for its consideration and recommendation.

(4) On receipt of recommendations of committee, Secretary, Department of Information Technology, shall pass the final order as regard to approval of such request and in case the request for blocking is not approved by the Secretary, Department of Information Technology in his final order, the interim direction issued under sub-rule (2) shall be revoked and the person or intermediary in control of such information shall be accordingly directed to unblock the information for public access.

10. Process of order of court for blocking of information.-

In case of an order from a competent court in India for blocking of any information or part thereof generated, transmitted, received, stored or hosted in a computer resource, the Designated Officer shall, immediately on receipt of certified copy of the court order, submit it to the Secretary, Department of Information Technology and initiate action as directed by the court.

11. Expeditious disposal of request.—

The request received from the Nodal Officer shall be decided expeditiously which in no case shall be more than seven working days from the date of receipt of the request.

12. Action for non-compliance of direction by intermediary.—

In case the intermediary fails to comply with the direction issued to him under rule 9, the Designated Officer shall, with the prior approval of the Secretary, Department of Information Technology, initiate appropriate action as may be required to comply with the provisions of sub-section (3) of section 69A of the Act.

13. Intermediary to designate one person to receive and handle directions.—

(1) Every intermediary shall designate at least one person to receive and handle the directions for blocking of access by the public any information generated, transmitted, received, stored or hosted in any computer resource under these rules.

(2) The designated person of the Intermediary shall acknowledge receipt of the directions to the Designated Officer within two hours on receipt of the direction through acknowledgement letter or fax or e-mail signed with electronic signature.

14. Meeting of Review Committee.—

The Review Committee shall meet at least once in two months and record its findings whether the directions issued under these rules are in accordance with the provisions of sub-section (1) of section 69A of the Act and if is of the opinion that the directions are not in accordance with the provisions referred to above, it may set aside the directions and issue order for unblocking of said information generated, transmitted, received, stored or hosted in a computer resource for public access.

15. Maintenance of records by Designated Officer.—

The Designated Officer shall maintain complete record of the request received and action taken thereof, in electronic database and also in register of the cases of blocking for public access of the information generated, transmitted, received, stored or hosted in a computer resource.

16. Requests and complaints to be confidential.—

Strict confidentiality shall be maintained regarding all the requests and complaints received and actions taken thereof.

QUESTION VI:**BRIEF FACTS:**

1. The petitioner's husband, Harbhajan Singh was commissioned as a Lieutenant in the Indian Army on or about November 13, 1983 according to the petitioner and on June 1, 1988 according to the respondent-authorities.
2. He was promoted to the rank of Major on June 24, 1998.
3. On promotion, he was posted at Kargil on July 10, 1998.
4. According to the petitioner, he complained of chest pain on July 12, 1998 and was removed to Leh on July 16, 1998.
5. The diagnosis made was of ischemic heart disease. The petitioner who was married to Harbhajan Singh in 1991 was living in Meerut at the relevant time with her two children — a daughter born in 1992 and a son born in 1995.
6. On receiving information of the illness of her husband, she rushed with her children to Leh on July 16, 1998.
7. After a great deal of persuasion, the petitioner and her children were allowed to meet Harbhajan Singh who was then lying in a make-shift hospital which was devoid of life saving treatment at the relevant time.
8. She found her husband in a precarious condition. He was unable to move on his own.
9. Both the petitioner and her husband requested the authorities to airlift him to Ambala or Srinagar Military Hospital for proper treatment. This request was turned down.
10. Upon this the petitioner and her husband requested the authorities to discharge him so that he might move to Srinagar at his own risk. That request was also not acceded to. On the other hand, he was threatened with Court Martial.
11. After a great deal of persuasion and pleading, on July 19, 1998 one Dr Major Piyush agreed to shift Harbhajan Singh from Leh to Ambala and told the petitioner that her husband would be airlifted to Ambala on July 21, 1998.
12. The petitioner and her husband pleaded with the authorities that she and her children be allowed to accompany him but that request was also not acceded to. She was asked to move with her children independently from Leh and reach Ambala to receive her husband there.
13. The petitioner was not satisfied with the assurance given by the authorities and insisted that she would stay on till her husband was actually airlifted on July 21, 1998.
14. On July 21, 1998, Harbhajan Singh was not airlifted. On inquiry, it was revealed that the Commanding Officer had not passed the necessary orders for his evacuation to Ambala Army Hospital. However, the authorities persuaded the petitioner to move to Ambala with an assurance that her husband would be airlifted to that place on July 23, 1998. Hence, on July 22, 1998 the petitioner with her children reached Srinagar and from there, reached Udampur on July 23, 1998. On that day at the Udampur check post, she was informed that her husband was not "well" and she should return to Leh.
15. The petitioner rushed back to Leh the next day, i.e., on July 24, 1998.
16. There she was to receive a rude shock when she was shown the burnt body of her husband. The authorities did not disclose to her the circumstances under which her husband had received the burns. Later on, she was only given a report of the post-mortem examination conducted by the Army Medical Authorities at Leh which attributed the death to "extensive burns".
17. According to the authorities, after Harbhajan Singh complained of chest pain at Kargil he was evacuated to Leh on July 16, 1998. He was advised transfer to Ambala on July 22, 1998. The transfer according to the authorities, "was not an emergency one".

