1. Translate the following English passage into the ordinary language spoken in courts using Devnagri Script:

Mahatma Gandhi once said, “I realized that the true function of a lawyer was to unite parties... The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromise of hundreds of cases. I lost nothing thereby not even money; certainly not my soul.”

Litigation seems to be an indispensable part of the society. Disputes are bound to accrue. As society grows and develops, so do the disputes, as also the tendency of the litigants to enter into multiple rounds of litigation one after the other. Undeniably “Justice can never be luxury for only those who could afford. It cannot be the prerogative of those with money in hand and power in mind”. Socio-economic discrepancies can never be allowed to hinder the process of administration of justice.
Since the ends of "Justice" is to give each one his due, delaying or withholding this noble activity will, nevertheless, tend to collapse the faith and confidence reposed by a litigant in the working of the judicial system. A poor litigant may not be well versed with the legal technicalities involved. Order 17 rule 1 though provides for only three adjournments to a party in a suit, yet inevitable, it is to deny that in the interest of justice and fair play the bench never hesitates to grant adjourment, when the same is prayed for unless it is imminently necessary to decline the same.

Prolonged rather endless litigation causes mental agony and a sense of dissatisfaction in respect of the way in which disputes are traditionally resolved resulting in criticism of the Courts, the legal profession and sometimes, leads to a sense of alienation from the whole legal system. It is in this backdrop that the need for not just an alternative to litigation involving adjudication was felt, but an effective and efficacious alternative means of dispute resolution incorporated in the process of administration of an end to the litigation and affording a concrete and amicably agreeable solution to the dispute in question.

What emerges from the aforesaid discussion is that in order to make our social life peaceful, dispute resolution is an indispensable process. This dispute resolution aids to resolve conflicts, so as to enable groups and persons to maintain co-operation. It is sine qua non for maintenance of social life and security of social order so that it does not become difficult for the individuals to carry on their life together. The term 'Alternative Dispute Resolution' is used to describe several modes of resolving legal disputes. But such resolution has become impracticable for many individuals including both business world as well as common men as experienced by them to file suits and get timely justice. For the parties to be heard and decided it takes years, so in order to solve this issue of delayed justice, ADR Mechanism has been displayed in response thereof.

Both nationally and internationally, the method of Alternative Dispute Resolution is being increasingly acknowledged in field of law and commercial sectors. These methods help the parties in order to resolve the disputes at their own terms, that too cheaply and as expeditiously as possible. In almost all contentious matters, which are capable of being resolved under law by way of agreement between parties, ADR can be used. In several categories of disputes, especially civil, commercial, industrial and family disputes, ADR techniques are used. The Preamble of the Indian Constitution enshrines the goal of ADR, which enjoins the State to secure to all the citizens of India, justice social, economical, political- liberty, equality and fraternity.
According to the 14th Law Commission Report, the reason for the delay results not from the procedure laid down by the legislations but by the reason of non-observance of its important decisions. In the case of Brij Mohan Lal v. Union of India, it was held by the court that – ‘An independent and efficient judicial system is one of the basic structures of our Constitution... It is our Constitutional obligation to ensure that the backlog of cases is declared and efforts are made to increase the disposal of cases.’

In India, the Code of Civil Procedure, 1908 was amended and the insertion of Section 89 and Order 10 Rule 1A-1C. Section 89 of the Code provides for the settlement of disputes outside the court and it is based on the recommendations which were made by the Law Commission of India and Malimath Committee. The suggestion made by the Law Commission of India was that the attendance of any party to the suit or proceedings may be required to appear in person with a view to arrive at an amicable settlement of dispute between the parties. The recommendation made by the Malimath Committee was that it is the obligation on the court to refer the dispute after the framing of the issues for the settlement either by way of Arbitration, Conciliation, Mediation, Judicial Settlement through Lok Adalat. The parties can resort to filing of suits, only when, they fail to get their disputes to be settled through any of the alternative disputes resolution.

