THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Main Written Examination in connection with Direct Recruitment to Grade-I of

Assam Judicial Service, 2022

Total Marks: 100 | Duration: 3 Hours

Date: 10-12-2011(Saturday) | Time: 9.00 am to 12.00 noon

PAPER-I

1. Write an essay on any of the topics below: 1 x 20 = 20

(A) How Artificial Intelligence can be employed for reducing the pendency of Laws?

(B) Social Media, a challenging new platform for Judges.

(C) Cryptocurrency and its regulations in India.

(D) History of Sedition Law in India and its implications in the modern times.

(E) Legal status of Surrogacy in India.

2. Read the following passage and write a précis. 15

(A) Give a title to the précis.

(B) Indicate the number of words used by you in writing the précis.

The expansion of the horizon of judicial review is seen both with reverence and suspicion; reverence in as much as the judicial review is a creative element of interpretation, which serves as an omnipresent and potentially omnipotent check on the legislative and executive branches of government. But at the same time there is a danger that they may trespass into the powers given to the legislature and the executive.

One may say that if there is any limitation on judicial review other than constitutional and procedural then it is a product of judicial self-restraint. As justice Dwivedi empathically observed, "Structural socio-political value choices involve a complex and

complicated political process. This court is hardly fitted for performing that function. In the absence of any explicit Constitutional norms and for want of complete evidence, the Court's structural value choices will be largely subjective. Our personal predilections will unavoidably enter into the scale and give colour to our judgment. Subjectivism is calculated to undermine legal certainty, an essential element of rule of law."

The above observations also reveal another assumption to support an attitude of self-restraint, viz., the element subjectiveness in judicial decision on issues having socio-political significance. When one looks at the decisions of the Supreme Court on certain questions of fundamental issues of Constitutional Law one can see that there is a sharp division among the Judges of the Apex Court on such basic questions of power of the Parliament to amend the Constitution, federal relations, powers of the President etc. This aptly demonstrates the observation of the Judge. This would mean that though there has been expansion of powers of judicial review one cannot also say that this cannot be overturned.

Judicial self-restrain in relation to legislative power manifests itself in the form that there is a presumption of constitutionality when the validity of the statute is challenged. In the words of Fazl Ali, "...the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles"

In applying the presumption of constitutionality the Courts sometimes apply an interpretational device called 'reading down'. The essence of the device is that "if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the court would lean in favour of the former construction." But all this depends on the outlook and values of the judge.

When it comes to judicial review of administrative action though the presumption of validity is not so strong in the case of administrative action as in the case of statutes. Still, when the Legislature expressly leaves a matter to the discretion of an administrative authority the courts have adopted an attitude of restraint. They have said we cannot question the legality of the exercise of discretionary power unless and until it is an abuse of discretionary power (which includes mala fide exercise of power, exercising the power for an improper motive, decision based on irrelevant considerations or in disregard of relevant consideration, and in some cases unreasonable exercise of power) and non-exercise of discretion (which come when power is exercised without proper delegation and when it is acted under dictation).

The relevant considerations which should make the judicial choice in favour of activism or restraint are the policy and scheme of the statute, the object of conferring discretionary powers, the nature and scope of the discretion, and finally, the nature of the right and interests affected by the decision. Any impulsive move to activism without a serious consideration of these factors may only be viewed as undesirable. Judicial activism, being an exception, not the general rule, in relation to the control of discretionary power, needs strong reasons to justify it. In the absence of such strong support of reasons the interventionist strategy may provoke the other branches of Government to retaliate and impose further limitations on the scope of judicial review.

3. Write short notes on any four of the judgments mentioned herein below: 4 x 5 = 20

(A) ***Haryana State Industrial and Infrastructure Development Corporation Ltd. & Others Vs. Deepak Agarwal & Others*** reported in (2022) SCC Online SC 932 – The question involved therein pertains to when there would be initiation of land acquisition proceedings under the Land Acquisition Act, 1984.

(B) ***Janhit Abhiyan Vs. Union of India*** reported in (2022) SCC Online SC 1540 – The question involved therein was regarding the challenge to the Constitution (One hundred and third Amendment) Act, 2019.

