

HIGH COURT FOR THE STATE OF TELANGANA

Written Examination for Recruitment of District Judges by transfer through Limited Competitive Examination

Paper – III

Dated 18th August, 2019

Time: 3 Hours, from 10:00 am to 1:00 pm **Maximum Marks: 100**

Instructions to the candidates

1. English translation is for 30 marks consisting of two questions of 15 marks each. Essay writing is for 70 marks consisting of two questions of 35 marks each.
 2. Translation has to be made from English language to either Hindi or Telugu language only.
 3. Essay writing must be written in English only.
 4. If the answers are not legible, such answers will not be evaluated.
 5. Write your hall ticket number only in the space provided in the first page of the main answer booklet. Do not write either your name or hall ticket number or any mark, anywhere in the main answer booklet/additional answer sheets.
 6. Any attempt by the candidate to disclose his/her identity in any manner in the answer sheets will disqualify him/her.
 7. No candidate will be permitted to leave the examination room/hall before 11:00 am.

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I. English Translation – 30 marks – Two questions (15) marks each.

1. In his famous play, Hamlet, Shakespeare advises “Neither a lender, or borrower be”. But who listens to such sane advice. Establishing a business is no easy enterprise. Thus, a businessman is bound to borrow capital from the financial institutions. But the market forces may prevent the businessman from repaying the loan amount. Hence, begins a tug of war between the Financial creditor and

the Corporate debtor. It could also be that the supplier of the goods cannot be paid by the Corporate debtor. Thus, begins a skirmish between the Operational Provider and the Corporate debtor. Even an individual may become insolvent as he is unable to discharge his financial liabilities. Hence, the dispute between the lender and the borrower. Debt recovery and insolvency riddle the business world. The issue is how do we solve this intractable problem?

Various potions were tried, tested, but failed. Taking its cue from the Bankrupts (England) Act, 1825, the English enacted the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920. We enacted The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the SARFAESI Act, 2002. But they failed to achieve the desired goals. Hence, we have enacted the Insolvency and Bankruptcy Code, 2016. (The Code, for short).

The Code has brought a sea change into the relationship between the creditor and the debtor: i) The Code has consolidated multiple outdated laws on insolvency and bankruptcy, by repealing the British laws mentioned above, and in amending eleven major legislations. ii) Creating multiple bodies and professionals for managing and facilitating the entire insolvency process in a structured and time bound manner including Insolvency and Bankruptcy Board of India, the Information Utilities, Insolvency Professionals, the Insolvency Professional Entities, and the Insolvency Professional Agency. iii) It has provided a time bound resolution of insolvency within a period of 180 days to maximum of 270 days. In

the case of **Arcelor Mittal India Pvt. Ltd. V Satish Kumar Gupta**[(2019) 2 SCC 1], the Hon'ble Supreme Court has already opined that the time bound process is an essential feature of IBC. Therefore, the Code provides a minimal role to the Judiciary. iv) It has enabled the Financial creditors, the operational creditors, and the corporate debtors to initiate the insolvency process before the NCLT. v) The mere presence of default in payment of debt is essential for initiating the Corporate Insolvency Resolution Process (CIRP, for short). In the case of **Innoventive Industries Ltd. V ICICI Bank** [(2018) 1 SCC 407], the Apex Court has held that “even non-payment of a disputed financial debt when due would constitute a default under the Code”. In other words, “as long as the

debt is due it does not matter if the same is disputed.” vi) the object of the Code is to balance the rights of the Creditors to recover their dues and to ensure the survival of the debtor as an ongoing concern. vii) the Code provides for two stages for recovery of debts due to the creditors, the Insolvency Resolution process, and upon its failure the Liquidation process.

2. Having undergone the agony of social suppression and economic exploitation, having been denied political rights during the colonial period, the Founding Fathers were eager to give Justice--Social, economic and Political--a pre-eminent position in our Constitution. Justice is, thus, prominently placed in the preamble of the Constitution. But mere mentioning is not enough. It is elaborately stated in Part III, and explained in detail in Part IV of the Constitution of India. While the former guarantees social, economic and political rights as fundamental rights, the latter places a constitutional duty on the State to strive to implement the concept of Justice in its different avatars through different means. A co-joint reading of these two parts of the Constitution reveals the depth of the Constitution: the Constitution is not just limited to defining the different functions of the three branches of the State, but is most importantly concerned with transporting the country from the feudal age to post-modern era. However, this transformation is not possible until Justice, in its varied form, reaches the common man. Till then, the concept is merely ephemeral.

Access to justice is pivotal to the Constitutional scheme of justice. Without access to the courts, justice is illusionary. Hence, Dr. B. R. Ambedkar called Art. 32 of the Constitution, "the soul of the Constitution". In order to facilitate easy access to justice, multi-pronged strategy is employed: an elaborate web of courts from the Supreme Court to the Gram Nyayalaya is woven; jurisprudentially, the concept of locus standi is diluted by creating Public Interest Litigation; Alternative Dispute Resolution mechanism is invented in order to supplement the traditional judicial structure. The plethora of litigation is a clear indication of people's zeal to access justice, of their faith in the Judiciary.

The ultimate consequence of the failure of the judiciary in securing justice for the people is the popular perception that the state machinery has failed to protect the common man. Thus, people turn to the anti-social elements, to the local goons who masquerade as the local politician, for protection. This leads to criminalisation of our politics. This criminalisation further leads to the breakdown of Rule of Law. For the very political leaders, who are supposed to uphold the law, end up violating it. Eventually, the people are disillusioned with democracy; they support anarchy.

II. English Essay Writing not less than 1500 words: 70 marks. Two questions (35) marks each.

1. Investigating and Impartiality.
2. Human Trafficking in India – Challenges and Solutions.