M.P. HIGHER JUDICIAL SERVICE MAIN EXAMINATION-2021

अनुक्रमांक/Roll No. | | | | |

कुल प्रश्नों की संख्या : 4
Total No. of Questions : 4

मुद्रित पृष्ठों की संख्या : 09
No. of Printed Pages : 09

Second Question Paper
द्वितीय प्रश्न–पत्र

ARTICLE & SUMMARY WRITING
लेख और सारांश लेखन

समय – 3:00 घण्टे
Time – 3:00 Hours

पूर्णांक – 100
Maximum Marks – 100

निर्देश :–
Instructions :-

1. All questions are compulsory. Please, adhere to the words limit of answers as specified in question paper and such violation may lead to minus marking.

   सभी प्रश्न अनिवार्य हैं। जहाँ प्रश्न के उत्तर की शब्द–सीमा प्रश्न के साथ दी गई है, उसका अवश्य पालन करें। उल्लंघन पर ऋणात्मक मूल्यांकन हो सकता है।

2. Write your Roll No. in the space provided on the first page of Answer-Book or Supplementary Sheet. Writing of his/her own Name or Roll No. or any mark of identification in any form or any Number or Name or Mark, by which the Answer Book of a candidate may be distinguished/ identified from others, in any place of the Answer Book not provided for, is strictly prohibited and shall, in addition to other grounds, entail cancellation of his/her candidature.

   उत्तर पुस्तिका अथवा अनुपूरक शीट के प्रथम पृष्ठ पर निर्दिष्ट स्थान पर ही अनुक्रमांक अंकित करें। उत्तर पुस्तिका में निर्दिष्ट स्थान के अतिरिक्त किसी स्थान पर अपना नाम या अनुक्रमांक अथवा कोई क्रमांक या पहचान का कोई निशान अंकित करना जिससे कि परीक्षार्थी की उत्तर पुस्तिका को अन्य उत्तर पुस्तिकाओं से अलग पहचाना जा सके, सर्वथा प्रतिषिद्ध है और अन्य आधारों के अतिरिक्त, उसकी अभ्यर्थिता निरस्त किये जाने का आधार होगा।

3. In case there is any mistake either or printing or of a factual nature, out of the Hindi and English versions of the question, the English version will be treated as standard.

   यदि किसी प्रश्न में किसी प्रकार की कोई मुद्रण या तथ्यात्मक त्रुटि हो, तो प्रश्न के हिन्दी तथा अंग्रेजी रूपांतरों में से अंग्रेजी रूपांतर मानक माना जायेगा।

4. Writing of all answers must be clear & legible. If the writing of Answer Book written by any candidate is not clear or is illegible in view of Valuer/Valuers then the valuation of such Answer Book may not be considered.
   सभी उत्तरों की लिखावट स्पष्ट और पठनीय होना आवश्यक है। किसी परीक्षार्थी के द्वारा लिखी गई उत्तर–पुस्तिका की लिखावट यदि मूल्यांकनकर्त्ता/मूल्यांकनकर्त्तागण के मत में अस्पष्ट या अपठनीय होगी तो उसका मूल्यांकन नहीं किया जा सकेगा।

P.T.O.

Q.1- Write an article either in English or in Hindi on the following *Social* topic : —20
निम्नलिखित *सामाजिक* विषय पर अंग्रेजी या हिन्दी में लेख लिखिए:

Gender discrimination in India
भारत में लैंगिक भेदभाव

Q.2- Write an article either in English or in Hindi on the following *legal* topic: —20
निम्नलिखित *विधिक* विषय पर अंग्रेजी या हिन्दी में लेख लिखिए:

"Essential practice" doctrine and Article 25 of Constitution of India
"आवश्यक अभ्यास" सिद्धांत और भारत के संविधान का अनुच्छेद 25

Q.3- Summarize the following legal passage into English (In around 1/3rd words of the passage given) —20
निम्नलिखित विधिक गद्यांश का अंग्रेजी में संक्षिप्तीकरण कीजिए (दिये गये गंद्याश के लगभग 1/3 शब्दों में):

To bring the statement in question within the prohibition of Article 20(3) the Constitution of India, the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, anytime after the statement has been made. While there is a requirement of formal accusation for a person to invoke Article 20(3) it must be noted that the protection contemplated by Section 161(2), CrPC is wider. Section 161(2) read with 161(1) protects 'any person supposed to be acquainted with the facts and circumstances of the case' in the course of examination by the police.

