

**IN THE SUPREME COURT OF INDIA**

**Advocate-on Record Examination - May 2018**

**PRACTICE AND PROCEDURE**

Max Marks : 100 marks .

Time : 3 hours

1. Briefly explain the different jurisdictions exercised by Indian Supreme Court. (12 marks)
2. Discuss the powers of the chief Justice of India as "*master of the Rolls*" with reference to the relevant case law. (8 marks)
3. Explain the origin, evolution and extent of jurisdiction exercised in a curative petition by Supreme Court of India. (6 marks)
  - (a) How a curative petition is different from a review petition? (2 marks)
  - (b) Can a curative petition can be filed before a review petition is dismissed? (2 marks)
  - (c) What is to be the constitution of the bench hearing a curative petition? (2marks)
4. (a) How a mid-night hearing can be sought before Supreme Court of India? (3 marks)
  - (b) In what manner new and old matters can be heard by Vacation Bench? (3 marks)
5. (a) Explain the nature of matters dealt by Registrar and Chamber judge. (5 marks)
  - (b) Does the Registrar of the Supreme Court while dealing with business in chambers have the following powers;
    - (i) Impose costs in default of compliance with his orders? (1mark)
    - (ii) Condone delay in re-filing 60 days after notifying the defects? (1 mark)
    - (iii) Allow the withdrawal of an appeal after lodgement of the appeal? (1mark)
    - (iv) Entertain an application for assignment of bonds? (1mark)
    - (v) Entertain on application for discovery and inspection? (1mark)
6. (a) Under what circumstances an advocate on record can be removed from the register of advocates on record? Explain the procedure. (6 marks)
  - (b) Enumerate the manner and mandatory disclosures to initiate Public Interest litigation before the Supreme Court of India? (6 marks)
  - (c) What is the minimum number of electors required to file an election petition challenging the election of the president of India? Who is required to certify such petition and to what effect? (4 marks)

7. Explain two of the following; (4 marks each)
- (a) Legal Aid and Amicus Curiae
  - (b) Mediation process in Supreme Court
  - (c) Supreme Court website, Information system and e-filing
  - (d) Reference to larger benches of 3,5 and more judges
8. In an issue of all India implication, there are several writ petitions filed before various High Courts. You have to advise a corporate client with business in more than one state for appropriate legal proceeding. Explain in brief the options available for legal proceedings including two alternatives before Supreme Court of India. (10 marks)
9. (a) What is a court of record? (4 mark)
- (b) Is Supreme Court a Court of Record? (2 mark)
- (c) Briefly explain the contempt powers of Supreme Court of India. (6 marks)
10. (a) What is the difference in the jurisdiction exercised by the Supreme Court under article 132 and 133 of the Constitution of India? (4 marks)
- (b) Under what power and when were the rules for Supreme Court of India first made? (2marks)

**SUPREME COURT OF INDIA**  
**ADVOCATES-ON-RECORD EXAMINATION 2018**

**PAPER-II**  
**(DRAFTING)**

**TOTAL: 100 MARKS**

**TIME: 3 HOURS**

**Instructions:**

1. 30 minutes extra time is provided for reading the question paper. Please read all the questions carefully.
2. Please ensure that your handwriting is legible. Needless to say, legible handwriting will weigh in your favour.
3. In Questions 1 and 3, please attempt either option A or option B.
4. Questions 1 and 3 will carry 25 marks. Question 2 will carry 20 marks. Question 4 will carry 30 marks.

**QUESTION 1.**

**A. DRAFT A COMPLETE CIVIL APPEAL WITH CAUSE TITLE AND APPLICATION FOR STAY, IF ANY, ON BEHALF OF X BANK (THE FOREIGN BANK) WITH SYNOPSIS AND THE LIST OF DATES. CERTIFICATE AND AFFIDAVIT ARE NOT REQUIRED.**

1. A, private limited company, executed an agreement with X Bank, a foreign bank, on 02.02.2015 by which X Bank purchased the original supplier's right, title and interest in a supply agreement in favour of B. B entered into an agreement with the supplier on 05.05.2015 for supply of goods worth US \$ 5,00,000 in accordance with terms and conditions contained in the sale contracts. The supplier issued three invoices dated 12.05.2015, 18.05.2015 and 23.05.2015. The payment term under the said invoices was 90 days from the date of bills of lading dated 09.05.2015, 14.05.2015 and 21.05.2015. Since the amounts under the said bills of lading were due for payment, X Bank sent an E-mail dated 27.08.2015 to B for payment of the outstanding amount. Thereafter, several reminders were sent by X Bank. The payments were not made by B in spite of several reminders. Ultimately X Bank issued a statutory notice on 28.01.2016 under Sections 433 and 434 of the Companies Act, 1956. The reply dated 09.03.2016 was issued by B denying any such liability.
  
2. After the enactment of the Insolvency and Bankruptcy Code, 2016 (the "Code"), X Bank issued a demand notice under Section 8 of the Code on 18.07.2016 at the registered office of B calling upon it to pay the outstanding amount.<sup>1</sup> B again denied the outstanding amount

---

<sup>1</sup> **Insolvency and Bankruptcy Code, 2016.**

**Section 8. Insolvency resolution by operational creditor-**

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

- (a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
- (b) the repayment of unpaid operational debt—
  - (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

by reply dated 01.10.2017. B also questioned the validity of the agreement dated 02.02.2015 in favour of X Bank.

