

Time Allowed: 2 Hours

Maximum Marks: 150

Important Instructions:

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- (iv) The answer to each question should begin on a fresh page.
- (v) This paper is to test the candidate's awareness of current affairs, general knowledge and English language. Credit will be given for substance, cohesive and concise presentation, articulation of views and ideas and employment of appropriate vocabulary and expression.

GENERAL KNOWLEDGE & LANGUAGE

1. Write in about 250 words on **any four** of the following:
 - (i) How can the right of equality be balanced amongst unequals?
 - (ii) Is the world moving towards an authoritarian democracy rather than an egalitarian democracy?
 - (iii) Future of global trade-multilateralism *vis-a-vis* bilateralism.
 - (iv) Private universities are a *sine qua non* for the growth of a country – Agree/Disagree.
 - (v) Different views on the award of death penalty.
 - (vi) Dispensation of justice with the use of technology and Artificial Intelligence is the only solution to reduce pendency in Indian Courts – Agree/Disagree.
 - (vii) Unity in Diversity – Preservation of the concept of plurality.
 - (viii) Women and the glass ceiling effect.
 - (ix) The leadership styles of women versus the leadership styles of men.

(20 marks x 4 = 80 marks)

2. Prepare a precis of the following passage in about 150 words:

“Empowerment’, ‘civil society’ and ‘democratization’ form the new package of liberalization discourse which on face value respond to the long-standing demands of struggling groups. In practice, however, each of them has been given a restricted meaning and has been oriented to serve the present global drive of western capitalism....Many scholars and activists of some social movements have uncritically accepted the use of the term ‘empowerment’ partly because of the global discourse which actually is the western discourse. Non-governmental organizations (NGOs) have been the first to accept this discourse. They seem to think that by using this term they answer the usual criticism that the NGOs accepted the prevailing power structure within which they pursued developmental functions. They would rather be known as part of ‘grassroots movements’ interested in ‘social transformation’.

For similar reasons the governmental agencies have also picked up this term to establish that programmes such as the National Literacy Mission, the many women’s development schemes or Panchayati Raj aim at ‘empowering’ the people, especially women, poor peasants, etc. In fact, several models of ‘empowerment’ are being popularized. See, for instance, the Government of India’s country paper for the Copenhagen Summit which has a section on “Empowering the People: Models of Mobilization”. It talks about the poor being empowered to be able to help themselves and breaking social, economic, cultural and psychological barriers to convert them from being ‘passive recipients of government programmes’ to ‘active participants and managers of their own affairs’ (GOI 1994). Here is a description of empowerment which involves ‘organizing them into informal groups, formal associations, trade unions, cooperatives, etc. for exerting collective pressure, articulating demands and effectively participating in the decision-making process with the ultimate objective of building foundations of individual and collective self-reliance’ (GOI 1994). All this is no doubt necessary and desirable. But it is also the method by which the politics of the oppressed and the poor is restrained and channelized by dominant forces in society. Their right to struggle is circumscribed by these forms of political bargaining. The state is assumed to be an impartial arbitrator trying to ‘enable’ the poor to pursue these forms of politics. One has to only point out the growing role of the state in pursuing authoritarian measures to maintain law and order and restrict trade union rights to provide a stable environment for liberalization. Thus instead of allowing the oppressed to expand their realm of political struggle this notion of empowerment actually limits it.

In this process, the alliance of the government and the NGOs is playing a strategic role....But when ‘empowerment’ is mediated by this alliance of government and NGOs, it has serious political implications. It may have the normal tendency to co-opt people’s movements and their cadres, curb their struggling power and capacity for carrying on autonomous campaigns. That is why

there is currently considerable disenchantment with NGO activity and even more questioning of the government handing over resources to NGOs for delivery among people.”

(40 marks)

3. Write on any three of the following in about 100 words each:

- (i) Personal Data Protection Bill 2019.
- (ii) One Trillion Trees Initiative.
- (iii) Skilling the Youth of India.
- (iv) Impact of COVID-19 on global economy.
- (v) New India @75
- (vi) India's exit from RCEP with ASEAN
- (vii) Global Risks Report, 2020 released by the World Economic Forum.

(10 marks x 3 = 30 marks)

DELHI HIGHER JUDICIAL SERVICE MAIN EXAMINATION (WRITTEN) - 2019

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LAW – I

1. 'A' obtained a decree of declaration and possession in respect of a property in Karol Bagh. In the plaint he had mentioned that the property was fully described in Schedule 'A' to the plaint. In the schedule a mistake was made about the premises number although, the description of premises was rightly given. Decree was prepared as per the schedule. At the time of execution of the decree the mistake in the premises number was noticed. 'A' made an application under Section 152 of the Code of Civil Procedure, 1908 for correcting the judgment and the decree. 'B' who had not filed written statement but had contested the suit and appeared as a witness, opposed the application on the ground that there was no error committed by the court in the judgment. Decide the application.

