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CS EXECUTIVE

MODULE-1

JURISPRUDENCE, INTERPRETATION
AND GENERAL LAWS

BY:-CS NITESH KR. JAISWAL (Company Secretary (FCS), LL.B.)

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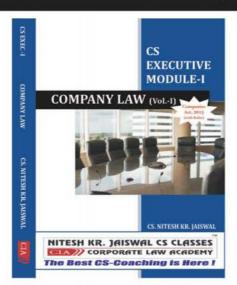
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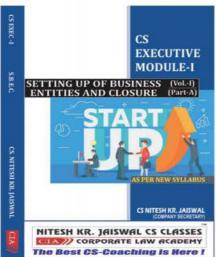
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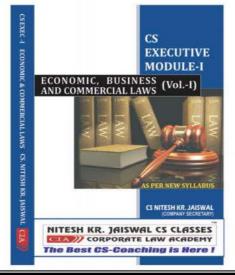
with the blessings of "maa sidhidalri"

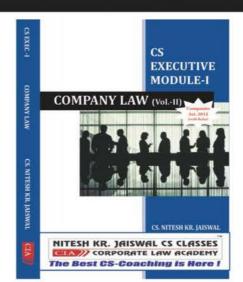
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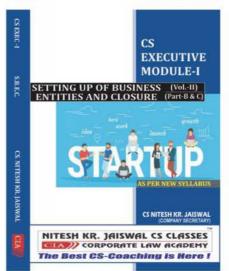
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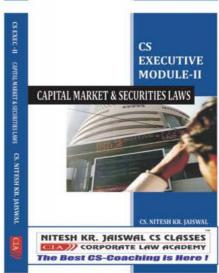












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- CS. Vinita Jangra
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- CS. Sudhir Kumar
- CS. Sourabh Raha

And



Statutory body under an Act of Parliament

Preface

We have great pleasure in placing the book on Jurisprudence, Interpretation and General Laws in the hands of students. This book gives a complete and overall prospect about Jurisprudence, Interpretation and General Laws from examination point of view and meets the requirements of all levels of students preparing for Company Secretaryship examination. The focus continues on equipping the students with theories, concepts and techniques that can be applied to various spheres of Company Secretary professional.

The important features of this book are as follows:

- ❖ It is user friendly and provides information in well structured manner.
- It incorporates latest changes relating to the subject, Jurisprudence, Interpretation and General Laws.
- It elaborates the concept through practical problems.
- Tables and diagrams are used for explaining the key concepts.
- Lucid and comprehensive presentation of the complex and advanced subjects matter will help the students in easy understanding.
- The book is comprehensive and even a student who has not studied the subject earlier can easily understand the concept and system of Jurisprudence, Interpretation and General Laws.

There is no denying the fact that improvement is an unending process.

We look forward to the comments, suggestions and criticisms from the readers for improvement of this book and will be gratefully acknowledged.

However, it becomes necessary for every student to constantly update with legislative changes made as well as judicial pronouncements rendered from time to time by referring to the ICSI's monthly journal 'Chartered Secretary' and e-bulletin 'Student Company Secretary' as well as other law/professional journals and reference books.

Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws made upto six months preceding the date of examination.

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CS. NITESH KR. JAISWAL

(Company Secretary (FCS), LL.B.)



EXECUTIVE PROGRAMME

Module 1 Paper 1

Jurisprudence, Interpretation and General Laws

SYLLABUS

Objectives

To provide understanding and working knowledge of sources of law, Constitution, legislative environment, interpretation of statutes and general laws.

- 1. Sources of Law
- 2. Constitution of India
- 3. Interpretation of Statutes
- 4. General Clauses Act, 1897
- 5. Administrative Laws
- 6. Law of Torts
- 7. Limitation Act, 1963
- 8. Civil Procedure Code, 1908
- 9. Indian Penal Code, 1860
- 10. Criminal Procedure Code, 1973
- 11. Indian Evidence Act, 1872
- 12. Special Courts, Tribunals under Companies Act & Other Legislations
- 13. Arbitration and Conciliation Act, 1996
- 14. Indian Stamp Act, 1899
- 15. Registration Act, 1908: Registration of Documents
- 16. Right to Information Act, 2005
- 17. Information Technology Act, 2000

JURISPRUDENCE, INTERPRETATION AND GENERAL LAWS

{Strictly as per new syllabus (2017) prescribed by The Institute of Company Secretaries of India (ICSI)}

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NKJ-PCET CLASSROOM EXAM/TEST			

This book is updated With all amendments Till 30th December 2019

(Afterwards amendments will be included / discussed in live lectures at classroom)

Roll	No				

Time allowed: 3 hours Maximum marks:100

Total number of questions: 6 Total number of printed pages: 4

NOTE: 1. Answer ALL Questions.

- 1. (a) Critically examine Roscoe Pound's theory of interests.
 - (b) Explain the freedom of association under the consultancy of India. What reasonable restrictions have been imposed on this freedom under Article 19 of the constitution of India?
 - (c) The 'Privileged Communications' are based on Public Policy and a witness cannot be compelled to answer the same during the evidence in the Court or before any other authority. Explain in brief.
 - (d) Naveen takes property belonging to Ganesh out of Ganesh possession in good faith belonging at the time when he takes it that the property belongs to himself. Later on Naveen discovers his mistakes, dishonestly misappropriates the property o his own use. Explain what offence he has done?

(5 Marks each)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (a) Distinguish between cognizable and non cognizable offence under the criminal Procedure Code 1973.

(4 Marks each)

(b) Distinguish between Arbitration and Conciliation under the Arbitration and Conciliation Act, 1996.

(4 Marks each)

1/2019/JIGL/NS P.T.O.

(c) Distinguish between review and revision under the Civil Procedure Code 1908.

(4 Marks each)

(d) Explain provisions for contempt and caveat under Companies Act 2013.

(4 Marks each)

OR (Alternate question to Q. NO. 2)

- **2A.** (i) The law of Limitation under the Limitation Act, 1963 bars the remedy but it does not extinguish the right. Explain in brief.
 - (ii) Distinguish between executed and execution under Indian Stamp Act 1889.
 - (iii) Explain the powers of Special Courts for offences triable by it under Special Courts, Tribunal under Companies and other legislations.
 - (iv) Explain the Rule of Beneficial Construction".

(4 marks each)

- 3 (a) Yash signed a deed of gift in favor of Raja. If Yash does not agree to its registration, will the gift deed be registered? Explain whether delay in registration of a gift deed will postpone its operation?
 - (b) Explain the provision for appeal under the Right to Information Act, 2005.
 - (c) The Civil court has power to grant temporary injunction, but for obtaining the same the plaintiff is required to satisfy the Court. Explain in brief.
 - (d) If any person dishonestly or fraudulently does any act under section 43 of Information Technology Act, 2000 without the permission of the owner or any other person, who is in charge of a computer, computer system network, he shall be punished. What is the punishment for the offence? In brief, discuss the offences listed in the act relating to computer and computer system network.

(5 marks)

1/2019/JIGL/NS Contd.......

- **4.** (a) Confessions caused by inducement, threat or promise are irrelevant. Explain briefly.
 - (b) Discuss the vicarious or tortuous liability of state for the act of his servant. Refer relevant Judgments.
 - (c) Explain the rule of 'Ejusdem Generics' under the Interpretation of statue.
 - (d) 'Explain provisions of summary procedure' including leave to defend under Civil Procedure Code.

(4 marks each)

- 5. (a) Discuss in brief the provisions for filing an appeal before the National Company Law Appellate Tribunal (NCLAT) under the companies Act 2013.
 - (b) Article 14 of the Constitution of India says that state shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Explain it. Refer the relevant Judgements.

(8 marks each)

Attempt all parts of either Q. No. 6 or Q. No. 6A

- **6.** (a) Explain in brief doctrine of 'Nemo Judex in Causa Sua'
 - (b) Explain the difference if any, in between Res Judicata and Res Sub-Judice'.
 - (c) What is the effect of acknowledgment on the period of limitation? Discuss.
 - (d) Explain the provisions for obtaining interim relief from Court, when there exists arbitration agreement among parties.

(4 marks each)

1/2019/JIGL/NS P.T.O.

6A.

OR (Alternate question to Q. NO. 6)

(ii) A promissory note is executed by Suresh and Udit and stamp is afterwards affixed and cancelled Suresh by again signing it. Explain whether the provisions of section 17

relating to time of stamping instruments have been compiled with?

(i) Opinion of experts under section 45 of the Indian Evidence Act, 1872.

- (iii) Explain the documents of which registration is optimal under the Registration Act 1908.
- (iv) Explain the basic features of arbitral award under the Arbitration and Conciliation Act 1996.

	(4 marks each)
0	_

1/2019/JIGL/NS Contd......

NEW SYLLABUS 421

Roll	No.	

Time allowed: 3 hours Maximum marks: 100

Total number of questions: 6 Total number of printed pages: 4

NOTE: Answer ALL Questions.

- 1. (a) Critically examine the statement by Austin that "Law is the command of sovereign".
 - (b) Discuss the doctrine of 'Res Sub Judice' under Section 10 of Civil Procedure Code, 1908.
 - (c) Discuss the test laid down by the Supreme Court of India to determine the entity of "State", whether it is 'instrumentality or agency of State'.
 - (d) Swaraj an employer of ABC Company Ltd., appointed Rakesh as an independent contractor. Discuss under what circumstances Swaraj would be liable for the fault of Rakesh.

(5 marks each)

Attempt all parts of either Q. No. 2 or Q. No. 2A

- 2. (a) Distinguish between 'Ratio Decidendi' and 'Obiter Dicta' in a judgment by a Court.
 - (b) Distinguish between 'Admission' and 'Confession' under Indian Evidence Act, 1872.
 - (c) Distinguish between 'Damnum Sine Injuria' and 'Injuria Sine Damnum' under the law relating to Torts.
 - (d) In exceptional cases, mere 'preparation' to commit an offence is punishable under Indian Penal Code, 1860. Discuss.

(4 marks each)

2/2018/JIGL/NS P.T.O.

OR (Alternate question to Q. No. 2)

- 2A. (i) Discuss 'Digital Signature' and 'Electronic Signature' under the Information Technology Act, 2000.
 - (ii) Discuss the 'Rule of Strict Liability' under the Law of Torts.
 - (iii) Explain the 'Rule of Harmonious Construction' for interpretation under General Clause Act, 1997.
 - (iv) "Article 20 of the Constitution of India guarantees protection against self-incrimination".Explain briefly.

(4 marks each)

- 3. (a) Atul mortgages his house of the value of ₹ 50,000 to Vijay. After some time Vijay buys the house from Atul for ₹ 25,000. Decide the amount on which Vijay has to pay the stamp duty under Indian Stamp Act, 1889.
 - (b) What are the restrictions on right to freedom of speech and expression under Article
 19 of the Constitution of India ?
 - (c) Discuss briefly the grounds for opposing the 'foreign award' made under the Arbitration and Conciliation Act, 1996.
 - (d) The 'mens rea' is an essential element to constitute an offence under Indian Penal Code, 1860. Discuss briefly.

(4 marks each)

2/2018/JIGL/NS Contd.

- 4. (a) What is 'documentary evidence' under Indian Evidence Act, 1872? Explain briefly.
 - (b) Manoj died on 3rd August, 2016 before a right to institute a suit accrued, leaving behind a minor son of the age of 15 years. Decide the time from where the period of limitation shall be calculated under Limitation Act, 1963.
 - (c) Explain in brief the 'International Commercial Arbitration' under the Arbitration and Conciliation Act, 1996.
 - (d) In a civil case what remedies are available for the defendant against whom an ex-parte decree has been passed by the court?

(4 marks each)

 (a) Discuss in brief the provisions for challenging the arbitrator under the Arbitration and Conciliation Act, 1996.

(8 marks)

(b) Discuss 'the procedure established by law' under Article 21 of the Constitution of India with decided case laws.

(8 marks)

Attempt all parts of either Q. No. 6 or Q. No. 6A

- 6. (a) Explain in brief 'Principle of Estoppel' under Indian Evidence Act, 1872.
 - (b) Define 'Lease' under the Indian Stamp Act, 1889.
 - (c) Explain the 'mischief rule' under the Interpretation of Status.
 - (d) What remedies can be sought under the Law of Torts?

(4 marks each)

2/2018/JIGL/NS P.T.O.

OR (Alternate question to Q. No. 6)

- **6A.** (*i*) Discuss the liability of Corporate body for data protection under Information Technology Act, 2000.
 - (ii) Discuss in brief the composition and the powers of Central Information Commission(CIC) given under the Right to Information Act, 2005.
 - (iii) Explain in brief 'Audi Alterum Partem Rule' under the Administrative law.
 - (iv) Discuss the summary trial by a Magistrate under the Criminal Procedure Code, 1973.

(4 marks each)

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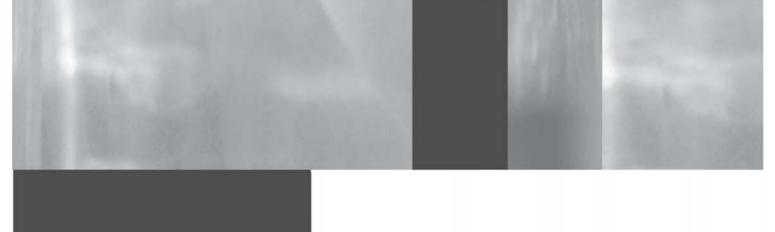
Important Abbreviations

A priori:	From the antecedent to the consequent.
Ab initio:	From the beginning.
Absolute sententia	Plain words require no explanation.
expositore non indiget:	
Actio mixta:	Mixed action.
Actio personalis moritur	A personal right of action dies with the person.
cum persona:	
Actionable per se:	The very act is punishable and no proof of damage is required.
Actus Curiae Neminem Gravabit:	Act of the Court shall prejudice no one.
Actus non facit reumnisi mens sit rea:	An act does not make a man guilty unless there be guilty intention.
Actus reus:	Wrongful act.
Ad hoc:	For the particular end or case at hand.
Ad idem:	At the same point.
Ad valorem:	According to value.
Aliunde:	From another source.
Amicus Curiae:	A friend of court member of the bar who is appointed to assist the Court.
Animus possidendi:	Intention to possess
Audi alteram partem:	Hear the other side.
Benami:	Nameless.
Bona fide:	Good faith; genuine.
Caveat:	A caution registered with the public court to indicate to the officials that they are not to act in the matter mentioned in the caveat without first giving notice to the caveator.
Caveat emptor:	Let the buyer beware.
Caveat actor:	Let the doer beware.
Caveat venditor:	Let the seller beware.
Certiorari:	A writ by which records of proceeding are removed from inferior courts to High Court and to quash decision that goes beyond its jurisdiction.
Cestui que trust:	The person who has the equitable right to property in India he is known as beneficiaries.
Consensus ad idem:	Common consent necessary for a binding contract.
Contemporanea expositio	A contemporaneous exposition or language is the best and strongest in
est optima et fortissima	Law.
lege:	
Corpus delicti:	Body/gist of the offence.
Cy pres:	As nearly as may be practicable.
Damnum sine injuria:	Damage without injury.
De facto:	In fact.
De jure:	By right (opposed to de facto) in Law
Dehors:	Outside; foreign to (French term).
De novo:	To make something new; To alter.
Dies non:	Day on which work is not performed.

Deceit:	Anything intended to mislead another.	
Del credre agent:	Is a mercantile agent who in consideration of extra remuneration called a	
	del credre commission undertakes to indemnify his employer against loss	
	arising from the failure of persons with whom he contracts to carry out	
THE CONTRACTOR IN THE PRESENTATION IS A ANTHONY,	their contracts.	
Delegate potestas non- potest delegari:	A delegated power cannot be delegated further.	
Delegatus non potest delegare:	A delegate cannot delegate.	
Dictum:	Statement of law made by judge in the course of the decision but not	
	necessary to the decision itself.	
Dispono:	Convey legally.	
Ejusdem generis:	Where there are general words following particular and specific words, the	
	general words must be confined to things of the same kind as those	
	specified.	
Estoppel:	Stopped from denying.	
Ex parte:	Proceedings in the absence of the other party.	
Expressio unius est	Express mention of one thing implies the exclusion of another or which is	
exclusio alterius:	shortly put.	
Ex turpi causa non oritur actio:	No action arises from an illegal or immoral cause.	
Fatum:	Beyond human foresight.	
	Things done and no longer worth arguing against; an accomplished act.	
Fait accompli:		
Factum probandum:	Fact in issue which is to be proved.	
Factum probans:	Relevant fact.	
Ferae naturae:	Dangerous by nature.	
Force majeure:	Circumstance beyond one's control, irresistible force or Compulsion	
Generalia specialibus non derogant:	General things do not derogate from special.	
Habeas corpus:	A writ to have the body to be brought up before the judge.	
Ignorantia legis neminem excusat:	Ignorance of law excuses no one.	
Injuria sine damno:	Injury without damage.	
Interest reipublicae ut sit finis litium:	State or public interest requires that there should be a limit to litigation.	
Ipso facto:	By the very nature of the case.	
In promptu:	In readiness.	
In posse:	In a state of possibility.	
In limine:	Initial stage; at the outset.	
In lieu of:	Instead of.	
Inter alia:	Among other things.	
Inter se:	Among themselves.	
In specie:	In kind.	
Inter vivos:	Between living persons.	
Intra vires:	Within the powers.	
In personam:	A proceeding in which relief is sought against a specific person.	
Indicia:	A symbol; token; mark.	

Innuendo:	Allusive remark.
Jus in personam:	Right against a person.
Jus in rem:	Right against the world at large.
Jus non scriptum:	Unwritten law; Customary Law.
Jus scriptum:	Written Law.
Lex Marcatoria:	The law merchant, is a body of legal principles founded on the customs of merchants in their dealings with each other, and though at first distinct from the common law, afterwards became incorporated into it.
Lex fori:	The law of the forum of court.
Lis:	A suit cause of action.
Lis pendens:	A pending suit.
Locus standi:	Right of a party to an action to appear and be heard on the question before any tribunal.
Mala fide:	In bad faith.
Mandamus:	A writ of command issued by a Higher Court to a Lower Court/Government/Public Authority.
Mens rea:	Guilty mind.
Manesuetae natureae:	Harmless by nature.
Mesne profits:	The rents and profits which a trespasser has received/made during his occupation of premises.
Misnormer:	A wrong name.
Mutatis-mutandis:	With necessary changes in points of detail.
Noscitur a sociis:	A word is known by its associated, one is known by his companions.
Obiter dictum:	An incidental opinion by a judge which is not binding.
Onus Probandi:	Burden of proof.
Pari passu:	On equal footing or proportionately.
Per se:	By itself taken alone.
Persona non-grata:	Person not wanted.
Per incuriam:	Through want of care; through inadvertance.
Prima facie:	At first sight; on the face of it.
Profit a prendre:	A right for a man in respect of his tenement.
Pro bono publico:	For the public good.
Pro forma:	As a matter of form.
Pro rata:	In proportion.
Posteriori:	From the consequences to the antecendent.
Puisne mortgage:	Second mortgage.
Pari causa:	Similar circumstances, with equal right.
Pari materia:	Relating to same person or thing.
Qui facit per alium facit per se:	He who acts through another is acting by himself.
Quo warranto:	A writ calling upon one to show under what authority he holds or claims an office.
Quia timet:	Protective justice for fear. It is an action brought to prevent a wrong that is apprehended.
Quid pro quo:	Something for something.
Ratio decidendi:	Principle or reason underlying a decision.

Res judicata:	A decision once rendered by a competent court on a matter in issue
Res junicum.	between the parties after a full enquiry should not be permitted to be
	agitated again.
Res ipsa loquitur:	The things speak for itself.
Respondent superior:	Let the principal be liable.
Res sub judice:	Matter under consideration.
Res gestae:	Facts relevant to a case and admissible in evidence.
Rule nisi:	A rule which will become imperative and final unless cause to be
S EARTHANNIA LITTH-COOKS	shown against it.
Scire facias:	Your cause to know.
Status quo:	The existing state of things at any given date.
Scientiet volenti non fit injuria:	Injury is not done to one who knows and wills it.
Spes successionis:	Chance of a person to succeed as heir on the death of another.
Supra:	Above; this word occurring by itself in a book refers the reader to a
	previous part of the book.
Suppressio veri:	Suppression of previous knowledge.
Sui juris:	Of his own right.
Simpliciter:	Simply; without any addition.
Scienter:	Being aware of circumstances, the knowledge of which is necessary to
	make one liable, as applied to the keeper of a vicious dog, means no more
	than reasonable cause to apprehend that he might commit the injury
CO CONTRACTOR CONTRACT	complained of.
Sine qua non:	An indispensable condition.
Situs:	Position; situation; location.
Suo motu:	On its own motion.
Stare decisis:	Precedent. Literally let the decision stand
Sine die:	Without a day being appointed.
Travaux preparatotries:	Preparatory records.
Tortum:	Civil wrong actionable without contract.
Uberrimae fide:	Of utmost good faith.
Ubi jus ibi remedium:	Where there is a right there is remedy.
Ultra vires:	Beyond the scope, power or authority.
Ut lite pendente nihil	Nothing new to be introduced during ligitation.
innovertur:	
Usufructuary:	One who has the use and reaps the profits of property, but not ownership.
Ut res magis valeat quam	The words of a statue must be construed so as to give a sensible or
pereat:	reasonable meaning to them.
Vis major:	Act of God.
Vigilantibuset, non dormientibus, jura	The laws help those who are vigilant and not those who are slumber or
dormientibus, jura subveniunt:	lazy.
Vice versa:	The order being reversed; other way round.
Volenti non fit injuria:	Damage suffered by consent gives no cause of action.
, otenu non ju injuria.	Damage surrered by consent gives no cause of action.



CHAPTER

1

SOURCE OF LAW

Covering-

- Bare Act
- Introduction
- Natural School
- Positivistic Definition of Law
- Historical Definition of Law
- Sociological Definition of Law
- Realist Definition of Law
- Significance of law
- Sources of Indian law
- Principle Sources of Indian Law
- Classification of Customs
- Requisites of a Valid Custom
- Judicial Decision or Precedents
- High Courts
- Supreme Court
- Kinds of Precedents
- Doctrine of Stare Decisis
- Ratio Decidendi
- OBITER DICTA
- Statutes or Legislation
- Personal Law
- Secondary source of Indian Law
- Mercantile or Commercial Law
- Jurisprudence
- Self Test Questions

EXPECTED
MARKS COVERAGE
(1 to 5)

Chase for	
Space for	
CHART NO.	
Live Lecture	
Space for Additional Writing Live Lectures	
Live Lectures	

From Bare Act...

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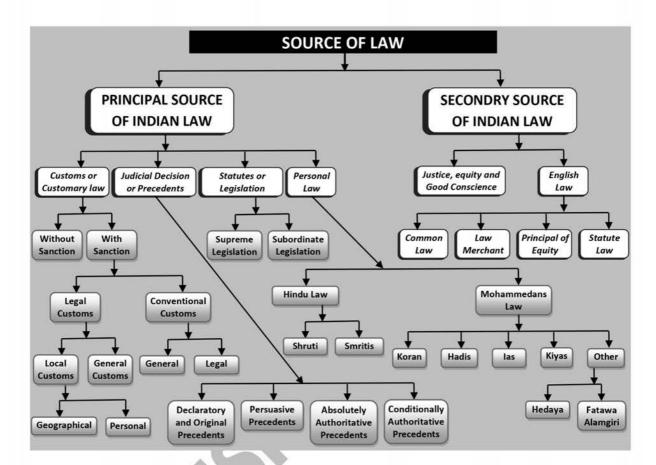
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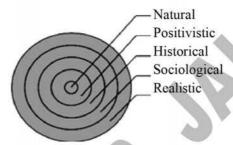
SOURCE OF LAW

INTRODUCTION

The nature and meaning of law has been described by various jurists. However, there is no unanimity of opinion regarding the true nature and meaning of law.

Therefore, it is not practicable to give a precise and definite meaning to law which may hold good for all times to come. However, it is desirable to refer to some of the definitions given by different jurists so as to clarify and amplify the term 'law'.

For the purpose of clarity and better understanding of the nature and meaning of law, we may classify various definitions into **five broad classes**:



1. NATURAL SCHOOL

Under this school fall most of the ancient definitions given by Roman and other ancient Jurists.

Salmond, defines law as "the body of principles recognized and applied by the State in the administration of justice."

Ancient Hindu view was that 'law' is the command of God and not of any political sovereign. Everybody including the ruler, is bound to obey it. Thus, 'law' is a part of "Dharma".

2. POSITIVISTIC DEFINITION OF LAW

According to *John Austin*, "Law is the aggregate of rules set by man as **politically superior**, or sovereign, to men as political subject." In other words, law is the "command of the sovereign". It obliges a certain course of conduct or imposes a duty and is backed by a sanction. Thus, the command, duty and sanction are the three elements of law.

Kelsen gave a 'pure theory of law'. According to him, law is a 'normative science'. The legal norms are 'Ought' norms as distinct from 'Is' norms of physical and natural sciences. Law does not attempt to describe what actually occurs but only prescribes certain rules.

3. HISTORICAL DEFINITION OF LAW

Savigny's theory of law can be summarised as follows:

- The law is **found** and not made.
- Law is not universal in its nature. Like language, it varies with people and age.
- Law should always conform to the popular Custom.
- The lawyer or the jurist is more important than the legislator.

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4. SOCIOLOGICAL DEFINITION OF LAW

Roscoe Pound thinks of law as a social institution to **satisfy social wants** – the claims and demands and expectations involved in the existence of civilised society by giving effect to as much as may be satisfied or such claims given effect by ordering of human conduct through politically organised society.

5. REALIST DEFINITION OF LAW

Realists define law in terms of judicial process. According to *Holmes*, "Law is a statement of the circumstances in which public force will be brought to bear upon through courts."