18. It is also the case of the authorities that it is Harbhajan Singh who did not board the plane on July 23, 1998. According to them, on that day he had gone to attend to some private business in the cook house and later his charred body was found with 98 per cent burns due to kerosene leading to irreversible shock. This was at 08.03 hours on that day.
19. According to the petitioner, her husband's death took place in mysterious circumstances, particularly because when she saw her husband, he was unable to move around. It was, therefore, ununderstandable as to how he could, on his own, move around to receive the said burns. He was in fact brought to the airbase at Leh from the Army Hospital in the custody of the Army specialists according to the authorities, and was supposed to be in their custody till he was to board the plane. Hence she protested to the authorities at Leh, upon which she was told that the matter would be investigated and it is only after the investigation that she would be informed about the circumstances leading to her husband's death.
20. Thereafter, she wrote several letters to the authorities for communicating to her the result of the inquiry; but only a few of the letters were answered intimating her that she would be informed in the matter when the report would become available.
21. After more than 16 years, the finding of the inquiry was that the death of her husband was not attributable to military service.
22. She applied for a copy of the inquiry report so that she could challenge the same in appeal and claim Special Family Pension and Children Allowance. The authorities, however, refused to give her a copy of the report stating that it was a highly confidential document.
23. The petitioner has, therefore, approached you for counsel and advise on seeking a remedy under Article 32 of the Constitution claiming both Special Family Pension and Children Allowance as well as damages of Rs 7,50,000.
24. **Draft a Writ Petition to be filed before the Hon'ble Supreme Court setting out Necessary grounds.**

RELEVANT STATUTORY PROVISIONS:

CONSTITUTION OF INDIA

Article 32

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 clause (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

SPECIAL FAMILY PENSION (SFP)

- i. *Eligibility: Admissible in case of death of a personnel on account of causes attributable to or aggravated by military service*

- ii. *Special Family Pension is admissible at the uniform rate of 60% of reckonable emoluments last drawn by the deceased, subject to a minimum of Rs. 2,550/- irrespective whether widow has children or not (in cases arising on or after 1.1.96). W.e.f. 1.1.96, in case the eligible child is physically or mentally handicapped and unable to earn livelihood, SFP is admissible for life. Widowed/divorced daughters upto the age of 25 years or marriage whichever is earlier has been included in the definition of family for the purpose of Special Family Pension.*
- iii. *Families of SSCOs and ECOs who die under circumstances attributable to military service shall also be entitled to special family pension.*

SPECIAL FAMILY PENSION ON REMARRIAGE WIDOW: *Special Family Pension on remarriage of widow, is regulated as follows:*

(a) *Commissioned Officers*

(i) *If she has child(ren):-*

If she continues to support children after remarriage

Full Special Family Pension to Continue to Widow

If she does not support children after remarriage

Ordinary Family (OFP) equal to 30% of emoluments last drawn to the re-married widow; 50% of the family eligible.