3. X Bank initiated insolvency proceedings under Section 9 of the Code before the National Company Law Tribunal (the “NCLT”) on 12.10.2017. The NCLT, by its judgment dated 08.01.2018, rejected the insolvency application holding that there is non-compliance of the mandatory provision of Section 9(3)(c) of the Code requiring that the certificate specified therein must accompany the application under Section 9 of the Code and, therefore, the application must be dismissed at the threshold.<sup>2</sup>

---

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation — For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

<sup>2</sup> **Insolvency and Bankruptcy Code, 2016.**

**Section 9. Application for initiation of corporate insolvency resolution process by operational creditor –**

- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of Section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of Section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.
- (2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.
- (3) The operational creditor shall, along with the application furnish—
  - (a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
  - (b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
  - (c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and
  - (d) such other information as may be specified.
- (4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.
- (5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—
  - (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—
    - (a) the application made under sub-section (2) is complete;
    - (b) there is no repayment of the unpaid operational debt;
    - (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
    - (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

4. NCLAT, by its judgment and order dated 28.02.2018, dismissed the appeal, agreeing with the NCLT's view that the application must be dismissed for non-compliance of the mandatory provision contained in Section 9(3)(c) of the Code. The NCLAT further held that an Advocate cannot issue a demand notice under Section 8 on behalf of the operational creditor.
5. Against the judgment of NCLAT, X Bank has approached you to file an appeal under Section 62 of the Code before the Supreme Court of India.<sup>3</sup> Your client is of the view that Section 9(3)(c) of the Code is procedural in nature like Section 9(5) and, therefore, is not mandatory. Your client also believes that a person resident outside India also falls within the definition of "operational creditor" under Section 5(20) of the Code.<sup>4</sup> Your client is further of the view that the

- 
- (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.
  - (ii) reject the application and communicate such decision to the operational creditor and the corporate debtor if,—
    - (a) the application made under sub-section (2) is incomplete;
    - (b) there has been repayment of the unpaid operational debt;
    - (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor ;
    - (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
    - (e) any disciplinary proceeding is pending against any resolution professional proposed resolution professional :  
Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.
  - (6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

### <sup>3</sup> Section 62. Appeal to Supreme Court

- (1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.
- (2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

### <sup>4</sup> Section 5. Definitions –

In this Part, unless the context otherwise requires,—

- \* \* \* \* \*
- (20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;
  - (21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under

demand notice envisaged under Section 8 of the Code can be issued by an Advocate on behalf of the operational creditor.

OR

**B. DRAFT A COMPLETE SPECIAL LEAVE PETITION WITH SYNOPSIS, LIST OF DATES, CAUSE TITLE AND INTERIM RELIEF. CERTIFICATE AND AFFIDAVIT ARE NOT REQUIRED.**

1. A is the propositus of a Hindu Joint Family. A has two sons B and C and two daughters D and E. B has two sons F and G and one daughter H. C has one son I and two daughters J and K. A died in the year 2001 leaving behind his widow and two sons B and C and their respective families and daughters D, E and their respective families.
2. F filed a suit on 20.12.2002 for partition and separate possession of suit schedule properties (Schedule I, II, III, IV and V properties). In the plaint F averred that: (a) The widow of A and his sons B and C are in joint possession of the said properties as coparceners; (b) his father B is neglecting the plaintiff and his siblings; (c) D and E, as married daughters of A, are not coparceners; (d) In addition, at the time of their marriage, D and E had relinquished their respective shares by signing a relinquishment deed; and (e) Schedules I, II and III properties are joint family properties of A and Schedule IV and V properties are purchased by B and C out of the joint family nucleus.
3. D and E filed a written statement on 20.10.2003 and contested the suit claiming that, as daughters of A, they are entitled to their respective shares in the joint family properties. After the amendment in 2005 (the "2005 Amendment") to Section 6<sup>5</sup> of the Hindu

---

anylaw for the time being in force and payable to the Central Government, any State Government or any local authority.

<sup>5</sup> **Section 6. Devolution of interest in coparcenary property**

- (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005) (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—
  - (a) by birth become a coparcener in her own right in the same manner as the son;
  - (b) have the same rights in the coparcenary property as she would have had if she had been a son;

Succession Act, 1956 (the "Act"), D and E stated that they are entitled to the joint family properties as coparceners as the 2005 Amendment would apply to their case in view of the pendency of the

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

- (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.
- (3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005) (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—
- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. —For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

- (4) After the commencement of the Hindu Succession (Amendment) Act, 2005) (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005) (39 of 2005), nothing contained in this sub-section shall affect—

- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
- (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. — For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005) (39 of 2005).

- (5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation. — For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.



partition suit as on the date of coming into force of the 2005 Amendment Act.

4. The Trial Court decreed the suit on 25.01.2016 holding that all the suit schedule properties are joint family properties. The Trial Court rejected the contentions of D and E and held that they are not entitled to share in the said properties as they were born prior to the 2005 Amendment coming into force. The High Court dismissed the First Appeal filed by D and E on 25.02.2018 and confirmed the decree passed by the Trial Court.
5. D and E have approached you to file a Special Leave Petition on their behalf. They strongly believe that Section 6 of the Act, as amended, applies to their case and the rights conferred thereunder are available not only to daughters who are born after 09.09.2005 (*i.e.*, the date on which the 2005 Amendment came into force), but also to daughters born earlier. Further, though the suit for partition was filed prior to 2005, since it was pending as on the date of said amendment, Section 6, as amended, would be applicable. Further, their signatures on the relinquishment deed are not relevant.

## **QUESTION 2.**

**PLEASE DRAFT A COUNTER-AFFIDAVIT ON BEHALF OF B KEEPING IN MIND THE MAINTAINABILITY OF THE PETITION, CONFLICT OF LAWS, WELFARE OF THE CHILD AND ALL OTHER ASPECTS THAT CAN WIN A CASE FOR YOUR CLIENT. HOWEVER, THERE IS NO NEED TO DRAFT THE CAUSE TITLE.**

1. A, the petitioner in this matter, is a Person of Indian Origin (PIO) but has been a citizen of the United States (the "US") for more than a decade. The petitioner married B on 20.12.2010 at New Delhi in India. After marriage, B went to the US with the petitioner and lived with him. Their son, C was born in the US on 15.07.2012 and he holds an American passport.