To summarise, following are the main characteristics of law and a definition to become universal one, must incorporate all these elements:

- (a) Law pre-supposes a State
- (b) The State makes or authorizes to make, or recognizes or sanctions rules which are called law
- (c) For the rules to be effective, there are sanctions behind them
- (d) These rules (called laws) are made to serve some purpose. The purpose may be a social purpose, or it may be simply to serve some personal ends of a despot

Separate rules and principles are known as 'laws'. Such laws may be <u>mandatory</u>, <u>prohibitive or permissive</u>. A **mandatory law** calls for affirmative act, as in the case of law requiring the payment of taxes. A **prohibitive law** requires negative conduct, as in the case of law prohibiting the carrying of concealed weapon or running a lottery. A **permissive law** is one which neither requires nor forbids action but allows certain conduct on the part of an individual if he desires to act.

Laws are made effective:

The State, in order to maintain peace and order in society, formulates certain rules of conduct to be followed by people. These rules of conduct are called 'laws'.

SIGNIFICANCE OF LAW

Law is not static. As circumstances and conditions in a society change, laws are also changed to fit the requirements of society. At any given point of time the prevailing law of a society must be in conformity with the general statements, customs and aspirations of its people.

Modern science and technology have unfolded vast prospects and have aroused new and big ambitions in men. Materialism and individualism are prevailing at all spheres of life. These developments and changes have tended to transform the law patently and latently. Therefore, law has undergone a vast transformation – conceptual and structural. The idea of abstract justice has been replaced by social justice.

SOURCES OF INDIAN LAW

The general meaning of the word "source" is origin. There is a difference of opinion among the jurists about the origin of law.

The modern Indian law as administered in courts is derived from various sources and these sources fall under the **following two heads:**-

1. PRINCIPLE SOURCES OF INDIAN LAW

2. SECONDARY SOURCES OF INDIAN LAW

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PRINCIPLE SOURCES OF INDIAN LAW

(i) CUSTOMS OR CUSTOMARY LAW

Custom is the most ancient of all the sources of law and has held the most important place in the past, though its importance is now diminishing with the growth of legislation and precedent.

When the same thing was done again and again in a particular way, it assumed the form of custom. Customs have played an important role in moulding the ancient Hindu Law. Most of the law given in Smritis and the Commentaries had its origin in customs. The *Smritis* have strongly recommended that the customs should be followed and recognised. Customs worked as a re-orienting force in Indian Law.

Classification of Customs

The customs may be divided into two classes:

- CUSTOMS WITHOUT SANCTION.
- CUSTOMS HAVING SANCTION.
- Customs without sanction are those customs which are non-obligatory and are observed due to the
 pressure of public opinion. These are called as "positive morality".
- Customs having sanction are those customs which are enforced by the State. These may be
 divided into two classes: (i) Legal, and (ii) Conventional.
- (i) <u>Legal Customs</u>: These customs operate as a binding rule of law. They have been recognised and enforced by the courts and therefore, they have become a part of the law of land. Legal customs are again of two kinds: (a) Local Customs (b) General Customs.
 - (a) <u>Local Customs</u>: Local custom is the custom which prevails in some definite locality and constitutes a source of law for that place only. Thus, local customs may be divided into two classes:
 - Geographical Local Customs
 - Personal Local Customs

These customs are law only for a particular locality, section or community.

- **(b)** General Customs: A general custom is that which prevails throughout the country and constitutes one of the sources of law of the land.
- (ii) <u>Conventional Customs:</u> These are also known as "usages". These customs are binding due to an agreement between the parties, and not due to any legal authority independently possessed by them. Like legal customs, conventional customs may also be classified as general or local.

Requisites of a Valid Custom

A custom will be valid at law and will have a binding force only if it fulfills the **following essential** conditions, namely:

- (i) Immemorial (Antiquity): A custom to be valid must be proved to be immemorial; it must be ancient.
- (ii) Certainty: The custom must be certain and definite, and must not be vague and ambiguous.
- (iii) Reasonableness: A custom must be reasonable. It must be useful and convenient to the society.
- (iv) <u>Compulsory Observance:</u> A custom to be valid must have been continuously observed without any interruption from times immemorial.
- (v) <u>Conformity with Law and Public Morality:</u> A custom must not be opposed to morality or public policy nor must it conflict with statute law.
- (vi) Unanimity of Opinion: The custom must be general or universal.
- (vii) Peaceable Enjoyment: The custom must have been enjoyed peaceably without any dispute in a law court or otherwise.

(viii) Consistency: There must be consistency among the customs.



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(ii) <u>JUDICIAL DECISION OR PRECEDENTS</u>

In general use, the term "precedent" means some set pattern guiding the future conduct. In the judicial field, it means the guidance or authority of past decisions of the courts for future cases.

Judicial precedents are an important source of law. They have enjoyed high authority at all times and in all countries. The rule that a court decision becomes a precedent to be followed in similar cases is known as *doctrine of stare decisis*.

The reason why a precedent is recognised is that a judicial decision is presumed to be correct.

High Courts

- (i) The decisions of High Court are binding on all the subordinate courts and tribunals within its jurisdiction.
 - The decisions of one High Court have only a persuasive value in a court which is within the jurisdiction of another High Court.
 - In case of any conflict between the two decisions of co-equal Benches, generally the later decision is to be followed.
- (ii) In a High Court, a single judge constitutes the smallest Bench. A Bench of two judges is known as Division Bench. Three or more judges constitute a Full Bench.
 - One Bench of the same High Court cannot take a view contrary to the decision already given by another coordinate Bench of that High Court.
 - Thus, a decision by a Bench of the High Court should be followed by other Benches unless they have reason to differ from it, in which case the proper course is to refer the question for decision by a Full Bench.
- (iii) The High Courts are the Courts of co-ordinate jurisdiction. Therefore, the decision of one High Court is not binding on the other High Courts and have persuasive value only.

Supreme Court

The Supreme Court is the highest Court and its decisions are binding on all courts and other judicial tribunals of the country. Article 141 of the Constitution makes it clear that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

Kinds of Precedents

Precedents may be classified as:

- (i) <u>Declaratory and Original Precedents:</u> According to Salmond, a declaratory precedent is one which is merely the application of an already existing rule of law. An original precedent is one which creates and applies a new rule of law. In the case of a declaratory precedent, the rule is applied because it is already a law. In the case of an original precedent, it is law for the future because it is now applied.
- (ii) <u>Persuasive Precedents:</u> A persuasive precedent is one which the judges are not obliged to follow but which they will take into consideration and to which they will attach great weight as it seems to them to deserve. Thus, in India, the decisions of one High Court are only persuasive precedents in the other High Courts.

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Q. 1. Distinguish between Declaratory Precedents and Original Precedents.

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- (iii) <u>Absolutely Authoritative Precedents:</u> An authoritative precedent is one which judges must follow whether they approve of it or not. Its binding force is absolute and the judge's discretion is altogether excluded as he must follow it.
 - <u>Absolutely authoritative precedents in India:</u> Every court in India is absolutely bound by the decisions of courts superior to itself. All courts are absolutely bound by decisions of the Supreme Court.
- (iv) <u>Conditionally Authoritative Precedents:</u> A conditionally authoritative precedent is one which, though ordinarily binding on the court before which it is cited, is liable to be disregarded in certain circumstances. The court is entitled to disregard a decision if it is a wrong one, i.e., contrary to law and reason. In India, for instance, the decision of a single Judge of the High Court is absolutely authoritative so far as subordinate judiciary is concerned, but it is only conditionally authoritative when cited before a Division Bench of the same High Court.

DOCTRINE OF STARE DECISIS

The doctrine of stare decisis means "adhere to the decision and do not unsettle things which are established". It is a useful doctrine intended to bring about **certainty and uniformity in the law**. In simple words, the principle means that **like cases should be decided alike**. This rule is based on public policy and expediency. Although generally the doctrine should be strictly adhered to by the courts, it is not universally applicable. The doctrine should not be regarded as a rigid doctrine which must be applied at the cost of justice.



Q. 1. Explain Doctrine of Stare Decisis.

RATIO DECIDENDI

The underlying principle of a judicial decision, which is only authoritative, is termed as *ratio decidendi*. The proposition of law which is necessary for the decision or could be extracted from the decision constitutes the ratio. The concrete decision is binding between the parties to it. The abstract ratio decidendi alone has the force of law as regards the world at large. In other words, the authority of a decision as a precedent lies in its *ratio decidendi*.

Where an issue requires to be answered on principles, the principles which are deduced by way of abstraction of the material facts of the case eliminating the immaterial elements is known as *ratio* decidendi and such principle is not only applicable to that case but to other cases also which are of similar nature.

It is the *ratio decidendi* or the **general principle** which has the binding effect as a precedent, and not the *obiter dictum*. However, the determination or separation of *ratio decidendi* from obiter dictum is not so easy. It is for the judge to determine the *ratio decidendi* and to apply it on case to be decided.

OBITER DICTA

The *literal* meaning of this Latin expression is "said by the way". The expression is used especially to denote those judicial utterances in the course of delivering a judgement which taken by themselves, were not strictly necessary for the decision of the particular issue raised. These statements thus go beyond the requirement of a particular case and have the force of persuasive precedents only. The judges are not bound to follow them although they can take advantage of them. They sometimes help the cause of the reform of law.

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Obiter Dicta are of different kinds and of varying degree of weight.

NKJ-CLASSROOM PRACTICE Q. 1. Distinguish between 'Ratio Decidendi' and 'Obiter Dicta' in a judgment by a Court. [Dec. 2018, 4 Marks] Q. 1. Define the term Obiter Dicta.

(iii) STATUTES OR LEGISLATION

Legislation is that source of law which consists in the declaration or promulgation of legal rules by an authority duly empowered by the Constitution in that behalf. It is sometimes called Jus scriptum (written law) as contrasted with the customary law or jus non-scriptum (unwritten law). Salmond prefers to call it as "enacted law". Statute law or statutory law is what is created by legislation, for example, Acts of Parliament or of State Legislature. Legislation is either supreme or subordinate (delegated).

<u>Supreme Legislation</u> is that which proceeds from the sovereign power in the State or which derives its power directly from the Constitution. It cannot be repealed₹₹, annulled or controlled by any other legislative authority.

<u>Subordinate Legislation</u> is that which proceeds from any authority other than the sovereign power. Legislative powers have been given to the **judiciary**, as the superior courts are allowed to make rules for the regulation of their own procedure. The **executive**, whose main function is to enforce the law, is given in some cases the power to make rules. Such subordinate legislation is known as executive or delegated legislation. Municipal bodies enjoy by delegation from the legislature, a limited power of making regulations or bye-laws for the area under their jurisdiction. Sometimes, the State allows autonomous bodies like universities to make bye-laws which are recognized and enforced by courts of law.

(iv) PERSONAL LAW

In many cases, the courts are required to apply the personal law of the parties where the point at issue is not covered by any statutory law or custom. In the case of Hindus, for instance, their personal law is to be found in:

- (a) The Shruti which includes four Vedas.
- (b) The 'Smritis' which are recollections handed down by the Rishi's or ancient teachings and precepts of God, the commentaries written by various ancient authors on these Smritis. There are three main Smritis; the Codes of Manu, Yajnavalkya and Narada.

Hindus are governed by their personal law as modified by statute law and custom in all matters relating to inheritance, succession, marriage, adoption, partition of joint family property, pious obligations of sons to pay their father's debts, guardianship, maintenance and religious and charitable endowments.

The personal law of Mohammedans is to be found in:-

- (a) The holy Koran.
- **(b)** The actions, percepts and sayings of the Prophet Mohammed which though not written during his life time were preserved by tradition and handed down by authorised persons. These are known as *Hadis*.
- (c) Ias, i.e., a concurrence of opinion of the companions of the Prophet and his disciples.

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- **(d)** *Kiyas* or reasoning by analogy. These are analogical deductions derived from a comparison of the Koran, Hadis and Ijmas when none of these apply to a particular case.
- (e) Digests and Commentaries on Mohammedan law, the most important and famous of them being the Hedaya which was composed in the 12thcentury and the Fatawa Alamgiri which was compiled by commands of the Mughal Emperor Aurangzeb Alamgiri.

Mohammedans are governed by their personal law as modified by statute law and custom in all matters relating to inheritance, wills, succession, legacies, marriage, dowry, divorce, gifts, wakfs, guardianship and pre-emption.

SECONDARY SOURCE OF INDIAN LAW

(i) JUSTICE, EQUITY AND GOOD CONSCIENCE

In the absence of any rule of a statutory law or custom or personal law, the Indian courts apply to the decision of a case what is known as "justice, equity and good conscience", which may mean the rules of English Law in so far as they are applicable to Indian society and circumstances.

The Ancient Hindu Law had its own versions of the doctrine of justice, equity and good conscience. The Supreme Court has stated that it is now well established that in the absence of any rule of Hindu Law, the courts have authority to decide cases on the principles of justice, equity and good conscience.

(ii) SOURCES OF ENGLISH LAW

The chief sources of English law are:

- Common Law
- Law Merchant
- Principle of Equity
- Statute Law.
- (i) <u>Common Law:</u> The Common Law, in this context is the name given to those principles of law evolved by the judges in making decisions on cases that are brought before them.
- (ii) <u>Law Merchant:</u> Law Merchant means those customs and usages which are binding on traders in their dealings with each other.
- (iii) <u>Principle of Equity:</u> Equity is a body of rules, the primary source of which was neither custom nor written law, but the imperative dictates of conscience and which had been set forth and developed in the Courts

The Chancellor, who was usually a Bishop, would dispose of these petitions not according to the rigid letter of the law but according to his own dictates of commonsense, natural justice and good conscience. The law so administered by the Chancellor came to be known as 'Equity' and such courts as 'Equity Courts'. These 'Equity Courts' acted on number of maxims e.g.

- 1. "He who seeks equity must do equity",
- 2. "He who comes to equity must come with clean hands".
- (iv) <u>Statute Law:</u> "Statute law is that portion of law which is derived from the legislation or enactment of Parliament or the subordinate and delegated legislative bodies.".

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MERCANTILE OR COMMERCIAL LAW

Mercantile Law is related to the commercial activities of the people of the society. It is that branch of law which is applicable to or concerned with trade and commerce in connection with various mercantile or business transactions. Mercantile Law is a wide term and embraces all legal principles concerning business transactions. The most important feature of such a business transaction is the existence of a valid agreement, express or implied, between the parties concerned.

Sources of Mercantile Law

The following are the main sources of Mercantile Law:

These have already been discussed under the heading – Sources of English Law.

MERCANTILE LAW IN INDIA

Sources of Indian Mercantile Law

The main sources of Indian Mercantile Law are:

- (i) <u>English Mercantile Law:</u> The Indian Mercantile Law is mainly an adaptation of English Mercantile Law. However, certain modifications wherever necessary, have been incorporated in it to provide for local
- (ii) Acts enacted by Indian Legislature or Statute Law: The Acts enacted by the Indian legislature from time to time which are important for the study of Indian Mercantile Law include, (i) The Indian Contract Act, 1872,(ii) The Sale of Goods Act, 1930, (iii) The Indian Partnership Act, 1932, (iv) The Negotiable Instruments Act, 1881, (v) The Arbitration and Conciliation Act, 1996, (vi) The Insurance Act, 1938.
- (iii) <u>Judicial Decisions:</u> Judges interpret and explain the statutes. Whenever the law is silent on a point, the judge has to decide the case according to the principles of justice, equity and good conscience.
- (iv) <u>Customs and Trade Usages:</u> Most of the Indian Law has been codified. But even then, it has not altogether done away with customs and usages. Many Indian statutes make specific provisions to the effect that the rules of law laid down in a particular Act are subject to any special custom or usages of trade.

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Q. 1. Discuss the sources of Indian Law.

JURISPRUDENCE

The word Jurisprudence is derived from the word 'juris' meaning law and 'prudence' meaning knowledge. Jurisprudence is the study of the science of law. The study of law in jurisprudence is not about any particular statute or a rule but of law in general, its concepts, its principles and the philosophies underpinning it.

Different jurists/ legal philosophers have used the term in different ways. The meaning of 'jurisprudence' has changed over a period of time as the boundaries of this discipline are not rigid.

Analytical jurisprudence concentrates on abstract theory of law, trying to discover the elements of pure science which will place jurisprudence on the sure foundation of objective factors which will be universally true, not on the shifting sands of individual preference, of particular ethical or sociological views.

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Sociological jurisprudence highlights the limitations of pure science of law and says that since the very purpose for the existence of law is to furnish an answer to social problems, some knowledge of these problems is necessary if one seeks to understand the nature of law. One can understand what a thing is only if one examines what it does.

The teleological school of jurisprudence emphasizes that a mere collection of facts concerning social life is of no avail. Law is the product of human reason and is intimately related to the notion of purpose. Hence, this school seeks to find the supreme ends which law should follow.

According to Salmond in the widest of its applications the term jurisprudence means the science of law, using the word law in that vague and general sense, in which it includes all species of obligatory rules of human action. He said that jurisprudence in this sense can be further divided into three streams: civil jurisprudence, international jurisprudence, and natural jurisprudence details of the law.

English jurist *Jeremy Bentham* had used 'jurisprudence' in two sense- one as 'law' referring to the substance and interpretive history of a given legal norm, consisting of case laws, precedents, and other legal commentary and the other as 'theory' or the study of general theoretical questions about the nature of laws and legal systems.

Prof. Julius Stone defined 'jurisprudence' as the lawyer's extraversion. According to him jurisprudence is the lawyer's examination of the precepts, ideals and techniques of the law in the light derived from present knowledge in disciplines other than the law.

Legal Theory

Legal theory is a field of intellectual enterprise within jurisprudence that involves the development and analysis of the foundations of law. Two most prominent legal theories are the normative legal theory and the positive legal theory. Positive legal theory seeks to explain what the law is and why it is that way, and how laws affect the world, whereas normative legal theories tell us what the law ought to be. There are other theories of law like the sociological theory, economic theory, historical theory, critical legal theory as well.

According to Austin law is the command of sovereign that is backed by sanction. Austin has propagated that law is a command which imposes a duty and the failure to fulfill the duty is met with sanctions (punishment). Thus Law has three main features:

- 1. It is a command.
- 2. It is given by a sovereign authority.
- 3. It has a sanction behind it.

Command

It is an expression of wish or desire of an intelligent person, directing another person to do or to forbear from doing some act, and the violation of this wish will be followed by evil consequences on the person so directed. Command requires the presence of two parties- the commander (political superior) and the commanded (political inferior).

Sovereign

In Austin's theory, sovereign is politically superior. He has defined sovereign as an authority that receives habitual obedience from the people but itself does not obey some other authority habitually. According to Austin, the sovereign is the source of all laws.

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Q. 1. Critically examine the statement by Austin that "Law is the command of sovereign".

[Dec. 2018, 5 Marks]

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Sanction

Is the evil consequence that follows on the violation of a command.

Roscoe Pound drew a similarity between the task of a lawyer and an engineer and gave his theory of social engineering. The goal of this theory was to build such a structure of society where the satisfaction of maximum of wants was achieved with the minimum of friction and waste.

According to *Roscoe Pound*, for determining the scope and the subject matter of the legal system, following five things are required to be done:

- 1. Preparation of an inventory of interests and their classification.
- 2. Selection of the interests which should be legally recognized.
- 3. Demarcation of the limits of securing the interest so selected.
- 4. Consideration of the means whereby laws might secure the interests when these have been acknowledged and delimited, and
- 5. Evolution of the principles of valuation of interests.

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Q. 1. Critically examine Roscoe Pound's theory of interests.

[June. 2019, 5 Marks]

Salmond claimed that the purpose of law was the deliverance of justice to the people and in this sense he differed from Bentham and Austin who went into the analysis of law as it stood without going into its purpose. But Salmond also necessitated the presence of the state for implementation of laws just like Bentham and Austin.

According to *Salmond* law is the body of principles which are recognized and applied by the state in the administration of justice. His other definition said that law consists of a set of rules recognized and acted on in courts of justice. 'Law' in this definition is used in its abstract sense. The constituent elements of which the law is made up are not laws but rules of law or legal principles.

Hans Kelson described law as a "normative science' as distinguished from natural sciences which are based on cause and effect, such as law of gravitation. The laws of natural science are capable of being accurately described, determined and discovered whereas the science of law is knowledge of what law ought to be. Like Austin, Kelsen also considered sanction as an essential element of law but he preferred to call it 'norm'. According to Kelsen, 'law is a primary norm which stipulates sanction'.

Jeremy Bentham concept of law is an imperative one.

Bentham was of the initial contributors on the function that laws should perform in a society. He claimed that nature has placed man under the command of two sovereigns- pain and pleasure. 'Pleasure' in **Bentham's** theory has a somewhat large signification, including altruistic and obligatory conduct, the 'principle of benevolence'; while his idea of 'interest' was anything promoting pleasure. The function of laws should be to bring about the maximum happiness of each individual for the happiness of each will result in the happiness of all.

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Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 2:-

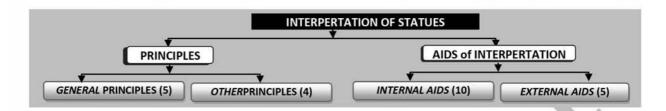
CHAPTER INTERPRETATION OF STATUES 2 Covering-Need for and object of Interpretation General Principles of Interpretation Other Rules of Interpretation Internal and External Aids in Interpretation Internal aids in Interpretation External Aids in Interpretation Self Test Questions **EXPECTED MARKS COVERAGE** (5 to 10)

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INTERPRETATION OF STATUTES

A statute has been defined as "the will of the legislature". Normally, it denotes the Act enacted by the legislature.

NEED FOR AND OBJECT OF INTERPRETATION

The object of all interpretation of a 'Written Document' is to **discover the intention** of the author. Interpretation or construction is the process by which the Court's seek to ascertain the meaning of the legislature.

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Q. 1. Rule of Reasonable Construction i.e. Ut Res Magis Valeat Quam Pareat.

GENERAL PRINCIPLES OF INTERPRETATION

1. PRIMARY / GOLDEN RULE OF INTERPRETATION / RULE OF LITERAL CONSTRUCTION

According to this rule, the words, phrases and sentences of a statute are ordinarily to be understood in their **natural**, **ordinary or popular and grammatical meaning** unless such a construction leads to an absurdity or the content or object of the statute suggests a different meaning. Interpretation should not be given which would make other provisions redundant.

2. RULE OF REASONABLE CONSTRUCTION / UT RES MAGIS VALEAT QUAM PAREAT

Normally, the words used in a statute have to be construed in their ordinary meaning, but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words, does not meet the ends as a fair and a reasonable construction. Under such circumstances it becomes necessary to have regard to the **subject matter of the statute** and the **object which it is intended to achieve**.

When any interpretation of the words defeats the intention of the law makers, and suppress the mischief, the court can go beyond for practical and true interpretation of the statue.

According to this rule, It is the duty of a Court in constructing a statute to give effect to the **intention** of the legislature. So, the Court can depart from the dictionary meaning which will advance the remedy and suppress the mischief.

For instance, publishing notice, announcement etc. in English language in Hindi newspapers may not result in reasonable interpretation of laws.

NKJ-CLASSROOM PRACTICE



Q. 1. The Constitution of India is—federal in character but with unitary features!. Comment.

3. MISCHIEF RULE OR HEYDON'S RULE

When the material words are capable of bearing **two or more** constructions, the most firmly established rule for construction of such words is the rule laid down in Heydon's case. The rule directs that the Courts must **adopt** that **construction** which "**shall suppress the mischief and advance the remedy**". But this does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregard the context and the collection in which they occur.

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The Supreme Court has expressed the view that the rule in Heydon's case is **applicable only** when the **words** in question are **ambiguous** and are reasonably capable of **more than one meaning**.

For instance in *Baldev Krishna Sahi v. Shipping Corporation of India Ltd.* supreme court had given a wider definition of 'Officer' or "employee" in section 630 of the Companies Act, 1956 (now Section 452 in Companies Act, 2013) to include both present and past officers and employees.

Q. 1. Explain the 'mischief rule' under the Interpretation of Status. [Dec. 2018, 4 Marks] Q. 1. The Mischief Rule or Heydon's Rule

4. RULE OF HARMONIOUS CONSTRUCTION

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, **if possible**, **effect may be given to both**. This is known as the "rule of harmonius construction".

In Jagdish Singh	The Supreme Court held that where there is conflict between different
v.	provisions of a rule, the principles of harmonious construction should be
Lt. Governor of Delhi	applied.

5. RULE OF EJUSDEM GENERIS

MODULE

Ejusdem Generis, literally means "of the same kind or species".

The rule of ejusdem generis provides that, where there are general words following particular and specific words, the general words following particular and specific words must be confined to things of the same kind as those specified, unless there is a clear manifestation of a contrary purpose.

	(a) The statute contains an enumeration by specific words,
	(b) The members of the enumeration constitute a class,
To apply the rule	(c) The class is not exhausted by the enumeration,
the following	(d) A general term follows the enumeration,
conditions must	(e) There is a distinct genus which comprises more than one species, and
exist:-	(f) There is no clearly manifested intent that the general term be given a
	broader meaning that the doctrine requires.

Q. 1. Explain the rule of 'Ejusdem Generics' under the Interpretation of statue. [June. 2019, 4 Marks] Q. 1. Briefly discuss general principles of interpretation.

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OTHER RULES OF INTERPRETATION

1. EXPRESSIO UNIS EST EXCLUSIO ALTERIUS

The rule means that express mention of one thing implies the exclusion of another.

The maxim ought not to be applied when its application leads to inconsistency or injustice.

2. <u>CONTEMPORANEA EXPOSITIO EST OPTIMA ET FORTISSIMA IN</u> LEGE

Where the words used in a statute have undergone alteration in meaning in course of time, the words will be construed to bear the same meaning as they had when the statute was passed on the principle expressed in the maxim.

3. NOSCITUR A SOCIIS

The 'Noscitur a Sociis' i.e. "It is known by its associates". In other words, meaning of a word should be known from its accompanying or associating words. A word in a statutory provision is to be read in collocation with its companion words.

But this rule will not apply:-

- (a) when the context excluded that principle
- **(b)** If sufficient reason can be assigned, it is proper to construe a word in one part of an Act in a different sense from that which it bears in another part of the Act.
- (c) where it would cause injustice or absurdity.
- (d) where different circumstances are being dealt with.
- (e) where the words are used in a different context.

4. STRICT AND LIBERAL CONSTRUCTION

By 'strict construction' it is meant is that "Acts, are not to be regarded as including anything which is not within their letter as well as their spirit, which is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended",

While by 'liberal construction' it is meant that "everything is to be done in advancement of the remedy that can be done consistently with any construction of the statute". Beneficial construction to suppress the mischief and advance the remedy is generally preferred.