(10 Marks)
2. Two journalists belonging to newspaper 'Naya Savera' and 'Nayi Duniya' seek to interview a terrorist who had been awarded death sentence for serial bomb blasts in Delhi. The Jail Superintendent refuses permission to interview. A writ petition is filed before the High Court that the refusal to grant permission amounts to violation of the fundamental right of the freedom of speech. Decide the petition in the light of Article 19(1)(a) and Article 19(2) of the Constitution of India.

(10 Marks)
3. Ram Singh, a Legislator of 'Jan Sewak Party' in the State defies the whip of party and later defects to the rival party. His membership of the Legislative Assembly comes to an end by virtue of Anti Defection Law. He assails the

validity of the law on the ground that it impinges upon his Fundamental Right of freedom of speech and expression granted by the Constitution. He argues that he has a right to speak on behalf of the people of his constituency in the legislature and has fundamental right to express the grievances of the people of his constituency. Decide the writ.

(10 Marks)

4. Madhu Sudan starts a private radio 'Dilli Dil Walon Ki' using air frequency not allotted to any other electronic media. The Ministry of Information and Broadcasting passes an order stopping the broadcast of 'Dilli Dil Walon Ki' on the ground that he has no license for using the air frequency. Madhu Sudhan challenges the order by a writ on the ground that his Right of freedom of speech and his right to telecast his views for public consumption are impaired. He also alleged that air waves belong to the general public and the State cannot exercise exclusive control over air waves. Decide.

(20 Marks)

5. Modern Printers is a photocopying shop in the University of Delhi which conducts courses for the 3-year LL.B. studies. Various judgements and textbooks are prescribed as reading material. The photocopying shop compiles the reading material in the form of a Compilation, after photocopying the relevant judgements from law reports and the relevant chapters from the text books. Publisher 'A' which owns the rights in some of the text books and Publisher 'B' who owns rights in a law report, whose works have been photocopied, file two separate suits against Modern Printers seeking injunctions restraining infringement of copyright. The photocopying shop pleaded 'Fair Dealing' under Section 52 of the Copyright Act, 1957. Decide the applications for interim injunction in both the suits.

(30 Marks)

6. Om Prakash filed a suit for declaration against Ram Prakash. Ram Prakash at the very inception took the plea that the suit was bad for non-joinder of a necessary party. Om Prakash proceeded with the suit and got a decree of declaration. The judgment of Trial Court was challenged in an appeal. Before the Appellate court, after the Defendant had entered appearance, Om Prakash sought withdrawal of the suit on the ground of formal defect with liberty to file a fresh suit on the same cause of action. The suit was allowed to be withdrawn with liberty as prayed. Om Prakash filed a fresh suit. The Trial Court dismissed it on the ground of limitation and observed that the period during which he prosecuted the earlier suit could not be excluded under Section 14 of the Limitation Act, 1963. An appeal is filed against the order of the Trial Court and Om Prakash takes the plea that the appeal and suit were withdrawn with the liberty to file fresh suit on the same cause of action so the benefit of Section 14 of the Limitation Act, 1963 shall be available to him. Ram Prakash opposed the appeal on the ground that Section 14 of the Limitation Act, 1963 was not attracted since the suit was continued despite his objection. Decide the appeal.

(20 Marks)

7. A pharmaceutical company 'A' sells a drug in the name of 'Chymoral' and had obtained a registration for the same. It also had a product 'Chymoral

forte'. 'B' another pharmaceutical company introduces a product in the name of 'Chymtral'. Both drugs are produced from the same generic salt. 'A' files a suit for infringement and passing off against 'B' 5 years after the launch of 'B's' product in the market. 'B' argues that both the products are coexisting for a long time and there was no actual confusion in the mind of consumer, no misrepresentation, no fraud played. 'B' further urged that it has already applied for registration of its trademark and though the mark was advertised in the Trade Marks Journal, no opposition in respect thereof has been filed by 'A'. 'A' relied upon its high quantum of sales and reputation in the market and that the trademark of 'B' looked similar and sounded similar to that of 'A'. At the time of filing of the suit 'A's' trademark is registered for about 15 years. Decide the application for interim injunction.

(30 Marks)

8. Explain the concept of Case Management. What are the powers of the Court in a case management hearing under Order XVA of the Code of Civil Procedure, 1908 as applicable to commercial disputes under the Commercial Courts Act, 2015?

(20 Marks)

9. 'A' files a suit against 'B'. Summons are served on 'B' on 01.07.2019. Written statement is filed by 'B' on 05.01.2020 with an application for condonation of delay. Discuss the relevant considerations for condonation of delay if the suit is a non-commercial suit. Would the answer be different if the suit is a commercial suit?

(20 Marks)

10. Expert evidence is a weak type of evidence and not substantive in nature. Comment.

(10 Marks)

11. In an appeal the appellant assails the admissibility of call records of appellant on the ground that certificate under Section 65B(4) of the Indian Evidence Act, 1872 was not produced. The witness, who proved the call record, had testified before the trial court and was cross-examined and no questions regarding the certificate were raised. Decide the appeal.