2. Subsequently, disputes arose between A and B. B filed a petition in the New York State Supreme Court (the “US Court”) for divorce and dissolution of marriage in January 2013. A separation agreement dated 17.05.2015 was entered into between A and B (the “Separation Agreement”) regarding distribution of marital property, spousal maintenance and child support. The parties agreed that both the parties will have joint custody of C on a weekly basis; B would stay within 40 Kms of the residence of A in the US; and the party in custody of C will inform the other party about the welfare of the child.
3. On the basis of the Separation Agreement, the US Court passed a consent order on 10.07.2015 governing the issues of custody and guardianship of their minor son. Thereafter, B found it difficult to live in the US and returned to India on 15.12.2015 to live with her parents in New Delhi. At the time of leaving the US, B informed A that she was taking C with her.
4. A moved the US Court on 17.12.2015 for modification of the consent order and for taking action against B for violating it. The US Court by an *ex parte* order, granted A sole legal and physical custody of the minor child. The US Court further directed B to hand over the child to A along with his passport. However, the *ex parte* order could not be executed in the US as B had already left for India to live with her parents in New Delhi.
5. A filed a writ petition on 07.01.2016 before the Supreme Court of India under Article 32 of the Constitution of India praying for a writ of habeas corpus for the production of C and for handing over C’s custody to him along with his passport. The notice could not be served on B as she was not available at the address of her parents. Ultimately, C could be traced only on 18.12.2017 by the Police and produced before the Supreme Court. The child is still in the custody of B. B has approached you to defend her before the Supreme Court of India and to file a counter affidavit on her behalf. Some statutory

provisions that you may find relevant in drafting the counter-affidavit are reproduced in the footnote below.<sup>6</sup>

<sup>6</sup> **Hindu Minority and Guardianship Act, 1956**

**Section 6. Natural guardians of a Hindu minor-** The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl- the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the father;

(c) in the case of a married girl- the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation- In this section, the expressions "father" and "mother" do not include a step-father and a step-mother.

**Section 13. Welfare of minor to be paramount consideration.**—(1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

**Hindu Marriage Act, 1955**

**Section 26. Custody of children.**—In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

**Code of Civil Procedure, 1908**

**Section 13. When foreign judgment not conclusive.**—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India.

**QUESTION 3.****A. DRAFT A COMPLETE CRIMINAL APPEAL ALONG WITH SYNOPSIS AND APPLICATION FOR BAIL. LIST OF DATES, AFFIDAVIT AND CAUSE TITLE ARE NOT REQUIRED.**

1. The case of the prosecution is that Shyam Manjrekar and Pradeep Bhosale, the deceased, were neighbours and they used to live with their families in Guruwar Peth, Pune. There was enmity between the two families owing to a petty property dispute. Earlier also, a criminal case was filed against accused Shyam Manjrekar and Ghanshyam Tare when they attempted to murder Pradeep Bhosale.
2. It is stated in the First Information Report (the "FIR") that, on 14.10.2002, at about 3.00 p.m., the deceased Pradeep Bhosale was resting on a cot outside the front door of his house when the accused Shyam Manjrekar, while in a drunken state, started hurling filthy abuses at him. Pradeep Bhosale objected to the behaviour of the accused, and there was a heated exchange of words. Meanwhile, Ashok Manjrekar and Bipin Manjrekar (both sons of Shyam Manjrekar) and others also reached there. They were armed with sharp-edged weapons, including a sword and a *gupti* and attempted to assault the deceased. On this, Pradeep Bhosale started running to save his life and was chased by the accused persons. The accused succeeded in catching Pradeep Bhosale in Gadikhana Chowk near Rajesh Boarding House. Divya Bhosale (PW1) (daughter of the deceased), and Vaishali Bhosale (PW2) (wife of the deceased) followed them. Thereupon, Ashok Manjrekar stabbed Pradeep Bhosale in his stomach, who fell down. Bipin Manjrekar gave a blow to Pradeep Bhosale in the groin area with the *gupti* (pointed sharp-edged weapon). Accused Chandan Mazumdar, who was armed with a sword, and the other accused also allegedly assaulted Pradeep Bhosale. Divya Bhosale, in an attempt to save her father, threw herself on him but she was pushed aside. When the accused left believing Pradeep Bhosale to be dead, Divya Bhosale took him in an

auto rickshaw to Sassoon Hospital, Pune, in a seriously injured condition. However, the entry made in the register maintained in the hospital showed that the deceased Pradeep Bhosale was brought to the hospital by one Pushpa Joshi, who was not examined by the prosecution.

3. Abhay Jagtap (PW4) gave medical aid to the injured Pradeep Bhosale who succumbed to his injuries at about 4.40 p.m on the same day. Divya Bhosale reported the incident at Police Outpost, Mithi Ganj against Shyam Manjrekar, Ghanshyam Tare, Ashok Manjrekar, Bipin Manjrekar and Chandan Mazumdar. The Police Outpost, Mithi Ganj forwarded the report to Police Station Khadak, which registered Crime No. 265 of 2002 for offences punishable under Sections 143, 147, 148, 149 and 302 read with Section 34 of the IPC, on the same day at 6.30 p.m.
4. Vijender Patil (PW5) was the investigating officer. He got the inquest report prepared through Sub-Inspector Lokesh Rahul. The autopsy was conducted by Dr. Varun Mishra (PW6) on the same day from 9.15 p.m. to 10.15 p.m. He prepared the post-mortem examination report. On completion of the investigation, the investigating officer submitted a charge-sheet against five accused, namely, Shyam Manjrekar, Ghanshyam Tare, Ashok Manjrekar, Bipin Manjrekar and Chandan Mazumdar.
5. The case was committed by the Magistrate to the Court of Session for trial after giving necessary copies to the accused. On 26.04.2003, the Additional Sessions Judge, Pune, after hearing the parties framed charges in respect of offences punishable under Sections 147, 148, 149 and 302 read with Section 34 of the IPC against all the five accused who pleaded "not guilty" and claimed their right to trial. The prosecution examined PW1 to PW6. The evidence was put to the accused persons under Section 313 CrPC who simply denied all the questions put to them. No one was examined on behalf of the defence as a witness.