RULE OF MANDATORY & DIRECTORY PROVISION

A mandatory provision prescribes **substantive conditions** which must be **strictly observed**. The lapse of a mandatory provision cannot be condoned; it must be obeyed in its letter and spirit. Non-observance of a mandatory provision has the consequence of **invalidating the act** done.

A directory provision prescribes **technical conditions**. A **substantial compliance** of a directory provision is sufficient unless it results in loss or prejudice to the other party. The technicalities of a directory provision should **normally be followed**, but laps in strict compliance of the procedure is **not viewed seriously**. Non-observance of a directory provision **does not invalidate the act done**; whatever other consequences may occur.

> PRESUMPTIONS FOR INTERPRETATION OF STATUES

Where the meaning of the statute is clear, there is no need for presumptions. But if the intention of the legislature is not clear, there are number of presumptions. These are:-

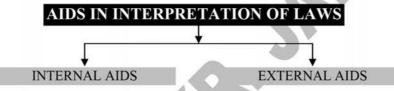
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- (a) that the words in a statute are used precisely and not loosely.
- (b) that the legislature knows the state of the law.
- (c) that the legislature does not make any alteration in the existing law unless by express enactment.
- (d) that the legislature knows the practice of the executive and the judiciary.
- (e) legislature confers powers necessary to carry out duties imposed by it.
- (f) that the legislature does not make mistake.
- (g) the law compels no man to do that which is futile or fruitless.

INTERNAL AND EXTERNAL AIDS IN INTERPRETATION

In coming to a determination as to the meaning of a particular Act, it is permissible to consider two points, namely,

- (1) the external evidence derived from extraneous circumstances, such as, previous legislation and decided cases etc.
- (2) the internal evidence derived from the Act itself.



> INTERNAL AIDS IN INTERPRETATION

<u>Title</u>- The long title sets out in general terms, the purpose of the Act and it often precedes the preamble.

<u>Preamble-</u> A preamble may afford useful light as to what a statute intends to reach and another that, if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment".

Heading and Title of a Chapter- In different parts of an Act, there is generally found a series or class of enactments applicable to some special object, and such sections are in many instances, preceded by a heading.

For Instance

(Title, Preamble & Heading and Title of a Chapter)

THE COMPANIES ACT, 2013

(No. 18 of 2013)

[29th August, 2013.]

An Act to consolidate and amend the law relating to companies.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Companies Act, 2013.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this

Short title, extent, commencement and application.



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Interpretation Clauses- It is common to find in statutes "definitions" of certain words and expressions used elsewhere in the body of the statute. The object of such a definition is to avoid the necessity of frequent repetitions in describing all the subject-matter to which the word or expression so defined is intended to apply. When a word has been defined in the interpretation clause, prima facie that definition governs whenever that word is used in the body of the statute.

For Instance

(Section 2)

Definitions

- 2. In this Act, unless the context otherwise requires,-
- (1) "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;
- (2) "accounting standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;
- (3) "alter" or "alteration" includes the making of additions, omissions and substitutions:
- (4) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under section 410;
- (5) "articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act:
- (6) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
- Explanation.—For the purposes of this clause, "significant influence" means control of at least twenty per cent. of total share capital, or of business decisions under an agreement:
- (7) "auditing standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143:
- (8) "authorised capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;
- (9) "banking company" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;

10 of 1949.

Proviso- The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to the case.

For Instance [Section 2(40)]

- (40) "financial statement" in relation to a company, includes-
 - (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - (iii) cash flow statement for the financial year;
 - (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

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Notwithstanding- A provision containing the words 'notwithstanding' is generally termed as 'non obstante clause' the provision containing the word 'notwithstanding' has an over-riding effect on the other provision, i.e. such provision shall prevail over the other provision, In other words, if there is any inconsistency or departure between the non obstante clause and another provision, it is the non obstante clause which will prevail. Accordingly, a non obstante clause restricts the operation and effect of all the contrary provisions.

For Instance

[Section 6]

Act to override memorandum, articles, etc.

- 6. Save as otherwise expressly provided in this Act—
- (a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
- (b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

<u>Without Prejudice</u>-An expression containing the words 'without prejudice to the generality of' indicates that anything contained in the provision following such words is **not intended to cut down the generality of the meaning of the preceding provision**.

For Instance

[Section 447]

Punishment for fraud. 447. Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

<u>Subject to-</u> A provision containing the word 'subject to' gives an overriding effect to the other provision, i.e., other provision shall prevail over such provision in case of any inconsistency. In other words, a provision containing the word 'subject to' implies that such provision shall yield place to another provision to which it is made 'subject to'. Thus, the effect of a provision containing the word 'notwithstanding' is opposite to a provision containing the words 'subject to'.

For Instance

[Section 68]

68. (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of—

company to purchase its own securities.

- (a) its free reserves:
- (b) the securities premium account; or
- (c) the proceeds of the issue of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

- (2) No company shall purchase its own shares or other specified securities under sub-section (1), unless—
 - (a) the buy-back is authorised by its articles;
 - (b) a special resolution has been passed at a general meeting of the company authorising the buy-back:

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Illustrations or Explanation- Illustrations attached to sections are part of the statute and they are useful so far as they help to furnish same indication of the presumable intention of the legislature. An explanation is at times appended to a section to explain the meaning of words contained in the section. It becomes a **part and parcel of the enactment**.

For Instance [Section 2(87)]

(87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.-For the purposes of this clause,-

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors:
 - (c) the expression "company" includes any body corporate;

<u>Schedules-</u> The schedules form a part of the statute and must be read together with it for all purposes of construction. Schedules are added in any statue giving details of certain things which a section refers. This avoids making a section unnecessary lengthy. But if there is any conflict between the enactment / provisions and schedule, the enactment shall prevail.

| Sec. 1] THE GAZETTE OF INDIA EXTRAORDINARY 259 | SCHEDULE II (See section 123) | Useful lives to compute depreciation | PART 'A'

 Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The depreciable amount of an asset is the cost of an asset or other amount

> EXTERNAL AIDS IN INTERPRETATION

<u>Parliamentary History-</u> Court is entitled to take into account "such external or historical facts as may be necessary to understand the subject-matter of the statute", or to have regard to "the surrounding circumstances" which existed at the time of passing of the statute.

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Reference to Reports of CommitteesThe report of a Select Committee or other Committee on whose report an enactment is based, can be looked into "so as to see the background against which the legislation was enacted.

Reference to other Statutes- It has already been stated that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context, permits reference to other statutes in parimateria, i.e. statutes dealing with the same subject matter or forming part of the same system.

<u>Dictionaries</u>- When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance.

<u>Use of Foreign Decisions</u>- Use of foreign decisions of countries following the same system of jurisprudence as ours and rendered on statutes in pari material has been permitted by practice in Indian Courts.

NKJ-CLASSROOM PRACTICE



Q. 1. What are the internal and external aids which could be taken into account while interpretation.



ADVANCE

YOUR KNOWLEDGE



Marginal Notes

Marginal Notes In England, the disposition of the Court is to disregard the marginal notes. In our country the Courts have entertained different views. Although opinion is not uniform, the weight of authority is in favour of the view that the marginal note appended to a section cannot be used for construing the section.

Marginal notes appended to the Articles of the Constitution have been held to constitute part of the Constitution as passed by the Constituent Assembly and therefore, they have been made use of in consulting the Articles, e.g. Article 286, as furnishing prima facie, "some clue as to the meaning and purpose of the Article".

When reference to marginal note is relevant? The Supreme Court has held that the marginal note although may not be relevant for rendition of decisions in all types of cases but where the main provision is sought to be interpreted differently, reference to marginal note would be permissible in law. Sarbajit Rick Singh v. Union of India





Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 2:-

CHAPTER

(3)

ARBITRATION AND CONCILIATION ACT, 1996

Covering-

- Bare Act
- ABC Analysis
- Alternative Dispute Resolution System (ADRS)
- The Arbitration and Conciliation Act, 1996
- Arbitration
- Arbitration Agreement
- Essentials/Features of Arbitration Agreement
- Arbitrator
- Appointment of Arbitrators
- Number of Arbitrators
- Grounds for Challenge
- Challenge procedure
- Failure or Impossibility to Act as an Arbitrator
- Substitution of Arbitrator
- Arbitral Proceedings/Arbitration Procedure
- Jurisdiction of Arbitral Tribunals
- Arbitral Award
- Provisions Regarding Setting Aside an Award
- International Commercial Arbitration
- Enforcement of Foreign Arbitral Awards
- Fast Track Procedure
- Conciliation
- Differences between Arbitration and Conciliation
- Advance Your Knowledge
- Self Test Questions
 - From Past CS Exam
 - > From ICSI Module

EXPECTED
MARKS COVERAGE
(10 to 15)

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From Bare Act... —

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REGD. NO. D. L.-33004/99

The Gazette of India

THE ARBITRATION AND CONCILIATION ACT, 1996

ACT No. 26 OF 1996

[16th August, 1996.]

An Act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985;

AND WHEREAS the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

AND WHEREAS the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

AND WHEREAS the General Assembly of the United Nations has recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;

AND WHEREAS the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;

AND WHEREAS it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:-

PRELIMINARY

- Short title, extent and commencement.—(1) This Act may be called the Arbitration and Conciliation Act, 1996.
 - (2) It extends to the whole of India:

Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

Explanation.—In this sub-section, the expression "international commercial conciliation" shall have the same meaning as the expression "international commercial arbitration" in clause (f) of sub-section (l) of section 2, subject to the modification that for the word "arbitration" occurring therein, the word "conciliation" shall be substituted.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

PART I

ARBITRATION

CHAPTER I

General provisions

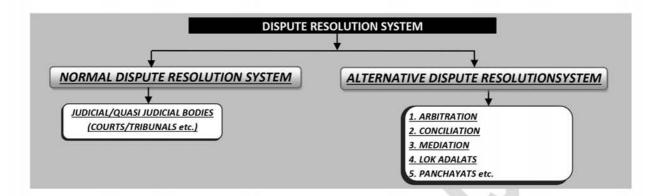
- 2. Definitions.—(1) In this Part, unless the context otherwise requires,—
- (a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;
 - (b) "arbitration agreement" means an agreement referred to in section 7;
- 3. Receipt of written communications.—(1) Unless otherwise agreed by the parties,—
- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and
- (b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.
- (2) The communication is deemed to have been received on the day it is so delivered.
- (3) This section does not apply to written communications in respect of proceedings of any judicial authority.



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ARBITRATION AND CONCILIATION ACT, 1996

ABC Analysis



- 1. Concept of ADRS.
- 2. Concept of Arbitrable Award.
- 3. Provision regarding setting aside an award.

 \mathcal{B}

- 4. Concept of Challenge Procedure.
- 5. Concept of substitution of Arbitrator.

 \mathcal{C}

- 5. Provision regarding setting aside an award.
- 6. Difference between Arbitration and Conciliation.



ALTERNATIVE DISPUTE RESOLUTION SYSTEM (ADRS)

Alternate dispute resolution would include within it any method of dispute resolution other than court litigation. It would include arbitration, mediation and conciliation in main.

There is a growing awareness that **courts will not be in a position to bear the entire burden of justice system**. A very large number of disputes lend themselves to resolution by alternative modes such as arbitration, mediation, conciliation, negotiation, etc. The ADR processes provide procedural flexibility save valuable time and money and avoid the stress of a conventional trial.

THE ARBITRATION AND CONCILIATION ACT, 1996

The Arbitration and Conciliation Act, 1996 aims at streamlining the process of arbitration and facilitating conciliation in business matters. The Act recognizes the autonomy of parties in the conduct of arbitral proceedings by the arbitral tribunal and abolishes the scope of judicial review of the award and minimizes the supervisory role of Courts.

	1. Part one deals with Arbitration (Sections 2 to 43);
The Act has been divided into four Parts	2. Part two deals with enforcement of certain Foreign Awards (Sections 44 to 60).
	3. Part three deals with conciliation (Sections 61 to 81); and
into iour rarts	4. Part four contains supplementary provisions (Sections 82 to 86).
and contains three Schedules	1. Schedule one contains provisions relating to convention on the Recognition and Enforcement of Foreign Arbitral Awards;
	2. Schedule two deals with Protocol on Arbitration Clauses;
	3. Schedule three contains provisions relating to Execution of Foreign Arbitral Awards.

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ARBITRATION

Arbitration is one of the methods of settling **civil disputes** between two or more persons by reference of the dispute to an independent and impartial third person called arbitrator, instead of litigating the matter in the usual way through.

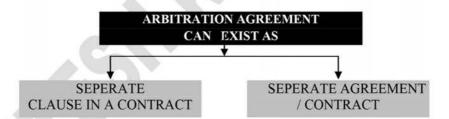
It is one of the techniques of alternative dispute resolution system.

ARBITRATION AGREEMENT

The "Arbitration agreement" has been defined to mean an agreement by which parties may submit to the arbitration, certain disputes which have arisen or which may arise between them in respect of a defined legal relationship.

ESSENTIALS/FEATURES OF ARBITRATION AGREEMENT

- (a) It must be in writing.
- (b) It must be signed by the parties to the agreement.
- (c) There must be an intention of the parties to submit any probable dispute to arbitration.
- (d) Being an agreement it must satisfy requirements of Indian Contract Act.
- (e) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.







Q. 1. What do you understand by an arbitration agreement?

ARBITRATOR

The term "arbitrator" is not defined in the Arbitration and Conciliation Act. In general, "arbitrator" is defined as a person who is appointed to determine differences and disputes between two or more parties by their mutual consent.

Arbitral tribunal" means a sole arbitrator or a panel of arbitrators.

APPOINTMENT OF ARBITRATORS

SECTION 11

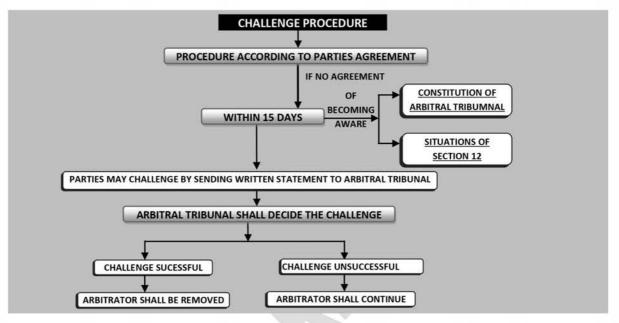
The parties may agree to a procedure of appointment of arbitrators. Otherwise the following procedure shall apply:-

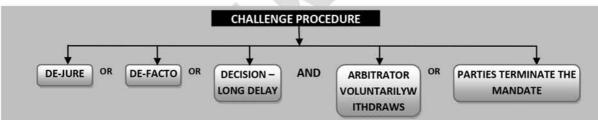
- (a) Arbitrator could be of any nationality.
- **(b)** In case of an arbitration with **three arbitrators**, each party shall appoint its own arbitrator, and the two appointed arbitrators shall appoint a third arbitrator, who shall be the presiding arbitrator.

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- (c) If, within 30 days, the parties fail to appoint their arbitrators, or the arbitrators fail to appoint the third arbitrator, the arbitrator shall be appointed by the Chief Justice of High court or a person institution designated by him at the request of a party.
- (d) Similar procedure is also applicable for appointment of a sole arbitrator. If parties fail to agree on the appointment of a sole arbitrator within 30 days, the appointment shall be done by the Chief Justice or a person/institution designated by him.
- (e) In case of appointment of a sole or third arbitrator in an **international commercial arbitration**, the **Chief Justice of India** or a person/Institution designed by him, may appoint a person of a nationality, other than that of the parties, where the parties are of different nationalities.

NUMBER OF ARBITRATORS

SECTION 10

Section 10 of the Act provides that, the **parties are free** to determine the number of arbitrators, provided that such number **shall not be an even number**. If they fail to determine the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.

GROUNDS FOR CHALLENGE

SECTION 12

An arbitrator may be	(a)	Circumstances	exist	that	give	rise	to	justifiable	doubts	as	to	his
challenged by a party		independence o	r impa	rtialit	y, or							
only if:-	(b)	he does not pos	sess th	e qua	lificati	ions a	gre	ed to by the	parties.			

A challenge is also permitted, if a party becomes aware of these grounds after an appointment is made.

CHALLENGE PROCEDURE

SECTION 13

- (a) The parties are free to agree on a procedure for challenging an arbitrator.
- (b) If the parties don't agree on any procedure, then a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in Section 12, send a written statement of the reasons for the challenge to the arbitral tribunal. The tribunal shall decide on the challenge unless the arbitrator challenged withdraws from his office or the other party agrees to the challenge.
- (c) if a **challenge** under any **procedure** is **not successful**, the arbitral tribunal **shall continue** the arbitral proceedings and make an arbitral award.

But at that stage, the challenging party has the right to make an application in the Court to set aside the award in accordance with Section 34 of the Act.

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Q. 1. Discuss in brief the provisions for challenging the arbitrator under the Arbitration and Conciliation Act, 1996. [Dec. 2018, 8 Marks]



Q. 1. What are the grounds to challenge the appointment of an Arbitrator under the Arbitration and Conciliation Act, 1996? Discuss.

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FAILURE OR IMPOSSIBILITY TO ACT AS AN ARBITRATOR

SECTION 14

As per Section 14, the mandate of an arbitrator shall terminate, if:-

- (a) he becomes de jure or de facto unable to perform his functions, or
- (b) he fails to act without undue delay due to some other reasons.

Mandate is **also terminated**, if he withdraws from his office, or the parties agree to the termination of his mandate.

SUBSTITUTION OF ARBITRATOR

Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to such appointment being replaced.

<u>Unless otherwise agreed by the parties</u>, where an arbitrator is replaced, any **hearings** previously held may be **repeated** at the discretion of the arbitral tribunal.

<u>Unless otherwise agreed by the parties</u>, an **order or ruling** of the arbitral tribunal made prior to the replacement of an arbitrator shall **not be invalid** solely because there has been a change in the composition of the arbitral tribunal.

ARBITRAL PROCEEDINGS/ARBITRATION PROCEDURE

SECTION 23-27

Sections 23 to 27 stipulate the procedure to be followed in arbitration proceedings.

(1) STATEMENTS OF CLAIMS AND DEFENCE

Within the period of time agreed upon by the parties or determined by the tribunal, the claimant has to state the facts in supporting his claim, the points at issue and the relief or remedy sought.

Similarly, the respondent shall also state his defence in respect of these particulars. There is no restriction upon the parties to agree for holding oral hearings for presentation of evidence and for oral arguments or, alternatively, for conducting the proceedings on the basis of document

(2) SUBMISSION OF DOCUMENTS

The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence which they will submit later on.

(3) AMENDMENTS

Parties may amend or supplement these statements during the proceedings, unless:-

- (i) Parties have agreed otherwise, or
- (ii) Arbitral tribunal considers it inappropriate to allow the amendment or supplement, due to delay in making it.

(4) DETERMINATION OF RULES OF ARBITRAL PROCEDURE

According to Section 19 the arbitral tribunal is neither bound by the Code of Civil Procedure 1908, nor by the Indian Evidence Act, 1872.

The parties are free to agree on a procedure to be followed by the arbitral tribunal in conducting its proceedings.

(5) APPOINTMENT OF EXPERTS BY ARBITRAL TRIBUNAL

Section 26 of the Act, provides for appointment of experts subject to agreement between the parties. Section 26 obligates the parties to provide the expert access to necessary information and documents.



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(6) DECISION BY MAJORITY

Section 29 of the Act provides for decision by majority where there is more than one arbitrator.

(7) COURT ASSISTANCE

Provisions are also made under the Act relating to Court assistance in taking evidence. Section 27 of the Act provides that the arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the court for assistance in taking evidence.

JURISDICTION OF ARBITRAL TRIBUNALS

The arbitral tribunal is empowered to **rule its own jurisdiction** including any objections in relation to existence and validity of the arbitration agreement.

Section 16 of the Act relates to competence of arbitral tribunal to rule on its jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. For this purpose an arbitration clause which forms part of a contract shall be treated as an agreement independent of other terms of the contract; and

A plea can be raised before the submission of the statement of defence where the arbitral tribunal does not have jurisdiction.

It is further provided that a **party shall not be precluded** from raising such a plea merely **because he** has appointment or **participated** in the **appointment** of an arbitrator.

ARBITRAL AWARD

Arbitral award is the decision of arbitrator/Arbitral Tribunal

INTERIM AWARD

The arbitral tribunal can make an interim award on any matter with respect to which it may make a final award. "Arbitral award" includes an interim award.

ESSENTIALS / REQUISITE / CONTENTS OF A VALID AWARD

- (a) An arbitration award is required to be in writing.
- (b) The arbitral award is required to be made on stamp paper of prescribed value
- (c) The award is to be signed by the members of the arbitral tribunal.
- (d) The award should contain reasons. However, there are two exceptions where an award without reasons is valid i.e.:-
 - (i) Where the arbitration agreement expressly provides that no reasons are to be given, or
 - (ii) Where the parties settled the dispute and the arbitral tribunal has recorded the Settlement in the form of an arbitral award on agreed terms.
- (e) The award should be dated i.e. the date of making of the award should be mentioned in the award.
- (f) The arbitral tribunal is under obligation to state the place of arbitration
- (g) After the award is made, a signed copy should be delivered to each party for appropriate action like implementation or recourse against arbitral award

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SETTLEMENT

SECTION 30

Section 30 declares that, inspite of an arbitration agreement, the arbitral tribunal may encourage the settlement of disputes by using mediation, conciliation etc. With the consent/agreement of the parties. If the parties reach to a settlement, the arbitral award will be given by the arbitral tribunal. The arbitral award on agreed terms will have the same status and effect as any other arbitral award, but these kind of settlement awards are non-appealable and will not have any statement of reasons.

BENEFITS OF SETTLEMENT

SECTION 30

- (i) It saves the precious time of overburdened courts
- (ii) Parties to the disputes are more satisfied by their mutual decisions as compared to decisions imposed on them by third party.

NKJ-CLASSROOM PRACTICE



Q. 1. What are the provisions relating to settlement of the dispute under the Arbitration and Conciliation Act, 1996?

FINALITY OF ARBITRAL AWARDS

Section 35 of the Act provides that the award shall be final and binding on the parties and persons claiming under it.

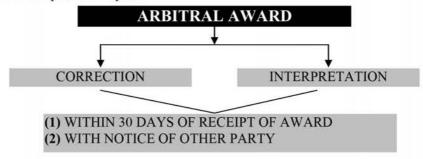
Section 36 provides that where time for making application for setting aside award has expired or such application has been refused, the award shall be enforced as a decree under CPC, 1908 in the same manner as if it were a decree of the court.

CORRECTION AND INTERPRETATION OF AN AWARD

Section 33 of the Act deals with correction and interpretation of an award, or additional award.

- The award may be corrected by the arbitral tribunal within 30 days of the receipt of the award. For that purpose, a party, with notice to the other party, may request the tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award.
- If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award. The parties may agree upon a period of time other than 30 days for the request.

If the tribunal finds that the request is reasonable, it shall make a correction or give an interpretation, within 30 days of the receipt of the request.



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ADDITIONAL AWARD

Unless otherwise agreed by the parties, a party with notice to the other party, may request the tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award. Such request may be made within 30 days from the receipt of the arbitral award. If the arbitral tribunal considers the above request reasonable, the tribunal shall make the additional arbitral award within 60 days of the request.

The time period of 60 days may be extended by the tribunal if necessary.

NKJ-CLASSROOM PRACTICE



Q. 1. Explain the basic features of arbitral award under the Arbitration and Conciliation Act 1996.

[June. 2019, 4 Marks]

PROVISIONS REGARDING SETTING ASIDE AN AWARD

The parties can approach the **Court** for setting aside the Award. An application may be made for setting aside an arbitral award.

Figure 2 GROUNDS ON WHICH THE AWARD MAY BE CHALLENGED BEFORE THE COURT

	(a) incapacity of a party;
	(b) invalidity of the arbitration agreement;
Section 34, stipulates the	(c) party applying was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings
following	(d) was otherwise unable to present his case;
grounds on which the award	(e) award not in accordance with the terms of submission to arbitration in regard to the dispute;
may be challenged	(f) arbitral tribunal not properly constituted or the arbitral procedure was not in accordance with the agreement of the parties;
before the Court:-	(g) subject matter of the dispute not capable of settlement by arbitration under the law for the time being in force;
	(h) Award being in conflict with 'the public policy of India'.

TIME PERIOD FOR MAKING APPLICATION

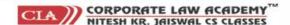
Application for setting aside an arbitral award can be made before **three months** from the date on which the party making that application had received the arbitral award <u>or</u> if a request had been made under Section 33 (*for correction & interpretation*), from the date on which that request had been disposed of by the arbitral tribunal.

It is further provided that the period of three months could be **extended** to a maximum of **30 days** by the Court but not thereafter if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period.

APPEALS

Section 37 of the Act provides that an appeal shall lie from the following orders to the court <u>authorised by</u> law to hear appeals from original decrees of the court passing the order, namely;-

- (a) granting or refusing to grant any measures;
- (b) setting aside or refusing to set aside an arbitral award.



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Section 37(3) prohibits making of **second appeal** from an order passed in appeal. but the right to appeal to the **Supreme Court** is always open to a party aggrieved.

NKJ-CLASSROOM PRACTICE



Q. 1. What are the grounds for setting aside of an arbitral award under the Arbitration and Conciliation Act,1996?

INTERNATIONAL COMMERCIAL ARBITRATION

"International commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under law in force in India and where at least one of the parties is:-

- (a) an individual who is a national of, or habitual resident in, any country other than India; or
- (b) a body corporate which is incorporated in any country other than India; or
- (c) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or
- (d) the Government of a foreign country.

NKJ-CLASSROOM PRACTICE



Q. 1. Explain in brief the 'International Commercial Arbitration' under the Arbitration and Conciliation Act, 1996. [Dec. 2018, 4 Marks]

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Part II of the Arbitration and Conciliation Act, 1996 deal with the enforcement of certain foreign awards made under the New York Convention and the Geneva Convention, respectively.

AWARDS MADE UNDER NEW YORK CONVENTION OR GENEVA CONVENTION

Any foreign award whether made under New York Convention or Geneva Convention, which would be enforceable under the Act have been **treated as binding for all purposes** on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India.