(10 Marks)

12. 'P' files a suit against 'D' before the District Court in Delhi. They settle their disputes, prior to recording of evidence. A decree is passed by the Court in terms of the settlement. 'P' seeks refund of the court fees paid. Is 'P' entitled to the refund:

(a) In the event the settlement was arrived at in mediation proceedings under Section 89 of the Code of Civil Procedure, 1908.

(b) In the event the settlement was arrived at, out of court, between the parties themselves, without recourse to any form of alternate dispute resolution under Section 89 of the Code of Civil Procedure, 1908.

(10 Marks)

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LAW – II

1. Kishore owned a house and he agreed to sell that house to Mohan for a sum of Rs.25,00,000. Out of the sale consideration, vendee paid a sum of Rs.5,00,000 as advance to the vendor on the day of agreement. The parties executed an agreement to sell the house on 28.01.2017 which contained the following clauses:
 - 1) The execution of the sale deed shall depend upon the purchaser getting satisfied himself regarding the title to the house of the seller.
 - 2) The mode of payment of the balance of Rs.20,00,000 shall be as under (i) Rs.10,00,000 on or before 28.02.2017; (ii) Rs.5,00,000 on or before 28.04.2017 and; (iii) Rs.5,00,000 on or before 28.05.2017. If any of the above dates are declared holidays, the next immediate working day shall be the day of payment.
 - 3) The payments of instalments shall be made on the due dates and in case of failure on the part of the purchaser, the seller can cancel the agreement.
 - 4) The sale deed shall be executed at the convenience of the purchaser.
 - 5) If the purchaser finds the title of the property to be unsatisfactory or unacceptable, he will put the seller to notice revealing his intention not

to conclude the sale and in such event if the seller fails to satisfy the purchaser regarding his title to the property within 30 days he shall pay to the purchaser all the monies advanced to him within two months, after the 30 day period.

- 6) The purchaser shall act as a caretaker for the house till the seller hands over the possession of the house to him after receipt of the entire sale consideration.
- 7) In pursuance of the agreement, Mohan paid a sum of Rs.10,00,000 on 28.02.2017 and a sum of Rs.2,00,000 on 28.04.2017. The balance amount of Rs.3,00,000 of the instalment due on 28.04.2017 and Rs.5,00,000, i.e., the last instalment was not paid by Mohan.

The seller issued a notice, dated 28.08.2017 to the purchaser and cancelled the agreement, dated 27.01.2017 on the ground of default in payment of the balance sale consideration. The payment of the sale consideration was not made in time and that such payment was the essence of the contract.

The purchaser sent a reply to the notice on 15.09.2017 contending that time was never intended to be the essence of the agreement and that the payments of instalments as mentioned in the agreement, were just a formality. Otherwise, in case of sale of immovable property, time is never the essence of the contract. The seller failed to show the original documents of title in spite of repeated requests. He was always willing to pay the balance sale amount after seeing the original documents of title. He was shown only the photostat copies of the title documents. He has raised doubts about the genuineness of the photostat copies of the documents.

On 11.11.2018, the purchaser filed a suit against the seller for specific performance of the agreement by stating that he was always willing to pay the amount of instalments but the original title documents of the house were not shown to him. He is willing to make the balance payment of the sale consideration after satisfying himself with correctness of the title deed of the seller in respect to the house. In the alternative, he seeks refund of the paid money with interest @ 12% per annum and damages from the seller for refusal to execute the sale deed. The seller has resisted the case by stating that the purchaser had seen the original documents of title of the house and thereafter, he made part payment of the sale consideration. Now, the original documents are with the bank which would have been released by the bank after it had received the balance amount. The seller was to pay that amount after receipt of the same from Mohan. He is willing to return back the received amount to Mohan.

After going through the respective case of the parties as pleaded and on the basis of the notice and reply to the notice, decide the suit with reasons and in reference to relevant provisions of law and the case law.

(20 Marks)

2. 'A', 'B', 'C' & 'D' formed a partnership firm to carry on the business of selling electronic goods. The partnership deed was got registered with the Registrar of Firms. All the partners agreed to entrust the running of business to partner 'A' and he was to maintain account of the business. 'A', was also to deposit the daily earnings of the firm in the bank account of the firm on the next working day. One of the clauses of the deed stipulates that in case of any dispute among the partners, the same would be got resolved through an arbitrator.

The business was run smoothly by 'A' for two years. Thereafter, the remaining three partners found that 'A' had issued a cheque of substantial amount in favour of his daughter from the bank account of the firm. 'A' was not authorized to issue such a cheque from the account of the firm. 'A' failed to explain his conduct to the other three partners.

The three partners filed a civil suit against 'A' for declaration that they were entitled to participate in the running of the business and that 'A' should render the accounts of the business of the firm.