(C) ***Mukesh Singh Vs. State (Narcotic Branch of Delhi)*** reported in (2020) 10 SCC 120 – The issue involved therein relates to whether the Police Officer who himself is the complainant can conduct the investigation.

(D) ***Aishat Shofa Vs. State of Karnataka*** reported in (2022) SCC Online SC 1394 – The issue involved therein relates to the legality of the actions of the State of Karnataka to abide by the prescribed uniform and private schools were directed to mandate a uniform as decided by their Board of Management.

(E) ***Vidya Drolia Vs. Durga Trading Corporation*** reported in (2021) 2 SCC 1 – The issue involved therein relates to what disputes are arbitrable.

(F) ***Rahul S. Shah Vs. Jinendra Kumar Gandhi*** reported in (2021) 6 SCC 418 – Directions issued by the Hon'ble Supreme Court under Article 142 read with Article 141 and Article 144 of the Constitution of India.

(G) ***Union of India Vs. V. Sriharan @ Murugan & Others*** reported in (2016) 7 SCC 1 – The question involved therein is whether imprisonment for life in terms with Section 53 read with Section 45 of the Indian Penal Code meant imprisonment for rest of life of the prisoner or a convict undergoing life imprisonment has a right to claim remission.

4. Study the following information carefully and answer the questions given beside.

5 x 2 = 10

The pandemic had turned the world on its head. No aspect of life has escaped unscathed. This includes the functioning of courts and tribunals. The judiciary has limited its work to hearing urgent matters via video conferencing. A lot has been written about how this is an opportunity to improve IT infrastructure of courts so that they can move to video conference hearings as the norm. However, any such move without first revamping procedural law would be futile.

In subordinate civil court and High Courts, a significant time of daily proceedings is taken up by cases where only adjournments are sought for procedural matters like filling of replies. Both as a response to this crisis, as well as in the medium term, this system needs to be devised where cases are not listed before the court unless all the documents are filed within strict timelines and every procedural requirement compiled with. The existing infrastructure is enough to enable this. Listing can be done before the court only in cases requiring urgent interim intervention from the court, while the matter is pending procedural completion, after verification of urgency by a judicial officer or a judge upon oral or written application.

When courts reopen, apart from fresh cases, only a limited number of cases (say-20-30 a day) which are ripe for arguments can be posted. This can be done with sufficient notice to the Bar Associations that requests for adjournments will be looked at askance. This will ensure that court rooms are not crowded. Circulations of the cases to be listed in advance (say, two weeks before listing) will give advocates enough time to take instructions from clients and prepare for arguments.

The Supreme Court Rules, 2013 should amend provisions pertaining to Special Leave Petitions (SLPs). Article 136 of the Constitution enables people to file a petition seeking leave to appeal a decision of any judicial or quasi-judicial authority. The Supreme Court grants leave to appeal if the petition raises a question of law of general public importance, or if the judgment appealed against is especially perverse, which would require interference from the Court. The provision has been abused over the years to only clog the docket of the Supreme Court. The Supreme Court was never intended to be a court of appeal, barring such appeals which specific statutes provide for. The High Courts are usually meant to be the final courts of appeal. Instead, SLPs are now being treated as the last round of appeal.

Reports show that SLPs comprise about 60-70% of the Supreme Court's docket. Out of this, 80-90 % of SLPs are dismissed, which means only 10-20% of such cases raise important questions of law. This takes up a lot of time of the Court. A simple solution would be to do away with immediate oral hearing of SLPs. The Supreme Court Rules could be amended to provide for a structure of pre-hearing of SLPs. Every SLP must be accompanied by an application for oral hearing which must be decided first by the Court, and that too in chambers. To assist the Court for that, a cadre of judicial research assistants made up of qualified lawyers should be created. The research assistants can go through each SLP and cull out the important questions of law as envisioned in Article 136.

(I) What remedy apart from improving IT infrastructure of the courts in order to reduce pendency and delay?