Bharat Aluminium Co.

v.

Kaiser Aluminium Technical Service,

Inc

The Supreme Court held that the Part I of the Arbitration Act, 1996 would have no application to International Commercial Arbitration held outside India and therefore such awards would only be subject to the jurisdiction of the Indian courts when the same are sought to be enforced in India in accordance with the provisions contained in Part II of the Arbitration Act, 1996.

The Court concluded that **Part I** of the Arbitration Act, 1996 is applicable only to all the arbitrations which take place **within the territory of India**.

NKJ-CLASSROOM PRACTICE



Q. 1. Part I of the Arbitration and Conciliation Act, 1996 applicable only to all the arbitrations which take place within the territory of India. Comment.

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FAST TRACK PROCEDURE

SECTION 29B

Section 29B(1) provides that notwithstanding anything contained in this Act, the parties to an arbitration agreement, may at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

Section 29B(2) provides that the parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

Section 29B(3) provides that the arbitral tribunal shall follow the following procedure while conduction proceedings <u>under sub-section (1):-</u>

- (a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing:
- (b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
- (c) An oral hearing may be held only, if all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;
- (d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held and adopt such procedure as deemed appropriate for expeditious disposal of the case.

Section 29B (4) provides that the award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon reference.

Section 29B (5) provides that if the award is not made within the period specified herein, the provisions of sub-sections (3) to (9) of section 29A shall apply to, the proceeding.

Section 29B (6) provides that the fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.

CONCILIATION

Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement.

He does this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement.

The Act gives a formal recognition to conciliation in India.

> NUMBER OF CONCILIATORS

There shall be one conciliator unless the parties agree that there shall be two or three conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

> APPOINTMENT OF CONCILIATORS

- (a) In conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;
- (b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;
- (c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.



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> ROLE OF CONCILIATOR

The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

The conciliator shall be guided by **principles of objectivity**, **fairness and justice**, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

The conciliator may, at any stage of the conciliation proceedings, make proposals for a **settlement of the dispute**. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefore.

> TERMINATION OF CONCILIATION PROCEEDINGS

The conciliation proceedings shall be terminated:-

- (a) by the signing of the settlement agreement by the parties on the date of the agreement; or
- **(b)** by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration;

> RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

The parties **shall not initiate**, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

DIFFERENCES BETWEEN ARBITRATION AND CONCILIATION

Arbitration and conciliation differ in following ways:-

- (a) In arbitration, the decision is known as **arbitral award** and is <u>signed by the arbitral tribunal</u> members; while under conciliation, it is known as **settlement** and is signed by the parties concerned.
- **(b)** In arbitration, parties **cannot** appoint **even number** of arbitrators; while in conciliation, the number of conciliators **can be even**.
- (c) Arbitrators can be appointed even before the dispute arises; while a conciliator is appointed only after the dispute has arisen.

NKJ-CLASSROOM PRACTICE



Q. 1. Distinguish between Arbitration and Conciliation under the Arbitration and Conciliation Act, 1996. [June. 2019, 4 Marks]

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DEFINATION OF COURT

Court means:-

- (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
- (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court. [Section 2(1)(e)].

Q. 1. HOW HAS THE 'COURT' BEEN DEFINED UNDER THE ARBITRATION AND CONCILIATION ACT, 1996?

Ans. Section 2(1) in The Arbitration Conciliation Act, 1996 defines "Court" as the principal Civil Court or original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal civil court, or any court of small causes.

The definition comes into use when arbitration fails and the matter comes up before a court for settlement. With the help of this definition, the relevant court can then be selected for proceeding on the matter that could not be resolved by arbitration.

Q. 2. DEFINE 'LEGAL REPRESENTATIVE' UNDER THE ARBITRATION AND CONCILIATION ACT, 1996.

Ans. The definition of "legal representative" given under Section 2(1)(g) of the Arbitration and Conciliation Act, 1995 has been taken from that given in section 2(11) of the code of Civil procedure.

As per that definition, the following are the persons who shall be deemed to be legal representatives:

- (a) A person who in law represents the estate of deceased person.
- (b) A person who inter meddles with the estate of the deceased.
- (c) A person on whom the estate of a deceased person devolved on the death of the party acting in a representative's capacity.

The following persons are also generally included in the list of legal representatives as mentioned above:

- (i) Executors and administrators duly appointed.
- (ii) Person who has take on himself duties and responsibilities which belong to the executor or administer though only in respect of a part of the estate.
- (iii) Heirs-at-law gaining right either by succession or by survivorship.
- (iv) Revisioners at law, when the action has been brought by or against the widow representing her husband's estate.
- (v) Universal legatee, i.e. person who has been named in a legacy as the beneficiary of all the effects of the testator.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



- Write notes on the following:
 - (i) Setting aside of an award.
 - Appointment of experts by an arbitral tribunal under the Arbitration and conciliation Act, 1996.
- 2. Distinguish the following:
 - (i) 'Arbitration' and 'conciliation'.
 - (ii) 'Arbitration' and 'conciliation' under the Arbitration and Conciliation Act, 1996.
- 3. What are the essentials of an arbitral awards?
- Explain the International commercial arbitration.
- 5. Comment the following:
 - "Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement.
 - (ii) Making of additional award by arbitral tribunal.
- State the various alternative dispute resolution mechanisms.
- Enumerate the ground on which an arbitral award may be challenged before the court.
- 7. Define 'International commercial arbitration'.
- What is an 'arbitral award' under the Arbitration and Conciliation Act, 1996? Explain.
- 9. Anil prefers an appeal for setting aside the arbitral award on the ground that he was not given a proper notice a proper notice of arbitral proceedings and thereby not being able to present his case. He also furnishes sufficient proof and pleads before the court the he received the arbitral award just 15 days back. Decide with reasons-
 - (i) Whether Anil with succeed in his prayer; and
 - (ii) Whether the law of limitation will not be bar?
- 10. Ram and Shyam entered into n agreement to refer a dispute relating to genuineness of a will to an agreement to refer a dispute relating to genuineness of a will to an arbitral tribunal. Inspite of this, Shyam commenced proceedings relating to this dispute in the district court of competent jurisdiction. Ram filed an application for stay of legal proceedings under the Arbitration and Conciliation Act, 1996. Will ram succeed? Explain.

FROM ICSI MODULE



Answer the following:

- What are the grounds to challenge the appointment of an Arbitrator under the Arbitration and Conciliation Act, 1996? Discuss.
- What do you understand by an arbitration agreement? What are its essentials?
- What are the grounds for setting aside of an arbitral award under the Arbitration and Conciliation Act, 1996?
- What are the provisions relating to settlement of the dispute under the Arbitration and Conciliation Act, 1996?
- Part I of the Arbitration and Conciliation Act, 1996 applicable only to all the arbitrations which take place within the territory of India. Give your answer with decided case study.



Answers to be analysed in Classroom

Q. 1.				
Answer to Que	stion No. 1:-			
4				



Q. 2. Answer to Question No. 1:-

CHAPTER

4

INDIAN STAMP ACT, 1899

Covering-

- Bare Act
- ABC Analysis
- Instrument
- Instrument Chargeable with Duty
- Bond
- Conveyance
- Several Instruments in Single Transaction
- Instruments Relating to Several Distinct Matters
- Instruments Coming Within Several Descriptions in Schedule-I
- Securities Dealt in Depository Not Liable to Stamp Duty
- Valuation for Duty Under the Act
- Persons Liable to Duty
- Methods of Stamping
- Adhesive Stamps
- Impressed Stamps
- E-Stamping
- Timing of Stamping of Instruments
- Instruments Not Duly Stamped Treatment and Consequences
- Collector's Power to Stamp
- Instruments Unduly Stamped by Accident
- Refund of Stamp Duty or Penalty by Revenue Authorities
- Advance Your Knowledge
- Self Test Questions
 - > From Past CS Exam
 - From ICSI Module

EXPECTED
MARKS COVERAGE
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From Bare Act... —

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REGD. NO. D. L.-33004/99



THE INDIAN STAMP ACT, 1899

ACT NO. 2 OF 18991

[27th January, 1899]

An Act to Consolidate and amend the law relating to Stamps.

WHEREAS it is expedient to consolidate and amend the law relating to Stamps. It is hereby enacted as follows:—

CHAPTER I

PRELIMINARY

 Short title, extent and commencement — (I) This Act may be called the Indian Stamp Act, 1899.

²[(2) It extends to the whole of India except the State of Jammu and Kashmir:

Provided that it shall not apply to ³[the territories which, immediately before the 1st November, 1956, were comprised in Part B States] (excluding the State of Jammu and Kashmir) except to the extent to which the provisions of this Act relate to rates of stamp-duty in respect of the documents specified in Entry 91 of List I in the Seventh Schedule to the Constitution].

- (3) It shall come into force on the first day of July, 1899.
- 2. Definitions. In this Act, unless there is something repugnant in the subject or context, —
- (1) "Banker". "banker" includes a bank and any person acting as a banker;
- (2) "Bill of exchange". "bill of exchange" means a bill of exchange as defined by the Negotiable Instruments Act, 1881, (26 of 1881), and includes also a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money;
 - (3) "Bill of exchange payable on demand". "bill of exchange payable on demand" includes-

CHAPTER II

STAMP DUTIES

A.—Of the liability of instruments to duty

- 3. Instruments chargeable with duty. —Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say—
 - (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in ⁶[India] on or after the first day of July, 1899;
 - (b) every bill of exchange [payable otherwise than on demand] **** or promissory note drawn or made out of [India] on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in [India]; and
 - (c) every instrument (other than a bill of exchange, ****or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of '[India] on or after that day, relates to any property situate, or to any matter or thing done or to be done, in '[India] and is received in '[India]:

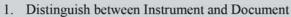
Provided that no duty shall be chargeable in respect of-

- (1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument:
- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts.

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INDIAN STAMP ACT, 1899

ABC Analysis



- 2. Instrument chargeable with Stamp Duty
- 3. Concept of cancellation of Stamp.

 \mathcal{B}

- 4. Section 4, Section 5 and Section 6.
- 5. Concept of Denoting Duty.

C

- 6. Methods of Stamping.
- 7. Person liable to pay Duty.



The Indian Stamp Act, 1899 is the law relating to stamps which consolidates and amends the law relating to stamp duty. It is a fiscal legislation envisaging levy of stamp duty on certain instruments.

INSTRUMENT

'Instrument' includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

The definition is an inclusive definition and is not necessarily restricted to those documents which are specifically mentioned in the definition. Briefly stated, an instrument includes conveyances, leases, mortgages, promissory notes and wills, but not ordinary letters or accounts.

INSTRUMENTS CHARGEABLE WITH DUTY

The following instruments shall be chargeable with a duty of the amount indicated in that **Schedule I** as the proper duty thereof, namely:-

- (a) every instrument mentioned in Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;
- (b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after the date and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated in India; and,
- (c) every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day and relates to any property situate, or to any matter or thing done or to be done in India and is received in India.

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However, no duty shall be chargeable in respect of:-

- (a) any instrument executed by or on behalf of or in favour of the Government, in cases where, but for this the Government would be liable to pay the duty chargeable in respect of such instrument.
- **(b)** any instrument for the sale, transfer or disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel or any part, interest, share of property of or in any **ship or vessel**.
- (c) Any instrument executed by, or, on behalf of, or in favour of, the Developer or Unit or in connection with the carrying out of purposes of the special Economic Zone.

<u>Some of the Instruments chargeable with duty as specified under Section 3</u> of the Indian Stamp Act, 1899 and as <u>indicated in Schedule I annexed to the Act</u>, are as under -

- Mortgage deeds
- 2. Share warrants
- 3. Trust deeds
- 4. Instruments of partnership
- 5. Certificate of sale
- 6. A memorandum of agreement
- 7. Power of attorney
- 8. Partition award
- 9. Protest of bill or note
- 10. Lease deed

PROMISSORY NOTE

A promissory note is defined as per Section 2(22) of the Negotiable Instrument Act, 1881. It implies a note given by a debtor to a creditor whereby he acknowledges his debt or liability, as well as the promise to pay that amount at a predetermined date. It is an 'instrument' as per the Indian Stamp Act.

Requirements of a promissory note:-

- (a) Unconditional undertaking to pay
- **(b)** Payment to be in money only
- (c) Ascertained or ascertainable amount
- (d) Either bearer or payable to or to the order of a certain person
- (e) Signed by the maker.

BOND

Under Section 2(5), a "bond" includes -

- (a) any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
- **(b)** any instrument attested by a witness not payable to order or bearer, whereby a person obliges himself to pay money to another; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

No document can be a bond unless it is one which, by itself, creates the obligation to pay the money.

NKJ-CLASSROOM PRACTICE



- Q. 1. Define the expression "bond".
- **Q. 2.** D executes an agreement in favour of C, (with witnesses) by which he promises to repay a loan taken by him from C. Discuss whether this is an agreement, a promissory note or abond.

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CONVEYANCE

The term "conveyance" includes a conveyance on sale and every instrument by which property (whether movable or immovable) is transferred and which is not otherwise specifically provided for by Schedule. It does not include a will. [Section 2(10)]

Thus, all transfers of property whether movable or immovable, on sale (which are not otherwise specially provided for by the Schedule), are chargeable as conveyances.

NKJ-CLASSROOM PRACTICE



Q. 1. Is an agreement for the sale of goods —conveyancel, for the purposes of the Stamp Act? Discuss.

SEVERAL INSTRUMENTS IN SINGLE TRANSACTION SECTION 4

Section 4 provides that, where in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction: —

- (a) only the principal instrument shall be chargeable with the duty prescribed for the conveyance, mortgage or settlement; and
- (b) each of the other instruments shall be chargeable with a duty of one rupee.

Illustrations

- A executed a conveyance of immovable property. On the same deed his nephew (undivided in status)
 endorsed his consent to the sale, as such consent was considered to be necessary. It was held that the
 conveyance was the principal instrument. The consent was chargeable with only one rupee.
- 2. Brother A executed in favour of brother B a gift of all his property. By another deed, brother B made provision for the living expenses of brother A and hypothecating in favour of brother A a part of the property included in the above mentioned gift deed, in order to secure the payment of the living expenses. It was held that the two documents were part of the same transaction. They amounted to a settlement and Section 4 applied (In Re. Maharaj Someshar Dutt,)

SECTION 4 NOT APPLICABLE

- 1. A lease is executed and got registered. A second document is executed altering the terms of the first document. The second document has to be stamped as a lease. Section 4 does not apply.
- A purchaser of land executes a mortgage of the land in favour of the vendor for a portion of the purchase money. The mortgage is liable to full duty as a separate instrument. Section 4 does not apply.

INSTRUMENTS RELATING TO SEVERAL DISTINCT MATTERS SECTION 5

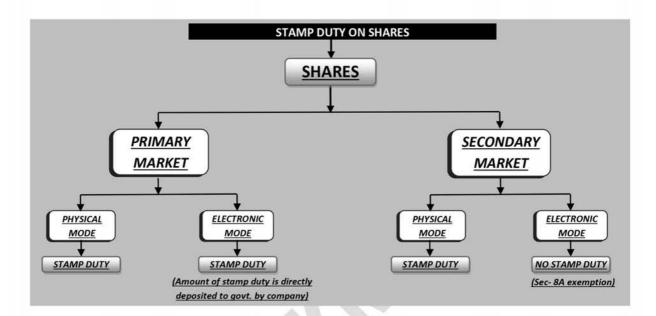
This is the reverse of the situation governed by Section 4. Under Section 5, an instrument comprising or relating to several distinct matters is chargeable with the **aggregate amount** of the duties with which each separate instrument, relating to one of such matters, would be chargeable under the Act.



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"Distinct matters"

The expression "distinct matter" means distinct transactions.

Chinmoyee Basu	A document containing both an agreement for the dissolution of a partnership
	and a bond , is chargeable with the aggregate of the duties with which two such
	separate instruments would be chargeable. The two are "distinct matters"

NKJ-CLASSROOM PRACTICE



Q. 1. A document creates a lease of property X and also grants a gift of property Y. How is the stamp duty to be calculated, on this document?

INSTRUMENTS COMING WITHIN SEVERAL DESCRIPTIONS IN SCHEDULE-I

SECTION 6

There may be cases where an instrument may come under several descriptions in Schedule-I to the Act. In such a circumstance, Section 6 of the Act provides that the instrument shall, where the duties chargeable thereunder are different, be chargeable only with the **highest of such duties**.

Section 6 is subject to the provisions of Section 5. Section 6 covers cases where the instrument does **not cover distinct matters**. Section 6 applies only where the instrument contains only one matter, but falls within two or more items in the Schedule.

For e.g.:-Where the deed fulfils the dual character of the **mortgage** and a **bond**. It will be chargeable to the highest of the duties by virtue of section 6.

SECURITIES DEALT IN DEPOSITORY NOT LIABLE TO STAMP DUTY

SECTION 8A

As per Section 8A of the Act:—

- (a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;
- (b) the transfer of—
 - (i) registered ownership of securities from a person to a depository or from a depository to a beneficial owner;
 - (ii) beneficial ownership of securities, dealt with by a depository;
 - (iii) beneficial ownership of units, such units being units of a Mutual Fund including units of the Unit Trust of India established under sub-section (1) of Section 3 of the Unit Trust of India Act, 1963, dealt with by a depository,

shall not be liable to duty under this Act or any other law for the time being in force.

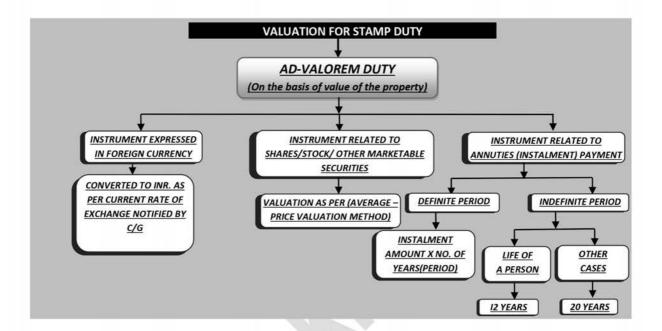
VALUATION FOR DUTY UNDER THE ACT

(a) According to Section 20, where an instrument is chargeable with ad valorem duty in respect of any money expressed in foreign currency such duty shall be calculated according to the current rate of exchange notified by Central Government on the date of the instrument. The Central Government notifies from time to time, in the Official Gazette the rate of exchange for conversion of certain foreign currencies into Indian currency for this purpose and such rate shall be deemed to be the current rate.

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- (b) Section 21 provides that in the case of an instrument chargeable with ad valorem duty in respect of any stock or any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the date of the instrument.
- (c) Section 25 deals with the manner of computation of duty in the case of **annuities** (periodic payments). It provides that:-
 - (i) where the sum payable is for a **definite period** so that the total amount to be paid can be previously ascertained such total amount;
 - (ii) where the sum is payable in **perpetuity or for an indefinite time** not terminable with any life in being at the date of such instrument or conveyance the total amount which, according to the terms of such instrument or conveyance will or may be payable during the period of **twenty years** calculated from the date on which the first payment becomes due, and
 - (iii) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance the maximum amount which will be or which may be payable as aforesaid during the period of 12 years calculated from the date on which the first payment becomes due.

PERSONS LIABLE TO PAY DUTY

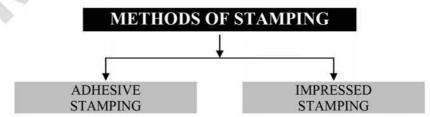
In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne:

- (a) in the case of any BOE, P-notes, mortgage by the person drawing, making or executing such instrument;
- (b) in the case of an insurance insurer.
- (c) in the case of a lease by the lessee
- (d) in the case of sale by the purchaser
- (e) in the case of an instrument of partition by the parties thereto in proportion to their respective shares in the whole property partitioned.

METHODS OF STAMPING

There are two types of stamping, namely:-

- (a) Adhesive stamping,
- (b) Impressed stamping.
- (c) e stamping.



1. ADHESIVE STAMPS

SECTION 11

Section 11 provides that the following instruments may be stamped with adhesive stamps, namely:-

(a) instruments chargeable with a duty not exceeding 10 paisa, bills of exchange payable otherwise than on demand.

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- (b) bills of exchange and promissory notes drawn or made out of India;
- (c) entry as an advocate, vakil or attorney on the role of a High Court;
- (d) notarial acts; and
- (e) transfers of shares in any incorporated company or other body corporate.

The use of the words 'may be stamped' really connotes 'shall be stamped'.

CANCELLATION OF ADHESIVE STAMPS

SECTION 12

Section 12(1)(a)Provides that any person affixing any adhesive stamp to any instrument chargeable with duty which has been executed by another person shall, when affixing such stamp cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled is deemed to be unstamped.

MODE OF CANCELLATION OF ADHESIVE STAMPS

The cancellation of an adhesive stamp may be done by the person concerned:-

- (a) by writing on or across the stamp his name or initials, or the name or initials of his firm with the true date of his so writing, or
- (b) in any other effectual manner.

Mahadeo Koeri v. Sheoraj Ram Teli,	It was held that a stamp may be treated as having been effectively cancelled by merely drawing a line across it.
Hafiz Allah Baksh v. Dost Mohammed,	It was held that if it is possible to use a stamp a second time , inspite of a line being drawn across it, there is no effectual cancellation .
Melaram v. Brij Lal,	It was held that a very effective method of cancellation is the drawing of diagonal lines right across the stamps with ends extending on to the paper of the document.
Kolai Sai v. Balai Hajam.	A cross marked by an illiterate person indicating his acknowledgement, was held to be an effective cancellation of the stamp in

2. IMPRESSED STAMPS

SECTION 13

Section 13 provides that every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the **stamp may appear on the face of the instrument** and cannot be used for or applied to any other instrument.

Under Section 14, **no second instrument chargeable with duty shall be written** upon piece of stamp paper upon which an instrument chargeable with duty has already been written.

DENOTING DUTY

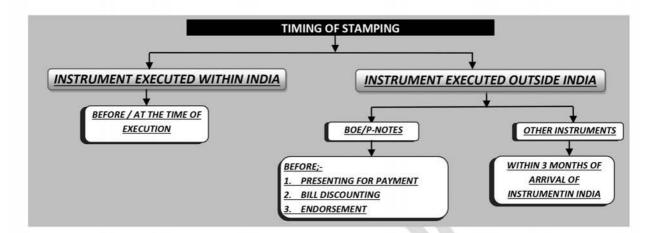
Where the duty with which an instrument is chargeable, or its exemption from duty, **depends** in any manner upon the duty actually paid in respect of **another instrument**, the payment of such last mentioned duty, shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be **denoted upon such first mentioned instrument**, by endorsement under the hand of the Collector of Stamps or in such other manner as the rules of the State Government may provide. This is called denoting of instruments.



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The objective of Denoting duty is to spare parties of an instrument from the inconvenience of having to produce the original or principle document in order to prove that the instrument is duly stamped.

3. E-Stamping

E-Stamping is a computer based application and a secured way of paying Non-Judicial stamp duty to the Government.

The benefits of e-Stamping are:-

- (a) E-Stamp Certificate can be generated within minutes;
- (b) E-Stamp Certificate generated is tamper proof;
- (c) Easy accessibility and faster processing;
- (d) Security;
- (e) Cost saving and
- (f) User friendly.

TIMING OF STAMPING OF INSTRUMENTS

> INSTRUMENTS EXECUTED INSIDE INDIA

Section 17 provides that all instruments chargeable with duty and executed by any person in India shall be stamped **before or at the time of execution**.

> INSTRUMENTS EXECUTED OUTSIDE INDIA

According to Section 18, every instrument chargeable with duty executed only out of India and (not being a bill of exchange or promissory note) may be stamped within **three months** after it has been first received in India.

Any bill of exchange payable otherwise than on demand or promissory note drawn or made out of India must be stamped and the stamp cancelled, before the first holder in India deals with the instrument, i.e., **presents the same for acceptance or payment**, or **endorses**, transfers or otherwise negotiates the same in India.

INSTRUMENTS NOT DULY STAMPED – TREATMENT AND CONSEQUENCES

Duly stamped means that the instrument bears an adhesive or impressed stamp not less than proper amount and that such stamp has been affixed or used in accordance with law in force in India.

> INSTRUMENTS NOT DULY STAMPED INADMISSIBLE IN EVIDENCE

Section 35 stipulates that no instrument chargeable with duty shall be-

- (a) admitted in evidence for any purpose whatsoever by any person authorised by law (such as judges or commissioners) or by the consent of the parties (such as arbitrators) to record evidence; or
- (b) shall be acted upon; or
- (c) registered; or
- (d) authenticated by any such person as aforesaid or by any public officer unless such instrument is duly stamped.

An insufficiently stamped instrument is **not an invalid document** and it can be admitted in evidence on payment of penalty.



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CASES WHERE UNSTAMPED INSTRUMENT CAN BE ADMITTED IN EVIDENCE

The proviso to Section 35 provides exception to section 35 as under:-

- (a) any instrument be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of₹5/- or ten times the amount of the proper duty or deficient portion, whichever is higher.
- (b) unstamped receipt would be admissible in evidence on payment of a penalty of ₹ 1/-.
- (c) where a contract or agreement of any kind is affected by the correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
- (d) any instrument can be admitted in evidence in any proceeding in a criminal Court.
- (e) when such instrument has been executed by or on behalf of the Government, it is admissible.

ADMISSION OF INSTRUMENTS (WHERE NOT TO BE QUESTIONED)

Guni Ram	Section 36 provides that where an instrument has been admitted in evidence, such an
<u>v.</u>	admission shall not be questioned at any stage of the same suit or proceeding on the
<u>Kodar</u>	ground that the instrument has not been duly stamped.

COLLECTOR'S POWER TO STAMP

The Collector when impounding any instrument not being an instrument chargeable with duty not exceeding 10 paisa only or a bill of exchange or promissory note, shall adopt the following procedure:-

(a) if he is of the opinion that such instrument, is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of ₹5/-, if he thinks fit and amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of ₹5/-.

INSTRUMENTS UNDULY STAMPED BY ACCIDENT

If the Collector is satisfied, that the omission to pay the proper duty was due to accident, mistake or urgent necessity, he may receive the deficit amount and certify by endorsement on the instrument that the proper duty has been levied.