On receipt of the notice of the suit, 'A' appeared in the court and filed an application under section 8 of The Arbitration and Conciliation Act, 1996. He requested the court to refer the disputes to arbitration. The other three partners resisted the application by alleging that 'A' committed fraud by misappropriating the money of the firm by issuing cheque in favour of his daughter from the bank account of the firm. The civil court dismissed the application on the ground that allegations of misappropriation and fraud could not be dealt with by the arbitrator and that the allegations would require a detailed enquiry and evidence. The same could be done only in the court.

'A' has filed an appeal under Section 37 of The Arbitration and Conciliation Act seeking setting aside the order of the civil court and has prayed that the dispute as raised by the three partners may be referred for arbitration. The other three partners have opposed the appeal.

Discuss the case law and decide the appeal.

(20 Marks)

3. What is the special scheme formulated by Delhi High Court for settlement of Motor Accident Claims within 120 days?

(10 Marks)

4. What are the consequences of driving or allowing an uninsured motor vehicle to be driven on road? Can uninsured vehicles be released on superdari? Elaborate with case law.

(10 Marks)

5. The following proceedings (unrelated to each other) are pending in the Debts Recovery Tribunal ("DRT"):

(a) XYZ Bank Ltd. has filed an Original Application against ABC Private Limited for recovery of a debt of Rs.7,75,000. ABC Private Limited has challenged the maintainability on the grounds of pecuniary jurisdiction of the DRT. Decide.

(5 Marks)

(b) XYZ Bank Ltd. had given a loan of an amount of Rs. 5,50,000 to Mr. 'E'. Mr. 'E' defaulted and the Bank took measures against the secured assets under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"). Mr. 'E' filed an appeal before the Tribunal. Is the appeal maintainable with respect to the pecuniary jurisdiction of the DRT?

(5 Marks)

(c) An original application filed by XYZ Bank Ltd. resulted in a recovery certificate dated 01.03.2019 being issued against Mr. 'D'. The Recovery Officer made an order dated 20.04.2019 for attachment of some moveable assets of Mr. 'D'. Mr. 'D' challenged the order of the Recovery Officer before the DRT. He filed an appeal on 01.07.2019, alongwith an application under Section 5 of the Limitation Act, 1963 stating that his mother had been hospitalised from 23.04.2019 and died on 30.05.2019. He contended that he was preoccupied with the last rites of his mother until 12.06.2019. XYZ Bank Ltd. contends that the appeal is barred by limitation. Decide.

(5 Marks)

6. Can a bank proceed simultaneously against a debtor (in respect of the same secured debt):

(a) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") and for recovery under the Recovery of Debts and Bankruptcy Act, 1993 ("RDB Act")?

(b) under the SARFAESI Act and in arbitration proceedings?

(c) under the RDB Act and in arbitration proceedings?

Explain.

(15 Marks)

7. Ms. 'A' has taken a loan from a bank and secured it by mortgage of her immovable property. She deposited the original title deeds of the property, which were in her name, with the bank. She failed to repay the loan. The bank proceeded to auction the property, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The sale was duly confirmed in favour of the

auction purchaser, Mr. 'P'. At this stage, Ms. A's brother filed a civil suit contending that he also had a share in the property as it was in fact purchased in the name of Ms. 'A' by her late father and that he also had a share therein. He sought a declaration to this effect, partition of the property and a permanent injunction against transfer and auction of the property of Mr. 'P'. Can brother of Ms. 'A' get the relief?

(10 Marks)

8. Ravi is an employee of the Municipal Corporation of City 'X' in the State of 'A' which is governed by the 'A' Municipal Corporation Act, 1888. Ravi superannuated after rendering 34 years of blemishless service. He is paid gratuity at the rate of 15 days monthly salary for every 18 months of service as per the 'A' Pension Rules, 1953 framed under the 'A' Municipal Corporation Act, 1888. Being dissatisfied, he claimed gratuity at the rate of 15 days monthly salary for every completed year of service by invoking the jurisdiction of the Controlling Authority under the Payment of Gratuity Act, 1972. The Municipal Corporation of 'X' opposed Ravi's claim for gratuity under the Payment of Gratuity Act by contending that the Municipal Corporation of 'X' having been established under the 'A' Municipal Corporation Act, he was entitled to receive gratuity only under 'A' Pension Rules, 1953 which conferred restrictive benefit of gratuity than what is conferred under the 1972 Act. It was further contended that Payment of Gratuity Act was not applicable to Municipalities.

Decide in the light of the relevant legal provisions and case law whether payment of gratuity to Ravi ought to have been made as per Payment of Gratuity Act, 1972 or the 'A' Pension Rules, 1953. Give reasons.

(20 Marks)

9. Ashok, an absolute owner of the property 'X', executed a gift deed of that property in favour of his five year old minor grandson, Prem, represented by his father, a natural guardian out of his love and affection for him. The gift deed was got registered and the possession of the property was delivered to Prem. The donee was to enjoy the property subject to the conditions:
- (1) The donee or his younger brothers who may be born hereafter, have no right to alienate the property in any manner whatsoever by way of sale, gift, mortgage or otherwise.
 - (2) The donee or his younger brothers, who may be born hereafter, shall enjoy the property during his or their life time as the case may be and on his or their demise it shall devolve on his or their children who shall be at liberty to deal with the property in any manner as they like.