6. In her testimony, Divya Bhosale (PW1) stated that her mother Vaishali Bhosale (PW2) and she followed the accused persons and witnessed the attack on her father at Gadikhana Chowk. Though she attempted to shield her father from the attackers, they threw her to the side and continued to inflict blows on him with various weapons. In the process, she sustained abrasions on her hands and legs in order to save her father. Fortunately, she saw Nipun Shankar (PW3), an auto rickshaw driver who was her father's friend, who was present at the scene, and who immediately bundled her with her seriously injured father into his auto rickshaw to seek medical help. She stated that, after they started out, it was Nipun Shankar (PW3) who suggested that her father should be taken to the closest hospital, Sassoon Hospital, to ensure that her father did not succumb to his injuries. In cross-examination, Divya Bhosale (PW1) confirmed that her mother (PW2) did not accompany her to the hospital. She also stated that she was not in a position to produce any medical records to substantiate her claim of injuries sustained while trying to save her father from the attackers.
7. Vaishali Bhosale (PW2) testified that she followed the accused along with her daughter (PW1) and was present during the attack on her husband Pradeep Bhosale. She stated that she accompanied her daughter to the hospital but in a different auto-rickshaw. In cross-examination, she did not remember exactly where the incident occurred and stated that the fatal blows were struck a short distance from their home on the same street. She also did not know who Pushpa Joshi was and how her name came to be entered in the hospital register.
8. In his testimony on behalf of the prosecution, however, Nipun Shankar (PW3) specifically stated that Divya Bhosale (PW1) reached the spot of the incident only after the accused ran away from the spot. He also stated that the wife of the deceased (Vaishali Bhosale (PW2)) was not at the scene of the incident. During cross-

examination, he could not recall any conversation with Divya Bhosale (PW1) on the way to Sassoon Hospital.

9. Dr. Varun Mishra (PW6), who had conducted the autopsy, stated that the *ante-mortem* injuries of Pradeep Bhosale were of recent origin and could have been caused by sharp-edged weapons. He further stated that, on opening the body, a haematoma was found in the right temporal region, and there was a crack fracture in the right temporal region. Dr. Varun Mishra further opined that the deceased had died of traumatic and haemorrhagic shock due to multiple injuries and concluded that it was a homicide. Lastly, Dr. Mishra stated that the nine injuries (described above) could have been caused by weapons like a sword, knife, "*gupti*" and "*khukri*". When the weapons seized during the investigation were shown to Dr. Mishra, he stated that the injuries could have been caused by the use of these weapons.
10. The learned Additional Sessions Judge, Pune (the "**Trial Court**"), after considering the evidence on record, found that the charges against the accused persons were not proved beyond reasonable doubt and, accordingly, acquitted all the five accused vide his judgment and order dated 10.08.2004, passed in Sessions Case No. 160 of 2002.
11. Aggrieved by the order passed by the Trial Court, the State of Maharashtra filed an appeal before the High Court under S. 378 of the Code of Criminal Procedure, 1973 (the "**CrPC**"). The High Court, after considering the evidence on record and hearing the parties, in its judgment dated 21.02.2007, found no infirmity in the finding of the Trial Court in respect of accused Ghanshyam Tare and dismissed the appeal to that extent. However, the High Court found that the Trial Court had erred in law in acquitting the four accused, namely, Shyam Manjrekar, Ashok Manjrekar, Bipin Manjrekar and Chandan Mazumdar. The High Court gave the following reasons:
  - a) The finding arrived at by the trial court was perverse and is liable to be set aside under clause (a) of Section 386 of CrPC

which empowers the appellate court to reverse the order of acquittal, and pass sentence on the accused in accordance with law.

- b) The testimony of PW1 and PW2 cannot be doubted as it was a daylight incident in which the quarrel started in front of the house of the deceased and the presence of the two eyewitnesses who are family members of the deceased was natural, and their conduct in following the deceased and the accused was also natural.
  - c) The contention that persons other than the accused mentioned in the FIR could have committed the murder is a mere conjecture. The prosecution is not required to meet any and every hypothesis put forward by the accused. It must grow out of the evidence in the case.
  - d) In the present case, the FIR was lodged promptly and even the post-mortem was conducted on the same day that the investigation started. Keeping these facts in mind, who got the deceased admitted to the hospital is not of much relevance.
12. The High Court convicted the four accused under Section 302 read with Section 34 IPC and sentenced each of them to imprisonment for life and to pay a fine of Rs 5000 in default of which, they would suffer further imprisonment for a period of one year.
13. Shyam Manjrekar, Ashok Manjrekar, Bipin Manjrekar and Chandan Mazumdar have now approached you to draft a Criminal Appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 read with S. 379 of CrPC.<sup>7</sup>

---

<sup>7</sup> **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 article 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;



OR

**B. PLEASE DRAFT A SPECIAL LEAVE PETITION ON BEHALF OF X ALONG WITH SYNOPSIS AND INTERIM RELIEF. LIST OF DATES, CERTIFICATE AND AFFIDAVIT ARE NOT REQUIRED.**

1. X and his father Budhia lived in village Gulariya. Bholu Chanchal, step-brother of X's father Budhia, lived in village Bandi in the district of the Rae Bareli, about two or three miles from Bandi. Budhia did not reside in village Gulariya all the year round because he was working in Burdwan in West Bengal. Bholu had about four bighas of pasture land and seven bighas of cultivated land. He had no male issue. He had several daughters who were all married and resided at the places of residence of their respective husbands. Bholu Chanchal was old, about 80 years of age, and had no male member in the family to help him with his cultivation.
2. X and his mother came to reside with Bholu so that X could help Bholu with his cultivation. However, as X was not of much assistance to Bholu, the prosecution case was that, after about a year, Bholu turned X and his mother out of his home. X and his mother then returned to village Gulariya.
3. The prosecution case was that, about a month and a half before the murder of Bholu, X and Budhia went to Bholu and requested him to transfer some of his land to X. Bholu said that he had already kept X with him for a year and had found him of no assistance whatsoever. He, therefore, refused to give any land to X. Bholu had some grand-daughters and one of them called Kumari Sarju aged about five years was staying with him. Bholu said that he would give his lands to his grand-daughter Sarju.