In order to avail of the benefit of this section, the instrument must be produced before the Collector within **one year** of the date of its execution.

REFUND OF STAMP DUTY OR PENALTY BY REVENUE AUTHORITIES

According to section 39 of the Indian Stamp Act, 1899, when a copy of an instrument is sent to the Collector, he may refund any portion of the penalty in excess₹5, which has been paid in respect of such instrument.

When the Collector is of opinion that any instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable.



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CIRCUMSTANCES UNDER WHICH REFUND OF STAMP DUTY OR PENALTY MAY BE MADE BY REVENUE AUTHORITIES.

Stamp Duty can be refunded under the following circumstances:-

- 1. Spoiled Stamps;
- 2. Misused Stamps;
- 3. Stamps used in excess of the value required; and
- 4. Stamps not required for use.

The stamps purchased and not used for intended purpose are entitled for refund after deduction of certain charges, if lodged for refund within six months from the date of purchase.

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ADVANCE YOUR

KNOWLEDGE



- Q. 1. AN INSTRUMENT BEARS A STAMP OF SUFFICIENT AMOUNT, BUT OF IMPROPER DESCRIPTION. CAN IT BE CERTIFIED AS DULY STAMPED? HOW THE INSTRUMENT CAN BE RECTIFIED AND WHAT WOULD BE THE DATE OF ITS EXECUTION?
- As per Section 37 of the Indian Stamp Act, 1899, an instruments that is stamped with the proper amount but wrong description of stamp, may, by the state Government Rules, be certified as duly stamped on payment of the right duty.

The date of execution of this instrument will be deemed to be the date of actual of execution, and not the date of proper stamping. The reason behind this is that there is no revenue loss to the government and if the mistake is bona fide, the right description of stamp can be subsequently put to use.

- ACHAL GIVES AN INSTRUMENT TO BASU WHICH IS UNSTAMPED. THIS INSTRUMENT IS ALSO NOT REGISTERED-
 - (a) WILL THE INSTRUMENTS BE ADMITTED IN EVIDENCE?
 - (b) WILL THE SITUATION CHANGE IF THE INSTRUMENT IS STAMPED BUT NOT REGISTERED BEFORE PASSING TO BASU GETS IT REGISTERED SUBSEQUENTLY?
- Section 17 of the Transfer of Property Act, 1882, provides a list of instrument that are compulsorily registrable. Section 49of the Registration Act 1908 provides that no such instrument shall be admitted as evidence or put to nay use unless registered.
 - (a) Since the instrument is unstamped, it cannot be used as evidence. However, if the same of duly stamped of registered, it can be so admitted subsequently.
 - (b) Such an instrument can be admitted as evidence, as per Section 49 as mentioned above.
- Q. 3. STATE THE LAW OF INADMISSIBILITY IN EVIDENCE OF AN INSTRUMENT NOT DULY STAMPED.
- Section 35 of the Indian Stamp Act, 1899 covers instruments not duly stamped, whereas Chapter IV (Section 35-48) gives the consequences in case an instruments is not duly Stamped. It providing the following:
 - (a) An instrument insufficiently stamped will not be admitted as evidence or recognized as valid by any government official unless it is duly stamped.
 - (b) It can, subsequently, be stamped with stamped of proper amount, and be rendered duly stamped according to the Indian Stamp Act, 1899.
 - (c) An agreement or contract that is made up of various part contained in separate letters would be deemed to be properly stamped if any one part of all the documents bears stamped of paper description and value.

- (d) The exclusion of insufficiently instruments shall not apply to criminal proceedings.
- (e) The collector of stamps can be presented with such an instruments and the proper stamp duty paid on it, so that it becomes a proper and valid
- Q. 4. AMIT MORTGAGES A HOUSED OF THE VALUE OF ₹ 25,000 TO BIMAL FOR ₹ 10,000. BIMAL AFTERWARDS BUYS THE HOUSE FROM AMIT. WHETHER THE STAMP DUTY ALREADY PAID IS DEDUCTIBLE FROM THE STAMP DUTY PAYABLE ON ₹25,000?
- Ans. In this case, the mortgage deed would already be stamped, since it is a prior contract. Hence, the stamp duty already paid on it can be deducted from the duty payable now on the deed of sale. So, only the balance duty is to be paid, i.e. the duty paid on mortgage would be less, and that required on sale would naturally be more, so the assessee now needs to pay the balance duty on the sale. For such a ruling, however, the Act specifies the condition that the entire property should be sold.
- Q. 5. DEFINE THE TERM 'BILL OF LADING' UNDER THE 'INDIAN STAMP ACT, 1899.
- As per section 2(4) of the Indian Stamp Act, 1899 "Bill of Lading" includes a 'through bill lading' but does not include a mate's receipt.

A bill of lading is a receipt by the master of a ship for goods delivered to him for delivery to X or his assigns. Three copies are made, each signed by the master. One is kept by the consignor of the goods, one by the master of the ship and one is forwarded to X, the consignee, who, on receipt of it, acquires property in the goods. It is a written evidence of a contract for the carriage and delivery of goods by sea, for certain freight.

When goods are delivered on board a ship, the receipt is given by the person in charge at that time. This receipt is known as the mate's receipt. The shipper of the goods returns this receipt to the master before the ship leaves and receives from him bill of lading for the goods, signed by the master.

- WHICH IS THE INSTRUMENT IN WRITING, Q. 6. CONTAINING AN UNCONDITIONAL ORDER SIGNED BY THE MAKER?
- Bill of Exchange Ans.
- Q. 7. WHICH IS A NOTE PROMISING THE PAYMENT OF ANY SUM OF MONEY OUT OF A PARTICULAR FUND WHICH MAY OR MAY NOT BE AVAILABLE?
- Ans. Promissory Note
- Q. 8. WITH WHICH SECTIONS DEALS MULTIFARIOUS INSTRUMENTS?
- Ans. Section 5

SELF TEST OUESTIONS

FROM PAST CS EXAMS



- 1. State the modes of cancellation of adhesive stamps.
- Explain the consequences of the instruments which are not duly stamped under the Indian Stamp Act, 1899.
- 3. List any 10 instruments which are chargeable with duty under the Indian Stamp Act, 1899.
- Mention the circumstances under which refund of stamp duty or penalty may be made by revenue authorities.
- Discuss the evidentiary value of an instrument not duly stamped under the Indian Stamp Act, 1899.
- 6. An instrument bears a stamp of sufficient amount, but of improper description. Can it be certified as duly stamped? How the instrument can be rectified and what would be the date of its execution?
- Achal gives an instrument to Basu which is unstamped.
 This instrument is also not registered –
 - (i) Will the instrument be admitted in evidence?
 - (ii) Will the situation change if the instrument is stamped but not registered before passing to Basu gets it registered subsequently?
- 8. What is a 'promissory note'?
- 9. Four adhesive stamps were used on an instrument. First adhesive stamp had a single line drawn across the face of the stamp. On the second stamp, there were two parallel lines. The third stamp had three parallel lines, and the fourth stamp had two lines crossing each other. What are the provisions for cancellation of adhesive stamps and which adhesive stamps referred to above will be considered to have been properly cancelled?
- 10. Amit mortgages a house of the value of ₹25,000 to Bimal for ₹10,000. Bimal afterwards buys the house from Amit. Whether the stamp duty payable on₹25,000?
- 11. Explain the "Denoting duty".

FROM ICSI MODULE



Answer the following:

- 1. Define the expression "bond".
- D executes an agreement in favour of C, (with witnesses) by which he promises to repay a loan taken by him from C. Discuss whether this is an agreement, a promissory note or a bond.
- 3. Is an agreement for the sale of goods "conveyance", for the purposes of the Stamp Act? Discuss.
- 4. A document creates a lease of property X and also grants a gift of property Y. How is the stamp duty to be calculated, on this document?
- 5. Can Parliament increase or, decrease, the stamp duty on an agreement?



Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-

CHAPTER REGISTRATION ACT, 1908 Covering-Bare Act ABC Analysis Documents whose Registration is Compulsory Documents of which Registration is Optional Time Limit for Presentation Instruments of Gift of Immovable Property Place of Registration Presenting of Documents for Registration Registered Document when Operative Effect of Non-Registration of Documents Registered Documents Relating to Property when to take Effect Against Oral Agreement Certificate of Registration Refusal to Register by the Sub-Registrar Advance Your Knowledge Self Test Questions From Past CS Exam From ICSI Module **EXPECTED** MARKS COVERAGE

(5 to 10)

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From Bare Act... —

रज़िस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



THE REGISTRATION ACT, 1908

ACT No. 16 OF 19081

[18th December, 1908.]

An Act to consolidate the enactments relating to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents; it is hereby enacted as follows:—

PART I

PRELIMINARY

- Short title, extent and commencement.—(1) This Act may be called the ²*** Registration Act, 1908.
 - ³[(2) It extends to the whole of India except the State of Jammu and Kashmir:

Provided that the State Government may exclude any districts or tracts of country from its operation.]

- (3) It shall come into force on the first day of January, 1909.
- 2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—
- (1) "addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of ⁴[an Indian], ⁵*** his father's name, or where he is usually described as the son of his mother, then his mother's name;
- (2) "book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book;
- (3) "district" and "sub-district" respectively mean a district and sub-district formed under this Act;
 - (4) "District Court" includes the High Court in its ordinary original civil jurisdiction;
- (5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act;
- (6) "immovable Property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;

PART II

OF THE REGISTRATION-ESTABLISHMENT

3. Inspector-General of Registration.—(1) The State Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such Government:

Provided that the State Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the State Government appoints in this behalf.

(2) Any Inspector-General may hold simultaneously any other office under the Government.

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REGISTRATION ACT, 1908

ABC Analysis



- 1. Documents whose Registration is Compulsory
- 2. Place of Registration
- 3. Effect of Non-Registration of Documents

 \mathcal{B}

- 3. Documents of which Registration is Optional
- 4 Time Limit for Presentation

 \mathcal{C}

- 5. Presenting of Documents for Registration
- 6. Certificate of Registration



Department of Land Resources

Government of India - Ministry of Rural Development (An ISO 9001:2008 Certified Department)

Registration means recording of the contents of a document with a Registering Officer and preservation of copies of the original document. The Registration Act, 1908 is the law relating to registration of documents.

The object and purpose of the Act among other things:-

- (a) is to give information to people regarding legal rights and obligations arising or affecting a particular property,
- (b) Is to perpetuate documents which may afterwards be of legal importance,
- (c) Is to prevent fraud.

DOCUMENTS

Any material or non-material things which contain any information is known as document.

Documents can be classified into two classes:

- (a) Those whose registration is compulsory; (Section 17)
- (b) Those whose registration is optional. (Section 18)

NKJ-CLASSROOM PRACTICE



Q. 1. What is the object of the law of Registration?

DOCUMENTS WHOSE REGISTRATION IS COMPULSORY

SECTION 17

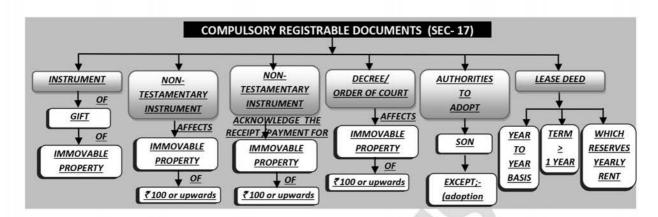
According to Section 17 of the Registration Act, 1908, documents whose registration is compulsory are the following:-

(a) Instruments of gift of immovable property.

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- (b) non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title of interest whether vested or contingent, of the value of one hundred rupees and upwards, in immovable property.
 - A document which is plainly intended to be operative immediately is non-testamentary.
- (c) Non-testamentary instruments which acknowledge the **receipt** or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of an interest of the value of ₹100 or upwards in immovable property.
- (d) Non-testamentary instruments transferring or assigning any decree or order of a Court or any award in order to create interests as mentioned in or a transfer of a decree or order of a court or of any award when such decree or order or award operates to create, declare, etc. any interest of the value of ₹100 and upwards in immovable property, requires registration.
- (e) Authorities to adopt a son which is not conferred by will.
- (f) A lease of immovable property is compulsory registrable:
 - (i) if it is from year to year; or
 - (ii) if it is for a term exceeding one year; or
 - (iii) if it reserves a yearly rent.

EXCEPTIONS TO SECTION 17(1) SECTION 17(2)

The registration of the non-testamentary documents mentioned in clauses of Section 17(1) is subject to the exceptions provided in **Sub-section (2) of Section 17.** Some are as follows:-

- (a) any composition deed, i.e., every deed the essence of which is composition; or
- (b) any instrument relating to shares in Joint Stock Company; or
- (c) any debentures issued by any such Company; or
- (d) any endorsement upon or transfer of any debenture; or
- (e) any grant of immovable property by the Government; or

DOCUMENTS OF WHICH REGISTRATION IS OPTIONAL SECTION 18

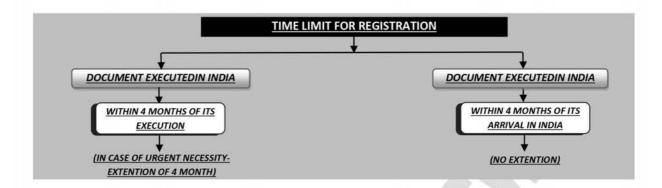
Section 18 specifies documents, registration of which is optional. It provides that any of the following documents may be registered under this Act, namely:

- (a) instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of value less than one hundred rupees, in immovable property;
- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment; limitation or extinction of any right, title or interest of value less than one hundred rupees, in immovable property;
- (c) leases of immovable property for any term **not** exceeding one year.
- (d) instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of a value less than one hundred rupees, to or in immovable property;
- (e) wills
- (f) Other documents not required by Section 17(2) to be registered.

NKJ-CLASSROOM PRACTICE



Q. 1. Explain the documents of which registration is optimal under the Registration Act 1908. [June. 2019, 4 Marks]



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TIME LIMIT FOR PRESENTATION

> DOCUMENTS EXECUTED IN INDIA

Section 23 provides that a document other than a will must be presented within **four months** of its execution.

In cases of **urgent necessity** or an unavoidable accident etc. the registrar may **extend** the period by maximum **4 months**, on payment of higher fees.

> DOCUMENTS EXECUTED OUT OF INDIA

As per Section 26 Where the registering officer is satisfied that the document was executed outside India and it has been presented for registration within **four months** after its arrival in India, he may accept such document for registration on payment of proper registration fee.

A document executed outside India is not valid unless it is registered in India.

RE-REGISTRATION

SECTION 23A

Section 23A provides for the re-registration of certain documents. The section is mainly intended to deal with situations where the original presentation was by a person not duly authorised.

If a person finds that a document has been filed for registration by a person who is not empowered to do so, he can present the document for re-registration within **four months** from the date he **became aware** of the fact that registration of document is invalid.

The document if registered under section 23A shall be deemed to have been **registered** from the date of its **original registration**.

INSTRUMENTS OF GIFT OF IMMOVABLE PROPERTY

In a case where the donor dies before registration, the document may be presented for registration after his death and if registered it will have the same effect as registration in his life time. On registration the deed of gift operates as from the date of execution.

It was held in <u>Kalyana Sundram v. Karuppa</u>, that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. And if it is presented by a person having necessary interest within the prescribed period the Registrar must register it. Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with.

NKJ-CLASSROOM PRACTICE



Q. 1. Yash signed a deed of gift in favor of Raja. If Yash does not agree to its registration, will the gift deed be registered? Explain whether delay in registration of a gift deed will postpone its operation? [June. 2019, 4 Marks]

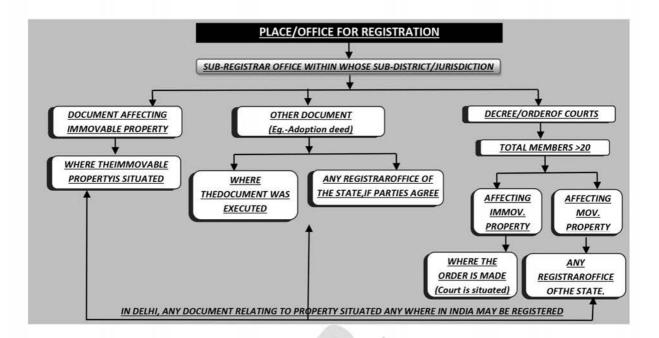
PLACE OF REGISTRATION

(a) Section 28 provides that documents affecting **immovable property** shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the relevant **property** is situated and,

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- (b) Any other document may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed or in the office of any other Sub-Registrar under the State Government at which all the persons executing desire the document to be registered.
- (c) A copy of a decree or order may be registered with the Sub-Registrar within whose sub-district it was made. If the decree or order does not affect immovable property, it may be presented for registration in the office of any other Sub-Registrar under the State Government at whose office all persons claiming under the decree or order desire it to be registered.
- (d) In **Delhi**, a document relating to property situated any wherein **India** may be registered (Section 30).

NKJ-CLASSROOM PRACTICE



Q. 1. A executes a sale deed of a garden in favour of B. The garden is situated in Udaipur. Can the sale deed be registered at Jaipur, which is the capital of Rajasthan?

PRESENTING OF DOCUMENTS FOR REGISTRATION

Section 32 specifies the **persons who can present documents for registration** at the proper registration office. Such persons are as follows:-

- (a) some person executing or claiming under the document, or in the case of a copy of a decree or order, claiming under the decree or order, or
- (b) the representative or assign of such person, or
- (c) the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated by the Registrar within whose district or sub-district the principal resides. (i.e. Special power of attorney)

REGISTERED DOCUMENT WHEN OPERATIVE SECTION-47

A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration.

K.J. Nathan v. S.V. Maruthi Rai As between two registered documents, the **date of execution** determines the priority. Of the two registered documents, executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first gets priority over the other, although the former deed is registered subsequently to the later one.

EFFECT OF NON-REGISTRATION OF DOCUMENTS

Section 49 of the Act provides that document required by Section 17 if not registered shall not:

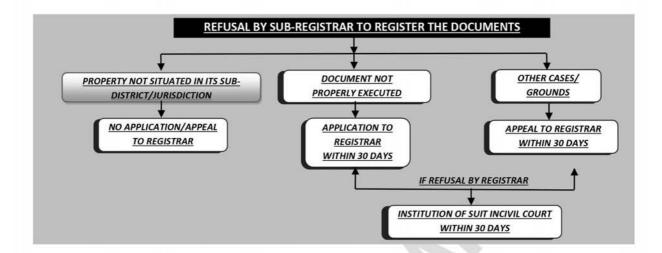
- (a) take affect against any immovable property comprised therein; or
- (b) confer any power to adopt; or
- (c) be received as evidence of any transaction affecting such property or conferring such power.

However, as provided in Section 49, proviso, an unregistered document affecting immovable property and required to be registered may be received as evidence of a contract in a suit for part performance under Section 53A of the Transfer of Property Act, 1882.

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REGISTERED DOCUMENTS RELATING TO PROPERTY WHEN TO TAKE EFFECT AGAINST ORAL AGREEMENT

Registered documents relating to any property whether movable or immovable shall take effect against any oral agreements or declaration relating to such property **unless followed by delivery of possession** which constitutes a valid transfer under any law for the time being in force.

CERTIFICATE OF REGISTRATION

After all the applicable provisions are complied with, the registering officer shall endorse thereon a certificate containing the word "registered" along with the number, and page of the book in which the document has been copied. The certificate shall be signed, sealed and dated by the registering officer.

The certificate of registration in respect of a document is **prima facie evidence** that the document has been legally registered and raises a presumption that the registering officer proceeded in accordance with the law.

REFUSAL TO REGISTER BY THE SUB-REGISTRAR

REASONS FOR REFUSAL TO REGISTER TO BE RECORDED

Every Sub-Registrar refusing to register a document, **except on the ground** that the property to which it relates is **not situated** within his sub-district, shall make an order of refusal and record his reasons for such order give a copy of the reasons so recorded to parties.

Registration cannot be refused on the ground of undervaluation for stamp or any other extraneous reason.

APPEAL TO REGISTRAR

An appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration to the Registrar to whom such Sub-Registrar is subordinate within 30 days from the date of the order; and the Registrar may reverse or alter such order. This does not apply where the refusal is on the ground of denial of execution.

If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall register the same,

APPLICATION TO REGISTRAR

Refusal to register on the ground of **denial of execution** is governed by Section 73, under which the aggrieved party can make an "application" not appeal within **30 days** to the Registrar. If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered

INSTITUTION OF SUIT IN CASE OF ORDER OF REFUSAL BY REGISTRAR

Where the Registrar refuses to order the document to be registered any person claiming under such document, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

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EXEMPTION OF CERTAIN DOCUMENTS EXECUTED BY OR IN FAVOUR OF GOVERNMENT

Documents issued. received or attested officer any engaged in making a settlement or revision of settlement of land revenue and which form part of the records of such settlement.

Documents and map issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land which from part of the record of such survey.

Documents which, under any law for the time being in force are filed periodically in any revenue office by Patwaries or other officers charged with the preparation of village records.

Sanads, inam, title deeds and other documents purporting to be an evidence grants or assignment of land of anv interest in land.

Notice given under section 74 or section 76 of the Bombay Land Revenue Code, 1879 of relinquishment of occupants or of land by holders of such land.

- Q. 1. GAUTAM EXECUTED A DOCUMENT ON 20TH OCTOBER, 2007 IN FAVOUR IT THOMAS. THEREAFTER, GAUTAM EXECUTED ANOTHER DOCUMENT ON 1ST DECEMBER, 2007 IN FAVOUR OF PETER IN RESPECT OF THE SAME PROPERTY. THE DOCUMENT BETWEEN GAUTAM AND THOMAS WAS REGISTERED ON 15TH JANUARY, 2008 WHEREAS THE DOCUMENT BETWEEN GAUTAM AND PETER WAS REGISTERED ON 15TH DECEMBER 2007. WHICH DOCUMENT GETS PRIORITY AND WHY?
- Ans. As per section 47 of the Registration Act of the two registered documents executed by the same person in respect of the same property to two different persons at the two different times, the one which is executed first has priority over the other, although the former deed is registered subsequently to the later one.

Facts of the case: A executes a sale deed in respect of his house in favour of B on January 5, 1992. He then executes a deed of gift in respect of the same property in favour of C an February 1, 1992 and gets it registered on February 15, 1992. The sale deed is registered on March 15, 1992.

Question involved: Which of the two transfers will come into force?

Decision: The deed which is executed first will get the first priority.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



- 1. Attempt the following:
 - State the documents of which registration is optional.
 - (ii) State the documents which are required to be compulsorily registered under the Registration Act, 1908.
- A document was executed outside India and it was presented for registration after a lapse of four month from the date of its arrival in India. Whether the document may be accepted for registration by the Registration? Decide.
- State the documents whose registration is optional under the Registration Act, 1908.
- State the places where documents relating to immovable property may be presented for registration under the Registration Act, 1908.
- 5. State the effect of non-registration of documents required to be registered under the Registration Act, 1908.
- Discuss the remedies available to a person who has been refused to register a document by a sub-registrar
- Is a 'will' required to be registered under the Registration Act, 1908? State the benefits of registration of a will, if any.
- 8. What are the documents which are compulsorily registrable under the Registration Act, 1908?
 - (i) What is the effect of non-registration of compulsorily documents under the Registration Act, 1908?
 - (ii) What are the cases in which a compulsorily registrable document can be used in evidence, even if it has not been registered?
- 9. Gautam executed documents on 20th October, 2007 Favorite Thomas. Thereafter, Gautam executed another documents on 11the December, 2007 in favour of Peter in respect of the same property. The document between Gautam and Thomas was registered on 15th January, 2008 whereas the documents between Gautam and Peter were registered on 15th December, 2007. Which document gets priority and why?
- 10. Bijoy executed a contract a contract of purchasing a piece of land in Delhi form Ajoy. Just after the execution of contract, Bijoy proceeded to England and he is not expected to return to India before six months Chirag, a good friend of Ajoy who has general power of attorney to act on behalf of Bijoy, gets the said sale deed registered. Is this registration valid?

FROM ICSI MODULE



Answer the following:

- 1. What is the object of the law of Registration?
- Discuss the validity of the agreements in the following cases:
 - (a) A agrees to sell certain vehicles to B, the agreement is oral.
 - (b) A agrees to sell a garden to B, orally.
 - (c) A agrees to sell, to B, a health resort by a written agreement. The agreement is not registered.
- 3. A executes a sale deed of a garden in favour of B. The garden is situated in Udaipur. Can the sale deed be registered at Jaipur, which is the capital of Rajasthan?
- 4. An executes a mortgage of a house in favour of a bank, as a simple mortgage. It is not registered. Can the bank sue to enforce this mortgage?
- A grants to B a mortgage by deposit of title-deeds. No document is executed or registered. Is the transaction valid.



Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-

CHAPTER RIGHT TO INFORMATION ACT, 2005 Covering-Bare Act Constitutional Validity of Act Salient Features of The Act Important Definitions Obligations of Public Authority Designation of Public Information Officers (PIO) Request for obtaining Information Duties of a PIO Partial Disclosure Allowed Exemption from Disclosure Who is Excluded Information Commissions **Powers of Information Commissions** Appellate Authorities Penalties on Public Information Officer Self Test Questions **EXPECTED** MARKS COVERAGE (1 to 5)

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- From Bare Act... -

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REGD. NO. D. L .- 33004/99

The Gazette of India

THE RIGHT TO INFORMATION ACT, 2005

No. 22 OF 2005

[15th June, 2005.]

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information:

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

- 1. Short title, extent and commencement.-(1) This Act may be called the Right to Information Act, 2005.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) The provisions of sub-section (1) of section 4, sub-sections (1) and (2) of section 5, sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.
 - 2. Definitions.-In this Act, unless the context otherwise requires,-
 - (a) "appropriate Government" means in relation to a public authority which is established, constituted, owned. controlled or substantially financed by funds provided directly or indirectly—
 - (i) by the Central Government or the Union territory administration, the Central Government;
 - (ii) by the State Government, the State Government;
 - (b) "Central Information Commission" means the Central Information Commission constituted under subsection (1) of section 12;

CHAPTER II

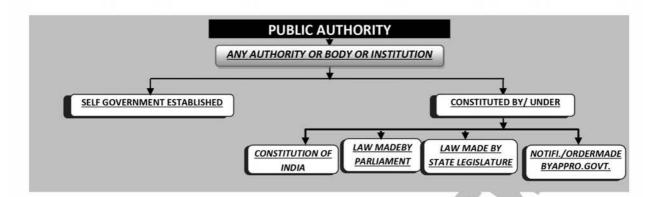
RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

3. Right to information. Subject to the provisions of this Act, all citizens shall have the right to information.

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RIGHT TO INFORMATION ACT, 2005

Throughout the world, the right to information is seen by many as the key to strengthening participatory democracy and ensuring more people-centred development. In India also, the Government enacted Right to Information (RTI) Act in 2005 allowing transparency and autonomy, and access to accountability in public authorities.