Special Pension to children

(ii) *If widow has no children Full Special Family Pension to continue to widow.*

QUESTION VII:**BRIEF FACTS:**

1. ABC Ltd., ("ABC") an Indian company entered into an affreightment contract with XYZ Shipping Co. Ltd. ("XYZ"), an Indonesian company on 20.10.2010. Under the contract, ABC engaged the services of XYZ to carry integrated circuits in 15 shipments from Hong Kong to India. The contract contained an arbitration clause which is reproduced below:

"If any dispute or difference should arise under this charter, general average/arbitration in London to apply, one arbitrator each to be appointed by each of the parties hereto, the third by the two so chosen, and their decision or that of any of them, shall be final and binding. The said three arbitrators should be commercial men who are the members of the London Arbitrators Association. This contract is to be governed and construed according to English Law."
2. ABC provided integrated circuits for the first 9 shipments to XYZ but only after considerable delay. Thereafter, ABC failed to provide the remaining 6 shipments. On 03.04.2013, a debt was admitted by way of an Addendum to the Contract of Affreightment. By way of the said Addendum, ABC admitted that it was liable to pay a sum of USD 649,722 to XYZ on account of non performance of its obligations under the Contract of Affreightment. Thereafter, arbitration was initiated and the disputes were referred to an arbitral tribunal comprising of three arbitrators at London. The arbitral tribunal, vide award dated 21.08.2014, held ABC liable to pay to XYZ an undisputed sum of US Dollars 649,722.90 plus interest and costs thereon.
3. The above award dated 21.08.2014 was for damages suffered by XYZ only in respect of the 9 shipments that were provided by ABC. XYZ had suffered further loss on account of ABC's failure to provide the remaining 6 shipments. Accordingly, the arbitration clause was invoked by XYZ for damages arising out of the non performance of the said 6 shipments and proceedings commenced at London in respect of sum of USD 1,115,379/-.
4. XYZ initiated enforcement action in India under Sections 47 and 49 of the Arbitration and Conciliation Act, 1996 ("the Act") for the award dated 21.08.2014. Simultaneously, in order to prevent the ongoing arbitration from becoming infructuous, XYZ filed a petition before the learned District Judge, Ernakulam under Section 9 of the Act read with section 151 and Order 38 Rule 5 and Order 39 Rule 1 of the CPC, seeking security pending foreign arbitration for the sum of USD 1,115,400/- and attachment of cargo belonging to ABC, which was within the jurisdiction of the District Court, Ernakulam.
5. The Hon'ble District Judge, Ernakulam on 25.09.2014 allowed the above petition under Section 9 and directed attachment of cargo belonging to ABC. Aggrieved by this order, ABC filed a writ petition under Article 226 of the Constitution challenging the above order on several grounds. The main ground of challenge was that proceedings under Section 9 of the Act are not maintainable in relation to foreign seated arbitrations as Section 9 falls within Part-I of the Act.
6. XYZ filed a reply in the aforementioned writ petition mainly stating that since the contract of affreightment is prior to the judgment of the Hon'ble Supreme Court in the case of Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc. (2012) 9 SCC 552 ("BALCO"), the same does not apply to the arbitration proceedings between the parties. Consequently the petitioner is entitled to file an application under Sec. 9 of the Act as mandated by the Hon'ble Supreme Court in Bhatia International (2002) 4 SCC 105 ("Bhatia International"). The Single judge of the Hon'ble Kerala High Court on 27.11.2014 allowed the writ petition and dismissed the Section 9 petition filed by XYZ before the Hon'ble District Judge. The relevant/operative part of the High Court's order is stated below:

“The contention that since Ext. P-1 was entered into before the judgment in Balco case-and therefore the principles laid down in the said decision are not applicable to the facts of the case cannot be countenanced. The law laid down by the Supreme Court in Balco case is declaratory in nature and, therefore, the first respondent cannot be heard to say that he is not bound by the same and that the said principle cannot be applied to the case on hand. In the case of a declaration, it is supposed to have been the law always and one cannot be heard to say that it has only prospective effect. It is deemed to have been the law at all times. If that be so, the petition before the court below is not maintainable and is only to be dismissed.”

