

**ADVOCATE ON RECORD EXAMINATION (June 2023)**

**Paper 1: Practice and procedure**

**Part I : 60 marks**

**Answer any 4 questions. All questions carry 15 marks each.**

*(Give reference to case laws while answering the question)*

1. Explain the nature of scope of original jurisdiction of the Supreme Court with regard to the following:
  - a. Writ jurisdiction,
  - b. Dispute between Government of India and one or more States, and/or between two or more States,
  - c. Dispute in connection with the election of the President or the Vice President of India.
2. Which are the statues under which the Supreme Court exercises appellate jurisdiction? Whether the scope of jurisdiction of the Supreme Court at statutory appellate body is different from the jurisdiction exercised under Article 136 of the Constitution?
3. Under which provisions the Supreme Court can transfer a case from one court to another court and under what circumstances? Whether a transfer petition can be heard and finally decided by a single judge of the Supreme Court?
4. What is the source of power of curative jurisdiction of the Supreme Court and under what circumstances such power can be exercised? What is the composition of the Bench for hearing curative petitions? Give your views whether the provision for the Curative Petition should be there or not?
5. When can a matter be referred to the larger Bench? Who has the authority to decide the strength and composition of the larger Bench?
6. Explain the advisory jurisdiction of the Supreme Court. Whether the advice given by the Supreme Court is the binding as a precedent under Article 141 of the Constitution?



**Part II : 40 marks**

Answer any 10 questions. All questions carry 4 marks each.

1. Explain
  - a. writ of habeas corpus
  - b. writ of quo warranto
2. Explain
  - a. ratio decidendi
  - b. per incuriam
3. Explain
  - a. Stare decisis
  - b. Res Judicata
4. Explain
  - a. What is a Court of record?
  - b. Whether Supreme Court is a Court of record?
5. Explain
  - a. Amicus Curiae
  - b. Pro-bono
6. What is the prescribed court fee for filing:
  - a. Special Leave petition (civil)
  - b. Special Leave petition (criminal)
  - c. Interlocutory Application for ex-parte interim order?
  - d. Transfer Petition arising out of Matrimonial disputes?
7. Enumerate the ways in which a public interest litigation may be commenced as per Supreme Court Rules, 2013.
8. What is surrender certificate or proof of surrender? Under what circumstances, and under which provision of Supreme Court Rules, 2013 such certificate is required?
9. Explain the difference between Writ Jurisdiction under Article 32 and Article 226 of the Constitution.
10. Which are the two books of account that every advocate-on-record is required to keep as per the Supreme Court Rules, 2013?



11. What is the procedure prescribed for inspection, search etc. under the Supreme Court Rules, 2013?
12. When does an appeal lie under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970?
13. Whether a Special Leave Petition can be filed against the rejection of review petition alone without challenging the main order? Cite the judgment of the Supreme Court in this regard.
14. What is the procedure to be followed for filing appeals and applications by indigent person before the Supreme Court?
15. What are the mandatory conditions for registration as Advocate – on – Record after passing of AOR examination?

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**SUPREME COURT OF INDIA**

**ADVOCATES ON RECORDS EXAMINATION, 2023**

**TIME: 03:00**

**TOTAL MARKS: 100**

**PAPER-II (DRAFTING)**

**INSTRUCTIONS:**

1. 30 MINUTES EXTRA-TIME IS PROVIDED FOR READING THE QUESTION PAPER.
2. ALL QUESTIONS ARE COMPULSORY AND CARRY EQUAL MARKS.
3. COVER PAGE, INDEX, OFFICE REPORT ON LIMITATION, LISTING PROFORMA, MEMO OF PARTIES, CERIFICATE AND AFFIDAVIT ARE '**NOT**' REQUIRED TO BE DRAFTED FOR ANY OF THE QUESTIONS.



**QUESTION NO. 1**

*(Instructions are at the end of the question)*

1. The General Election to the Legislative Assembly in the State of Maharashtra was declared by the Election Commission of India vide Notification dated 01.05.2023, whereby the last date of submitting nomination was 08.05.2023 (till 3.00 p.m.), the date of scrutiny was 09.05.2023, the date of polling was 25.05.2023 and the date of counting was 28.05.2023.
2. Besides other candidates, **Mr. Vijay Dinanath Chauhan** and **Mr. Radhe Bhaiya** contested from the **Malegaon Central Assembly Constituency**. Mr. Vijay Dinanath Chauhan contested on the '**Agneepath Party**' ticket and was allotted the "**Belt**" symbol, whereas Mr. Radhe Bhaiya contested on the '**TN Party**' ticket and was allotted the "**Shoe**" symbol.
3. Mr. Radhe Bhaiya filed his nomination papers with the Returning Officer on 08.05.2023 at 2.10 p.m. along with Form A and Form B. The Returning Officer posted the nomination papers of all the candidates on the website of the Election Commission of India as well on the notice board of his Office. On 09.05.2023, at the time of scrutiny of the nomination papers, none including Mr. Vijay Dinanath Chauhan, had raised any objection on the nomination papers filed by Mr. Radhe Bhaiya. None objected to the effect that Mr. Radhe Bhaiya was not the official candidate of the TN Party and that he should not be given the "*Shoe*" symbol.
4. After the counting of votes, the Election Commission of India announced the results whereby Mr. Radhe Bhaiya secured