Therefore the 'right against self-incrimination' protects persons who have been formally accused as well as those who are examined as suspects in criminal cases. It also extends to cover witnesses who apprehend that their answers could expose them to criminal charges in the ongoing investigation or even in cases other than the one being investigated.

Even though Section 161(2) of the Cr.P.C casts a wide protective net to protect the formally accused persons as well as suspects and witnesses during the investigative stage, Section 132 of the Evidence Act limits the applicability of this protection to witnesses during the trial stage. The latter provision provides that witnesses cannot refuse to answer questions during a trial on the ground that the answers could incriminate them. However, the proviso to this section stipulates that the content of such answers cannot expose the witness to arrest or prosecution, except for a prosecution for giving false evidence. Therefore, the protection accorded to witnesses at the stage of trial is not as wide as the one accorded to the accused, suspects and witnesses during investigation under Section 161(2), Cr.P.C. Furthermore, it is narrower than the protection given to the accused during the trial stage under Section 313(3) and Proviso (b) to Section 315(1), Cr.P.C. The legislative intent is to preserve the fact-finding function of a criminal trial.

Since the extension of the 'right against self- incrimination' to suspects and witnesses has its basis in Section 161(2), Cr.P.C it is not readily available to persons who are examined during proceedings that are not governed by the code. There is a distinction between proceedings of a purely criminal nature and those proceedings which can culminate in punitive remedies and yet cannot be characterised as criminal proceedings. The consistent position has been that ordinarily Article 20(3) cannot be invoked by witnesses during proceedings that cannot be characterised as criminal proceedings. In administrative and quasi-criminal proceedings, the protection of Article 20(3) becomes available only after a person has been formally accused of committing an offence.

Section 27 of evidence Act, provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of the information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. It cannot be disputed that by giving such information

the accused furnishes evidence, and therefore is a 'witness' during the investigation. Unless, however he is 'compelled' to give the information he cannot be said to be 'compelled' to be a witness; and so Article 20(3) is not infringed. Compulsion is not however inherent in the receipt of information from an accused person in the custody of a police officer. There may be cases where an accused in custody is compelled to give the information later on sought to be proved under S. 27. There will be other cases where the accused gives the information without any compulsion. Where the accused is compelled to give information it will be an infringement of Art. 20(3); but there is no such infringement where he gives the information without any compulsion.

The distinction between inculpatory and exculpatory evidence gathered during investigation is relevant for deciding what will be admissible as evidence during the trial stage. The exclusionary rule in evidence law mandates that if inculpatory evidence has been gathered through improper methods (involving coercion, threat or inducement among others) then the same should be excluded from the trial, while there is no such prohibition on the consideration of exculpatory evidence. However, this distinction between the treatment of inculpatory and exculpatory evidence is made retrospectively at the trial stage and it cannot be extended back to the stage of investigation. If we were to permit the admission of involuntary statement on the ground that at the time of asking a question it is not known whether the answer will be inculpatory or exculpatory, the 'right against self-incrimination' will be rendered meaningless. The law confers on 'any person' who is examined during an investigation, an effective choice between speaking and remaining silent. This implies that it is for the person being examined to decide whether the answer to a particular question will eventually prove to be inculpatory or exculpatory. Furthermore, it is also likely that the information or materials collected at an earlier stage of investigation can prove to be inculpatory in due course.

Q.4(a)- Translate the following 20 Sentences into English :- —20
निम्नलिखित 20 वाक्यों का अंग्रेजी में अनुवाद कीजिए :–

(1) उपनिधान' एक व्यक्ति द्वारा दूसरे व्यक्ति को किसी प्रयोजन के लिये इस संविदा पर माल का परिदान करना है कि जब वह प्रयोजन पूरा हो जाए तब वह लौटा दिया जाएगा, या उसे परिदान करने वाले व्यक्ति के निदेशों के अनुसार अन्यथा व्ययनित कर दिया जायेगा।

(2) प्रस्तावना यह उद्घोषित करती है कि भारत एक सम्प्रभु राज्य है। यह इंगित करता है कि भारत किसी बाह्य शक्ति पर निर्भर नहीं है। वह बिना किसी बाह्य शक्ति द्वारा अधिशासित हुए अपने सभी आंतरिक एवं बाहरी मामलो को संचालित करने के लिये स्वतंत्र हैं।

(3) न्यायाधीश सुसंगत तथ्यों का पता चलाने के लिये या उनका उचित सबूत अभिप्राप्त करने के लिये, किसी भी रूप में, किसी भी समय किसी भी साक्षी या पक्षकारों से, सुसंगत या विसंगत तथ्य के बारे में कोई भी प्रश्न, जो वह चाहे, पूछ सकेगा तथा किसी भी दस्तावेज या चीज का पेश करने का आदेश दे सकेगा।

