

SUPREME COURT OF INDIA

EXAMINATION FOR ADVOCATES ON RECORDS - JUNE 2024

PAPER-IV

LEADING CASES

NOTES:

1. Question 10 is compulsory and carries 20 marks. Each correct answer carries 01 mark. There will be negative marking for incorrect answer.
2. Question 10 is provided in a separate sheet. Ensure that you return the same with your answer sheet(s).
3. Answer any other four (4) questions from questions 1 to 9. The answers to questions 1 to 9 carry 20 marks each.
4. All answers must refer to the judgements referred or followed and subsequent judgments in which the principle has been followed. Reference must be made to applicable provisions and procedure(s) where necessary.

QUESTIONS

1. This question is as follows:
 - a. Whether a judgement of the Supreme Court of India, which has been affirmed in review can be successfully challenged on the ground that it violates the fundamental rights under Part III of the Constitution or is otherwise erroneous?
 - b. If the answer to question 1 (a) is in the affirmative, give the grounds on which the challenge can be successfully made before the Supreme Court.
 - c. If the answer to question 1 (a) is in the negative, give the grounds on which the challenge will not be entertained by the Supreme Court.
2. What is the rationale for making the registration of a first information report (FIR) mandatory when the police receive information of a cognizable offence and under what circumstances can the police avoid registering the FIR?
3. Explain the concepts of 'Sustainable Development', 'Precautionary Principle' and the 'Polluter Pays Principle' in the context of environmental law?
4. The Supreme Court struck down Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976 which came into force from January, 3, 1977 amending Article 31C of the Constitution and held the said article to be void. Article 31C of

the Constitution as amended by the 42nd Constitution Amendment Act reads *inter alia* as follows:

"31C. Saving of laws giving effect to certain directive principles. - Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

Elucidate the reasons which led the Court to strike down the said provisions of the Amending Act and declare Article 31C void. Support your answers mentioning the relevant provisions and judgments.

5. The Supreme Court in the past had given certain directions leading to termination of criminal trials on the ground of violation of the right to speedy trial under Article 21 of the Constitution. Subsequently, the Supreme Court has held that giving such directions is not within the power of judicial law making available to constitutional courts, however liberally Article 21, 32, 141 and 142 of the Constitution may be construed and interpreted. What is the extent, scope and competence of the Courts to make judicial legislation while exercising their power of judicial review?
6. Articles 74(2), 163, 355, 356 and 357 and allied provisions enshrined in the Constitution set out the machinery for exercising powers by the President on the recommendations of the Governor (of the concerned State) for issuing a proclamation under Article 356(i) for imposing 'President's Rule' in a State by dissolving the elected Legislative Assembly. Such a proclamation has been held to be susceptible to challenge and scrutiny by Courts. Explain the role of the President and the Council of Ministers vis-à-vis the role of the Governor in making a proclamation dissolving the legislative assembly of a State under Article 356 of the Constitution in the light of relevant judgments dilating on the

extent to which a Court can judicially review such a Proclamation in the federal structure under the Constitution?

7. In examining the correctness, propriety and acceptability of religious practices followed by religious denominations and communities when such practices/customs are not specifically codified by legislation, Courts trace the sources which lead to such religious practices and custom(s). More often than not such challenges to religious practices and customs/rites are made before the Courts in public interest litigations. These challenges are premised on the keystone of these religious practices being arbitrary and violative of constitutional rights or otherwise. What are the principles on which Courts examine these challenges to religious practices derived and followed in personal laws which are not codified or statutory in nature?
8. Rules providing qualifications, procedure for appointment, conditions of service, and salaries of members of Statutory Tribunals were made under Section 184 of the Finance Act, which deals with issuance of Money Bills. A challenge is made to these rules on the ground that the Rules were *ex facie* unconstitutional, arbitrary being framed in colourable exercise of legislative power and offending the basic structure of the Constitution. That the legislation making changes *qua* Statutory Tribunals can trace its competence to Schedule VII List III Entry 11A of the Constitution. The issues of delegation of powers were also raised. The Court cautioning against the potential misuse of Section 184 of the Finance Act by the Executive struck down the Rules formulated for tribunals U/s 184 of the Act. The issue of a Money Bill and the certification accorded by the Speaker of the Lok Sabha in respect of Part XIV of the Finance Act was referred to a larger bench. What were the reasons given by the Court for striking down the said Rules while referring the issue of a 'Money Bill' as aforesaid to a larger bench?
9. The Supreme Court of India has expanded the ambit, scope and purview of the fundamental rights to include the right to privacy. Explain the foundational reasons expressed by the Court to justify the deriving of such a right to privacy from the provisions of Part III of the Constitution.