7,500 votes and Mr. Vijay Dinanath Chauhan secured 7,000 votes and hence, Mr. Radhe Bhaiya was declared as the Returned Candidate and was elected by a margin of 500 votes.

5. Pursuant to the same, a member of the 'Agneepath Party' submitted a RTI Application to the Chief Electoral Officer (CEO), Maharashtra, seeking the particulars regarding the date and time of delivery of Form A under the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter, "*Symbols Order*") to the CEO, Maharashtra by Mr. Radhe Bhaiya. In response, the CEO, Maharashtra stated as follows: "*Form A & B of Mr. Radhe Bhaiya not received but a letter dated 08.05.2023 (received on 09.05.2023) has been received wherein it is stated that Form A & B of Mr. Radhe Bhaiya have been submitted to the Returning Officer of the Malegaon Central Assembly Constituency within the stipulated time.*"
6. Mr. Vijay Dinanath Chauhan then filed an Election Petition before the Hon'ble High Court under Section 100 (1)(d) (i) and (iv) read with Section 33 and 33-B of the Representation of the People Act, 1951 ((hereinafter, "*RP Act, 1951*"), to declare the election of the first respondent/Mr. Radhe Bhaiya as Returned Candidate from Malegaon Central Assembly Constituency at the General Election held on 25.05.2023 accepting the nomination papers of the first respondent/Mr. Radhe Bhaiya as null and void and to declare the Election Petitioner (Mr. Vijay Dinanath Chauhan) as duly elected member of the Legislative Assembly from Malegaon Central Assembly Constituency as he has secured next higher votes to the first respondent/Returned Candidate as per Section 101 of the RP Act, 1951. It was the



case of the Election Petitioner that the non-submission of Form A by the Returned Candidate to the Chief Electoral Officer of Maharashtra before 3.00 p.m. on the last date of filing of the nomination papers, i.e., 08.05.2023, amounted to non-compliance with the provisions of the Symbols Order and Sections 33 and 33B of the RP Act, 1951.

The Hon'ble High Court, however, dismissed the Election Petition, with the following observations:

- (1) Failure to plead material facts would entail even dismissal of the election petition under Order VII Rule 11 C.P.C. The expression "material facts" used in Section 83(1)(a) of the R.P. Act should be in relation to Section 100 (1)(d), *ibid*, that the result of the election insofar as it concerns the Returned Candidate has been materially affected. This Tribunal is aware that the Election Petitioner need not extract the expression from the statute verbatim in the election petition and it would suffice, if the pleadings satisfy the requirements of the statute. Unfortunately, for the Election Petitioner, his pleadings do not satisfy the requirements of the statute, inasmuch as, he has not averred as to how the acceptance of the nomination papers of the Returned Candidate, despite non-submission of Form A by him to the Chief Electoral Officer, had materially affected the result of the election, insofar as it concerns the Returned Candidate. In the facts of the case at hand, this Tribunal is unable to fathom as to how the failure to submit Form A to the Chief Electoral Officer would have, in any manner,





affected the result of the election, insofar as it concerns the Returned Candidate.

- (2) The Returning Officer followed Paragraph 8.4.2 (q) of the Election Commission of India's 'Handbook to the Returning Officer 2014', wherein it has been specifically stipulated as under:-

*“8.4 Allotment of Symbols to Candidates:*

*8.4.2 (q) . . . N.B. The notices in Form A and Form B signed in original must reach you not later than 3 p.m. on the last date for making nominations. The presentation of these Forms to the Chief Electoral Officer alone will not be treated as compliance with the provisions of para 13 of the Election Symbols (Reservation and Allotment) Order, 1968. It shall be the responsibility of the candidate or the political party concerned to ensure that the documents reach the Returning Officer in time. However, the submission of these Forms to you within the prescribed time will be considered as substantial compliance of the legal requirements, even if the same have not reached the Chief Electoral Officer.”*

- (3) Submission of Forms A and B to the Returning Officer and not to the Chief Electoral Officer would amount to substantial compliance with the provisions of law.