---

(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.

**Section 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 and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

4. On the night of March 19, 2011, Bholu was sleeping in front of his house on a cot with his grand-daughter. One Nanku (PW1), a neighbour, was sleeping at a short distance from Bholu's house. At about midnight, Nanku heard some noise and called out to Bholu. There was no response. Nanku then heard the sound of someone running away. Nanku called out to others living nearby and went to Bholu's house. He found Bholu lying dead on his cot with a large number of injuries on his head and neck. The little girl Sarju, though stained with Bholu's blood, was not herself injured. She was soundly sleeping on the cot and was not awake when Bholu was killed.
5. Nanku informed the police station eight miles away from Bandi village of what he had heard and seen but could not name the perpetrator. The post-mortem examination disclosed that Bholu had sustained as many as thirteen injuries, eleven of which were incisions on different parts of his body. The injuries inflicted on Bholu's head and face had cut through his skull and the doctor who did the post-mortem was of the opinion that Bholu had died as a result of fractures of the skull bones, haemorrhage and shock. He concluded in his report that Bholu had been murdered.
6. After the post-mortem, Bholu's corpse was brought back to the village for cremation. On information given by Nanku, the local police started investigation. X, it is stated, came to one Brij Lal (PW2) of village Bandi. This was on the third day after the murder. X made certain enquiries from Brij Lal which roused the latter's suspicion. The Sub-Inspector of Police was then in the village and he was informed of the presence of X. He interrogated X and the case of the prosecution was that X made certain statements and produced from his house a *kulhari* (axe), a blood-stained shirt and *dhoti*. The examination of the shirt and *dhoti* by the Chemical Analyst and the Serologist disclosed that they were stained with human blood. This recovery of the blood stained *kulhari* (axe) and the blood-stained shirt and *dhoti* was made, according to the prosecution case, on

March 22, 2011, in the presence of two witnesses. X was charged under Section 302 of the Indian Penal Code, 1860 (the “**IPC**”) by the learned Sessions Judge of Rae Bareli (the “**Trial Court**”) for the murder of Bholu. X pleaded “not guilty” and the case was set down for trial.

7. According to the recovery memo, the two witnesses who were present when the aforesaid articles were produced by X were Lal Bahadur Singh and Wali Mohammad. Lal Bahadur Singh was examined as PW4. He gave evidence about the production of blood stained articles from X’s house. He stated that he was present when X produced the articles from a tub on the eastern side of the house. In cross-examination, however, he admitted that he had not heard X making any statement that led to the recovery. Wali Mohammad was not examined at all. One other witness Dodi Baksh Singh was examined as PW3. This witness stated that he had heard that, a short while before the recovery, the Sub-Inspector of Police took X into custody and interrogated him and that X broke down and stated that the axe with which the murder had been committed, his blood-stained shirt and *dhoti* were in his house and he would show the Police where he had hidden these articles.
8. In his statement under Section 313 of the Code of Criminal Procedure, 1973 (the “**CrPC**”), X stated that, apart from raising some suspicion against him and his father, the evidence given by the prosecution does not establish beyond reasonable doubt that he was the murderer. The evidence of Nanku (PW1) shows clearly that neither he nor the other persons to whom he had called out had seen the murderer. At the scene of the crime, the grand-child who was sleeping with Bholu was also fast asleep and did not even wake up when the injuries were inflicted on Bholu. Bholu might or might not have shouted out when the injuries were inflicted on him. The evidence of Nanku does not disclose that he heard anything except the sound of a person running away wearing shoes. X denied that he

and his father had asked for any lands from the deceased a month and a half prior to the occurrence. X denied that he had made any statement to the police that led to the recovery of the blood stained axe or blood stained shirt and *dhoti* from his house. X also denied that the clothes or the axe belonged to him. X raised the plea of alibi and said that he was living with his father in Burdwan and came back to the village on March 21, 2011. He said that the case was being foisted on him out of enmity.

9. On 19.07.2013, the Trial Court found him guilty of the offence of murder under Section 302 of the IPC and sentenced him to imprisonment for life. X preferred an appeal to the Hon'ble High Court of Judicature at Allahabad (the "**High Court**") under Section 374(2) of the CrPC which was dismissed on 16.06.2016. Both the Trial Court and the High Court came to the conclusion that the evidence as to motive was satisfactory. Both Nanku (PW1) and Brij Lal (PW2) had spoken to the motive. X and his mother had stayed with Bholu about four years ago in order to render assistance to Bholu in his cultivation. Bholu had turned X out because his work was not satisfactory. This is proved by the evidence of Nanku and Brij Lal. The evidence of the aforesaid two witnesses also established that X and his father had met Bholu about a month and half before the occurrence and asked for some land and Bholu refused to give any land to X. Some statutory provisions that you may find relevant in drafting the special leave petition are reproduced below.<sup>8</sup>

---

<sup>8</sup> **Section 162 of CrPC:**

**162. Statements to police not to be signed: Use of statements in evidence.**—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be

**QUESTION 4.**

**PLEASE DRAFT A SYNOPSIS AND A WRIT PETITION CONTAINING APPROPRIATE PRAYERS. THERE IS NO NEED TO DRAFT THE CAUSE TITLE AND LIST OF DATES.**

1. Mr. X is an Income Tax Officer (a Group B post) in the Income Tax Department who suffers from a benchmark disability<sup>9</sup> as defined in the Rights of Persons with Disabilities Act, 2016 (the “2016 Act”). He believes that he is entitled to be promoted to the post of Assistant Commissioner of Income Tax (a Group A post) under the first proviso to Section 34(1) of the 2016 Act.<sup>10</sup> However, the Income Tax Department has refused to do so on the basis of a circular issued by the Department of Personnel and Training, Government of India (the “DOPT”), which is set out below. Mr. X has been advised that, on account of certain orders of the Supreme Court (as set out below), his

---

used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation. — An omission to state a fact or circumstance in the statement referred to in subsection (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

**Sections 25 to 27 of the Indian Evidence Act, 1872:**

**25. Confession to police-officer not to be proved.** — No confession made to a police-officer, shall be proved as against a person accused of any offence.