A. Change in the substantial laws like IPC and Indian Evidence Acts.

B. Change in the procedural laws like Criminal Procedure Code and Civil Procedure Code.

C. Change in the hierarchy of the courts.

D. All of the above

(II) Mrs Sharma's lawyer Mr Singh filed a petition in the family court requiring maintenance from her separated husband under section 125 of CrPC. The matter was pertaining to another jurisdiction out of the state and therefore the file was rejected. Which statement from the passage mentions delay caused by such illicit filing of the case.

A. Both as a response to this crisis, as well as in the medium term, this system needs to be devised where cases are not listed before the court unless all the

documents are filed within strict timelines and every procedural requirement compiled with.

B. Article 136 of the Constitution enables people to file a petition seeking leave to appeal a decision of any judicial or quasi-judicial authority.

C. When courts reopen, apart from fresh cases, only a limited number of cases (say-20-30 a day) which are ripe for arguments can be posted.

D. In subordinate civil court and High Courts, a significant time of daily proceedings is taken up by cases where only adjournments are sought for procedural matters like filling of replies.

(III) What procedural remedy according to the author should be done regarding listing of the cases so that courtrooms are not crowded?

A. The cases to be listed must be announced before two weeks so that the lawyers can notify their clients and prepare arguments.

B. The bar association should be notified in advance so that requests for adjournments do not take place.

C. Apart from fresh cases only limited number of cases should be taken with due inquiry.

D. All of the above

(IV) Mr. Ramu a Government teacher was ordered to vacate his job as he did not enroll for advanced teaching course by the school. Mr. Ramu appealed in the High Court citing injustice but of no success. What provision Mr. Ramu is entitled to pertaining to the passage?

A. Mr. Ramu should file a special leave for appeal in the Supreme Court under Article 136 of the constitution citing injustice.

B. Mr. Ramu should vacate his job and look for another job.

C. Mr. Ramu should re appeal in the High Court itself.

D. Mr. Ramu should enroll for the teaching course by the school.

(V) The author cites remedies for delays caused by SLPs in the Apex Court. Which statement/statements from the passage cite those remedies?

A. The Supreme Court Rules could be amended to provide for a structure of pre-hearing of SLPs.

B. The research assistants can go through each SLP and cull out the important questions of law as envisioned in Article 136.

C. Every SLP must be accompanied by an application for oral hearing which must be decided first by the Court, and that too in chambers.

D. All of the above.

5. Questions on General Knowledge. 10 x 1 = 10

(I) According to the Constitution of India, which of the following is not one of the main organs of the Government?

(A) Legislature

(B) Bureaucracy

(C) Executive

(D) Judiciary

(II) Panchayati Raj comes under

(A) Residual list

(B) Concurrent list

(C) State list

(D) Union list

(III) Which of the amendments of the Constitution of India was responsible for deleting the right to property from the list of fundamental rights?

(A) 43rd amendment

(B) 44th amendment

(C) 48th amendment

(D) 52nd amendment

(IV) Mein Kampf is authored by...

(A) Napoleon Bonaparte

(B) Karl Marx

(C) Adolf Hitler

(D) Benito Mussolini

(V) In 2017 which Space Agency sent 104 satellites in a single mission?

(A) ISRO

(B) NASA

(C) Russian Agency

(D) China space Agency

(VI) Topographical map of India is approved by-

(A) Archaeological Survey of India

(B) Geographical Survey of India

(C) Surveyor General of India

(D) None of the above

(VII) Who is the ex-officio chairman of the Planning Commission of India?

(A) President of India

(B) Finance Minister of India

(C) Prime Minister of India

(D) Vice-President of India

(VIII) National Unity Day or Rashtriya Ekta Diwas' is observed to commemorate the birth anniversary of which leader?

(A) Mahatma Gandhi

(B) Sardar Vallabhbhai Patel

(C) Subhas Chandra Bose

(D) B. R. Ambedkar

(IX) Janjatiya Gaurav Diwas' is observed on the birth anniversary of which leader?