**INSTRUCTIONS:-**

- I. DRAFT AN APPROPRIATE PETITION ON BEHALF OF THE ELECTION PETITIONER AGAINST THE AFORESAID JUDGMENT OF THE HON'BLE HIGH COURT WITH A BRIEF SYNOPSIS, GROUNDS AND PRAYERS.





II. LIST OF DATES IS **"NOT"** REQUIRED TO BE DRAFTED.

**APPENDIX:**

**THE REPRESENTATION OF THE PEOPLE ACT, 1951**

**"Section 33. Presentation of nomination paper and requirements for a valid nomination:** (1) On or before the date appointed under clause (a) of Section 30, each candidate shall, either in person or by his proposer, between the hours of eleven O' clock in the forenoon and three O' clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under Section 31, a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency."

**"Section 36. Scrutiny of nominations:**

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(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

xxxxxx"

**"Section 83. Contents of petition.—**(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

xxxxxx"

**"Section 100. Grounds for declaring election to be void:** (1) Subject to the provisions of sub-section (2), if the High Court is of opinion --

(a) that on the date of his election, a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected--

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice, but, the High Court is satisfied --

(a) that no such corrupt practice was committed at the election by the candidate or his election agent and every such corrupt practice was committed contrary to the orders and without the consent of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects, the election was free from any corrupt practice on the part of the candidate or any of his agents,

then, the High Court may decide that the election of the returned candidate is not void."

#### **THE ELECTION SYMBOLS (RESERVATION AND ALLOTMENT) ORDER, 1968**

**Para 13. When a candidate shall be deemed to be set up by a political party.-** For the purposes of an election from any parliamentary or assembly constituency to which this Order applies, a candidate shall be deemed to be set up by a political party in any such parliamentary or assembly constituency, if, and only if,-

(a) the candidate has made the prescribed declaration to this effect in his nomination paper;

(aa) the candidate is a member of that political party and his name is borne on the rolls of members of the party;

(b) a notice by the political party in writing, in Form B, to that effect has, not later than 3 p.m. on the last date for making nominations, been delivered to the Returning Officer of the constituency;

(c) the said notice in Form B is signed by the President, the Secretary or any other office bearer of the party, and the President, Secretary or such other office bearer sending the notice has been authorised by the party to send such notice;





(d) the name and specimen signature of such authorised person are communicated by the party, in Form A, to the Returning Officer of the constituency and to the Chief Electoral Officer of the State or Union Territory concerned, not later than 3 p.m. on the last date for making nominations; and

(e) Forms A and B are signed, in ink only, by the said office bearer or person authorised by the party:

Provided that no facsimile signature or signature by means of rubber stamp, etc., of any such office bearer or authorised person shall be accepted and no form transmitted by fax shall be accepted.

**"FORM A**

**Communication with regard to Authorised Persons to intimate names of candidates set up by recognised NATIONAL OR STATE Political party or REGISTERED UN-REGISTERED political party:**

(See paragraph 13(c), (d) and (e) of the Election Symbols  
(Reservation and Allotment) Order, 1968)

To

1. The Chief Electoral Officer

..... (State/Union Territory)

2. The Returning Officer for the

..... Constituency.

Subject: General Elections to .....from ..... (State / Union Territory) – Allotment of Symbols – Authorisation of persons to intimate names of candidates."

**CONDUCT OF ELECTION RULES, 1961**

**"Rule 4. Nomination paper:** Every nomination paper presented under subsection (1) of section 33 shall be completed in such one of the Forms 2-A to 2-E as may be appropriate.

Provided that a failure to complete or defect in completing the declaration as to symbols in a nomination paper in Form 2-A or Form 2-B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36."



**QUESTION NO. 2**

*(Instructions are at the end of the question)*

1. The Hon'ble Supreme Court of India vide Judgment and Final Order dated 11.09.2022 titled "*Upmanyu Vs. Union of India*", while dealing with a batch of petitions arising out of the impugned judgment of High Court of Judicature of Allahabad inter-alia held that All India Council for Technical Education (AICTE) was the sole repository of power to lay down parameters of qualitative norms for broader concepts of technical education which entails both theory and practical. It further held that AICTE having not laid down the modalities of how practicals could be conducted through distance mode, imparting of technical courses through distance mode could not be permitted through Distance Education Council (DEC).
2. The Hon'ble Supreme Court was pleased to declare all the degrees and diplomas awarded to all the students from the year 2018 i.e. when such permission were granted to the Universities/Other Educational Institutions till the date of the Supreme Court Judgment i.e. 11.09.2022 to appear in a special examination to be conducted by the AICTE as a one-time measure to get their Degrees/Diplomas validated.
3. The Applicants are diploma holders from a duly accredited NAAC 'A' of a "Deemed to be University" within the meaning of Section 3 of the UGC Act, 1956.
4. The Applicants were not parties before the Hon'ble Supreme Court.