7. Aggrieved by the above order dated 27.11.2014, XYZ filed a Special Leave Petition (“SLP”) in the Hon’ble Supreme Court of India on 11.12.2014 under Article 136 of the Constitution. In the SLP, the main issue was whether in the present case, petition under Section 9 of the Act is maintainable or not. XYZ contended the following:
 - a. The judgment of the Supreme Court in BALCO operates only prospectively, i.e. for contracts entered into after 06.09.2012.
 - b. That although the Addendum was entered into after BALCO, the arbitration was under the contract of affreightment which was entered into before BALCO. Therefore, Part-I of the Act would apply to the present arbitration even though it is seated outside India and thereby, petition under Section 9 of the Act is maintainable.
 - c. That in the contract of affreightment, there was no implied or express exclusion of Part-I of the Act because exclusion has to be clear and unambiguous in the contract. Therefore, under Bhatia International regime, Part-I of the Act will apply and petition under Section 9 of the Act is maintainable.
 - d. XYZ has a strong prima facie case in view of the Addendum and if Section 9 petition is held to be not maintainable, XYZ may be rendered remediless as ABC may dispose of all its assets to render the award unenforceable.
8. Notice was issued to ABC in the above SLP on 15.12.2014. ABC has approached you to represent them in this matter and file a counter affidavit to the above SLP on their behalf.
9. **Draft only the preliminary objections to the above SLP justifying how a petition under Section 9 of the Act is not maintainable. Respond to the abovementioned contentions raised in the SLP using the facts stated above and relevant case-law. Proceed on the basis of the Act as it stood prior to its amendment in 2015/2016.**

RELEVANT STATUTORY PROVISIONS:

ARBITRATION AND CONCILIATION ACT, 1996 (AS IT STOOD PRIOR TO AMENDMENT IN 2015/2016)

2. Definitions.-

(1) *In this Part, unless the context otherwise requires,-*

(f) *"international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is-*

(i) *an individual who is a national of, or habitually resident in, any country other than India; or*

(ii) *a body corporate which is incorporated in any country other than India; or*

(iii) *a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or*

(iv) *the Government of a foreign country;*

(2) *This Part shall apply where the place of arbitration is in India.*

(7) An arbitral award made under this Part shall be considered domestic award.

9. Interim measures etc. by Court.-

A party may, before, or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
- (ii) for an interim measure or protection in respect of any of the following matters, namely:-*
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*
 - (b) securing the amount in dispute in the arbitration;*
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
 - (d) interim injunction or the appointment of a receiver;*
 - (e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.*

37. Appealable orders.-

- (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-*
 - (a) granting or refusing to grant any measure under section 9;*
 - (b) setting aside or refusing to set aside an arbitral award under section 34.*
- (2) Appeal shall also lie to a court from an order of the arbitral tribunal-*
 - (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*
 - (b) granting or refusing to grant an interim measure under section 17.*
- (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or taken away any right to appeal to the Supreme Court.*

QUESTION VIII:**BRIEF FACTS:**

1. One Mr. Joshi, ("the Complainant") approached the Maharashtra State Financial Corporation ("the Corporation") for sanction of loan for his hotel project at Akola. As per the project report, the total capital requirement was Rs 74.45 crores, out of which the Complainant intended to take Rs. 30 crores as loan from the Corporation.
2. The Executive Committee of the Corporation approved the Complainant's loan proposal on 27-5-2006, sanctioning a term loan of Rs 30 crores to the Complainant. Accordingly, a sanction letter along with the terms and conditions of the loan was issued to the Complainant on 2-7-2006. The material conditions of the loan were as follows:

"(a) The loan shall be utilised exclusively for the project as per the scheme approved by the Corporation and the specific purposes for which the same is sanctioned.

(b) The loan shall be disbursed by the Corporation in one lump sum or in installments as and when the said purposes are fulfilled or at the entire discretion of the Corporation or may be refused if in the opinion of the Corporation, the purposes for which the full loan has been sanctioned are not properly fulfilled.

(c) The loan will be disbursed either for acquisition of fixed assets under the said scheme or for reimbursement of funds utilised for acquisition of fixed assets taken for security under the said scheme.