भाग – II / Part – II

2. निम्नलिखित हिंदी गद्यांश का सामान्य अंग्रेजी भाषा में अनुवाद कीजिए :

Translate the following Hindi passage into ordinary English language :

जैसा कि हम जानते हैं कि कानून उन चीजों के लिए एक व्यक्ति को दंडित करने का इरादा नहीं करता है, जिस चीज़ पर वह व्यक्ति संभवतः कोई नियंत्रण नहीं रख सकता था। एक कृत्य आपराधिक मानवीयता के बिना किसी व्यक्ति को दोषी नहीं बनाता है का सिद्धांत, केवल एक अनुमानक के रूप में काम करता है, जो यह बताता है कि आपराधिक कानून किसी व्यक्ति को दंडित करने के लिए उस व्यक्ति में किसी प्रकार के दोषी मानसिक तत्त्व को दूर करता है और यह जाहिर है कि दोषी मानसिक तत्त्व की अनुपस्थिति में व्यक्ति को किसी प्रकार की कोई सजा दी नहीं जा सकती है।
भारतीय दंड संहिता में ‘साधारण अपराध’ का भी उल्लेख मिलता है। जैसा कि नाम से जाहिर है, वह अध्याय उन परिस्थितियों की बात करता है जहाँ किसी अपराध के घटित हो जाने के बावजूद तथा सजा का प्राप्तवाद होने पर भी उसके लिए किसी प्रकार की सजा नहीं दी जाती है। यह अध्याय ऐसे कुछ अपराध प्रदान करता है, जहाँ किसी व्यक्ति का आपराधिक दायित्व खाम हो जाता है। इन बचाव का आधार यह है कि व्यक्ति किसी व्यक्ति के अपराध का विचार करता है, परन्तु उसे उत्तरदायी नहीं ठहराया जा सकता है।

ऐसा इसलिए है, क्योंकि अपराध के बाद तो मौजूदा हालात ऐसे थे कि व्यक्ति का क्रृत्य उचित था या उसकी हालत ऐसी थी कि वह अपराध के लिए अपेक्षित आपराधिक मनोवृत्ति का गठन नहीं कर सकती था।

यह ज्ञान लेना बेहद आवश्यक है कि चूंकि इस अध्याय का नाम ‘साधारण अपराध’ है, इसलिए यह अध्याय न केवल सम्पूर्ण भारतीय दंड संहिता पर लागू है बल्कि इसके अंतर्गत मौजूद अपराध अन्य कानूनों के लिए भी उपलब्ध है।

अपराध के प्रकार एवं उनके भेद – यह बचाव आम तौर पर दो मांगों के अंतर्गत चरित्रित किये जाते हैं— तर्कसंगत और धृष्टि। इस प्रकार, किसी अपराध के लिए सजा तभी दी जा सकती है जब किसी व्यक्ति द्वारा वह अपराध किसी तर्कसंगत और धृष्टि, आस्था की गरी मौजूदगि में किया गया हो। क्षम्य कृत्य वह है, जिसमें हालातमण उस व्यक्ति द्वारा नुकसान पहुँचाया गया था, फिर भी उस व्यक्ति ने उस श्रेणी के व्यक्तियों को उस कृत्य के लिए ध्येय किया जाना चाहिए क्योंकि उसे उस कृत्य के लिए दोषी नहीं ठहराया जा सकता है।

इसके अलावा, तर्कसंगत कृत्य वह है, जो है तो अपराध ही लेकिन कुछ विशेष परिस्थितियों के अंतर्गत उन्हें अपराध माना जाता है और इसलिए उनके लिए कोई आपराधिक दायित्व नहीं बनाता है। इनके बीच का अंतर इस प्रकार से साफ़ किया जा सकता है कि, यथार्थ कृत्यों के, आपराधिक मनोवृत्ति की निहित आवश्यकता के अभाव में आपराधिक दायित्व से अलग किया जाता है, वहीं धृष्टियुक्त या तर्कसंगत कृत्यों के मामलों में, सामान्य परिस्थितियों में वो कृत्य एक अपराध होता और उसमें आपराधिक मनोवृत्ति की मौजूदगि भी हो सकती है, लेकिन जिन परिस्थितियों में वह कृत्य किया गया वह इसे सही ऋणों और व्यवहार बनाता है।