5. The Applicants joined the distance course pursuant to a public advertisement and were duly admitted to the course after a competitive selection process.
6. The Applicants also attended regular classes, which included practicals.
7. The Applicants are now gainfully employed in various Government/Private services.
8. The threat of losing their livelihood looms over their heads.

**INSTRUCTIONS:-**

- I. DRAFT AN APPROPRIATE REVIEW PETITION BEFORE THE HON'BLE SUPREME COURT WHICH MAY PROVIDE SUCCOUR TO THE APPLICANTS ALONGWITH A BRIEF SYNOPSIS, GROUNDS AND PRAYERS.
- II. LIST OF DATES IS **"NOT"** REQUIRED TO BE DRAFTED.

**QUESTION NO. 3**

*(Instructions are at the end of the question)*

1. One Raj Kumar married several women in the course of his lifetime and thereafter, died issueless in 1954. The details of the wives of Late Raj Kumar are as under:-
  - (1) **Mala** - Died in 1959
  - (2) **Yogeeta** - Died in 1961
  - (3) **Leena** - Leena was first married to Balraj and had a daughter, Babita. After the death of Balraj, Leena got remarried to Mr. Raj Kumar and Babita also came along to live with her and Mr. Raj Kumar - Leena died in 1962 leaving behind her daughter Babita
  - (4) **Asha**.
2. After the death of Raj Kumar, his wife Asha expressed her desire to take the Petitioner herein as her son and the Adoption ceremony took place on 20.02.1965, wherein Puja and feast took place and also the giving and taking over ceremony was done, whereby the Petitioner's father (Rajendra Kumar) and mother gave him in adoption to Asha. The age of the Petitioner at the time of adoption was 12 years and his name, after adoption, was changed from Gaurav to Vinod.
3. Thereafter, on 15.03.1965, the Deed of Adoption was executed and registered at the concerned Registry in Bokaro in connection with the adoption of the Petitioner by Asha. The witnesses to the said Adoption Deed were one Mr. Ravi and one Mr. Surya, and the Deed Writer was one Kamal Nath.





4. After adoption, Asha and the Petitioner started residing together as mother and son, and the Petitioner came in actual physical possession of all the properties ("suit property") of Late Raj Kumar and started paying rent thereof also. Furthermore, the Petitioner was married off by Asha in June 1965 i.e. after adoption, as per the custom of the prevalent child marriage at the time.
5. Thereafter, in 1990, on being influenced by Babita and her husband (Randhir), Asha (i.e. the adoptive mother of the Petitioner herein) instituted a title suit being Title Suit No. 420 of 1990 before the Court of the learned Subordinate Judge-III, Bokaro, wherein she arrayed the Petitioner herein as Defendant No. 1 and his birth father, Rajendra Kumar as Defendant No. 2. It is pertinent to mention herein that Asha filed the aforementioned Title Suit for declaration that the Deed of Adoption was illegal, invalid and not binding on her. Case of the plaintiff in brief was that her husband Raj Kumar died in or about 1954 leaving behind the plaintiff as his widow and Babita as his daughter. His entire interest devolved on them. She and Babita were residing in her husband's house and were in possession of the suit property. In December 1989, Defendant Nos.1 and 2 came to the village and Defendant No. 1 made a declaration that he had been adopted by the Plaintiff (Asha). Upon enquiry, the Plaintiff (Asha) found that a forged and fabricated deed of adoption was created. As per the Plaintiff, there was no actual giving and taking and the formalities and ceremonies of adoption were also not performed. The Plaintiff was in need of money for the marriage of her daughter Babita and for which the Defendants had agreed to advance money on

creation of a Bhugutbandha (a type of land mortgage deed) and on this pretext, the deed of adoption was created. It was also claimed that Gaurav was aged about 47 years at that time, so at the time of creation of the said deed he was aged about 22 years. He was married prior to 1964 and he had never lived with the plaintiff nor was he treated as her adopted son.