(d) A minimum margin of 55% overall on fixed assets shall be maintained during the currency of the loan.

(e) The loan shall be repaid within a period of 8 years by 13 half-yearly installments commencing from the end of second year of disbursement of the first installment of the loan. The amount of each installment repayable being about 1/13 of the amount sanctioned regardless of the amount disbursed.

(f) The interest shall be charged @ 22% p.a. and the same shall be payable quarterly on the total loan and the same shall be charged from the date of disbursement of first installment of the loan."
3. Additionally, it was also agreed that the loan amount would be disbursed depending on the progress of the work in accordance with a set time schedule. The progress of the construction work was required to be evaluated by the valuer approved by the Corporation.
4. The said conditions were accepted by the Complainant. Pursuant to the Complainant's request vide his letter dated 2-9-2006 containing certain undertakings/promises by the Complainant, the Corporation released first installment of the loan of Rs 2,90,00,000/-. On the same day, the Complainant issued a cheque for Rs 30,00,000/- towards upfront fees to the Corporation. However, the said cheque was dishonoured when presented for payment.
5. On 15-12-2006, the Corporation by their letter intimated the complainant that despite the release of first installment of Rs 2.90 crores, he had neither submitted papers for further disbursements nor reported progress of the project and had also failed to submit chartered accountant's certificate showing his investment. Subsequently, the Complainant filed a valuation report dated 7-1-2007, showing that a total amount of Rs. 6,66,97,057/- had been spent on the construction of the hotel. According to the Corporation, the Complainant had failed to furnish the progress report and despite the lack of complete documents, second installment of Rs 87,00,000/- was released to him on 19-1-2007, after adjusting the amount of interest due in terms of the conditions of loan therefrom.
6. On 5-3-2007, the Corporation vide their letter requested the Complainant to inform them about the progress of the project and avail the balance loan limit by submitting valuation report, chartered accountant's certificate towards further investment made by him for creation

of fixed assets. The Corporation had learnt that there was a proposal for laying a railway line between Akola and Nagpur which was likely to affect the hotel project. Based on this fact coupled with the complainant defaulting in payment of interest despite repeated requests by the Corporation vide their letters dated 10-12-2007 and 24-2-2008, the Corporation refused to release further installments of the loan sanctioned to the complainant. In its abovementioned letter dated 24-2-2008, the Corporation had also stated that on inspection on a couple of occasions by the Regional Manager of the Corporation, it was found that during the last four months there was no further progress in implementation of the project.

7. Finally, vide their letter dated 5-9-2008, the Corporation informed the Complainant that the entire balance unavailed term loan of Rs 26.23 crores had been treated as cancelled. The advocate for the Corporation further issued a legal notice dated 18-10-2008 to the Complainant, calling upon the Complainant to repay the entire disbursed loan with interest amounting to Rs 5.19 crores i.e. the outstanding amount as on 23-9-2008, within fifteen days from the date of receipt of the said notice. It further stated that the Complainant had also failed to give any alternative proposal for the hotel project as the project at the existing site was likely to be affected by a new railway track.
8. By his letter dated 15-9-2008, the Complainant protested to the recall of loan sanctioned to him. The complainant pointed out that though a number of installments of the loan had fallen due to be paid to him, it was only as late as on 29-7-2008 that the Corporation had asked him to submit a letter from the competent authority regarding the status of the railway line. He further stated that he had promptly submitted a certificate issued by the Commissioner, Akola Division affirming that there was no proposal of Akola-Nagpur line. The complainant also stated that by June 2007, he had spent Rs. 27,25,51,000/- but no evaluation was done by the valuer of the Corporation and the Corporation did not release further installments.
9. On 17-1-2009, the Complainant filed a complaint with the National Consumer Disputes Redressal Commission, New Delhi ("**the Commission**") in O.P. No. 9 of 2009 under Section 21(a)(i) of the Consumer Protection Act, 1986. In OP No. 9/2009, he prayed that the Corporation be directed to: (a) release the unavailed amount of loan due to him, i.e. Rs. 26.23 crores and (b) pay adequate amount of compensation for the loss suffered by him due to cancellation of the remaining term loan amount by the Corporation.
10. On 7-1-2016, the Commission came to the conclusion that there was no justifiable ground for the Corporation to deny disbursement of loan to the Complainant. According to the Commission, there was no stipulation in the conditions of loan for stopping the disbursement on account of default in the payment of interest on time. Therefore, the action of the Corporation in having sanctioned the loan and then stopping its disbursement without any cause amounted to deficiency in service on its the part. The Commission rejected the Corporation's stand that unless its action is found to be mala fide, even a wrong decision taken by it is not open to challenge. However, keeping in mind the passage of time, the Commission did not direct the Corporation to release further installments of the loan but directed the Corporation to pay to the Complainant an amount of Rs. 4,14,84,457/- as compensation within a period of two months from the date of the order.
11. The Corporation now wants to approach the Hon'ble Supreme Court of India to appeal against the Order of the Commission dated 7-1-2016 under Section 23 of the Consumer Protection Act, 1986. **Draft a statutory appeal as aforesaid, clearly stating the principles of law and relevant case laws, if any, on the basis of which the Order of the Commission dated 7-1-2016 may be averred to be wrong in law. Assume that the delay in filing the appeal has been condoned.**