Later on, Prem was married and he became a father of two children, namely Anmol and Kiran. After the death of his grandfather, Prem sold the property 'X' to Hari and on execution and registration of the sale deed, the possession of the property was delivered to the vendee. Prem mentioned in the sale deed that he was selling the property bona fide as he was in need of money.

Now, Anmol and Kiran, the minors through their maternal uncle have filed a civil suit to seek declaration against their father Prem and vendee, Hari by pleading that the sale of property 'X' was not valid. Their father as donee and any younger brothers, who might have been born, received the property in gift but had no right to alienate it in any manner. Further, they being children of Prem, are the absolute owners of the property. Secondly, the gift deed was not a valid gift deed under Section 13 of the Transfer of Property Act as it was in favour of Prem and for the benefit of unknown/unborn persons. They have also sought direction to Hari to deliver the vacant possession of the property to them.

Prem did not appear in the court and was proceeded *ex parte*.

Hari has contested the suit and has contended that the gift deed in favour of Prem was a valid deed and not hit by Section 13 of the Transfer of Property Act. The condition in the gift deed that donee shall not alienate the property, was a void condition. He has relied upon the provisions of Section 10 of the Transfer of Property Act.

Decide the case filed by the plaintiffs in the light of Sections 10, 13 or any other Section of the Transfer of Property Act.

(20 Marks)

10. 'X', a Hindu widow of 27 years old is a mother of a two year old girl. The father of the girl owned a flat and during his life time, he bequeathed it to the girl.

After two years of the death of her husband, 'X' married 'M' and she along with her daughter started living with him. A son was born to 'X', out of her wedlock with 'M'. The girl was always treated as a family member in the house of 'M' and he loved her as his daughter.

Unfortunately, after five years of the marriage, the relations between 'X' and 'M' turned strained. 'X' along with daughter and the son left the house of 'M' and started living in the flat, owned by the girl. Both the children are studying in a well known private school in Delhi.

'X' and 'M' are employed and they are separately getting salary of Rs. 25000/- per month.

'X' has filed a petition against 'M' under the provisions of the Hindu Adoption and Maintenance Act to claim maintenance for the girl and the son. She has pleaded that her income is not sufficient to meet the needs of the two children and that 'M' is duty bound to maintain the children.

'M' has opposed the petition on the grounds that:-

- a) 'X' voluntarily left him and started living separately,
- b) he is not liable to maintain the girl,

- c) 'X' has sufficient income to maintain herself and the two children,
- d) though his salary is Rs. 25000/- per month but carry home salary is much less as he is to pay the instalments of home loan and car loan,
- e) with the left out salary, he is hardly able to meet his basic requirements.

'X' has averred that:-

- a) the girl was always treated as a family member, being daughter, by 'M' in his house and he shall look after her needs,
- b) 'M' raised loans after she was compelled to leave his house and that both the loans are only for the benefit of 'M',
- c) her income is not sufficient to maintain herself and to meet the growing needs to provide good life to the children as was enjoyed by them in the house of 'M'.

Discuss the law of maintenance under Hindu law and find out if the two children can get maintenance from 'M' and if yes, then how much?

(20 Marks)

11. Attempt any four out of the followings:-

- (i) Discuss the concept of 'Acknowledgement of Paternity' (Ikrar-e-Nasal) as prevailing under Muslim Law.
- (ii) Do 'Goods' under the Sale of Goods Act, 1930 include goods which are not in existence and actionable claims. Give reasons for your answer.
- (iii) Generally a person who is not a partner of a firm, cannot be made liable for the acts of the firm. Discuss with example/case law where the liability of a non-partner can arise as a partner.
- (iv) Elaborate the terms 'Desertion' and 'Cruelty' as applicable under the Hindu Marriage Act, 1955.
- (v) 'An Arbitral tribunal is not generally bound by the provisions of the Civil Procedure Code, 1908 or Indian Evidence Act, 1872'. If so, what procedure can be followed by an Arbitrator to adjudicate disputes?

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LAW – III

1. Write short notes on any *four* of the following:

1. Doctrine of Transfer of Malice.
2. Effect of judgment of conviction and sentence delivered in the absence of the accused.
3. Whether the liability under Section 397 IPC is individual or conjoint? Also, state difference between Section 396 IPC and Section 397 IPC.
4. Difference between culpable rashness and negligence.
5. Mere attempt made by the accused to make the victim girl aged 5 years naked – What offence the accused has committed?
6. Extent to right of victim's counsel to assist the prosecution.

(5 Marks x 4 = 20 Marks)

2. 'A' was married to 'B' on 01.01.2018. 'A's attitude towards his wife 'B' was not cordial. 'A' had kept her in a separate bungalow and had most of the time remained away from her. On 30.06.2018, 'B' committed suicide by hanging at the matrimonial home. On receiving the information, father and brother of the deceased arrived the next day from Mumbai. 'B' had already been cremated by then. However, 'B's parents did not lodge any complaint.