6. The Petitioner and his birth father, Rajendra Kumar then filed their respective Written Statements in the above Title Suit, wherein they both pointed out the entire chain of events including the adoption ceremony and the registration of the aforesaid Deed of Adoption. The Defendant No. 1 claimed that he was in possession of other properties of Late Raj Kumar and after the adoption; he ceased to have any relation with the Defendant No. 2. He also averred that he was not married prior to 1965 but was married in December 1966 that is after adoption he was given in marriage by the Plaintiff.
7. Asha only examined herself and Babita as PWs, whereas the Defendant Nos. 1 and 2 examined themselves as witnesses. No other witnesses were examined by both sides. The alleged Deed of Adoption was produced by the Defendants and was marked as Exhibit-A. During the course of the pendency of the aforesaid Title Suit, Asha died and the Babita was substituted as the plaintiff in the Title Suit.
8. By Judgment dated 09.10.1995, the Court of the learned Subordinate Judge-III, Bokaro decreed the aforesaid Title Suit in favour of Babita, inter-alia holding that the Deed of Adoption was not duly executed by Asha and that the said Deed was a product of fraud and misrepresentation practiced by Rajendra



Kumar on Asha. The learned Trial Court relied upon a statement made by the Petitioner in 1988 before a Judicial Magistrate in a separate case, wherein he had stated his name to be Gaurav and not Vinod. The learned Trial Court also held that:

- (a) There is no evidence that ceremonies of adoptions were performed.
- (b) The witnesses to the deed of adoption have not been examined.
- (c) No petition for mutation was moved by the Defendant No. 1 to get the suit property mutated in his name.
- (d) The cumulative effect of these evidences rebuts the presumption that any adoption of Defendant no.1 was taken by the original plaintiff in consonance with the provisions of the Hindu Adoptions and Maintenance Act, 1956.

It is pertinent to point out herein that the learned Trial Court disbelieved and discarded the testimony of Rajendra Kumar, who had deposed regarding the giving and taking ceremony, the execution of the registered Adoption Deed and the age of the Petitioner herein as being around 12 years old at the time of adoption.

9. Aggrieved, the Petitioner herein filed Title Appeal No. 270 of 1995 before the Court of the 1<sup>st</sup> Additional District Judge, Bokaro. Thereafter, by Judgment dated 23.09.2002, the Court of the 1<sup>st</sup> Additional District Judge, Bokaro allowed the aforementioned Title Appeal and set aside the Judgment and

Decree passed by the learned Trial Court. The Court of the 1<sup>st</sup> Additional District Judge, Bokaro placed heavy reliance upon the provisions of Section 16 of the Hindu Adoptions and Maintenance Act, 1956.

10. Thereafter, Babita filed an appeal under Section 100 of the Code of Civil Procedure, 1908, dated 21.02.2003, before the Hon'ble High Court of Jharkhand at Ranchi.
11. By the impugned Final Judgment and Order dated 12.05.2023, the Hon'ble High Court allowed the second appeal filed by the plaintiff (Babita) and set aside the Judgment of reversal passed by the Court of the 1<sup>st</sup> Additional District Judge, Bokaro in the Title Appeal, thereby restoring the Judgment and Decree passed by the learned Trial Court in the Title Suit. The Hon'ble High Court held as under:-

*"Whenever an instrument is under challenge, the veracity of it is to be tested not only against the background of contemporary events, but also in the light of the subsequent events to show whether the said instrument was ever acted upon. Here in the present case the deed of adoption has been challenged by none other than the original plaintiff, Asha, who is said to have taken Defendant No.1 in adoption by the registered deed executed in the year 1965. Section 10 mandates that adoptive child should be unmarried at the time of adoption unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption. As per Ext-C which is the statement made before the judicial magistrate in 1988, the Defendant No.1 stated himself to be Gaurav and not Vinod. The father of Defendant No.1 has deposed that the time of adoption*





*he and wife were only present. There is no evidence that ceremonies of adoptions were performed. After the said adoption there is no evidence that he lived in the house of Raj Kumar and the rent receipts showed it to be in the name of Asha (now deceased). The witnesses to the deed of adoption have not been examined. There are evidences that after adoption the name of defendant no.1 was not changed to Vinod as claimed in the pleadings. D.W.2 has admitted in para-seven of the cross-examination that Babita called the original plaintiff as her mother. Although it has been claimed that he had been taken in adoption in the year 1965 but no petition for mutation was moved by the Defendant No. 1 to get the suit land mutated in his name. The cumulative effect of these evidences rebuts the presumption that any adoption of Defendant No.1 was taken by the original plaintiff in consonance with the provisions of the Adoption Act 1956. The findings recorded by the first court of appeal in this regard are not tenable and is accordingly set aside."*

**INSTRUCTIONS:**

- I. DRAFT AN APPROPRIATE PETITION ON BEHALF OF THE PETITIONER BEFORE THE HON'BLE SUPREME COURT OF INDIA AS AGAINST THE JUDGMENT OF THE HON'BLE HIGH COURT ALONGWITH A BRIEF SYNOPSIS, LIST OF DATES, QUESTIONS OF LAW, GROUNDS AND PRAYERS.

**APPENDIX:-**

**THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956**

**"10. Persons who may be adopted.**—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—



- (i) he or she is a Hindu;
- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption."