(4) समन न्यायालय द्वारा की जाने वाली आदेशिका का एक प्रारूप है जो किसी व्यक्ति को मजिस्ट्रेट के समक्ष उपस्थित होने के लिये आहूत करती है। धारा 61 उपबन्धित करती है कि न्यायालय द्वारा जारी किया गया प्रत्येक समन लिखित रूप मे और दो प्रतियों में और न्यायालय के पीठासीन अधिकारी द्वारा हस्ताक्षरित होना चाहिये।

(5) हर अभिवचन मे उन तात्विक तथ्यों का, जिन पर अभिवचन करने वाला पक्षकार, यथास्थिति, अपने दावे या अपनी प्रतिरक्षा के लिये निर्भर करता है और केवल उन तथ्यों का, न कि उस साक्ष्य का जिसके द्वारा वे साबित किए जाने हैं, संक्षिप्त कथन अन्तर्विष्ट होगा।

(6) मृत्युदण्ड का विषय हमेशा विवादित रहा है। हमारा समाज, विधायिका एवं न्यायपालिका भी इस विषय पर आज तक एक मत नहीं हो पाए है। आज जब किसी को मृत्युदण्ड देते है तो सुधारवादी लोगों का ध्यान सिर्फ अपराधी की मृत्यु पर ही रहता है उसकी आपराधिक पृष्ठभूमि पर कम रहता है। उसके अपराध की गंभीरता एवं उसके करने के तरीके पर ध्यान नही दिया जाता है।

(7) जहां वाद पत्र के अभिवचन से यह प्रकट हों कि वादी को वाद पत्र में वांछित अनुतोष प्रदान नहीं किया जा सकता है, वहां वाद को प्रारम्भिक प्रक्रम पर ही समाप्त कर देना चाहिए।

(8) विबंधन का सिद्धांत पक्षकारों के बीच निष्पक्षतापूर्वक, सद्भाव व ईमानदारी को बढ़ाने की संकल्पना पर आधारित है।

(9) साक्ष्य के मूल्यांकन का एक मूलभूत सिद्धांत है कि किसी पक्षकार को एक ही साथ कभी हां कभी ना नहीं करने अथवा कभी अनुमोदन और कभी अनानुमोदन करने की अनुमति नहीं दी जा सकती है।

(10) मुख्तारनामा धारित करने वाला व्यक्ति, मुख्तारनामा देने वाले व्यक्ति के द्वारा किये गये कार्यों की साक्ष्य मुख्तारनामा देने वाले व्यक्ति की एवज में नहीं दे सकता है।

(11) घरेलू हिंसा को आचरण के ऐसे प्रतिमान के रूप में वर्णित किया जा सकता है जिसमें एक अन्तरंग भागीदार दूसरे भागीदार को नियंत्रित या परिवर्तित करने के लिये शारीरिक हिंसा, प्रपीड़न, धमकी, अभित्रास या पृथक्करण एवं भावनात्मक या आर्थिक या यौन दुरूपयोग का प्रयोग उसके प्रति करता है।

(12) माध्यस्थम् के प्रयोजन से 'लिखित करार' पद के अंतर्गत किसी संविदा में ऐसा माध्यस्थम् खण्ड या ऐसा माध्यस्थम् करार भी शामिल है जो पक्षकारों द्वारा हस्ताक्षरित या पत्रों के आदान–प्रदान में समाविष्ट है।

(13) सहज एवं असंदिग्ध शब्दों का अर्थान्वयन उनके सामान्य अर्थ के अनुसार किया जाना चाहिये।

(14) भू–अर्जन के मामलों में न्यायालय, भूमि के आकार, माप, सामना, भूमि की सामर्थ्य, भूमि के प्रत्याशित लोगों आदि सुसंगत कारकों पर मनोयोग पूर्वक विचार कर मुआवजे के निर्धारण हेतु बाध्य है।

(15) परिवर्तित हो रहे विधिक परिदृश्य के साथ गति बनाये रखने के लिए विधि विभाग नियमावली को सरकार द्वारा निर्धारित कालावधि के अंदर व्यापक रूप से अद्यतन किया जाएगा।

(16) राज्य सरकार विभिन्न विभागो के मुकदमों की संख्या एवं गुणवत्ता को देखते हुए पर्याप्त अधोसंरचना प्रदान करके तथा पर्याप्त संख्या में समुचित श्रेणी के अधिकारियों को नियोजित करके विधि प्रकोष्ठ को सुदृढ़ करने का प्रयास करेगी।