The RTI Act confers on all citizens a right to information. The Right to Information Act, 2005 provides an effective framework for effectuating the right to information recognized under Article 19 of the Constitution.

RIGHT TO KNOW

CASE LAW



R.P. Limited	The Supreme Court read into Article 21 the right to know. The Supreme Court held	
v.	that right to know is a necessary ingredient of participatory democracy. Article 21	
Indian Express	confers on all persons a right to know which include a right to receive	
Newspapers	information.	

CONSTITUTIONAL VALIDITY OF ACT

Article 19(1)(a) of our Constitution guarantees to all citizens freedom of speech and expression. Right to freedom of speech and expression in Article 19(1)(a) carries with it the right to propagate and circulate one's views and opinions subject to reasonable restrictions as mentioned above. The prerequisite for enjoying this right is knowledge and information. Information adds something "new to our awareness and removes vagueness of our ideas".

Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a).

NKJ-CLASSROOM PRACTICE



Q. 1. The right to impart and receive information is a species of the right to freedom of speech and expression. Discuss.

SALIENT FEATURES OF THE ACT

- (a) The RTI Act extends to the whole of India except Jammu & Kashmir.
- (b) It shall apply to Public Authorities.
- (c) All citizens shall have the right to information, subject to provisions of the Act.
- (d) The Public Information Officers/Assistant Public Information Officers will be responsible to deal with the requests for information and also to assist persons seeking information.
- (e) Fee will be payable by the applicant depending on the nature of information sought.
- (f) Certain categories of information have been exempted from disclosure under Section 8 and 9 of the Act.
- (g) Intelligence and security agencies specified in Schedule II to the Act have been exempted from the ambit of the Act, subject to certain conditions.

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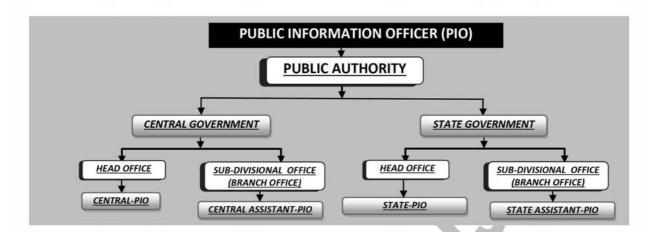


Q. 1. The RTI Act confers on all citizens a right to information. Enumerate the salient features of the Act.

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IMPORTANT DEFINITIONS

- "Public authority" means any authority or body or institution of self government established or constituted –
 - (a) By or under the Constitution;
 - (b) By any other law made by Parliament;
 - (c) By and other law made by State Legislature;
 - (d) By notification issued or order made by the appropriate Govt.

2. Record" includes:—

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device
- 3. <u>"Information"</u> means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form.
- **4.** "Right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—
 - (a) taking notes, extracts, or certified copies of documents or records;
 - (b) inspection of work, documents, records;
 - (c) taking certified samples of material;
 - (d) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;
- 5. "Third party" means a person other than the citizen making a request for information and includes a public authority.

OBLIGATIONS OF PUBLIC AUTHORITY

Every public authority under the Act has been entrusted with a duty to maintain records and publish manuals, rules, regulations, instructions, etc. in its possession as prescribed under the Act.

DESIGNATION OF PUBLIC INFORMATION OFFICERS (PIO)

Every public authority has to:-

- (a) Designate in <u>all administrative units or offices</u> Central or State Public Information Officers to provide information to persons who have made a request for the information.
- (b) Designate at <u>each sub-divisional level or sub-district level</u> Central Assistant or State Assistant Public Information Officers to receive the applications for information or appeals for forwarding the same to the Central or State Public Information Officers.

REQUEST FOR OBTAINING INFORMATION

The Act specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.



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- (a) Application is to be submitted in writing or electronically, with prescribed fee, to Public Information Officer (PIO).
- (b) Information to be provided within 30 days.
- (c) 48 hours where life or liberty is involved.
- (d) 35 days where request is given to Asst. PIO.
- (e) Time taken for calculation and intimation of fees excluded from the time frame.
- (f) No action on application for 30 days is a deemed refusal.
- (g) If the interests of a third party are involved then time limit will be 40 days (maximum period + time given to the party to make representation).
- (h) No fee for delayed response.

DUTIES OF A PIO

PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing. If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall **transfer**, within 5 days, the request to that other public authority and inform the applicant immediately.

PIO may seek the assistance of any other officer for the proper discharge of his/her duties. PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request

Where the information requested for concerns the **life or liberty** of a person, the same shall be provided within **forty-eight hours** of the receipt of the request. If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request.

PARTIAL DISCLOSURE ALLOWED

Under Section 10 of the RTI Act, only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information, may be provided.

If allowing partial access, the PIO shall give a notice to the applicant, informing:-

- (a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
- (b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;
- (c) the name and designation of the person giving the decision;
- (d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
- (e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.

PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question.



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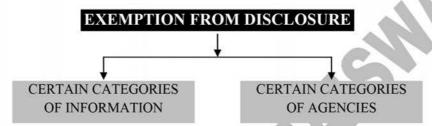
REJECTION OF REQUEST

The Public Information Officer has been empowered to reject a request for information where an infringement of a copyright subsisting in a person would be involved.

Where a request has been rejected, the PIO shall communicate to the requester: -

- (a) the reasons for such rejection,
- (b) the period within which an appeal against such rejection may be preferred, and
- (c) the particulars of the Appellate Authority.

EXEMPTION FROM DISCLOSURE



Certain categories of information have been exempted from disclosure under the Act. These are:-

- (a) Where disclosure prejudicially affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court;
- (c) Where disclosure would cause a breach of privilege of Parliament or the State Legislature;
- (d) Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position of a third party, or available to a person in his fiduciary relationship, unless larger public interest so warrants;
- (e) Information received in confidence from a foreign government;
- (f) Information the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance;
- (g) Information that would impede the process of investigation or apprehension or prosecution of offenders;
- (h) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of **Council of Ministers**, the **reasons** thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken.

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Q. 1. Specify the categories of information that have been exempted from disclosure under the Act.

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WHO IS EXCLUDED

The Act excludes Central Intelligence and Security agencies specified in the Second Schedule like IB, R&AW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, the Crime Branch-CID-CB, Lakshadweep Police etc. Agencies specified by the State Governments through a Notification will also be excluded.

The exclusion, however, is **not absolute** and these organizations have an obligation to **provide information** pertaining to allegations of **corruption and human rights violations**. Further, information relating to allegations of human rights violation shall be given only with the approval of the Central Information Commission within forty-five days from the date of the receipt of request.

INFORMATION COMMISSIONS

➤ CENTRAL INFORMATION COMMISSION (CIC)

The Central Information Commission is to be constituted by the Central Government through a Gazette Notification. The Central Information Commission consists of: -

- (i) The Chief Information Commissioner;
- (ii) Central Information Commissioners not exceeding 10.

The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

CIC/IC shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory. CIC shall be appointed for a term of 5 years from date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier. CIC is not eligible for reappointment.

> STATE INFORMATION COMMISSION (SIC)

The State Information Commission will be constituted by the State Government through a Gazette notification. The State Information Commission consists of:-

- (i) One State Chief Information Commissioner (SCIC) and
- (ii) Not more than 10 State Information Commissioners (SIC).

POWERS OF INFORMATION COMMISSIONS

The Central Information Commission/State Information Commission has a duty to receive complaints from any person:—

- (a) who has not been able to submit an information request because a PIO has not been appointed
- (b) who has been refused information that was requested;
- (c) who has received no response to his/her information request within the specified time limits
- (d) who thinks the fees charged are unreasonable;
- (e) who thinks information given is incomplete or false or misleading; and
- (f) any other matter relating to obtaining information under this law.



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If the Commission feels satisfied, an enquiry may be initiated and while initiating an enquiry the Commission has same powers as vested in a Civil Court.

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Q. 1. Discuss in brief the composition and the powers of Central Information Commission(CIC) given under the Right to Information Act, 2005.

[Dec. 2018, 4 Marks]



Q. 1. Describe the constitution and powers of the Central Information Commission under the Act.

APPELLATE AUTHORITIES

Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file an appeal under the Act.

FIRST APPEAL

First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).

First Appeal shall be **disposed** of within 30 days from the date of its receipt or within such extended period not exceeding a total of forty-five days from the date of filing thereof, for reasons to be recorded in writing.

SECOND APPEAL

Second appeal to the Central Information Commission or the State Information Commission as the case may be, within **90 days** of the date on which the decision was given or should have been made by the First Appellate Authority (delay may be condoned by the Commission if sufficient cause is shown).

NKJ-CLASSROOM PRACTICE



Q. 1. Explain the provision for appeal under the Right to Information Act, 2005.

[June. 2019, 4 Marks]



Q. 1. Can a person who does not receive a decision within the specified time or is aggrieved by the decision of the PIO file an appeal under the Act?

PENALTIES ON PUBLIC INFORMATION OFFICER

According to section 20 of the Rights to Information Act, 2005, where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, made default, :-

- (a) it shall impose a penalty of ₹250/- for each day subject to maximum amount of such penalty shall not exceed ₹25,000/-.
- **(b)** it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

The Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him.



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ROLE OF CENTRAL/STATE GOVERNMENTS

Section 26 contemplates the Role of Central/State Governments. It authorizes the Central/State Governments to:

Develop and organise educational programmes for the public especially disadvantaged communities on RTI.

Encourage public authorities to participate in the development and organisation of such programmes.

Promote timely and effective dissemination of accurate information by the public authorities,

Train officers and develop training materials.

Compile and disseminate a User Guide fort the public in the respective official language.

Publish names, designation, postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rected etc.



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Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-

CHAPTER LIMITATION ACT, 1963 Covering-Bare Act Law of Limitation Bars only the Remedy Bar of Limitation/Time Barred Extension of Time in Certain Cases/Doctrine of Sufficient Cause/ Condonation of Delay Computation of Period of Limitation For Persons Under Legal Disability Continuous Running of Time Exclusion of Certain Days Legal Time or Proceedings/Computation of Period of Limitation Effect of Acknowledgement on The Period of Limitation Effect of Payment (Or Part Payment) of Debt of Interest on The Period of Limitation Classification of Period of Limitation Writs under the constitution Self Test Questions

EXPECTED
MARKS COVERAGE
(1 to 5)

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- From Bare Act...-

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REGD. NO. D. L.-33004/99

The Gazette of India

THE LIMITATION ACT, 1963 ACT NO. 36 OF 1963

[5th October, 1963.]

An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:-

PART I

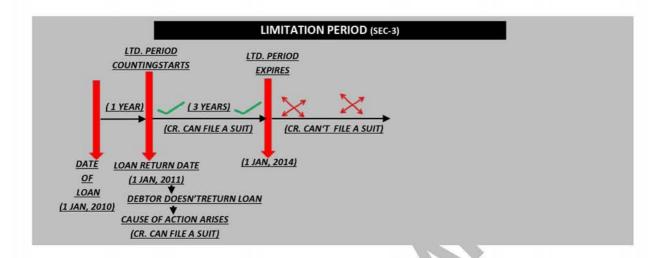
PRELIMINARY

- 1. Short title, extent and commencement.—(1) This Act may be called the Limitation Act, 1963.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.
 - 2. Definitions.—In this Act, unless the context otherwise requires,—
 - (a) "applicant" includes-
 - (i) a petitioner;
 - (ii) any person from or through whom an applicant derives his right to apply;
 - (iii) any person whose estate is represented by the applicant as executor, administrator or other representative;
 - (b) "application" includes a petition;
 - (c) "bill of exchange" includes a hundi and a cheque;
 - (d) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
 - (e) "defendant" includes-
 - (i) any person from or through whom a defendant derives his liability to be sued;
 - (ii) any person whose estate is represented by the defendant as executor, administrator or other representative;
- 3. Bar of limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.
 - (2) For the purposes of this Act,-
 - (a) a suit is instituted,—
 - (i) in an ordinary case, when the plaint is presented to the proper officer,
 - (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and
 - (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;
 - (b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—
 - (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;
 - (ii) in the case of a counter claim, on the date on which the counter claim is made in court;
 - (c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

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LIMITATION ACT, 1963

The law relating to limitation is incorporated in the Limitation Act of 1963, which prescribes different periods of limitation for suits, petitions or applications. The Act prescribes the period of limitation in Articles in Schedule to the Act. The Act extends to whole of India.

LAW OF LIMITATION BARS ONLY THE REMEDY

CASE LAW



Bombay Dying & Mfg. Co. Ltd.
v.
State of Bombay

The Law of limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process.

Thus if a claim is satisfied outside the Court of law after the expiry of period of limitation, that is not illegal.

BAR OF LIMITATION/TIME BARRED SECTION 3

Section 3 of the Act provides that every suit, appeal or application must be instituted, preferred or made within the period of limitation prescribed in **schedule II** of the Limitation Act.

State of M.P.
v.
Bhai Lal Bhai

The Limitation Act does not in terms apply to a proceeding under Article 32 or Article 226 of the Constitution. But the Court act on the analogy of the statute of limitation and refuse relief if the delay is more that the statutory period of limitation.

NKJ-CLASSROOM PRACTICE



Q. 1. The law of Limitation under the Limitation Act, 1963 bars the remedy but it does not extinguish the right. Explain in brief. [June. 2019, 4 Marks]

EXTENSION OF TIME IN CERTAIN CASES / DOCTRINE OF SUFFICIENT CAUSE / CONDONATION OF DELAY SECTION 5

Section 5 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay. This is known as **doctrine of "sufficient cause" for condonation of delay**.

Section 5 provides that any appeal or any application, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

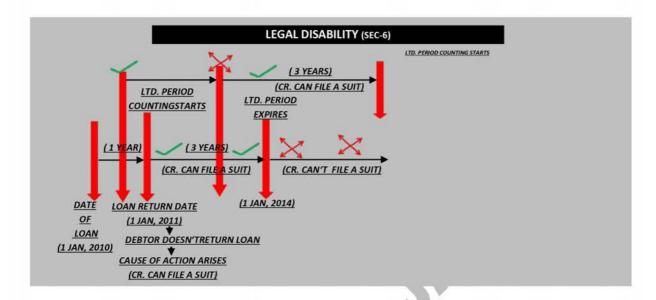
Thus, the Court may admit an application or appeal even after the expiry of the specified period of limitation if it is satisfied with the applicant or the appellant, as the case may be as to sufficient cause for not making it within time.

The term 'sufficient cause' has not been defined in the Limitation Act. It depends on the circumstances of each case. However, it must be a cause which is beyond the control of the party.

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EXCEPTION

The Section is not applicable:-

- (a) to applications made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 and
- (b) to suits.

It applies only to appeals or applications as specified therein. The **reason for non-applicability** of the Section to suits is that, the period of limitation allowed in most of the suits extends from 3 to 12 years whereas in appeals and application it does not exceed 6 months.

NKJ-CLASSROOM PRACTICE



Q. 1. Explain Doctrine of Sufficient Cause.

COMPUTATION OF PERIOD OF LIMITATION FOR PERSONS UNDER LEGAL DISABILITY

SECTION 6-7-8

Section 6 is an enabling section to enable persons under disability to exercise their legal rights within a certain time. Section 7 supplements Section 6. Section 8 controls these sections, which serves as an exception to Sections 6 and 7. Section 6, 7, 8 doesn't apply on appeals.

> SECTION-6

In case of persons suffering from some **legal disability**, the period of limitation **runs** from the **date of cessation of disability**.

Where the prescribed period of limitation expires before the cessation of disability, for instance, before the attainment of majority, the minor will be entitled to a fresh period of limitation from the attainment of his majority.

In case of person with several disabilities, the period of limitation will starts from the date of cessation of all disabilities.

> SECTION-7

Section 7 is only an application of the principle in Section 6 to a **joint-right** inherited by a group of persons wherein some or all of whom are under the disability.

The disability of all except one does not prevent the running of time, if the discharge can be given without the concurrence of the other. Otherwise the time will run only when the disability is removed.

> SECTION-8

Section 8 imposes a limitation on concession provided under Sections 6 and 7 to a person under disability up to a maximum of **three years** after the cessation of disability.

NKJ-CLASSROOM PRACTICE



Q. 1. Manoj died on 3rd August, 2016 before a right to institute a suit accrued, leaving behind a minor son of the age of 15 years. Decide the time from where the period of limitation shall be calculated under Limitation Act, 1963. [Dec. 2018, 4 Marks]

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CONTINUOUS RUNNING OF TIME

SECTION 9

According to Section 9 of the Act where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it.

The applicability of this Section is limited to suits and applications only and does not apply to appeals.

NKJ-CLASSROOM PRACTICE



Q. 1. "Period of Limitation once starts cannot be stopped" Comment.

EXCLUSION OF CERTAIN DAYS OR TIME IN LEGAL PROCEEDINGS/ COMPUTATION OF PERIOD OF LIMITATION SECTION 12

Sections 12 to 24 deals with computation of period of limitation and Section 12 prescribes the time which shall be excluded in computing the time of limitation in legal proceedings.

- (1) Computation of period of limitation for a suit, appeal or application:
 - In case of any suit, appeal or application, the period of limitation is to be computed exclusive of the day on which the time begins to run.
- (2) Computation of period of limitation for an appeal or an application:
 - (i) The day on which the judgement complained of was pronounced.
 - (ii) The time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
- (3) Computation of Limitation period for an application to set aside an award:

The time required for obtaining a copy of the award shall be excluded.

EFFECT OF ACKNOWLEDGEMENT ON THE PERIOD OF LIMITATION

SECTION 18

Section 18 of the Act deals with the effect of acknowledgement of liability in respect of property or right on the period of limitation.

A fresh period of limitation shall be computed from the time when the acknowledgement was signed or made.

The following requirements should be present for a valid acknowledgement <u>as</u> <u>per Section 18:-</u>

- (a) There must be an admission or acknowledgement;
- **(b)** Such acknowledgement must be in respect of any property or right;
- (c) It must be made before the expiry of period of limitation;
- (d) It must be in writing and signed by the party against whom such property or right is claimed.

NKJ-CLASSROOM PRACTICE



Q. 1. What is the effect of acknowledgment on the period of limitation? Discuss.

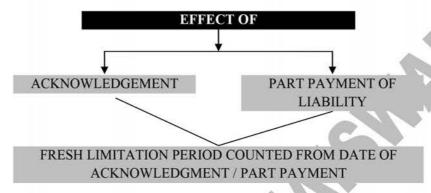
[June. 2019, 4 Marks]

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EFFECT OF PAYMENT (OR PART PAYMENT) OF DEBT OR OF INTEREST ON THE PERIOD OF LIMITATION

SECTION 19

As per Section 19 of the Act where payment on account of a debt or of interest is made **before the expiration** of the prescribed limitation period by the person liable to pay the debt or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.



NKJ-CLASSROOM PRACTICE



Q. 1. Write a short note on effect of Payment on Account of Debt or of Interest on Legacy.

CLASSIFICATION OF PERIOD OF LIMITATION

Depending upon the duration, period of limitation for different purposes may be classified as follows:

1. PERIOD OF 30 YEARS

The maximum period of limitation prescribed by the Limitation Act is 30 years and it is provided only for three kinds of suits:-

- (i) Suits by mortgagors for the redemption or recovery of possession of immovable property mortgaged;
- (ii) Suits by mortgagee for foreclosure;
- (iii) Suits by or on behalf of the Central Government or any State Government including the State of Jammu and Kashmir.

NKJ-CLASSROOM PRACTICE



Q. 1. In which kind of suits maximum period of 30 years prescribed under the Limitation Act, 1963?

2. PERIOD OF 12 YEARS

A period of 12 years is prescribed as a limitation period for various kinds of suits relating to immovable property, trusts and endowments.

3. PERIOD OF 3 YEARS

A period of three years has been prescribed for suits relating to accounts, contracts, declaratory suits, suits relating to decrees and instruments and suits relating to movable property.



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4. PERIOD VARYING BETWEEN 1 TO 3 YEARS

The period from 1 to 3 years has been prescribed for suits relating to torts and other miscellaneous matters and suits for which no period of limitation is provided in the schedule to the Act.

5. PERIOD IN DAYS VARYING BETWEEN 90 TO 10 DAYS

The minimum period of limitation of 10 days is prescribed for application for leave to appear and defend a suit under summary procedure from the date of service of the summons.



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ADVANCE YOUR

YOUR KNOWLEDGE



What is sufficient cause and what is not may be explained by the following Judicial observations:

- 1. Wrong practice of High Court which misled the appellant or his counsel in not filing the appeal should be regarded as sufficient cause under Section 5;
- 2. In certain cases, mistake of counsel may be taken into consideration in condonation of delay. But such mistake must be *bona fide*;
- 3. Wrong advice given by advocate can give rise to sufficient cause in certain cases;
- 4. Mistake of law in establishing or exercising the right given by law may be considered as sufficient cause. However, ignorance of law is not excuse, nor the negligence of the party or the legal adviser constitutes a sufficient cause;
- 5. Imprisonment of the party or serious illness of the party may be considered for condonation of delay;
- **6.** Time taken for obtaining certified copies of the decree of the judgment necessary to accompany the appeal or application was considered for condoning the delay.
- Non-availability of the file of the case to the State counsel or Panel lawyer is no ground for condonation of inordinate delay (Collector and Authorised Chief Settlement Commissioner v. Darshan Singh and others, AIR 1999 Raj. 84).
- 8. Ailment of father during which period the defendant was looking after him has been held to be a sufficient and genuine cause (Mahendra Yadav v. Ratna Devi & others, AIR 2006 (NOC) 339 Pat).

The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of sufficient cause' delightfully undefined thereby leaving to the court a well-intended discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such. [R B Ramlingam v. R B Bhvansewari (2009) 2 SCC 689].

The *quasi-judicial* tribunals, labour courts or executive authorities have no power to extend the period under this Section.

WRITS UNDER THE CONSTITUTION

The State cannot place any hindrance by prescribing by prescribing a period if limitation in the way of an aggrieved person seeking to approach the Supreme Court of India for enforcement of their fundamental rights.

The limitation Act does not in terms apply to a proceeding under Article 32 or Article 226 of the Constitution. But the courts act on the analogy of the statute of limitation and refuse relief if the delay is more than the statutory period of limitation.

Where the remedy in a writ petition corresponds to a remedy in an ordinary suit and latter remedy is subject to bar of a statute of limitation the Court in its writ jurisdiction adopts in the statute its own rule of procedure and in absence of special circumstances imposes the same limitation in the writ Jurisdiction.

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Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-

CHAPTER INDIAN EVIDENCE ACT, 1872 Covering-Bare Act Evidence-definition Who can be a witness Relevancy of facts connected with the fact to proved Admissions Confessions Difference Between admissions and confessions Motive Preparation and Conduct Facts of Which evidence Cannot be Given Oral evidence to be direct evidence Opinion of third persons when relevant Documentary Evidence Evidence in respect of certain documents Provisions of evidence relating to Electronic Records Circumstantial Evidence Estoppels Self Test Questions **EXPECTED MARKS COVERAGE**

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- From Bare Act... -

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REGD. NO. D. L.-33004/99

The Gazette of India

THE INDIAN EVIDENCE ACT, 1872

ACT NO. 1 OF 18721

[15th March, 1872.]

Preamble.— WHEREAS it is expedient to consolidate, define and amend the law of Evidence; It is hereby enacted as follows:—

PART I

RELEVANCY OF FACTS

CHAPTER I. - PRELIMINARY

1. Short title. — This Act may be called the Indian Evidence Act, 1872.

Extent. — It extends to the whole of India ²[except the State of Jammu and Kashmir] and applies to all judicial proceedings in or before any Court, including Courts-martial, ³[other than Courts-martial convened under the Army Act (44 & 45 Vict., c. 58)] ⁴[the Naval Discipline [29 & 30 Vict., 109] Act or ⁵*** the Indian Navy (Discipline) Act, 1934 (34 of 1934),] ⁶[or the Air Force Act (7 Geo. 5, c. 51)] but not to affidavits⁷ presented to any Court or officer, nor to proceedings before an arbitrator;

Commencement of Act.—And it shall come into force on the first day of September, 1872.

- 2. [Repeal of enactments.] Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Schedule.
- Interpretation-clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—
 - "Court".—"Court" includes all Judges⁸ and Magistrates⁹ and all persons, except arbitrators, legally authorized to take evidence.
 - "Fact".— "Fact" means and includes (1) anything, state of things, or relation of things, capable of being perceived by the senses;
 - (2) any mental condition of which any person is conscious.

Illustrations

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
 - (e) That a man has a certain reputation, is a fact.

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INDIAN EVIDENCE ACT, 1872

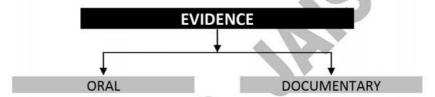
The Indian Evidence Act, 1872 is an Act to consolidate, define and amend the law of Evidence. The law of Evidence may be defined as a system of rules for ascertaining controverted questions of fact in judicial inquiries. In general the rules of evidence are same in civil and criminal proceedings.

EVIDENCE- DEFINITION

SECTION-3

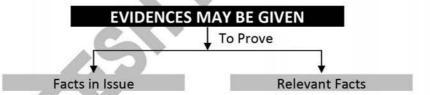
"Evidence" means and includes:-

- (a) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called **oral evidence**;
- **(b)** all documents (including electronic records) produced for the inspection of the Court; such documents are called **documentary evidence**.



FACTS

Evidence may be given of facts in issue and relevant facts



> FACTS IN ISSUE

"Facts in issue" means and includes-any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings.