**"11. Other conditions for a valid adoption.**—In every adoption, the following conditions must be complied with:—

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu sonson's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;
- (v) the same child may not be adopted simultaneously by two or more persons;
- (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of dattahomam shall not be essential to the validity of an adoption."

**"16. Presumption as to registered documents relating to adoption.**—Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."



**QUESTION NO. 4**

*(Instructions are at the end of the question)*

1. Mr. McLovin works as an investigative journalist for an electronic media channel named "Jaagte Raho". A journalist from the Channel has conducted various sting operations in January, 2022 against the incumbent Chief Minister, his relatives and associates in the State of Goa. The sting operation has allegedly captured CM's close aides asking for bribes in return for certain favours. Mr. McLovin is often targeted with malicious prosecution within the State for not favoring the ruling dispensation. Several false cases have been foisted against Mr. McLovin ever since the new Government took charge in the State.
2. Mr. McLovin hosts and anchors debate shows on his channel. On 12<sup>th</sup> May, 2022, Mr. McLovin hosted and anchored a debate wherein the sting operations were exposed. Subsequent to the telecast, a large crowd gathered outside and vandalized the studio while chanting slogans in favor of the current State Government. That some members of the TV crew were grievously injured including Mr. McLovin.
3. Mr. McLovin lodged a complaint at Police Station Baga against unknown persons for criminal trespassing, vandalizing and causing grievous hurt. Finding that no action had been taken on his complaint, Mr. McLovin was compelled to move the jurisdictional Magistrate under Section 156(3) of CrPC. The

Judicial Magistrate vide Order dated 20.08.2022 directed the Police to file a Status Report. The Police has till date not complied with the directions passed by the Learned Magistrate and the proceedings are pending adjudication before it.

4. Post the Telecast, multiple FIRs concerning the episode were filed and registered against Mr. McLovin in parts of the States of Goa, Rajasthan, Himachal Pradesh, Sikkim and Kerala. The details of the FIRs are as under:
- (i) FIR No. 122/2022 registered on 13.05.2022 in the State of Goa for offences punishable under Sections 153A, 153B, 295A, 505, 120-B and 34 of IPC and Section 66F of the Information Technology Act, 2000; and
  - (ii) FIR No. 56/2022 registered on 18.05.2022 in the State of Rajasthan for offences punishable under Sections 153A, 153B, 295A, 505, 12-B and 34 of IPC and Section 66F of the IT Act; and
  - (iii) FIR No. 25/2022 registered on 21.05.2022 in the State of Himachal Pradesh for offences punishable under Sections 295A of IPC and Section 66F of the IT Act; and
  - (iv) FIR No. 10/2022 registered on 22.05.2022 in the State of Sikkim for offences punishable under Sections 295A, 298, 505 of IPC and Section 66E and 66F of the IT Act; and



- (v) FIR No. 66/2022 registered on 25.05.2022 in the State of Kerala for offences punishable under Sections 295A, 298, 505 of IPC and Section 66E and 66F of the IT Act.
5. The gist of the aforementioned FIRs are almost identical. It is alleged that Mr. McLovin had deliberately and intentionally insulted a particular community. That the telecast of debate was deliberate and defamatory, containing false innuendos and suggestive half-truths against the CM and his close aides. Allegations with regard to cyber-crimes were also levelled.
6. Mr. McLovin apprehends prejudice in conducting his defense in the Courts at Goa. The complaints in these FIRs are against the relatives and associates of the CM who are allegedly seen in the sting operation. It is also to be noted that the FIRs have been registered in States where the CM's party is in power.

**INSTRUCTIONS:-**

- I. DRAFT AN APPROPRIATE TRANSFER PETITION TO BE FILED BEFORE THE HON'BLE SUPREME COURT ON BEHALF OF MR. McLOVIN ALONGWITH A BRIEF SYNOPSIS, GROUNDS AND PRAYERS.
- II. LIST OF DATES, APPLICATION FOR EX-PARTE STAY ARE **"NOT"** REQUIRED TO BE DRAFTED.