RELEVANT LEGAL PROVISIONS**THE CONSUMER PROTECTION ACT, 1986*****Section 2(1)(o)***

"2. (1)(o) 'service' means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"

Section 2(1)(g)

"2. (1)(g) 'deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;"

Section 23 of the Act:

"23. Appeal. – Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order of the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period."

SUPREME COURT OF INDIA
ADVOCATE-ON-RECORD EXAMINATION
JUNE, 2016
QUESTION PAPER – III
ADVOCACY AND PROFESSIONAL ETHICS

TOTAL MARKS : 100

TIME ALLOWED : 03 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.
 - Answers should be brief and pointed. Illegible handwriting may result in deduction of marks.
 - Proficiency in language, comprehension, references to case law and statement of principles will carry weightage.
-

Question 1. An independent legal profession is considered to be scarcely less important to maintaining the Rule of Law and protecting liberty of people than an independent judiciary. Explain the role and values of the profession, in the above context. You may refer to provisions of the Constitution, international human rights instruments, as well as relevant case law which connect the role of the profession and protection of rights.

Question 2. Given the exalted role of the legal profession as an indispensable element of Rule of Law, its several justice serving functions, its obligation to ensure respect for the institutions of justice, whether the resort to strike by Advocates can at all be justified on any legal or ethical

principles? Whether strike by Advocates would amount to contempt of court? Or other misconduct?

Question 3. What is the difference between professional values and professional virtues? explain how both are relevant to professional ethics? You may keep the following statements in mind :-

- (a) Values are standards influencing choices between course of action. They intend to fall into one of three groups : moral values such as fairness, justice and truth; pragmatic values such as thrift, efficiency and health; and aesthetic values such as beauty, softness and warmth. A value system is a collection of consistent and coherent values ranked according to importance. Professional value systems include a mixture of moral and pragmatic values. [N Rescher, *Introduction to Value Theory* (New Jersey, Prentice Hall, 1969) at 2.]
- (b) Whereas values are standards set by a society or individual, virtues are aspirational qualities for individuals. Professionals aspire to 'an ideal defining a standard of good conduct, virtuous character, and a commitment, therefore, to excellence going beyond the norm of morality ordinarily governing relations among persons. [A Flores, 'What Kind of Person Should a Professional Be?' in A Flores (ed), *Professional Ideals* (1988) (n 13) at 1.]

Question 4. "An advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons ... is

his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others."

(Trial of Queen Caroline : statement of Henry Brougham-counsel for the Queen)

Is the above statement which is now captured by the phrase, "hired gun", consistent with the rules of the Bar Council of India? Can it be said that the adversarial system of administration of justice need not necessarily involve or support the above extreme proposition? Examine with reference to Practice in Supreme Court.