**26. Confession by accused while in custody of police not to be proved against him.** — No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation. — In this section Magistrate does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882).

**27. How much of information received from accused may be proved.** — Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

<sup>9</sup> Section 2(r) of the 2016 Act defines a “person with benchmark disability” as meaning “... a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.”

<sup>10</sup> Please see footnote 6 for the text of Section 34 of the 2016 Act.

only option is to file a writ petition under Article 32 of the Constitution of India. Please draft a synopsis and a writ petition containing appropriate prayers on his behalf.

2. The relevant background facts, statutory and constitutional provisions and orders of the Supreme Court are set out below.
3. On October 8, 2013, a three-judge Bench of the Supreme Court of India pronounced its judgment in *Union of India v. National Federation of the Blind* (reported as (2013) 10 SCC 772) concerning the need for reservation in public employment for persons with disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the “**1995 Act**”). Relevant extracts from the judgment are set out below:

*“50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.*

*51. The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various international treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today.*

*52. Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz. “computing 3% reservation on total number of vacancies in the cadre strength” which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29-12-2005, which are contrary to the above reasoning are struck down and we direct the appropriate*

*Government to issue new office memorandum(s) consistent with the decision rendered by this Court.*

*53. Further, the reservation for persons with disabilities has nothing to do with the ceiling of 50% and hence, Indra Sawhney [1992 Supp (3) SCC 217] is not applicable with respect to the disabled persons.*

*54. We also reiterate that the decision in R.K. Sabharwal [(1995) 2 SCC 745] is not applicable to the reservation for the persons with disabilities because in the abovesaid case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST and OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal.*

### **Directions**

*55. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:*

*55.1. We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29-12-2005 and the subsequent OMs consistent with this Court's order within three months from the date of passing of this judgment.*

*55.2. We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.*

*55.3. The appellant herein shall issue instructions to all the departments/public sector undertakings/government companies declaring that the non-observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and the Nodal Officer in department/ public sector undertakings/ government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default."*

4. On June 30, 2016, a two-judge Bench of the Supreme Court of India in its judgment in *Rajeev Kumar Gupta v. Union of India* (reported as (2016) 13 SCC 153) quashed two Office Memoranda of the

DOPT, of the years 1997 and 2005, which did not provide for reservations in promotions for disabled persons and held as follows:

*“21. The principle laid down in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217] is applicable only when the State seeks to give preferential treatment in the matter of employment under the State to certain classes of citizens identified to be a backward class. Article 16(4) does not disable the State from providing differential treatment (reservations) to other classes of citizens under Article 16(1) [As per Indra Sawhney case, 1992 Supp (3) SCC 217, Article 16(4) is a subset of Article 16(1).] if they otherwise deserve such treatment. However, for creating such preferential treatment under law, consistent with the mandate of Article 16(1), the State cannot choose any one of the factors such as caste, religion, etc. mentioned in Article 16(1) as the basis. The basis for providing reservation for PWD is physical disability and not any of the criteria forbidden under Article 16(1). Therefore, the rule of no reservation in promotions as laid down in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217] has clearly and normatively no application to PWD.<sup>11</sup>*

*22. The 1995 Act was enacted to fulfil India's obligations under the “Proclamation on the Full Participation and Equality of the People with Disabilities in the Asia and Pacific Region”. The objective behind the 1995 Act is to integrate PWD into the society and to ensure their economic progress. [See Paras 3, 4 and 5 of the Proclamation of the Full Participation and*

<sup>11</sup> Para 812 of *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

“We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains — and should remain — the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”



*Equality of the People with Disabilities in the Asia and Pacific Region.] The intent is to turn PWD into “agents of their own destiny”. PWD are not and cannot be equated with backward classes contemplated under Article 16(4). May be, certain factors are common to both backward classes and PWD such as social attitudes and historical neglect, etc.*

*23. It is disheartening to note that (admittedly) low numbers of PWD (much below three per cent) are in government employment long years after the 1995 Act. Barriers to their entry must, therefore, be scrutinised by rigorous standards within the legal framework of the 1995 Act.*

*24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.*

*25. In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed.”*

5. On 24.01.2017, Mr. X was denied promotion as a Group-A officer, in violation of the law laid down by the Supreme Court in *Rajeev Kumar Gupta* (supra), despite the fact that the post was identified. However, on 03.02.2017, a two-judge Bench of the Supreme Court passed the following order in *Sirajuddin v. State of Karnataka*, SLP (C) No. 24994 of 2016 (“*Sirajuddin’s case*”):

*“... Question which has arisen in this case is whether persons, governed under “The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, can be given reservation in promotion. A view has been*

taken by this Court in *Rajiv Kumar Gupta & Others v. Union of India & Others*- (2016) 6 SCALE 417 in the affirmative.

*Mr. Ranjit Kumar, learned Solicitor General, points out that the prohibition against reservation in promotion laid down by the majority in Indra Sawhney & Others v. Union of India & Others*- (1992) Supp. 3 SCC 215<sup>12</sup> applies not only to Article 16(4) but also 16(1) of the Constitution of India and inference to the contrary is not justified.