> RELEVANT FACT

Where in a case direct evidence is not available to prove a fact in issue then it may be proved by any circumstantial evidence and in such a case every piece of circumstantial evidence would be an instance of a "relevant fact".

WHO CAN BE A WITNESS

Every person is a competent witness if he/she:-

- (a) Understand the questions posed to him.
- **(b)** Can give logical and rational answer to those questions.

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RELEVANCY OF FACTS CONNECTED WITH THE FACT TO BE PROVED

DOCTRINE OF RES GESTAE

The term Res Gestae means surrounding or accompanying circumstances which are inseparable from the facts in issue and are necessary of explain the nature of the main act. They includes Acts or declaration accompanying or explaining the transaction or facts in issue. The area of events covered by Res Gestae depends upon circumstances of each case.

Illustration

A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

Relevancy of Facts Forming Part of the Same Transaction

Section 6 lays down the requirement that the inter-connection between facts in issue and other connected facts must be such that they form part of the same transaction. A transaction may be defined as a group of facts so connected together so as to be referred to by a single legal name as a crime or a wrong or any other subject of enquiry which may be in issue.

Rattan v. Queen A man was prosecuted for murder of his wife. His defence was that the bullet went off accidentally. There was evidence to the extent that the deceased, before her death, telephoned to telephone operator and said 'Get the police please". Before the operator could have connected the call to the police, the lady had given the address and the call suddenly ended. Thereafter the police came to the house and found the dead body of the lady. Her call and the words she had spoken to the telephone operator were held to be relevant as the part of the same transaction.

Inconsistent Facts

Section 11 provides that the facts, which ordinarily have nothing to do with the facts of the case, become relevant because of the reason that they are inconsistent with the facts in issue.

ADMISSIONS

An admission is a statement, oral or documentary which suggests as to any fact in issue or relevant fact. Admission may be verbal or documentary.

Admission means conceding something against the person making the admission. In other words admissions must be self-harming.

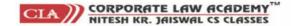
CONFESSIONS

The Act does not define a confession but includes in it admissions of which it is a species. There can be an admission either in a civil or a criminal proceedings, whereas there can be a confession only in criminal proceedings.

Thus confessions are special form of admissions. Whereas every confession must be an admission but every admission may not amount to a confession.

Important points;-

- Confession must be free and made voluntarily.
- A confession is irrelevant if it is made to:-



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- (a) to a Police Officer; or
- (b) to any one at a time when the accused is in the custody of a Police Officer and **no Magistrate is** present.
- The confession is an evidence against its maker and can be against another person who is being jointly tried with him for an offence.

CLASSIFICATION OF CONFESSIONS

- (a) Judicial confessions are those made before a Court or recorded by a Magistrate.
- **(b)** Extra-judicial confessions- are those which are made either to the police or to any person other than Judges and Magistrates as such.

NKJ-CLASSROOM PRACTICE



Q. 1. Confessions caused by inducement, threat or promise are irrelevant. Explain briefly.

[June. 2019, 4 Marks]

DIFFERENCE BETWEEN ADMISSIONS AND CONFESSIONS

ADMISSIONS	CONFESSIONS
Admission can be either in civil or criminal proceedings.	Confessions can only be in criminal proceedings.
Admission need not to be voluntary always.	Confession need to be voluntary always.
Admission can be made by anybody	Confession can be made only by accused.
Admission can't bind co-accused	Confession can bind co-accused
Every admission may not amount to a confession	Every confession must be an admission

NKJ-CLASSROOM PRACTICE Q. 1. Distinguish between 'Admission' and 'Confession' under Indian Evidence Act, 1872. [Dec. 2018, 4 Marks] Q. 1. Write a short note on Admissions and Confession.

MOTIVE PREPARATION AND CONDUCT

SECTION 8

Every crime can be divided into the following three stages i.e., Motive, Preparation and Conduct.

1. Motive

Motive is that part which induces or moves a person to act in a certain way. It is the emotion supposed to have led to the act. There can be no action without a motive, which must exist for every voluntary act.

The mere existence of the motive is by itself not an incriminating circumstance. In **Tara Devi v. State of U.P.**, it was held that motive of a woman to get rid of her husband was not enough to convict particularly when her paramour was acquitted.

2. Preparation

Preparation means the means and measures necessary for the commission of any office.

3. Conduct

Conduct means attempt to commit the crime and actual commission of the crime.

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FACTS OF WHICH EVIDENCE CANNOT BE GIVEN

Following are some facts of which evidence cannot be given though they are relevant;-

- (a) <u>Communication between the husband and the wife during marriage</u> -is privileged and its disclosure cannot be enforced. This provision is based on the principle of domestic peace and confidence between the spouses.
- **(b)** Evidence as to affairs of State- no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

NKJ-CLASSROOM PRACTICE



- Q. 1. The 'Privileged Communications' are based on Public Policy and a witness cannot be compelled to answer the same during the evidence in the Court or before any other authority. Explain in brief.

 [June. 2019, 5 Marks]
- (c) <u>Professional communications-professional communications</u> between a legal adviser and a client are protected from disclosure. a legal adviser cannot be allowed without the express consent of his client to disclose oral or documentary communications passing between them in professional confidence.

ORAL EVIDENCE TO BE DIRECT EVIDENCE

All facts except contents of documents may be proved by **oral** evidence which **must** in all cases be "direct" and should **not** be **hearsay or indirect**.

Thus, the two broad rules regarding oral evidence are:-

- (a) all facts except the contents of documents may be proved by oral evidence;
- (b) oral evidence must in all cases be "direct".

The direct evidence means the evidence of the person who perceived the fact to which he deposes.

OPINION OF THIRD PERSONS WHEN RELEVANT

The general rule is that opinion of a witness on a question whether of fact or law, is irrelevant. However, there are some exceptions to this general rule. These are:-

- (a) Opinions of experts- when the court has to form an opinion upon a point of foreign law or of science or art, or as to identify handwriting or finger impression, the opinions upon that point of persons specially skilled in such are relevant.
- **(b)** Opinion as to the handwriting of a person if the person giving the opinion is acquainted with the handwriting of the person in question;
- (c) Opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate;

NKJ-CLASSROOM PRACTICE



Q. 1. Opinion of experts under section 45 of the Indian Evidence Act, 1872.

[June. 2019, 4 Marks]

Q. 1. State the cases in which opinion of expert is relevant.

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DOCUMENTARY EVIDENCE

Documents produced for the inspection of the Court is called Documentary Evidence. Section 60 provides that the contents of a document must be proved either by primary or by secondary evidence.

<u>Primary Evidence</u>: 'Primary evidence' means the very document itself, not a copy of it. The provision of primary evidence is based on the 'Best Evidence' principle, i.e., if there is better evidence available, then that must be provided. If the person capable of providing superior evidence supplies an inferior one, it creates an unfavourable stance against him. (Section 62).

<u>Secondary Evidence:</u> 'Secondary Evidence' means certified or compared copies of, or counterparts of, or oral accounts of documents. (Section 63)

According to Section 65 of the Act, where primary evidence can be provided, secondary evidence should not be used. It should only be given where the original document is not available because it has been lost or destroyed, or it is otherwise unavailable because it cannot easily by moved because of bulk, or because it is under the control of some public authority's control.

NKJ-CLASSROOM PRACTICE



Q. 1. What is 'documentary evidence' under Indian Evidence Act, 1872? Explain briefly.

[Dec. 2018, 4 Marks]



O. 1. Differentiate between Primary Evidence and Secondary Evidence.

EVIDENCE IN RESPECT OF CERTAIN DOCUMENTS

As per Section 93 of the Indian Evidence Act, 1872 when the language used in the document is, on its face, defective or ambiguous, evidence may not be given of facts which would show its meaning or supply its defects.

For ex. Amar agrees in writing to sell a horse to Bijoy for ₹2,000 or ₹3,000 Evidence cannot be given to show which price was to be given?

SEC. 97 provides that where language of a document applies partly to one sets of facts or partly to another sets of facts, but doesn't apply accurately to either sets of facts, then evidence can be given to which fact the document intended to apply

For ex. A agree to sell to my land at Delhi in possession of Y. A has land at Delhi but not in the possession of y, and he has land in possession of y but it is situated at Mumbai. Evidence may be given of facts showing which land he meant to sell.

PROVISIONS OF EVIDEENCE RELATING TO ELECTRONIC RECORDS

Section 65A of the Indian Evidence Act, 1872 provides that the contents of electronic records may be proved in accordance with the provisions of Section 65B.

UNDER Section 65B any information contained an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media produced by computer shall be deemed to be a document

For ex. Mr. A borrowed ₹1,00,000 from Mr. B, which was recorded on a printed paper and stored in computer as the computer output. After some time, Mr. B demanded money from Mr. A, which the latter refused to pay. Mr. B filed a suit for recovery of money from Mr. A on the basis of computer records. The Court will treat it as sufficient proof for granting relief of Mr. B against Mr. A.

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CIRCUMSTANTIAL EVIDENCE

Evidence that is drawn not from direct observations of a fact at issue but from events or circumstances that surrounds it is called circumstantial evidence.

For example- from the evidence that the person was seen running away from the place of crime, a judge may infer that the person may have committed the crime.

Important Rules regarding circumstantial evidence:-

- (a) The circumstances, from which the conclusion is to be drawn, should be fully established or proved.
- **(b)** The circumstances should be of conclusive nature.
- (c) The circumstances should exclude the possibility of guilt of any person other than that of the accused.

NKJ-CLASSROOM PRACTICE



Q. 1. What is oral, documentary and circumstantial evidence?

ESTOPPEL

The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. (Section 115)

To involve the doctrine of estoppel, following three conditions must be satisfied :-

- (a) A representation by a person to another;
- (b) The other person shall have acted upon the said representation; and
- (c) Such action shall have been detrimental to the interests of the person to whom the representation has been made.

Different kinds of Estoppel:

- (a) Estoppel by attestation
- (b) Estoppel by contract
- (c) Constructive estoppel
- (d) Estoppel by election
- (e) Equitable estoppel
- (f) Estoppel by negligence
- (g) Estoppel by silence

NKJ-CLASSROOM PRACTICE



Q. 1. Explain in brief 'Principle of Estoppel' under Indian Evidence Act, 1872.

[Dec. 2018, 4 Marks]



Q. 1. Explain in Brief Principal of Estoppel.



ADVANCE

YOUR

KNOWLEDGE



Classification of relevant facts:

Principles of Sections relating to relevancy of facts are mere rules of logic. Relevant facts may be classified in the following form:

- (a) facts connected with the facts to be proved; (Sections 6 to 16)
- (b) statement about the facts to be proved e.g. admission, confession; (Sections 17 to 31)
- (c) statements by persons who cannot be called as witnesses; (Sections 32 to 33)
- (d) statements made under special circumstances; (Sections 34 to 38)
- (e) how much of a statement is to be proved; (Section 39)
- (f) judgements of Courts of justice, when relevant; (Sections 40 to 44)
- (g) opinions of third persons, when relevant; (Sections 45 to 51)
- (h) character of parties in Civil cases and of the accussed in criminal cases. (Sections 52 to 55)

Two fundamental rules on which the law of evidence is based are: (a) no facts other than those having rational probative value should be admitted in evidence and, (b) all facts having rational probative value are admissible in evidence unless excluded by a positive rule of paramount importance.

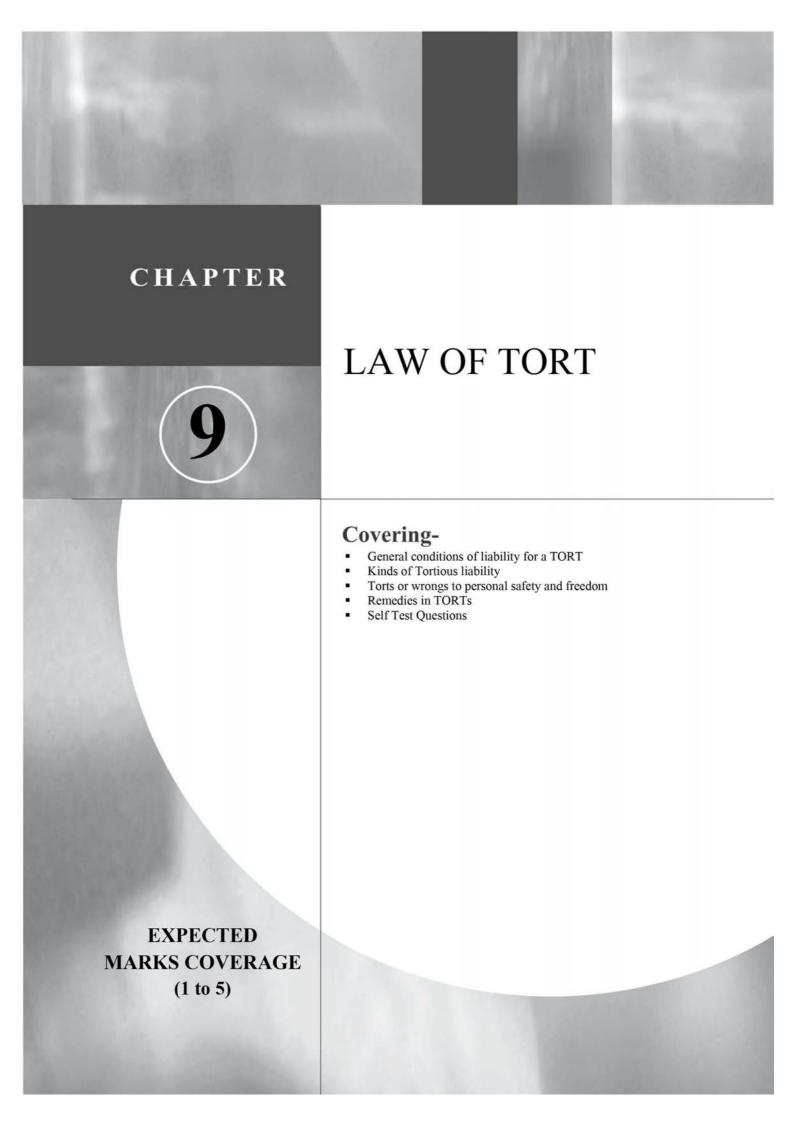


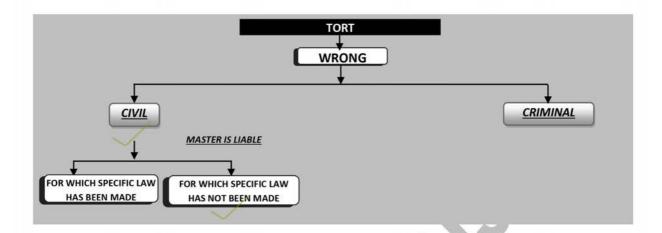


Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-





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LAW OF TORTS

The term 'tort' is a French equivalent of English word 'wrong'. The word tort is derived from Latin language from the word *Tortum*. Thus, simply stated 'tort' means wrong. But every wrong or wrongful act is not a tort. Tort is really a kind of civil wrong as opposed to criminal wrong.

Wrongs, in law, are either public or private. <u>Public wrongs</u> are the violations of 'public law and hence amount to be offences against the State, while <u>Private wrongs</u> are the breaches of private law, i.e., wrongs against individuals.

Section 2(m) of the Limitation Act, 1963, states: "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust."

Two important elements of torts:-

- (i) that a tort is a species of civil injury of wrong as opposed to a criminal wrong, and
- (ii) that every civil wrong is not a tort.

GENERAL CONDITIONS OF LIABILITY FOR A TORT

In general, a tort consists of some act or omission done by the defendant (tortfeasor) whereby he has without just cause or excuse caused some harm to plaintiff.

To constitute a tort, there must be:-

- (a) a wrongful act or omission of the defendant;
- (b) the wrongful act must result in causing legal damage to another; and
- (c) the wrongful act must be of such a nature as to give rise to a legal remedy.



1. WRONGFUL ACT

The act complained of, should under the circumstances, be legally wrongful as regards the party complaining. Every person whose legal rights, e.g., right of reputation, right of bodily safety and freedom, and right to property are violated without legal excuse, has a right of action against the person who violated them, whether loss results from such violation or not.

2. LEGAL DAMAGES

It is not every damage that is a damage in the eye of the law. It must be a damage which the law recognizes as such. In other words, there should be legal injury or invasion of the legal right.

Two maxims, namely: (i) <u>Damnum sine injuria</u>, and (ii) injuria sine damnum, explain this proposition.

> DAMNUM SINE INJURIA

Damnum means harm, loss or damage in respect of money, comfort, health, etc. **Injuria** means infringement of a right conferred by law on the plaintiff.

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The maxim means that in a given case, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts. Therefore, causing damage, however substantial to another person is not actionable in law unless there is also a violation of a legal right of the plaintiff.

Common **examples** are, where the damage results from an act done in the exercise of legal rights. Thus, if I own a shop and you open a shop in the neighbourhood, as a result of which I lose some customers and my profits fall off, I cannot sue you for the lose in profits, because you are exercising your legal right. [Gloucester Grammer School case,)

> INJURIA SINE DAMNUM

It means injury without damage, i.e., where there is no damage resulted yet it is an injury or wrong in tort, i.e. where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort.

Injuria sine domno covers such cases and action lies when the right is violated even though no damage has occurred. Thus the **act of trespassing** upon another's land is actionable even though it has not caused the plaintiff even the slightest harm.

NKJ-CLASSROOM PRACTICE



Q. 1. Distinguish between 'Damnum Sine Injuria' and 'Injuria Sine Damnum' under the law relating to Torts.

[Dec. 2018, 4 Marks]

3. LEGAL REMEDY

The third condition of liability for a tort is legal remedy. This means that to constitute a tort, the wrongful act must come under the law. The main remedy for a tort is an action for unliquidated damages, although some other remedies, e.g., injunction, may be obtained in addition to damages or specific restitution

Self-help is a remedy of which the injured party can avail himself without going to a law court. It does not apply to all torts and perhaps the best example of these to which it does apply is trespass to land.

For example, if "A" finds a drunken stranger in his room who has no business to be there in it, and is thus a trespass, he (A) is entitled to get rid of him, if possible without force but if that be not possible with such force as the circumstances of the case may warrant.

NKJ-CLASSROOM PRACTICE



- Q. 1. What are the general conditions of liability for a tort?
- Q. 2. Distinguish between Damnum Sine Injuria and Injuria Sine Damnum.

KINDS OF TORTIOUS LIABILITY

The following types of tortuous liability may be noted:

1. STRICT OR ABSOLUTE LIABILITY

In some torts, the defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant's part. In other words, the defendant is held liable without fault.

Rule in Rylands v. Fletcher

The rule in <u>Rylands v. Flethcer</u> is that a man acts at his peril and is the insurer of the safety of his neighbour against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants.

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It was held in that case that: "If a person brings or accumulates on his land anything which, if it should escape may cause damage to his neighbours, he does so at his own peril. If it does not escape and cause damage he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent damage."

Exceptions to the Rule of Strict Liability

The following exceptions to the rule of strict liability have been introduced in course of time, some of them being inherent in the judgment itself in *Ryland* v. *Fletcher*:

(i) Damage due to Natural Use of the Land

In *Ryland* v. *Fletcher* water collected in the reservoir in such large quantity, was held to be nonnatural use of land. Keeping water for ordinary domestic purpose is 'natural use'. Things not essentially dangerous which is not unusual for a person to have on his own land, such as water pipe installations in buildings, the working of mines and minerals on land, the lighting of fire in a fire-place of a house, and necessary wiring for supplying electric light, fall under the category of "natural use" of land.

(ii) Consent of the plaintiff

Where the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, the liability under the rule in *Ryland* v. *Flethcher* does not arise. Such a consent is implied where the source of danger is for the 'common benefit' of both the plaintiff and the defendant.

(iii) Act of Third Party

If the harm has been caused due to the act of a stranger, who is neither defendant's servant nor agent nor the defendant has any control over him, the defendant will not be liable. Thus, in *Box* v. *Jubh* (1879) 4 Ex. D. 76, the overflow from the defendant's reservoir was caused by the blocking of a drain by stranger, the defendant was held not liable. But if the act of the stranger, is or can be foreseen by the defendant and the damage can be prevented, the defendant must, by due care prevent the damage. Failure on his part to avoid such damage will make him liable.

(iv) Statutory Authority

Sometimes, public bodies storing water, gas, electricity and the like are by statute, exempted from liability so long as they have taken reasonable care.

Thus, in *Green* v. *Chelzea Water Works Co.* (1894) 70 L.T. 547 the defendant company had a statutory duty to maintain continuous supply of water. A main belonging to the company burst without any fault on its part as a consequence of which plaintiff's premises were flooded with water. It was held that the company was not liable as the company was engaged in performing a statutory duty.

(v) Act of God

If an escape is caused, through natural causes and without human intervention circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility, there is then said to exist the defence of Act of God.

(vi) Escape due to plaintiff's own Default

Damage by escape due to the plaintiff's own default was considered to be good defence in *Rylands* v. *Fletcher* itself. Also, if the plaintiff suffers damage by his own intrusion into the defendant's property, he cannot complain for the damage so caused.

NKJ-CLASSROOM PRACTICE

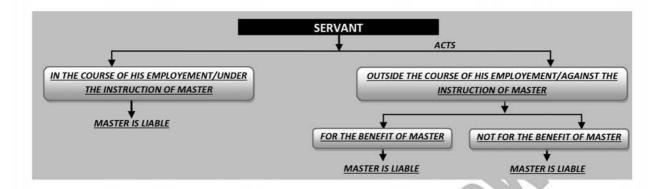


Q. 1. Discuss the 'Rule of Strict Liability' under the Law of Torts. [Dec. 2018, 5 Marks]

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2. ABSOLUTE LIABILITY

The Supreme Court has discussed the applicability of the rule of Reylands v. Fletcher in the case of M.C. Mehta v. Union of India

The Supreme Court intended that the requirement of non-natural use or the aspect of escape of a dangerous substance, commonly regarded as essential for liability under Rylands v. Fletcher, need not be proved in India.

This means that principle of Absolute liability is operative without any exceptions, it does not admit defences of reasonable and due care, unlike strict liability. Thus when an enterprise is engaged in hazardous activity and harm results, it is absolutely liable, effectively tightening of the law.

3. VICARIOUS LIABILITY

Normally, the tort feasor is liable for his tort. But in some cases a person may be held liable for the tort committed by another. A master is vicariously liable for the tort of his servant, principal for the tort of his agent and partners for the tort of a partner. This is known as vicarious liability in tort.

The common examples of such a liability are:-

> PRINCIPAL AND AGENT

When an agent commits a tort in the ordinary course of his duties as an agent, the principal is liable for the same.

In Lloyd v. Grace, Smith & Co., the managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud, against a lady client by fraudulently inducing her to sign documents transferring her property to him. He had done so without the knowledge of his principal who was liable because the fraud was committed in the course of employment.

> PARTNERS

For the tort committed by a partner in the ordinary course of the business of the firm, all the other partners are liable therefore to the same extent as the guilty partner. The liability of the partners is joint and several.

In Hamlyn v. Houston & Co. one of the two partners bribed the plaintiff's clerk and induced him to divulge secrets relating to his employer's business. It was held that both the partners were liable for the tort committed by only one of them.

MASTER AND SERVANT

A master is liable for the tort committed by his servant while acting in the course of his **employment**. The servant, of course, is also liable; their liability is joint and several.

A master is liable not only for the acts which have been committed by the servant, but also for acts done by him which are not specifically authorized, in the course of his employment. The master is liable even though the servant acted against the express instructions, for the benefit of his master, so long as the servant acted in the course of employment.

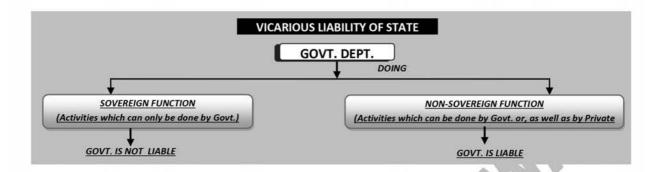
> EMPLOYER AND INDEPENDENT CONTRACTOR

An independent contractor is one who works for another but who is not controlled by that other in his conduct in the performance of that work.

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The employer is not liable merely because an independent contractor commits a tort in the course of his employment; the employer is liable **only if he himself is deemed to have committed a tort**. This may happen in one of the following three ways:

- (a) When employer authorizes him to commit a tort.
- (b) In torts of strict liability
- (c) Negligence of independent contractor

An employer is not liable for the tort of an independent contractor if he has taken care in the appointment of the contractor. In <u>Philips v. Britania Hygienic Laundry Co.</u>, the owner of lorry was held not liable when a third-party's vehicle was damaged, in consequence of the negligent repair of his lorry by a garage proprietor.

NKJ-CLASSROOM PRACTICE



Q. 1. Swaraj an employer of ABC Company Ltd., appointed Rakesh as an independent contractor. Discuss under what circumstances Swaraj would be liable for the fault of Rakesh.

[Dec. 2018, 5 Marks]

> VICARIOUS LIABILITY OF THE STATE

When a case of Government liability in tort comes before the courts, the question is whether the particular Government activity, which gave rise to the tort, was the sovereign function or non-sovereign function.

It is a sovereign function it could claim immunity from the tortuous liability, otherwise not. Generally, the activities of commercial nature or those which can be carried out by the private individual are termed as non-sovereign functions.

NKJ-CLASSROOM PRACTICE



Q. 1. Discuss the vicarious or tortuous liability of state for the act of his servant. Refer relevant Judgments. [June. 2019, 4 Marks]



- Q. 1. Discuss the types of tortuous liability.
- Q. 2. State the conditions where employer is liable for the acts of Independent Contractor.

TORTS OR WRONGS TO PERSONAL SAFETY AND FREEDOM

An action for damages lies in the following kinds of wrongs which are styled as injuries to the person of an individual:

> BATTERY

Any **direct application of force** to the person of another individual without his consent or lawful justification is a wrong of battery.

To constitute a tort of battery two things are necessary:-

- (i) use of force, however, trivial it may be without the plaintiff's consent, and
- (ii) without any lawful justification.

Even though the force used is very **trivial** and does not cause any harm, the wrong is committed. Thus, even to touch a person in anger or without any lawful justification is battery.

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> ASSAULT

Assault is any act of the defendant which directly causes the plaintiff immediately to **apprehend** a contact with his person. Thus, when the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against him, the tort of assault is committed. The law of assault is substantially the same as that of battery except that apprehension of contact, not the contact itself has to be established.