(A) B. R. Ambedkar

(B) Birsa Munda

(C) Sardar Vallabhbhai Patel

(D) Ayyan Kaali

(X) The Indian Penal Code was prepared by-

(A) First Law Commission of India

(B) Second Law Commission of India

(C) Lord Macaulay

(D) None of the above

6. Questions on Expression of Law. 10 x 1 = 10

(I) "Lex talionis" denotes:

(A) The law of the place

(B) The law of the strong

(C) Oral law

(D) The law of Retributive Justice.

(II) "En ventre sa mere" is a person in being for the purpose of:

(A) Punishment of abortion

(B) Acquisition of property

(C) Creation of partnership

(D) Claiming compensation in torts

(III) "Autrefois convict" means:

(A) No person can be punished twice for the same offence.

(B) One who repeats the same offence can be punished twice.

(C) Neither (a) nor (b)

(D) Automatically Convict on the basis of Presumption of Law.

(IV) What do you understand by the term "habeas corpus"?

(A) That the body required for response.

(B) Easement rights to move freely.

(C) The same cause of Damage.

(D) A claim on legal grounds.

(V) What do you mean by the term "Ad Litem"?

(A) For the suit

(B) Party in a dispute

(C) Tax Litigation

(D) Money Agreement

(VI) What is meant by the Doctrine of Implied term?

(A) The practice of setting down default rules for contracts.

(B) The practice of setting down new rules for contracts.

(C) The practice of setting down void rules of the contract.

(D) The practice of setting down rules for foreign nationals.

(VII) What is meant by doctrine of *Quantum Meruit*?

(A) Compensation for work is inadequate.

(B) Reasonable sum of money in a contract where the price was not fixed.

(C) Unreasonable compensation.

(D) No compensation for work.

(VIII) The doctrine of "stare decisis" underpins the common law system. What is "stare decisis"?

(A) Courts must adhere to statutes in all of their decisions.

(B) The reasoning behind the decision.

(C) To stand by what has gone before.

(D) Parliament can overturn decided cases.

(IX) What is meant by "Ex Turpi Causa Non Oritur Actio"?

(A) The victim of a crime has a right to sue the perpetrator in tort.

(B) A person cannot pursue a cause of action if it arises out of his own guilty act.

(C) A person cannot be guilty if he has no reason to commit the crime.

(D) Friends who commit crimes together cannot be tried together.

(X) What is meant by *"Pari Delicto"*?

(A) Equal loss

(B) Equal gain

(C) Equal fault

(D) Equal respect

7. Explain the following legal maxims in one sentence. 5 x 1 = 5

(I) Actio Personalis Moritur Cum Persona

(II) Delegatus Non Potest Delegare

(III) Expressio Unius Est Exclusio Alterius

(IV) Ignorantia Facti Excusat-Ignorantia Juris Non Excusat

(V) Lex Non Cogit Ad Impossiblia

8. In the following questions sentences are given with blanks to be filled in with an appropriate word(s). Choose the correct alternatives out of the four. 5 x 1 = 5

(I) The chairman is ill and we'll have to _____ the meetings for a few days.

(A) put on

(B) put of

(C) put away

(D) put off

(II) The cat and the dog have a _____ enemy in the rat.

(A) same

(B) common

(C) mutual

(D) similar

(III) He told me that he _____ watching the movie.

(A) is finished

(B) was finished

(C) had finished

(D) not finished

(IV) He is very good _____ making stories.

(A) in

(B) about

(C) at

(D) for

(V) I do my work _____ carefully to not make mistakes.

(A) so

(B) very

(C) too

(D) more

9. In the questions below choose the word opposite in meaning to the given word. 1 x 5 = 5

(I) Plausible

(A) Inplausible

(B) Unplausible

(C) Implausible

(D) Displausible

(II) Frailty

(A) Energy

(B) Intensity

(C) Vehemence

(D) Strength

(III) Genial

(A) Stupid

(B) Stingy

(C) Boorish

(D) Unkind

(IV) Prevent

(A) Protect

(B) Block

(C) Hinder

(D) Induce

(V) Demolish

(A) Shift

(B) Build

(C) Repeat

(D) Hide

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