After more than three months, victim's father filed a complaint against 'A' and his family members for causing dowry death of his daughter. FIR was registered. 'A' and his five family members were charged for commission of offences under Section 304B, 306, 498A and 201 IPC read with Section 120B IPC. By a judgment dated 01.06.2019, the Sessions Judge convicted 'A' under Section 498A and 201 IPC only and acquitted the five family members of all the charged offences. In appeal, the High Court acquitted 'A' of the offence under Section 498A IPC but maintained conviction under Section 201 IPC.

During trial, it was proved that 'A' had not informed the police about the unnatural death of the deceased and the last rites were performed hurriedly before the arrival of family of the victim from Mumbai. The accused 'A' did not take the victim to any doctor. No postmortem examination on the body was got conducted. In her suicide note, the victim took the entire blame of her death on herself.

Discuss whether in the given facts, conviction under Section 201 IPC can be maintained while acquitting 'A' of the main offence under Section 498A IPC.

(15 Marks)

3. On 15.08.2019, the duty constable posted at AIIMS hospital informed the police station that one patient by the name of 'X', aged about 5 years, while travelling along with her father in his car 'Mahindra XUV' and while passing through an over-bridge on the Ring Road, suffered an injury on her neck as she had raised her head out of the sun-roof of the car and her throat got slit by a string (Chinese *manjha*) used for flying the kite. As per the FIR, 'X' was brought to the hospital in an unconscious condition and she succumbed to the injuries on 19.08.2019.

During investigation, it was revealed that 'A' (victim's father) had permitted his innocent daughter to take her head out through the sun-roof of the car for enjoyment and had allowed her to stand while the car was in motion.

It is a common practice to fly kites on Independence Day. However, flying kites with sharp thread (popularly known as Chinese *manjha*) is banned/prohibited in Delhi.

Police books 'A' for causing 'X's death. 'A' prefers a quashing petition under Section 482 Cr.P.C contending that death was caused due to negligence of the person flying the kite.

Decide who is responsible for 'X's death and what offence has been committed.

(A car sun-roof is an opening on top of a car roof which allows light/fresh air to enter inside the car).

(15 marks)

4. On 28.07.2018, a telephonic message was received at the police station at around 4:45 AM that a quarrel had taken place near Chandni Chowk, from where one 'H' was brought to hospital in a seriously injured condition. SHO of the police station reached the hospital and was informed that the injured had succumbed to the injuries. The SHO recorded the statement of victim's father at the hospital. In the complaint, the victim's father disclosed:

“Deceased 'H', my younger son aged around 22 years, was pursuing computer course from an Institute at Darya Ganj. 'H' had left home on 27.07.2018 on his motorcycle for attending the computer course. In the evening, he informed his sister on her mobile that he was going with his friend and would not be returning during the night. At about 3:00 AM on 28.07.2018, one Atul (the appellant) telephonically informed me that 'H' was brought to the hospital as he was not feeling well. Atul asked me to reach the hospital immediately. On receiving the message, I rushed to the hospital and found that my son was lying dead in wounded condition. At that time, Atul was also present there. Atul informed me that 'H' had sustained injuries due to fall from stairs.”

After investigation, four persons including Atul (the appellant), who had visited the house where a drinks party had been arranged during the night of 27/28 July, 2018 were sent to face trial for commission of offence under Section 302/34 IPC.

The evidence of PW1 and PW2 (eye witnesses) would establish that Atul (the appellant) and others including the deceased 'H' had gathered for a drinks party arranged at the instance of 'H'. They had consumed drinks when the incident took place. Soon after assaulting 'H' with a knife, the appellant (the assailant) realized that 'H' has been badly injured. He offered him water and took him to the hospital along with his other friends. He was in the hospital till 'H' succumbed to the injuries. He had also informed the father of 'H' on telephone and called him to the hospital.

The trial court convicted only Atul (the appellant) for commission of offence under Section 302 IPC. The conviction is under challenge by Atul before the High Court.

Appellant's case:

- a. The incident took place as 'H', while smoking, blew smoke on him. It was a sudden fight. In the heat of passion, he gave knife blows to 'H'.
- b. He had no intention to cause 'H's death.
- c. When 'H' was taken to the hospital, the doctors did not provide him immediate treatment but insisted on calling his father.
- d. He offered the victim water and took him to the hospital. He did not abscond from the spot and remained present throughout until the last rites were performed.
- e. There was no previous history of animosity with 'H'.
- f. On the same set of evidence, co-accused who were present at the spot were acquitted by the trial court.