**APPENDIX:**

**THE CODE OF CRIMINAL PROCEDURE, 1973**

**156.** Police officer' s power to investigate cognizable case

**THE INDIAN PENAL CODE**

**153A.** Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

**153B.** Imputations, assertions prejudicial to national-integration.

**295A.** Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

**505.** Statements conducing to public mischief.

**120B.** Punishment of criminal conspiracy.

**34.** Acts done by several persons in furtherance of common intention

**THE INFORMATION TECHNOLOGY ACT, 2000**

**66-F.** Punishment for cyber terrorism

**66E.** Punishment for violation of privacy.





**QUESTION NO. 5**

*(Instructions are at the end of the question)*

1. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) provides that pre-natal diagnostic test or procedure can be conducted only for the purposes of detecting genetic or metabolic disorders or chromosomal abnormalities of congenital anomalies or sex linked diseases. The Act prohibits selection of sex before and after conception, determination and disclosure of the sex of foetus. The Act also prohibits any advertisement relating to pre-natal determination of sex. Section 23 deals with offences and penalties. Section 26 deals with offences by companies.
2. Certain doctors ostensibly in the field of public health and nutrition have adopted a modus operandi whereby they engage in giving advertisements through sponsored links for sex determination of a child in the foetus. In some cases the advertisements are through smart algorithms through commonly used words and keyword searches in popular search engines. In this manner they are violating the PCPNDT law with impunity.
3. It may be pointed out that the Ministry of Electronics and Information Technology (MeitY) has been totally ineffective in curbing the said malady. Also, the Ministry of Health and Family Welfare is deeply concerned with the eschewed sex ratio between the female and the male child.
4. The popular search engines are taking refuge in Section 79 of the Information Technology Act, 2000 which exempts the

intermediaries from liability against any third party information, data, or communication link made available or hosted by them.

5. The defence of the popular search engines is that they are merely intermediaries who have no control over third party content and, therefore, they are not liable for prosecution under either the PCPNDT Act, 1994 or the IT Act, 2000. Some of the search engines have also taken a plea before the competent authority that they are not amenable to the laws in India since they are located in a foreign land and have only some offices in India for operational purposes.

#### **INSTRUCTIONS:**

- I. PLEASE DRAFT A PUBLIC INTEREST LITIGATION TO BE FILED BEFORE THE HON'BLE SUPREME COURT FOR THE PURPOSES OF EFFECTIVE IMPLEMENTATION OF THE MANDATE OF THE PCPNDT ACT, 1994 WITH EMPHASIS ON THE POSSIBLE MEASURES TO CURB THE SEX DETERMINATION OF A FEMALE CHILD AND THE PRO-ACTIVE ROLE OF THE JUDICIARY IN THIS REGARD.
- II. MANDATORY DISCLOSURES, GROUNDS AND PRAYERS ARE ALSO REQUIRED TO BE DRAFTED.
- III. SYNOPSIS AND LIST OF DATES ARE **"NOT"** REQUIRED.



**APPENDIX:**

**THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES  
(PROHIBITION OF SEX SELECTION) ACT (PCPNDT ACT)**

- 22. Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention.-**
1. No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such centre, laboratory, clinic or at any other place.
  2. No person or organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or preconception selection of sex by any means whatsoever, scientific or otherwise.
  3. Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

Explanation.—For the purposes of this section, “advertisement” includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal, light, sound, smoke or gas

**INFORMATION TECHNOLOGY ACT, 2000**

- 79. Exemption from liability of intermediary in certain cases.--**(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.
- (2) The provisions of sub-section (1) shall apply if--
- (a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or
  - (b) the intermediary does not—
    - (i) initiate the transmission,
    - (ii) select the receiver of the transmission, and

- (iii) select or modify the information contained in the transmission;
- (c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.
- (3) The provisions of sub-section (1) shall not apply if—
  - (a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;
  - (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

*Explanation.* -- For the purposes of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary.]



**Supreme Court of India**

**Advocate-on-Record Examination**

**June-2023**

**Question Paper – III**

**Advocacy and Professional Ethics**

**Total Marks 100**

**Time – 3 hours**

- A. Question 1 and Question 2 carry 20 marks each and are compulsory.**
- B. Questions 3 to 8 carry 10 marks each. Answer any four questions from Question 3 to 8.**
- C. Questions 9 to 14 carry 5 marks each. Answer any four questions from Questions 9 to 14.**

1. What would be the consequence if an Advocate is found guilty of "professional misconduct" or "other misconduct" and under which provision of which Act can action be taken against him ? Discuss with reference to the judgments of the Supreme Court on "professional misconduct" and "other misconduct". (20 marks)
2. "Strikes by Advocates": Trace the development of law in relation to strikes by Advocates, with reference to decided cases by the Supreme Court of India and whether it would be legal for Advocates



to strike / boycott / abstain from attending Courts ? Whether strikes constitute contempt of court ? (20 marks)

3. Discuss the Seven Lamps of Advocacy propounded by Justice Abbot Parry and their relevance in present day practice. (10 marks)
4. Explain who is an "Amicus Curiae" and write about the duties and responsibilities of an Amicus Curiae towards the Court. What are the guidelines laid down by the Hon'ble Supreme Court regarding appointment of Amicus Curiae in criminal trials ? (10 marks)
5. Discuss the developments in the practice of legal profession, with special reference to Law Firms and applicability of professional ethics to the said Law Firms. (10 marks)
6. Discuss the scope and limitations of fair criticism or comment by an Advocate on the judgment of the Court. Also state the role and responsibility of media in reporting on sub-judice matters. (10 marks)
7. Do the High Courts possess the power / jurisdiction to direct that any Advocate shall not be permitted to practice before that High