Question 5. It is said, "Without an adequate conception of the requirements of his office, it is utterly impossible that the advocate can perform the duties, which, by its very nature, lie stands pledged to society to fulfill. How can he hope to treat the mazes of intricate argument, if his mind is not disciplined by the habit of accurate reasoning? Or to advise safely in some perilous emergency, if he has not thoroughly digested and made himself master of legal principles?"

Examine the application of the above statement with reference to standards of professional duty in the Supreme Court vis a vis Bar Council of India Rules or any other principles?

Question 6. What is professional misconduct within the meaning of Section 35 of the Advocates Act, 1961? Explain why and how professional misconduct is distinguished from other misconduct? Whether principles of misconduct in relation to public services can be invoked to the legal profession?

Question 7. Section 35 of the Advocates Act, 1961, provides for punishment of advocates guilty of professional or other misconduct. Which one of the following standards to the extent they are different would be appropriate for determining and dealing with instances of "other misconduct":-

- (i) That the conduct is sufficiently reprehensible or indifferent as amounting to an abuse of the professional privilege, or
- (ii) That the conduct constitutes a significant departure from the acceptable standards of conduct for legal practitioners.

Explain with reference to decided cases.

Question 8. "In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his license or debarring him to practice as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his license to practice as an advocate in other courts or tribunals."(Supreme Court Bar Association v. U.O.I. (1998) 4 SCC 409)

Discuss as to whether Chapter 5 of the Advocates Act, 1961 may not control the powers of the Supreme Court under Order IV, Rule 8A of the Supreme Court Rules, 1966 as regards the withdrawal of the privileges of an advocate to practice in Supreme Court and also whether the provisions of

Articles 129 and 142 of the Constitution, can be sources of power to deal with professional misconduct?

Question 9. What is the standard of proof envisaged in disciplinary proceedings against Advocates? Explain the words "reason to believe" in Section 35 of the Advocates Act, 1961 with reference to decided cases.

Question 10. What is the role of the bar in the promotion of alternate dispute resolution processes? How is it related to Professional ethics?

Question 11. What do you understand of acting in the best interests of the client? How do you enrich this understanding by embedding the position of Advocate as officers of the Court and their primary duty to the Court?

Question 12. Whether the long tradition of lawyers being officers of the court can be said to be scarcely applicable to corporate lawyering, as it is claimed that this segment has no public responsibilities?

Supreme Court of India
Advocate-on-Record Examination – June 2016

Paper – IV Leading Cases

Time : 3 hours

Total Marks : 100

All Questions carry equal marks of 25 each. Answer any FOUR questions:

Basic Structure of the Constitution

1. What is scope of the limitation of not amending "the basic structure of the Constitution" as formulated by the Supreme Court in the case of *Kesavananda Bharati vs The State of Kerala* AIR 1973 Sc 1461, 1973 Supp. SCR 1 as this concept is not defined by the Constitution itself. Is this concept defined considering the cases after *Kesavananda Bharati* case; *The Minerva Mills Ltd. & Ors. Vs. UOI* AIR 1980 SC 1789, 1980 (3) SCC 625; *M. Nagaraj & Ors. Vs. UOI & Ors.* 2006 (8) SCC 212 and *I.R. Coelho vs. State of Tamil Nadu* AIR 2007 SC 861, 2007 (2) SCC 1, in which cases the Supreme Court had to consider the scope of the basic structure of the Constitution.

Is this concept not a very vague and undefined judiciary invented concept to prevent an amendment of the Constitution which Parliament and the Legislatures in the country feel it is necessary but is not considered as valid by the judiciary. In your opinion was the 13 judges bench in *Kesavananda Bharati* case justified in holding that Article 368 of the Constitution did not permit the destruction of the basic structure of the Constitution as this opinion of seven judges was over the dissent of six other judges. In *Kesavananda Bharati* case was there a ratio of not amending the "basic structure of the Constitution"? That was only limit expressed by only one Judge – Justice H.R. Khanna.

