Uttarakhand Civil Judge (Mains) 2008

The Present Day · compulsory paper

Time allowed: Three Hours · Maximum Marks: 150

Candidates should attempt all the five questions. All questions carry equal marks.

1 (a) The Executive is responsible to the Legislature which in turn is answerable to the people but the Judiciary armed with power to punish for its contempt is accountable to none. What measures would you suggest to make the judiciary accountable in view of its recent claims for being not subject to Right to Information Act and Prevention of Corruption Act?

1 (b) In Kusumlata V. Union of India (2006) 6 SCC 180 Supreme Court observed that, "The Public Interest Litigation which has now come to occupy an important field in the administration of law should not become 'Publicity interest litigation' or 'Private interest litigation' or 'Politics interest litigation' or the latest trend 'Paise Income interest litigation'". Explain PIL with the help of decided cases in the light of above observation. What guidelines have been indicated by the Supreme Court to avoid its misuse? How far recently propounded thesis of Justice Markandey Katju for 'judicial restraint' is relevant in this context?

2 (a) "The principle of sustainable development has become a fundamental concept of Indian law which helps us to strike a balance between the environmental considerations and plans to promote development." Discuss with the help of decided cases the principle of sustainable development in the light of above observation.

2 (b) Do you agree with the view that 'Precautionary principle' and 'Polluter pays principle' are the essential features of the principle of sustainable development?

3 (a) Discuss the scope of reservation of OBC in the matter of admission to educational institutions with reference to Constitution (93rd Amendment) Act, 2005 followed by the Central Educational Institutions (Reservation in Admission) Act, 2006 (No. 5 of 2007) and the recent pronouncement of the Supreme Court in Ashok Kumar Thakur V. Union of India (2008).

3 (b) What is the position of reservation of OBC in the un-aided Private Educational Institutions? Explain.

4 (a) The expression 'Office of the profit' has not been defined either in the Constitution of India or General Clauses Act. Controversy is still going on. Evolve a comprehensive criteria which should be just, fair and reasonable and could be applied all over the country in a clear and transparent manner for determining an office of profit.

4 (b) Briefly discuss aims and main provisions of Parliament (Prevention of Disqualification) Amendment Act, 2006.

5 (a) "Under our Constitution, the Legislature, the Executive and the Judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate

balance in the Constitution will be upset, and there will be a reaction." Explain the theory of Separation of Powers in the light of above observation made by the Supreme Court in Divisional Manager, Aravali Golf Club and another V. Chander Hass and another (2008) 1 SCC 683. How far theory of Separation of Powers first propounded by Montesquieu is apt and timely for the Indian Judiciary today?

5 (b) "Justice includes both morality and law." Explain with the help of latest decided cases on the point.