Court or its subordinate Courts ? If yes, under which jurisdiction and to what extent ? (10 marks)

8. One of the prescribed duties of an Advocate is - not to indulge in advertising / soliciting for work. Explain the rationale for such duty, with reference to case laws, and the relevance of such duty during the present age of social media. (10 marks)
9. Is it appropriate to term the role of an Advocate as that of a "hired gun"? Explain with reference to an Advocate's duty towards the Client. (5 marks)
10. What are the duties of an Advocate towards the Court? (5 marks)
11. Is it proper for an Advocate to stand as a surety for his / her client? Also elaborate whether an Advocate can act in a matter where he / she has some pecuniary interest? (5 marks)
12. Is an Advocate bound to accept any brief in the Court in which he / she practices? Elaborate. (5 marks)



13. Explain what is meant by "an Advocate shall not commit a breach of the obligation imposed by Section 126 of the Indian Evidence Act."  
(5 marks)

14. Does an Advocate enjoy any privileges? (5 marks)

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## SUPREME COURT OF INDIA

### ADVOCATES ON RECORD EXAMINATION, 2023

#### PAPER IV-LEADING CASES

**Attempt any five questions. Each question carry 20 marks**

1. Summarize the reasons stipulated in the case of Navtej Singh Johar V. Union of India (2018) 10 SCC 1 for declaring Section 377 of IPC as violative of the fundamental rights provided under Articles 14, 15, 19 and 21 of the Constitution?

**(20 Marks)**

2. The doctrine of separation of powers cannot curtail the power of judicial review when fundamental rights are sought to be abrogated. Explain with reference to relevant case laws.

**(20 marks)**

3. With reference to the judgment of Supreme Court (Nirbhaya case), explain:- in what cases, statement by way of confession made in police custody is admissible in evidence against the accused; what is the evidentiary value of a dying declaration? Can it be the sole basis for conviction? Under what circumstances, the dying declarations were relied upon in Nirbhaya case; what are the aggravating and mitigating factors considered by the Supreme Court while awarding death sentence?

**(20 Marks)**

4. What is the duration of the order of Anticipatory Bail granted to a person under Section 438 Cr.PC.? Is it open for the Court to impose any appropriate condition? Discuss with reference to the decision of the Constitution Bench of the Supreme Court.

**(20 Marks)**

5. In Swiss Ribbon case, Supreme Court held that IBC proceedings are not recovery proceedings. Discuss the statement with reference to the object and scheme of IBC and the provisions. Analyze the decision of Supreme Court.

**(20 Marks)**

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6. What are the factors which are considered while fixing compensation in the cases of medical negligence? Discuss just and fair compensation. Is Hospital also vicariously liable for the negligence of a Doctor? Examine with reference to case law.

**(20 Marks)**

7. State the reasons why the judgment of Pradeep Kumar Biswas v Indian Institute of Chemical Biology (2002) 5 SCC 111 is a leading case. Discuss in detail the majority view and the minority view in the judgment. Explain the circumstances under which a Writ under Article 226 of the Constitution can be filed against a Private Institution which is not a 'State' under Article 12 of the Constitution?

**(20 Marks)**

8. Is "right of Privacy" a fundamental right. Explain with reference to judgment of Supreme Court. 'Doctrine of proportionality' has been developed and expounded by Supreme Court for testing the validity of legislation. Explain the doctrine with reference to the case laws.

**(20 Marks)**

9. How has the Court in the judgment of Pramati Educational & Cultural Trust v. Union of India (2014) 8 SCC 1 clarified and/or explained the view in the cases of TMA Pal, Islamic Academic and in P.A. Inamdar? Examine this in light of Right to Education and reservation in private unaided educational institutions. Does Right of Children to Free and Compulsory Education Act, 2009 apply to aided or unaided minority school? Explain.

**(20 Marks)**

10. (a) Under Arbitration and Conciliation Act, post 2015 amendment, Supreme Court has held that "perversity" is one of the grounds for challenge to the Award of the Arbitral Tribunal. Discuss with reference to the case laws.

**(10 Marks)**



(b) Constitution Bench in the case of SBP Vs Patel Engineering (2005) 8 SCC 618, in the context of pre-2005 amendment regime, held that all preliminary or threshold issues pertaining to jurisdiction of Arbitral Tribunal should be examined by Court while deciding Section 11

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application. Discuss the evolution of arbitration jurisprudence with reference to power of court under Section 11 of A&C Act, 1996.

**(10 Marks)**

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