*Persons suffering from disability certainly require preferential treatment and such preferential treatment may also cover reservation in appointment but not reservation in promotion.*

<sup>12</sup> Question number 7, as answered in Para 819 of *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

**“Question No. 7:**

*Whether clause (4) of Article 16 provides reservation only in the matter of initial appointments/direct recruitment or does it contemplate and provide for reservations being made in the matter of promotion as well? [One of us, Ahmadi, J is of the opinion that this question does not arise for consideration in these writ petitions and hence need not be answered. Accordingly, the opinions expressed and conclusion recorded on this question are those of the Chief Justice, M.N. Venkatachaliah, and B.P. Jeevan Reddy, JJ only]*

**819.** The petitioners' submission is that the reservation of appointments or posts contemplated by clause (4) is only at the stage of entry into State service, i.e., direct recruitment. It is submitted that providing for reservation thereafter in the matter of promotion amounts to a double reservation and if such a provision is made at each successive stage of promotion it would be a case of reservation being provided that many times. It is also submitted that by providing reservation in the matter of promotion, the member of a reserved category is enabled to leap-frog over his compatriots, which is bound to generate acute heart-burning and may well lead to inefficiency in administration. The members of the open competition category would come to think that whatever be their record and performance, the members of reserved categories would steal a march over them, irrespective of their performance and competence. Examples are given how two persons (A) and (B), one belonging to O.C. category and the other belonging to reserved category, having been appointed at the same time, the member of the reserved category gets promoted earlier and how even in the promoted category he jumps over the members of the O.C. category already there and gains a further promotion and so on. This would generate, it is submitted, a feeling of disheartening which kills the spirit of competition and develops a sense of disinterestedness among the members of O.C. category. It is pointed out that once persons coming from different sources join a category or class, they must be treated alike thereafter in all matters including promotions and that no distinction is permissible on the basis of their “birth-mark”. It is also pointed out that even the Constituent Assembly debates on draft Article 10(3) do not indicate in any manner that it was supposed to extend to promotions as well. It is further submitted that if Article 16(4) is construed as warranting reservation even in the matter of promotion it would be contrary to the mandate of Article 335 viz., maintenance of efficiency in administration. It is submitted that such a provision would amount to putting a premium upon inefficiency. The members of the reserved category would not work hard since they do not have to compete with all their colleagues but only within the reserved category and further because they are assured of promotion whether they work hard and efficiently or not. Such a course would also militate against the goal of excellence referred to in clause (j) of Article 51-A (Fundamental Duties).”

*Section 33 of the 1995 Act is required to be read and construed in that background.*<sup>13</sup>

*We find merit in the contention that the matter needs to be considered by the larger Bench. Accordingly, we direct the matter be placed before Hon'ble the Chief Justice for appropriate orders."*

6. On 19.04.2017, the 2016 Act came into force. The 2016 Act is a part of the obligations that India has incurred pursuant to the ratification of the Convention on the Rights of Persons with Disabilities on 13.12.2006 in the United Nations General Assembly. Section 102 (1) of the 2016 Act has repealed the 1995 Act. Unlike the 1995 Act, Section 34 of the 2016 Act specifically contemplates reservation in promotion.<sup>14</sup> In view of this development, Mr. X made a

<sup>13</sup> **Article 16 of the Constitution of India:**

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) ...

<sup>14</sup> **Section 34 of the 2016 Act:**

(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely: —

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

representation on 05.05.2017 to the Chairman, CBEC and the Secretary (Personnel), DOPT that he may be promoted as a Group A officer. The DOPT considered his representation and issued the following clarification on 15.09.2017:

*“The Hon’ble Supreme Court in the matter of Civil Appeal No. 1567/2017 [SLP (C) 24994/2016] titled Siddaraju v. State of Karnataka, in its order dated 3.2.2017 has noted that a view has been taken by the Apex Court in Rajiv Kumar Gupta v. Union of India- (2016) 6 SCALE 417 in the affirmative. However, in view of majority judgment in Indra Sawhney v. Union of India, (1992) Supp. 3 SCC 217 with regard to reservation in promotion and the provisions for reservation for persons with disabilities as construed after reading Section 33 of the PWD Act, 1995, the Hon’ble Supreme Court has held that they find merit in the contention that the matter needs to be considered by the larger Bench and accordingly, directed the matter be placed before Hon’ble Chief Justice for appropriate action. In view of the same, the request of Mr. X has been examined and cannot be acceded to.”*

7. On 15.01.2018, the DOPT issued an Office Memorandum on reservation for the persons with benchmark disabilities under the 2016 Act. However, the said OM does not deal with the issue of reservation in promotion at all.

---

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

**Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:**

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to nonavailability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability: Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

8. Mr. X approached an advocate practising before the High Court of Delhi who informed him that, in view of the order dated 03.02.2017 of the Supreme Court in *Sirajuddin's case*, he is unlikely to get any relief from the High Court of Delhi and, therefore, he should approach you to file a writ petition under Article 32 before the Supreme Court of India.

Supreme Court of India

Advocate-on-Record Examination

June 2018

Question Paper - III

ADVOCACY AND PROFESSIONAL ETHICS

TOTAL MARKS : 100

TIME ALLOWED : 3 hours

- 
- This paper is divided into 3 Sections.
  - Answers must be brief and pointed.
  - Handwriting must be legible. Illegible handwriting may result in deduction of marks.
  - Proficiency in language, comprehension, references to case law and statement of principles will carry weightage.
  - Number your answers correctly.
- 

SECTION – I

Answer any 3 (three) out of 6 (six) questions. They carry 20 marks each.

Question 1

"That the practice of law is not akin to any other business or profession as it involves a dual duty - nay a primary duty to the Court and then a duty to the litigant with the privilege to address the Court for the client. The lawyer is also required to be courteous and respectful to the opponent." Discuss how an Advocate can reconcile his/her duties.

Question 2

- (a) A client goes to a lawyer and states "I have committed a murder, please defend me". Should the lawyer accept the case and defend?
- (b) A client goes to a lawyer and states "I have forged my brother's signature on this family settlement. Please file a suit for specific performance." Should he file?

Question 3

- (a) Elucidate the provisions /rules that govern advertising and solicitation by lawyers and discuss your understanding as to the reasons for the same. Also, discuss whether they are excessive and unconstitutional.
- (b) Can a lawyer have a website? If yes, what would you include/exclude as content and the reasons. If not, why not?