State/Prosecution case:

- a. The appellant had given six knife blows to the deceased on the chest and abdomen.
- b. The appellant gave false explanation to the victim's father that 'H' had sustained injuries due to fall from stairs.
- c. There was no provocation to cause injuries to the victim who was unarmed and was unable to defend himself.
- d. The weapon of offence i.e. the knife was recovered from nearby bushes pursuant to the disclosure statement made by the appellant.
- e. Postmortem examination revealed that the injuries caused to the victim were sufficient in the ordinary course of nature to cause death.
- f. The appellant had acted in a cruel and inimical manner.

Decide.

(30 marks)

5. 'A' is cited as a prosecution witness in the charge-sheet filed against 'B' for the commission of offence under Section 302 IPC. The prosecution, however, during trial does not examine 'A' as a witness as he is unlikely to support the prosecution case. 'B' summons 'A' as a defence witness. During 'A's cross-examination, he is confronted with his statement recorded under Section 161 Cr.P.C by the prosecution. The defence objects to it.

Decide the objection, and discuss the relevancy and use of statement of 'A' recorded under Section 161 Cr.P.C.

(10 marks)

6. Victim 'V', a female aged 32 years, returned from her village in a train on 30.12.2010. At Delhi railway station, accused 'H' (husband of accused 'W') met 'V' and told her that her father had sent him to pick her up. Since victim 'V' was not well, she believed 'H' and accompanied him. 'H' took her to his house and committed rape upon her. During the commission of rape, accused 'W' (wife of accused 'H') reached there. Victim 'V' requested accused 'W' to save her. Instead of saving her, 'W' slapped her, closed the door of the house and stood at the door to ensure that no one could enter the house. She exhorted her husband 'H' to continue with the act.

On the complaint of victim 'V', FIR was registered, investigation was carried out and charge-sheet was filed against 'H' and 'W' alleging commission of offence punishable under Section 323/376(2)(g) IPC. At the stage of charge, 'W' contended that she being a woman could not be charged for the offence of rape. The prosecutor argued that 'W' had facilitated the act of rape and she can be prosecuted for offence of gang rape under Section 376(2)(g) IPC. Pass an order on charge qua 'W'.

(15 marks)

7. 'G', a minor girl aged 10 years, used to stay with her two maternal uncles 'X' and 'Y' at Ranchi. 'X' developed fancy for 'G' and started touching her inappropriately. Subsequently he established physical relations with 'G'. 'G' being a child did not resist and maintained silence. When she was 16 years old, the other uncle 'Y' also established physical relations with her. 'G' still did not report the matter to anyone due to fear and shame. The sexual abuse continued, though 'X' and 'Y' were unaware of the acts of each other.

When 'G' was 17 years old, she came to Delhi for higher studies and stayed in a hostel. After one month, 'X' came to Delhi; took 'G' to a hotel and had physical relation with her.

After 'G' got married at Delhi at the age of 20, her husband encouraged her to report the matter to police. She lodged a complaint against 'X' and 'Y' at Delhi, upon which FIR was registered and investigation was carried out. Charge-sheet was filed against 'X' and 'Y' at Delhi for commission of various sexual offences. At the stage of charge, 'Y' contends that the courts at Delhi have no jurisdiction to try him as no offence was committed by him within territorial limits of Delhi. Decide the contention.

(15 marks)

8. 'A' is facing charge for the offence under Section 13(1)(a) of The Prevention of Corruption Act, 1988 (as amended by the Amendment Act of 2018). The prosecution examined 111 witnesses and relied on thousands of documents. When the case reached the stage envisaged in Section 243 (1) Cr.P.C, the accused submitted a list of 99 witnesses for the defence. The Special Judge made a scrutiny of the list and found that only 10 witnesses were necessary. 'A' challenged the order urging that the trial court can't discriminate as no such pruning was carried out when the prosecution examined 111 witnesses. He contended that all the witnesses cited by him were relevant and necessary and their non-examination would prejudice his defence. According to him, under Section 243 (1) Cr.P.C, there is no discretion with the trial judge to vivisect the list for the purpose of eliminating certain names.

Decide.

Would it make any difference if 'A' is prosecuted for commission of offence punishable under IPC?

(10 marks)

9. The accused 'A' was serving as a Medical Officer in a Government Health Centre. The wife of the complainant who was suffering from back pain met 'A' at the Centre. 'A' advised her to undergo an operation at his private clinic.

A complaint came to be lodged by the complainant against 'A' stating that when 'A' was treating his wife at his private clinic, he demanded Rs.2,000/- towards 'fees' for carrying out curative operation to which the complainant agreed to pay in the evening. Since he was not willing to pay illegal gratification, he approached the Anti-Corruption Bureau and a trap was

arranged. At the time of trap, when he along with a raiding team went to 'A's private clinic to hand over the money, the accused 'A' asked whether he had brought the 'fee' as agreed? Thereafter, the complainant handed over the said amount of Rs.2,000/- to 'A' who asked him to put it in the drawer of the table. The complainant kept it there. 'A' was apprehended for accepting Rs.2,000/- as illegal gratification.