(17) जहां बार–बार स्थगन लिए जा रहे हो वहां विभाग प्रमुख या विभाग का विधि अधिकारी सुसंगत अभिलेखों का अवलोकन कर सुनिश्चित करेगें कि स्थगन के उचित कारण अभिलेख से प्रकट होते ही।

(18) विभिन्न स्तरों पर इस नीति के सफल कियान्वयन के लिए मुकदमे के प्रबंधन तथा संचालन में हितधारकों/कर्तव्य धारकों की जवाबदेही को बढ़ाया जाना महत्वपूर्ण होगा।

(19) जांच अधिकारी/अनुशासनिक प्राधिकारी का यह बाध्यकारी कर्तव्य है कि वह जांच संचालित करने के लिए सुसंगत नियमों तथा विहित प्रकियाओं का पालन करे ताकि प्रकियात्मक भाग में कोई चूक कारित न हो।

(20) अपील के ज्ञापन, सारांश और तारीखों की सूची का विशेष ध्यान रखते हुए यह सुनिश्चित करते हुए तैयार किये जाने चाहिए कि उनमें विवाद के तथ्य तथा अंतर्ग्रस्त प्रश्न स्पष्ट रूप से प्रकट हों।

Q.4(b)- Translate the following 20 Sentences into Hindi :- —20

निम्नलिखित 20 वाक्यों का हिन्दी में अनुवाद कीजिए :

(1) The admissibility of the dying declaration rests upon the principle that a sense of impending death produces in man's mind the same feeling as that of a conscientious and virtuous man under oath.

(2) It has also to be borne in mind that in India, the maxim 'falsus in uno, falsus in omnibus' has no application. It is not the law that if the witness has spoken some falsehood, his entire testimony has to be discarded. Testimony of such a witness requires care and caution at the time of its analysis.

(3) It is well established that there is no presumption under Hindu Law that business standing in the name of member of the joint family is a joint family business even if that member is the manager of the joint family, Unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property.

(4) Section 34 has been enacted on the principle of joint liability in doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action.

(5) The entire case is based on circumstantial evidence. Pieces of circumstances, however strong may be, it is well-known that all links in the chain must be proved. In this case a vital link in the chain, viz possibility on the appellant No. 1 committing the offence, closing the door and then sneaking out of the room from one of the two places had not been proved by the prosecution.

(6) It is true that the power of revision confers wide discretion to be exercised fairly by the revisional Court, according to the exigencies of a case but it is too well settled that such exercise is normally done only in exceptional cases where there is glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.

(7) Whenever the question of title is raised or is involved, then matter has to be adjudicated by the Civil Court and not by the revenue authorities.

(8) Even if the "Will" is not challenged by anybody, but still the propounder of the "Will" has to discharge his burden.

(9) Territorial jurisdiction of Court ordinarily lies where cause of action arises but by valid contract the parties may submit themselves to the jurisdiction of any other specific court.

(10) Whether after rejecting application u/s 438 Cr.P.C., Court can grant relief of protection from arrest to the accused? Supreme Court under Article 142 of the constitution of India may pass such an order.

(11) Trial of "under trial" accused must be speedy because speedy trial is a fundamental right of accused and if his trial is delayed because of continuous non-appearance of police witness then such accused should be compensated from the State.

(12) Whether omission to state the order in which consecutive sentences are to be carried out would lead to assumption that sentences are directed to run concurrently?

(13) Revision is maintainable against an order passed upon the application for default bail as such order is not an interlocutory order.

(14) Visitation rights should be granted in such a way that visiting parent and child can meet like parent and child.

(15) If the fingerprints were picked from the glasses allegedly used by the accused, there is nothing to indicate what method was applied and whether such method is trusted and tested one.

(16) The Supreme Court has repeatedly expressed the view that Government and statutory authorities should be model litigants and should not put forth false, frivolous, vexatious and technical contentions to obstruct the path of Justice.

(17) The alternative dispute resolution mechanism will be encouraged as cost effective and time saving mode of settling legal disputes.

(18) It shall be mandatory for employees, including those retired, to seek redressal, at first instance, through this system before approaching the Courts.

(19) A legal notice is intended to alert the State to seek a just settlement. When such a legal notice is served upon any Department asking for the relief the same should be decided expeditiously in accordance with the prevalent Rules/ Instructions and by a detailed speaking order.

(20) Several PILs are filed because the competent authorities do not perform their duties or redress complaints. Effective functioning of the departmental grievance redressal system would reduce such cases.

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