(NOTE: *THIS SHEET MUST BE RETURNED WITH YOUR ANSWER SHEET*)

10. Answer whether the following are True or False -

- i. The expression 'paid' in Section 24(2) of the Land Acquisition, Rehabilitation and Resettlement Act, 2013 only refers to actual payment of compensation to the landowner, and depositing the compensation in the treasury does not constitute 'payment'.
- True ☐ False ☐
- ii. Virtual currencies (VCs) are equivalent to legal tender and therefore fall under the regulatory purview of the Reserve Bank of India (RBI).
- True ☐ False ☐
- iii. Members of the judicial service of any State, even if they have completed 7 years of practice as an advocate before joining the judicial service, cannot claim appointment for vacancies in the cadre of District Judge from the quota earmarked for appointment from amongst eligible advocates under Article 233 of the Constitution.
- True ☐ False ☐
- iv. Protection granted to a person under Section 438 of the Criminal Procedure Code (Cr. P.C.) is invariably limited to a fixed period.
- True ☐ False ☐
- v. If the Speaker refrains from making a decision within a reasonable time, the High Court and the Supreme Court do not have the jurisdiction to direct the Speaker to make a determination.
- True ☐ False ☐
- vi. The Supreme Court had held, prior to the amendment in 2023 of S. 27(1) of the Competition Act, that the penalty imposed under that provision for a contravention of Section 3 of the Competition Act must be based on the 'total turnover' of each of the companies guilty of the contravention and not only the 'relevant turnover' of the companies in the product in respect of which the contravention was found.
- True ☐ False ☐
- vii. Section 8(1)(j) of the Right to Information Act, 2005 (RTI Act), protects the disclosure of personal assets of judges from unwanted intrusion.
- True ☐ False ☐

- viii. Contravention of the substantive law of India is a ground available to set aside an arbitral award after the 2015 Amendment to the Arbitration and Conciliation Act, 1996.
- True ☐ False ☐
- ix. Section 53 of the Insolvency and Bankruptcy Code, 2016, is discriminatory because it gives priority to secured financial debts over unsecured operational debts.
- True ☐ False ☐
- x. The Telecom Regulatory Authority of India (TRAI) has the first-instance jurisdiction in matters pertaining to the telecom sector, but the Competition Commission of India's (CCI) jurisdiction is not completely ousted; it comes into play after TRAI's proceedings have concluded.
- True ☐ False ☐
- xi. The State is obligated to collect quantifiable data demonstrating the backwardness of the class and the under representation of Scheduled Castes (SCs) and Scheduled Tribes (STs) in public employment. This obligation is in addition to complying with Article 335 of the Constitution of India.
- True ☐ False ☐
- xii. Section 74 of the Contract Act will apply to cases of forfeiture of earnest money under the terms and conditions of a public auction even before entering into a contract.
- True ☐ False ☐
- xiii. Section 3(d) of the Indian Patents Act prohibits granting of patents to known substances unless they demonstrate significantly enhanced efficacy.
- True ☐ False ☐
- xiv. Involuntary administration of the polygraph test, narcoanalysis test, and brain electrical activation profile test on accused violates the right against self-incrimination under Article 20(3) of the Constitution.
- True ☐ False ☐

- xv. The First proviso to Section 184(1) of the Finance Act, 2017, introduced by the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, prescribing a minimum age of fifty years for appointment is constitutional.
- True ☐ False ☐
- xvi. The directive of the Supreme Court to form a special court for the trial of the Italian marines signifies that the jurisdiction to investigate the incident lies solely with the Union of India until it is proven that Article 100 of United Nations Convention on the Law of the Sea applies.
- True ☐ False ☐
- xvii. The Governor has the authority to intervene in controversies related to disqualifying members of the Legislative Assembly without seeking the opinion of the Election Commission.
- True ☐ False ☐
- xviii. Plenary legislation, as opposed to subordinate legislation or executive order, cannot be struck down on the ground of manifest arbitrariness.
- True ☐ False ☐
- xix. Gender identity is not considered an integral part of the right to dignity, and the court has not recognized the rights of transgender persons as a third gender, apart from the gender binary.
- True ☐ False ☐
- xx. In a case, the Supreme Court has ruled that the restriction of speech under Article 19(2) could be based solely on 'advocacy'.
- True ☐ False ☐