दूसरी शब्दों में, तर्कसंगत कृत्य के अंतर्गत एक व्यक्ति अपराध के सभी अवयवों को पूरा अवश्य करता है (यहाँ तक कि आपराधिक मनोवृत्ति की मौजूदगि भी होती है), लेकिन कुछ विशेष परिस्थितियों के तहत उस व्यक्ति का आचरण सही माना जाता है। वहीं धृष्टि कृत्य वह होता है, जिसमें हालातमण व्यक्ति द्वारा नुकसान किया गया है, लेकिन यह माना जाता है कि उस व्यक्ति को आपराधिक दायित्व से मुक्त रखा जाना चाहिए क्योंकि उसे उस कृत्य के लिए दोषी नहीं ठहराया जा सकता है (पुर्व रूप से इसलिए, क्योंकि आपराधिक मनोवृत्ति का उस व्यक्ति में अभाव था)।

JUL-B
3. Write a precis in English of the following passage:

When an accused has been found guilty of an offence, the million dollar question that faces the judge is that of the appropriate sentence which is to be imposed on the convict. Sentencing is the last stage of the criminal process and is the most complex and difficult stage in the judicial process. Sentencing can never be a rigid and mechanical process. In choosing a fair and just sentence, judges must have regard to various factors including the nature of the offence, gravity of the offence, the manner and circumstances of commission of the offence, the personality of the accused, his family background, character, motivations for the crime, antecedents etc.

Every legal system confers a wide discretion on the judges to choose the appropriate sentence. Individualization of punishment is possible only if such discretion is made available to the judge. Consistency of approach in sentencing in relation to one kind of offence is essential to maintain public confidence in the system. However, we may not be able to achieve perfect consistency in outcome because of the infinite variety of circumstances with which the courts are presented.
But when the discretion becomes wide and unfettered, the result would be wide disparity and variation in sentences. Many studies on the sentencing practices followed in India has revealed that subjectivity of the judge plays a crucial role in the decision making process. This is not at all desirable for a criminal justice system and a solution to this problem needs to be found at the earliest. The I.P.C. does not lay down the sentencing policy to be followed with respect to the offences, but leaves it to the discretion of the judge. Discretion oriented sentencing is idealistic in spirit as it enables the court to individualise the penal measures in its proper sense. Individualisation of punishment should not degrade into liberalization of punishment.

The Apex Court, while awarding the punishment for rape should not forget the unimaginable trauma, degradation and humiliation suffered by the victims of rape. Rape is an obnoxious act of the highest order affecting the dignity of a woman. The legislative intent to curb the offence of rape with iron hand can be inferred from the Criminal Law (Amendment) Act, 1983 and Criminal Law (Amendment) Act, 2013 which provided enhanced sentences for gang rape as also punishment for repeated offence. The legislative history of the amendment points the need for strictly interpreting the term “adequate and special” reasons. If a compromise is taken as “special and adequate reason” we would be going back to the pre-1983 situation, which saw many de facto rapists escaping the clutches of law.

A compromise entered into between the rape victim and the offender shall not be taken as a valid ground for awarding sub-minimum sentence. Rape is a crime against the entire women-folk and the society at large. The judiciary while dealing with an offence involving much social concern should imbibe the legislative spirit and award due punishment considering the gravity of the concerned offence and its impact on the society. Imposition of sentence without considering its effect on the social order will turn out to be counter productive. Offences, such as, gang rape require exemplary treatment. Any liberal attitude towards such heinous offenders will go against societal interest. In dealing with heinous crimes, deterrence and prevention should be the prime objective of punishment. Punishment should commensurate with the gravity of the offence and its impact on society. It should not be disproportionate.