Question 4

- (a) Can a lawyer representing a client participate in a media debate during the pendency of the case? Will it make a difference if he gives an interview after the case has been decided (i) by a lower court (ii) by the Supreme Court?

- (b) What are or should be the parameters governing public debate of criminal cases bearing in mind every accused is entitled to a fair trial. Would you have different parameters for tax related cases, writs or civil disputes?

**Question 5**

The Law Commission has recommended review of regulatory mechanism of the Advocates Act, not only in matters of discipline and misconduct of the advocates, but in other areas as well, keeping in view the wide expanse of the legal profession being involved in almost all areas of life. The Advocates Act and the Bar Council Rules do not define misconduct. In your view what is misconduct and support your answer with case law. Should personal misconduct by a lawyer be considered professional misconduct.

**Question 6**

- (a) Can a lawyer claim attorney/client privilege qua law enforcement authorities in a search and seizure operation at his office?
- (b) If an advocate permits his associate or colleague to either assist him or handle the matter of his client, can such associate or colleague take the legal opinion given by him when he leaves the service of the advocate? Would your answer be different if they were partners or if the information taken was only the contact details of the client?

**SECTION - 2**

*Answer 2 (two) out of 4 (four) questions. They carry 10 marks each*

**Question 7**

*"It is true that freedom of speech and expression guaranteed by Article 19[1](a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen."*  
(C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee and Ors. ((1995) 5 SCC457)

Can an Advocate criticize the judiciary within and outside the courtroom. In what circumstances can the judge hold the critic in contempt.

**Question 8**

Can a lawyer have a lien on the moneys of his client coming into his hands for the reasonable fee that may be due to him if the fee was not settled originally by the client. Would it amount to professional misconduct if he believed that he was legitimately owed the money and was merely setting off the sum? What other measures can he use to claim his fee?

**Question 9**

*"Since the strikes are in violation of law laid down by this Court, the same amount to contempt and at least the office bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt."* (Krishnakant Tamrakar vs. The State of Madhya Pradesh (28.03.2018 - SC): MANU/SC/0310/2018)

Recently advocates of a state went on a hunger strike demanding the filling of vacancies of judges in the High Court. In light of the observations in the judgement, explain whether this action was legal.

**Question 10**

A personal attorney of a high-profile leader paid a pornography artist "hush money" out of his own pocket to silence her about her alleged affair with his client. The attorney broke a number of laws and ethical rules. Discuss the issues arising from this case.

**SECTION - 3**

*Answer all questions. They carry 2 marks each.*

**Question 11**

In what circumstances can a person be disqualified for enrollment as an Advocate under Section 24A of the Advocates Act, 1961?

**Question 12**

Who is an "Amicus Curiae"?

**Question 13**

What are the types of punishment for misconduct that can be imposed by the Disciplinary Committee of the Bar Council under the Advocates Act?

**Question 14**

What constitutes "moral turpitude" for a lawyer in India?

**Question 15**

What is the maximum fee on brief payable to Advocate on Record for petitions in courts for review prescribed in Part 1 of the Second Schedule of the Supreme Court Rules?

**Question 16**

What are the exceptions under which an advocate can represent an establishment of which he is a member?

**Question 17**

When can an advocate withdraw from a case or return a brief?

**Question 18**

*Suppression and concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such a case, the court is duty bound to discharge Rule Nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. Give the citation of the judgement of the Supreme Court on this proposition and/or parties names.*

**Question 19**

The decision of the Supreme Court in Rameshwar Prasad Goyal (2014) 1 SCC 572 is an authority on what proposition of law?

**Question 20**

Name the 7 lamps of advocacy professed by Justice Abbot Parry.



**Advocate-on-Record Examination, June 2018**  
**Question Paper-IV (Leading Cases)**

**Total Marks:100**

**Time Allowed:3 hours**

**Attempt any five questions. All questions carry equal marks.**

1. Is privacy a fundamental right in Part III of the Constitution of India? If yes, in which provision of the Constitution is it primarily located? Is it absolute? What test must an infringement of fundamental right to privacy satisfy in order to be constitutionally valid?
2. What is the doctrine of Basic Structure? Is it a limitation on the amendatory power of Parliament under Article 368 of the Constitution? Name any three cases dealing with this doctrine? Name any three features of the Constitution which have been recognised as basic feature of the Constitution?
3. Briefly comment on Public Interest Litigation with reference to at least three decided cases, and express your views about limitations that are desirable to be put on the invocation of this jurisdiction?
4. What is the law of precedents? When can Smaller Benches with lesser number of judges (say three) declare a judgment of a Bench of larger number of judges (say five) per incuriam? Cite any two cases dealing with per incuriam?
5. Is there any rigid quantum limit on the providing of reservations by Governments in public employment? Can reservations be provided for in promotions? What was the issue in M. Nagaraj (2006) 8 SCC 212 and what was the ratio decidendi?
6. Which major mining law governs the activity of Mining of major minerals like iron ore? Does illegal mining, as happened in some states, impact ecology? If yes, then how? Can Courts impose damages for illegal mining? If yes, on what principle?
7. How has Article 370 of the Constitution been explained in SBI v. Santosh Gupta (2017) 2 SCC 538? Where does residuary power of legislation under the Constitution vest – Union Parliament or State Legislature of J&K? What is "Residuary power of Legislation?"

8. How is the concept of Curative petition different from Review petition? Who can certify that a case was fit for filing a curative petition? Is such a certificate required also for Review petitions?
9. Should death penalty be retained in the light of Supreme court verdict in *IR Coelho* holding Article 21 to be a part of basic feature of the Constitution, and *K. Puttaswamy* holding that the principle of "fair, just and reasonable" expounded in *Meneka Gandhi* case would apply not only to the procedure but also to substantive part of the enactment? Give reasons?
10. What is passive and active Euthanasia? Does Article 21 of the Constitution enable an individual to resort to passive Euthanasia? What procedure needs to be followed for this purpose?