Maneka Gandhi Case

2. In *Gopalan's case* 1950 SCR 1964; AIR 1950 SC 27 the Supreme Court had held that the expression "procedure established by law" in Article 21 meant any kind of procedure established by a law made by Parliament or the State Legislatures and it did not give the expression the meaning of "due process of law" which was given in the US Constitution by the Supreme Court of United States. Twenty eight years after the Constitution was promulgated, in 1978 the Supreme Court in the case of *Maneka Gandhi vs. UOI* 1978 (1) SCC 248 overruled *Gopalan's case* and held that the

procedure established by law in Article 21 meant that the law or action governed by the Government must be just, reasonable and fair. In *Maneka Gandhi's case* the Supreme Court also adopted revisionist interpretation of "life" in Article 21 of the Constitution by enlarging its dimensions of not merely being deprived of life without authority of law but as affirmative guarantee for the dignity of the individual and worth of the human life. This interpretation has enabled the Courts in India to have jurisdiction in almost all matters for the purpose of ensuring the human existence. Did *Maneka Gandhi's case* overrule the original opinion of the makers of the Constitution propounded in *Gopalan's case* and in effect introduce the American concept of due process in the Indian Constitution law? *Maneka Gandhi's case* also gave a new interpretation of the Right to Equality before law in Article 14 as being contrary to arbitrariness. Is this reinterpretation of the Constitution by *Maneka Gandhi's case* justified and can the enlarged jurisdiction which our courts have today as a result be considered to be legally sound?

Public Interest Litigation

3. Public Interest Litigation began in the early years of the Supreme Court to protect the human rights of individuals who had no protection in ordinary litigation as in the case of allegations in killing of innocent people through fake encounters (*Chaitanayha Kalburg vs. UP 1989 (2) SCC 314*) and the death of a person in police custody because of torture *D.K. Basu vs. West Bengal 1997 (1) SCC 416* and the like. PIL was thus was a jurisdiction formally grounded on the enforcement of the human rights on behalf of the poor disadvantaged persons who were unable to reach the Court on their own. Over the years this unexceptional social action dimension of PIL has been diluted and converted into another type of public cause litigation to simply correct the actions and means of the executive or of public officials or departments of government or other public bodies e.g. the recent order of the Supreme Court on prohibition of taxis with diesel fuel in Delhi and replacing them with CNG. Is deviation of PIL in this manner justified to enable courts to practically correct and run administration and Government.

Appointment of Judges

4. The Supreme Court has held that under Article 124 of the Constitution, it is the Chief Justice of India and four of his colleagues who will select the judges of the Supreme Court, and contrary to Article 124, the President of India has merely to approve the recommendation of the Chief Justice and the collegium. This was decided in the *Second Judges case – Supreme Court Advocate on Record Association vs. UOI* 1993 (4) SCC 441; AIR 1994 SC 298; reversing the earlier judgement in the *First Judges case – S.P. Gupta vs. UOI* 1981 Supp. 1 SCC 87. The *Second Judges case* was further improved in the *Third Judges case* (Special Reference No. 1 of 1998). Both the *Second & Third Judges cases* have been criticized not only in India but in other jurisdictions of the world as an extraordinary overreach by the judiciary in the name of securing the independence of the judiciary. Recently, the Supreme Court of India has again held that an Amendment to the Constitution seeking to create a National Judicial Appointments Commission to select and appoint judges of the superior courts was violative of the basic structure of the independence of the judiciary. Considering the widespread criticism and dissatisfaction in the appointments of the judges of superior courts, is the appropriation of power to appoint judges by the Supreme Court justified to give an enlarged jurisdiction of the Supreme Court to appoint its own judges in the *Second & Third Judges' case?*

Reconsideration of the Death Penalty

5. The death penalty in India is being sanctified by the leading judgement of *Bachan Singh vs. State of Punjab* 1980 (2) SCC 284 which held that due consideration must be given to not only the relevant circumstances of the crime but also the circumstances of the criminal and further the death penalty should only be given in "rarest of the rare cases". However, subsequent cases have omitted to follow this approach as propounded in the *Bachan Singh's case* and have given judges - centric judgements rather than principled one. This has been noticed by Supreme Court recently in *Sangeet vs. Haryana* 2013 (2) SCC 452. In the light of subsequent criticism of *Bachan Singh's case* by the Supreme Court itself is there now a requirement that the "rarest of the rare" formula to execute a criminal requires reconsideration.