'A's plea is that he had not demanded any illegal gratification from the complainant; that there was no recovery of the tainted money from his possession; and that Rs.2,000/- were agreed to be paid by the complainant's wife towards his 'fees' for carrying out curative operation at his private clinic. Case of the prosecution is that all the ingredients under Section 7 of The Prevention of Corruption Act, 1988 (as amended by the Amendment Act of 2018), i.e. demand, acceptance and recovery of money have been established and 'A' is liable to be convicted.

There is evidence on record that 'A' was working as Medical Officer in a government hospital and was receiving 'non-practicing allowance' (NPA). The prosecution, however did not produce any material or circular that 'A' was prohibited from carrying out private practice.

Decide.

(15 marks)

10. On 03.12.2015, victim's mother lodged a complaint that her daughter 'X' aged around 14 years revealed her that around a month back, her father had sexually assaulted her. She further revealed that in the past also, the father had made such attempts. A case under Section 376 IPC read with Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act) was registered against the accused father. The accused was arrested on 09.02.2016.

During trial, 'X' appeared as a witness. She deposed, "I do not remember the exact date, month and year but about six months ago my father used to keep calling me whenever my mother used to go for work. One night, I woke up with a feeling of something on my face and I found my father rubbing his penis all over my face. I did not know what to do. My father went away. Thereafter, he used to often call me for the same act. One morning, when I got up from my bed, I felt severe pain in my private part. I went to the toilet and found bleeding from my private part; there was a tear. Thereafter, I thought that my accused father might have been responsible for the same. After 2-3 days of the incident, I narrated about it to my mother."

In the cross-examination, she admitted that she did not know what caused severe pain in her private part and how she had bled and the tear had occurred. The other evidence remained un-controverted.

What offence, if any, has been committed under POCSO Act by the accused father?

(15 marks)

11. Complainant 'X' lodges an FIR suspecting theft of data and software of his company by his employee 'Y'. During investigation, it was found that 'Y' had dishonestly and fraudulently used the knowledge bank, resources and source code of 'X's company without permission, resulting in transfer of financial aid and confidential data to another company formed by 'Y'. After completion of investigation, charge-sheet for commission of offences punishable under Section 408, 420 IPC and Sections 43, 65 and 66 of Information Technology Act was filed against 'Y'.

Decide under which Sections, charge can be framed against accused 'Y'.

(10 marks)

12. On secret information received through an NGO, the police conducts a raid at a hotel in Delhi and found exploitation of six girls by an accused, who was arrested for offence under Immoral Traffic (Prevention) Act. The accused was produced before a Magistrate for custody remand. At the same time, victim girls were also produced by the police before the Magistrate with an application to send them to Nari Niketan (place of safety) so that they could be protected from further exploitation. Before the Magistrate, the victim girls show their Aadhaar cards, according to which their age was more than 18 years, and assert that they cannot be sent to Nari Niketan against their consent. On the other hand, the police claims that Aadhaar card is not a proof of age and that the victims are minors, for which a further inquiry would be necessary to determine their age. Magistrate directs the victims to be produced before the Child Welfare Committee for their further custody. Decide who shall conduct inquiry to determine the age of the victim girls and who shall pass order to decide further custody of the girls.

(10 marks)

13. 'ABC Company' availed a loan of Rs. 200 crore from 'XYZ Bank' after creating an equitable mortgage. 'ABC Company' fails to repay the loan and its account became Non Performing Asset (NPA). The lands of the company were put to auction. Though a successful bidder quoted Rs. 250 crore, yet auction was withdrawn by the senior officers of the 'XYZ Bank'.

Subsequently, the said lands were sold to 'Alpha Company' through its Managing Director (petitioners herein) for a sum of Rs. 150 crore.

CBI registers a case under Section 406/408/120B IPC read with Section 13(2)/13(1)(d) of The Prevention of Corruption Act, 1988 against 'ABC Company' and its officers, senior officers of 'XYZ Bank', and the petitioners ('Alpha Company' and its Managing Director) in January 2016. Allegations against the petitioners are that they hatched criminal conspiracy with the senior officers of 'XYZ Bank' whereby they (the petitioners) purchased lands at a low price of Rs. 150 crore thereby causing huge loss to the Bank.

Subsequently, the Enforcement Directorate also registers a case against all the above persons for commission of offences under the Prevention of Money Laundering Act, 2002 in February 2016.

After investigation, CBI filed a final report before the court, stating that the allegations were not substantiated with prosecutable evidences and recommended for closure of the case. Final report was accepted by the Special Court for CBI Cases in August, 2017.

Petitioners urge that the proceedings in the complaint case lodged by Enforcement Directorate be quashed as the “predicated offence” itself has been closed by the order of the court. The plea is opposed by Enforcement Directorate urging that the complaint discloses a stand-alone offence punishable under Section 3 of Prevention of Money Laundering Act.

Whether closure of case by the CBI would provide a death knell to the proceedings of the Enforcement Directorate? Decide.

(15 marks)

14. Whether the protection granted to a person under Section 438 Cr.P.C is limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail? Discuss.

(5 marks)