Usually when there is a battery, there will also be assault, but not for instance, when a person is hit from behind.

> BODILY HARM

A wilful act (or statement) of defendant, calculated to cause physical harm to the plaintiff and in fact causing physical harm to him, is a tort.

> FALSE IMPRISONMENT

It means unauthorized restraint on a person's body. What happens in false imprisonment is that a person is confined within certain limits so that he cannot move about and so his personal liberty is infringed. It is a serious violation of a person's right and liberty whether being confined within the four walls or by being prevented from leaving place where he is. If a man is restrained, by a threat of force from leaving his own house or an open field there is false imprisonment.

> MALICIOUS PROSECUTION

Malicious prosecution consists in instigating judicial proceedings (usually criminal) against another, maliciously and without reasonable and probable cause, which terminate in favour of that other and which results in damage to his reputation, personal freedom or property.

The following are the essential elements of this tort:-

- (a) There must have been a prosecution of the plaintiff by the defendant.
- **(b)** There must have been want of reasonable and probable cause for that prosecution.
- (c) The defendant must have acted maliciously (i.e. with an improper motive and not to further the end of justice).
- (d) The plaintiff must have suffered damages as a result of the prosecution.
- (e) The prosecution must have terminated in favour of the plaintiff.

NERVOUS SHOCK

It provides relief when a person may get physical injury not by an impact, e.g., by stick, bullet or sword but merely by the nervous shock through what he has seen or heard. Causing of nervous shock itself is not enough to make it an actionable tort, some injury or illness must take place as a result of the emotional disturbance, fear or sorrow.

> DEFAMATION

Defamation is an attack on the reputation of a person.

"Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally; or which tends to make them shun or avoid that person."

Defamation may be classified into two heads: Libel and Slander.

<u>Libel-</u> is a representation made in some **permanent form**, e.g. written words, pictures, cinema films, effigy, statue etc.

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Slander- is the publication of a defamatory statement in a transient form; statement of temporary nature such as spoken words, or gestures.

Defamation is tort as well as a crime in India.

NKJ-CLASSROOM PRACTICE



- Q. 1. Write a short note on:
 - (a) Battery
 - (b) Assault
 - (c) Malicious Prosecution

REMEDIES IN TORTS

1. <u>JUDICIAL REMEDIES</u>

Three types of judicial remedies are available to the plaintiff in an action for tort namely:-

- (i) Damages,
- (ii) Injunction,
- (iii) Specific Restitution of Property.

2. EXTRA JUDICIAL REMEDIES

Self Defence

It is lawful for any person to use reasonable forces to protect himself, or any other person against any unlawful use of force.

Prevention of Trespass

An occupier of land or any person with his authority may use reasonable force to prevent trespassers entering or to eject them but the force should be reasonable for the purpose.

Re-entry on Land

A person wrongfully disposed of land may retake possession of land if he can do so in a peaceful and reasonable manner.

NKJ-CLASSROOM PRACTICE



Q. 1. What remedies can be sought under the Law of Torts?

[Dec. 2018, 4 Marks]

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Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-

CHAPTER

10

CIVIL PROCEDURE CODE, 1908 (C.P.C)

Covering-

- Bare Act
- Scheme of the Code
- Decree, Order & Judgement
- Affidavit
- Place of Suing/ Filing of Suit (Territorial)
- Different Stages of a suit
- Rejoinder/ Replication
- Appearance of Parties
- Stay of Suit / Doctrine of RES SUB-JUDICE
- Doctrine of Res Judicata
- Distinguish between Res Subjudice and Res Judicata
- Set-Off, Counter-Claim and Equitable Set-Off
- Temporary Injunctions and Interlocutory Orders
- Appeals
- Suits by Against Minors
- Suits by Against Corporation
- Summary Procedure
- Self Test Questions

EXPECTED
MARKS COVERAGE
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रज़िस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



The Code Of Civil Procedure, 1908 (Act No. 5 of 1908)

An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; it is hereby enacted as follows:-

PART	SECTIONS	TITLE
	1-8	PRELIMINARY
Ī	9-35	SUITS IN GENERAL
11	36-74	EXECUTION
111	75-78	INCIDENTAL PROCEEDINGS
IV	79-88	SUITS IN PARTICULAR CASES
٧	89-93	SPECIAL PROCEEDINGS
VI	94-95	SUPPLEMENTAL PROCEEDINGS
VII	96-112	APPEALS
VIII	113-115	REFERENCE, REVIEW AND REVISION
IX	116-120	SPECIAL PROVISION RELATING TO THE HIGH COURTS NOT BEING THE COURT OF A JUDICIAL COMMISSIONER
X	121-131	RULES
XI	132-158	MISCELLANEOUS
THE FIRST S	CHEDULE	

PRELIMINARY

- 1. Short title, commencement and extent- (1) This Act may be cited as the Code of Civil Procedure, 1908.
- (2) It shall come into force on the first day of January, 1909.
- [2][(3) It extends to the whole of India except-
- (a) the State of Jammu and Kashmir;
- (b) the State of Nagaland and the tribal areas :

Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

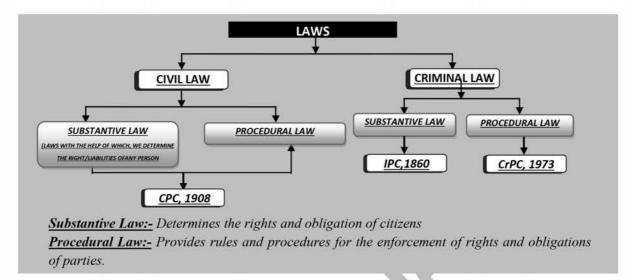
Explanation-In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972 were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution.

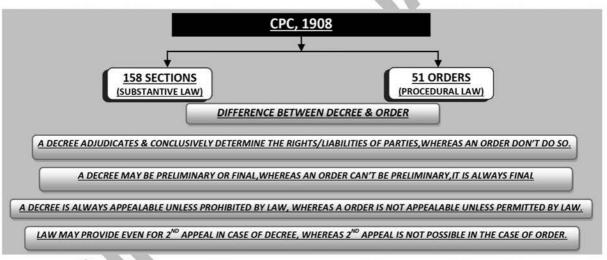
- (4) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union territory, as the case may be, relating to the application of this Code.]
- 2. Definitions- In this Act, unless there is anything repugnant in the subject or context,-
- (1) "Code" includes rules;
- (2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within 3 ** * * section 144, but shall not include-
- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

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CIVIL ROCEDURE CODE, 1908 (C.P.C)

The Civil Procedure Code consolidates and amends the law relating to the procedure of the Courts of Civil jurisdiction or civil suits.

The codes came into force as on 1st January, 1909. It extends to the whole of India.

SCHEME OF THE CODE

The Civil Procedure Code consists of two parts:-

- (a) First part contains 158 Sections.
- (b) Second part contains 51 Orders which in turn contains several rules.

The first part, containing substantive law, can be amended by the Parliament whereas the second part, containing procedural law, can be amended only by the High Courts.

DECREE, ORDER & JUDGEMENT

1. DECREE

"Decree" is defined in Section 2(2) of the Code as:-

- (a) the formal expression of an adjudication which,
- (b) conclusively determines the rights of the parties,
- (c) with regard to all or any of the matters in controversy.

But decree does not include:-

- (a) any adjudication from which an appeal lies as an appeal from an Order, or
- (b) any order of dismissal for default.

According to the explanation to the definition, a decree may be preliminary or final. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of.

2. ORDER

"Order" as defined in **Section 2(14)** of the Code means the formal expression of any decision of a Civil Court which is not a decree.

Generally no appeal lies from an order unless it is provided in law.

3. JUDGEMENT

"Judgement" as defined in Section 2(9) of the Civil Procedure Code means the statement given by the Judge on the grounds of a decree or order. Thus a judgement set out the grounds and reasons for the Judge to have arrived at the decision.

The decree is the operative part of a judgement. So the judgement is always followed by the decree.

NKJ-CLASSROOM PRACTICE

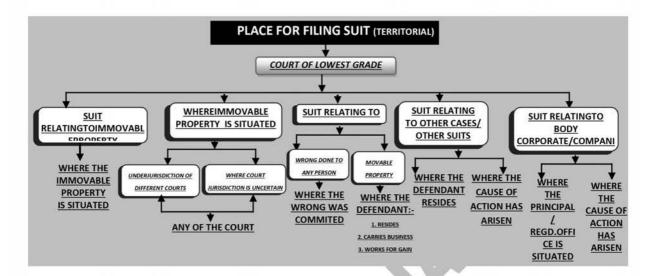


- Q. 1. Define following terms:
 - (i) Order
 - (ii) Judgement
 - (iii) Decree.

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AFFIDAVIT

An affidavit is a declaration on oath reduced to writing and sworn before that person who has authority to administer such an oath. It must be correct in a particulars, and as such furnishing false affidavit may result into serious consequences.

The following rules and principles should be kept in mind while drawing up an affidavit:

- (i) The person making the affidavit should be described with all his particulars
- (ii) It must be drawn up in the first person. Such person is known as deponent.
- (iii) It has to be sworn by the deponent in the presence of Oath Commissioner, Notary Public, Magistrate or any other Authority appointed by the Government for this purpose.

PLACE OF SUING/FILING OF SUIT (TERRITORIAL)

- Section 15 lays down that every suit shall be instituted in the <u>Court of the lowest grade</u> to try it.
 (Section 15)
- According to Section 16, suits relating to immovable property shall be instituted in the Court within
 the local limits of whose jurisdiction the property is situated. (Section 16).
- Where immovable property is situated within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction the property is situated. (Section 17).
- Where jurisdiction of Courts where immovable property is situated are uncertain, then <u>any of the said Courts</u> may proceed to entertain the suit. (Section 18).
- Suit for compensation for wrong done to the person or to movable property, may be instituted in
 any of the Courts within whose jurisdiction the <u>defendant resides</u>, or carries on <u>business</u>, or <u>personally</u>
 works for gain or where wrong was committed. (Section 19).
- Other suits (where Sections 15, 16, 18 and 19 doesn't apply) may be instituted in any of the Courts within whose jurisdiction the defendant resides, or cause of action has arisen. (Section 20).
- In the case of a body corporate or company suit may be instituted in any of the Courts within whose jurisdiction;-
 - (a) its principal office is situated, or
 - (b) Cause of action has arisen, *provided* it has a subordinate office (branch office) at such place. (Section 20).

CASE LAW



Angile Insulations	Where there might be two or more competent courts which could entertain a
y.	suit and if the parties to the contract agreed to vest jurisdiction in one such
Davy Ashmore India	court to try the dispute. Such an agreement would be valid
Ltd.	

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DIFFERENT STAGES OF A SUIT

Stage - 1	Institution of suit.	
Stage - 2	Issue and service of summons	
Stage - 3	Written statement	
Stage - 4	Discovery and inspection	_
Stage - 5	Appearance of parties	_
Stage - 6	Hearing of the suit	
Stage - 7	Judgment and decree	
Stage - 8	Execution	

REJOINDER / REPLICATION

- 1. Rejoinder or replication means a written statement/ reply of the plaintiff/petitioner by way of defense to pleas 'raised in the counter affidavit /written statement from the defendant /respondent.
- 2. Such statement are subsequent pleading as contemplated in Order VIII Rule 9 of the Civil Procedure Code. Under Rule9, leave of the court is essential before any party can present a further pleading after the written statement has been filed.
- 3. The only subsequent pleading that may be filed without the leave of the court is the written statement filed by way of defense to a set-off or a counter —claim.
- 4. While filing a rejoinder/ replication, a party cannot be allowed to fill up gaps or lacuna in his pleadings. Not again can a party introduce new material facts or different cause of action except in a case where subsequent to filing of the petition /suit, the petitioner/plaintiff discovers in his pleadings.

APPEARANCE OF PARTIES

ORDER 9

When a suit is failed by the plaintiff, a summon is issued to the defendant to appear on a particular date fixed by the court. The defendant is further directed through the summon to file the written statement (reply) to the suit filed by the plaintiff.

On the date of hearing by the court, both the plaintiff as well as the defendant are required to present themselves before the court. If the plaintiff doesn't appear on the date of the hearing, then the Court may either dismiss the suit for default or decide it ex- part on the merits of the case. If the defendant doesn't appear on the date of hearing, the court may either adjourn the hearing or decide it ex- part on the merits of the case.

The ex-parte order or the order relating to the dismissal of the suit can be aside provided the plaintiff or the defendant, as the case may be, gives a sufficient reason for his non-appearance on the date of hearing.

STAY OF SUIT/ DOCTRINE OF RES SUB-JUDICE SECTION 10

Section 10 provides that **no Court** shall **proceed** with the **trial** of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties where such suit is pending in the same or any other Court (**in India**) having jurisdiction to grant the relief claimed. However, the pendency of a suit in a foreign court does not preclude the Courts in India from trying a suit founded on the same cause of action.

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t.	(a) There must be two suits instituted at different times;
Essential conditions for stay of suits:-	(b) The matter in issue in the later suit should be directly and substantially in issue in the earlier suit;
	(c) Such suit should be between the same parties;
	(d) Such earlier suit is still pending either in the same Court or in any other competent Court.

A suit was instituted by the plaintiff company alleging infringement by the defendant company by using trade name of medicine and selling the same in wrapper and carton of identical design with same colour combination etc. as that of plaintiff company. A subsequent suit was instituted in different Court by the defendant company against the plaintiff company with same allegation. The Court held that subsequent suit should be stayed as simultaneous trial of the suits in different Courts might result in conflicting decisions as issue involved in two suits was totally identical (M/s. Wings Pharmaceuticals (P) Ltd. and another v. M/s. Swan Pharmaceuticals and others.)

NKJ-CLASSROOM PRACTICE



Q. 1. Discuss the doctrine of 'Res Sub Judice' under Section 10 of Civil Procedure Code, 1908. [Dec. 2018, 5 Marks]

DOCTRINE OF RES JUDICATA

SECTION 11

Section 11 of the Civil Procedure Code deals with the doctrine of Res Judicata which <u>imposes</u>, <u>bar or restraint on repetition of litigation of the same issues</u>. It **prevents two different decrees** on the **same subject**. The doctrine underlines the general principle that one shall **not be twice vexed** for the **same cause**. Section 11 says that once a *res* is *judicata*, it shall not be adjudged again.

This doctrine is based on the following grounds of public policy:-

- (a) There should be an end to litigation;
- (b) The parties to a suit should not be harassed to agitate the same issues or matters already decided.
- (c) The time of Court should not be wasted.

For the applicability of the principle of res judicata the following conditions are required to be satisfied:-

- (a) The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit.
- (b) The former suit has been decided.
- (c) Such former suit and the latter are between the same parties.
- (d) The court which determined the earlier suit must be competent to try the latter suit.

DISTINGUISH BETWEEN RES SUBJUDICE AND RES JUDICATA

The doctrine of res Sub Judice bars the trial of a suit in which the matter directly or substantially is pending adjudication in a previous suit.

On the other hand, the, doctrine of res Judicator bars the trial of a suit of an issue in which the manner directly and substantially in issue has already been adjudicated upon in a previous suit between the same parties under the same title.



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NKJ-CLASSROOM PRACTICE



Q. 1. What is res judicata and stay of suits?

SET-OFF, COUNTER-CLAIM AND EQUITABLE SET-OFF

1. SET-OFF

Order 8, deals with set-off which is a reciprocal acquittal of debts between the plaintiff and defendant. It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant as a counter claim.

where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, the defendant may, present a written statement containing the particulars of the debt sought to be set-off.

2. COUNTER-CLAIM

According to Order 8, Rule 6 A Counter-claim means something claimed by other party against the set-off made by the first party. A defendant in a suit may, in addition to his right of pleading a set-off, set up by way of counter-claim against the claim of the plaintiff.

3. EQUITABLE SET-OFF

In this case the defendant is permitted to claim set-off in respect of an unascertained sum of money where the claim arises out of the same transaction.

DIFFERENCE BETWEEN 'LEGAL SET-OFF' AND 'EQUITABLE SET-OFF'.

LEGAL SET-OFF	EQUITABLE SET-OFF
Sum must be ascertained.	Sum need not be ascertained.
Claim need not originate from the same transaction.	Claim must origination from the same transaction.
Legal set off can be claimed as a right by the defendant and the court is bound to adjudicate upon the claim.	Equitable set off cannot be claimed as a right but by court's discretion.
Court fee must be paid on set off amount.	No court fee is required.
The amount must not be time barred.	The amount may be time barred. However, if the defendant's claim is time barred, he can claim only as much amount as is given in the plaintiffs claim.

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

> TEMPORARY INJUNCTION

ORDER 39

A temporary injunction is a provisional remedy invoked to preserve the subject matter in its existing condition. Temporary injunctions are such as are to continue until a specified time or until the further order of the Court and they may be granted at any stage of a suit.



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Cases where the Court may grant temporary injunction

The court may grant temporary injunction where it is proved by affidavit or otherwise:-

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit,
- **(b)** that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors, or
- (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

> INTERLOCUTORY ORDERS

The Court may, on the application of any party to a suit order the **sale**, in such manner and on such terms as it thinks fit, of any **movable property**, being the subject-matter of such suit, or attached before judgement in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to be sold at once.

APPEALS

Right of appeal is not a natural or inherent right attached to litigation. Such a right is given by the statute or by rules having the force of statute.

KINDS OF APPEALS

1. APPEALS FROM ORIGINAL DECREES

Appeals from original decrees may be preferred in the Court superior to the Court passing the decree. Where the decree has been passed with the consent of parties, no appeal lies. The appeal from original decree lies on a question of law as well as on question of fact.

2. SECOND APPEAL

As per Section 100 of the Civil Procedure Code, an appeal lies to the High Court from every decree passed in appeal by any subordinate Court if the High Court is satisfied that the case involves a substantial question of law.

3. APPEAL FROM ORDERS

Appeal from orders would lie only on grounds of defect or irregularity in law. Otherwise in general, Appeal against orders are not allowed.

4. APPEALS TO THE SUPREME COURT

Appeals to the Supreme Court would lie from any judgement, decree or final orders passed by a High Court in exercise of original jurisdiction.

REFERENCE, REVIEW AND REVISION



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1. REFERENCE

SECTION 113

Subject to such conditions as may be prescribed, at any time before judgement a court in which a suit has been instituted may state a case and refer the same for opinion of the High Court and the High Court may make such order thereon as it thinks fit.

2. REVIEW SECTION 114

Any person considering himself aggrieved by a decree or order may apply for a review of judgement to the court which passed the decree or made the order and the Court may make such order thereon as it thinks fit

Any person may apply for a review of judgement to the court in the following situation:-

- (a) In case of a decree or order from which an appeal is not allowed.
- (b) In case of a decree or order from which an appeal is allowed but from which no appeal has been preferred.

3. REVISION SECTION 115

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which **no appeal lies** thereto, and <u>when a subordinate Court appears—</u>

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, a petition for revision can be made to the High Court and High Court may make such order as it thinks fit.

NKJ-CLASSROOM PRACTICE



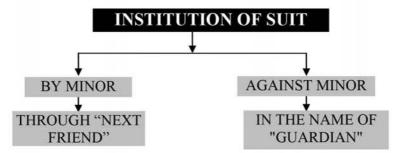
Q. 1. Briefly discuss the provisions relating to reference, review and revision.

DISTINGUISH BETWEEN REVISION AND APPEAL

S.NO.	REVISION	APPEAL
1.	Application for revision can be made only to the high court	Appeal can be preferred to any court superior to one from whose decree or order appeal is sought to be preferred. That superior court need not necessarily be a high court.
2.	Revision cannot be applied for as a right.	Right of appeal is substantive, given by law.
3.	The power of the high court to exercise provisional jurisdiction either of its own motion or on the request of a party is discretionary.	The court to which an appeal has been preferred is bound to consider it according to the procedure prescribed.
4.	Revision can be applied for only on grounds of Jurisdiction and not on the question of law or fact.	In an appeal the appellate court has power to consider both the question of law and fact.

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SUITS BY OR AGAINST MINORS ORDER 32



Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. The next friend should be a person who is of sound mind and has attained majority.

Where the defendant is a minor the Court, shall appoint a proper person to be guardian for the suit for such minor.

When minor attain majority

When the **minor plaintiff** attains majority, he may elect to proceed with the suit or application or elect to abandon it. If he elects the former course, he shall apply for an order discharging the next friend and for leave to proceed in his own name and the title of the suit will be corrected. If he elects to abandon the suit or application, he shall, apply for an order to dismiss the suit on repayment of the costs incurred by the defendant or opposite party etc.

SUITS BY OR AGAINST A CORPORATION

Signature or verification of pleading

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation, by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service of summons

Subject to any provision regulating of process ,where the suit is against a corporation, the summons may be served:-

- (i) On the secretary or any director or other principal officer of the corporation, or
- (ii) By leaving it or sending it by post addressed to the corporation at the registered office or if there is no registered office then at the place where the corporation carries on business.

SUMMARY PROCEDURE

ORDER 37

The object of summary procedure is to prevent unreasonable obstruction by a defendant. The **defendant is not entitled to defend** the suit unless he enters an appearance within 10 days from the service of summons. Such leave to defend may be granted unconditional or upon such term as the Court or the Judge may think fit.

However, such leave shall not be granted where:-

(a) the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a **substantial defence** or that the **defences** are **frivolous** and

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(b) the part of the **amount** claimed by the plaintiff and admitted by the defendant to be due from him is **not deposited** by him in the Court.

A procedure by way of summary suit applies to suits upon **bill of exchange**, **hundies or promissory notes**, or where the plaintiff desires to proceed under the provisions of Order 37.

NKJ-CLASSROOM PRACTICE



Q. 1. Explain in brief Summary Procedure.



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Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-

CHAPTER

(11)

INDIAN PENAL CODE, 1860 – I

Covering-

- Bare Act
- Introduction
- Indian Penal Code, 1860
- Jurisdiction of Indian Penal Code, 1860
- The Fundamental Elements of Crime
- The Stages of Crime
- Punishment
- Criminal conspiracy
- Dishonest Misappropriation of Property
- Dishonest Misappropriation of Property Possessed by deceased person at the time of his death
- Criminal Breach of Trust
- Cheating
- Cheating and dishonestly inducing delivery of property
- Dishonest or Fraudulent removal or concealment of property to prevent distribution among creditors
- Forgery
- Defamation
- Exceptions
- Punishment for defamation
- General Exception
- Self Test Questions

EXPECTED
MARKS COVERAGE
(1 to 5)

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- From Bare Act... -

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The Gazette of India

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INDIAN PENAL CODE, 1860

INTRODUCTION

Crime is a social phenomenon. It is a wrong committed by an individual in a society. It arises first when a state is organized, people set up rules, the breaking of which is an act called crime.

In India, the base of the crime and punitive provision has been laid down in Indian Penal Code, 1860.

INDIAN PENAL CODE, 1860

The Indian Penal Code, 1860 is the substantive law of crimes. It defines acts which constitute an offence and lays down punishment for the same. It lays down certain principles of criminal law. The procedural law through which the Indian Penal Code is implemented is the Criminal Procedure Code, 1973.

The Indian Penal Code was passed in the year 1860 but it came into force on 1st January 1862, and it applies to the whole of India.

Indian Penal Code consists of 23 chapters and more than 511 sections. It has two parts- general principles and defences and specific offences.

The objective of the Indian Penal Code is to provide a general penal code for India.

The complexity of modern legislation demands a clear understanding of the substantive law of crimes. The students will understand the general penal code for India, Substantive as well as Procedural law of crimes.

The Indian Penal Code is a colonial legislation which was retained as the main penal law of the country even after India became independent in 1947.

JURISDICTION OF INDIAN PENAL CODE, 1860

Under the Indian Penal Code, 1860 criminal courts in India exercise jurisdiction either because a crime is committed by any person (national, or foreigner) within the Indian territory or because a crime though committed outside India, the person committing the crime is liable to be tried for it under any Indian law. The former is known as intra-territorial jurisdiction and the latter as known as extra-territorial jurisdiction.

<u>Intra-territorial jurisdiction</u>: Where a crime under any provision of IPC is committed within the territory of India the IPC applies and the courts can try and punish irrespective of the fact that the person who had committed the crime is an Indian national or foreigner. Section 2 of the Code declares the jurisdictional scope of operation of the IPC to offences committed within India. <u>The Code applies to any offence committed:</u>

- 1. Within the territory of India as defined in Article 1 of Constitution of India.
- 2. Within the territorial waters of India, or
- 3. On any ship or aircraft either owned by India or registered in India.

It should be noted that it is not defence that the foreigner did not know that he was committing a wrong, the act itself not being an offence in his own country. In this regard the Supreme Court in *Mobarik Ali Ahmed* v. *State of Bombay*, held that it is obvious that for an Indian law to operate and be effective in the territory where it operates, i.e., the territory of India, it is not necessary that the laws should either be published or be made known outside the country in order to bring foreigners under its ambit.

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Exemption from intra-territorial jurisdiction of IPC:-

- 1. Article 361(2) of the Constitution protects criminal proceedings against the President or Governor of a state in any court, during the time they hold office.
- In accordance with well-recognized principles of international law, foreign sovereigns are exempt from criminal proceedings in India.
- 3. This immunity is also enjoyed by the ambassadors and diplomats of foreign countries who have official status in India. This protection is extended to all secretaries and political and militaryattaches, who are formally part of the missions.

Extra -territorial jurisdiction: Section 3 and section 4 of the IPC provide for extra-territorial jurisdiction. Where a crime is committed outside the territory of India by an Indian national, such a person may be tried and punished by the India courts.

The jurisdiction of a court over offences committed in high seas is based on the precept that a ship in the high seas is considered to be a floating island belonging to the nation whose flag the ship flies. It does not matter where the ship or boat is, whether it is in high seas or on rivers, whether it is moving or stationery, having been anchored for the time being. This jurisdiction called the 'admiralty jurisdiction'.

THE FUNDAMENTAL ELEMENTS OF CRIME

The basic function of criminal law is to punish the offender and to deter the incidence of crime in the society. A criminal act must contain the following elements:

- 1. <u>Human Being:</u>— The first requirement for commission of crime is that the act must be committed by a human being. The human being must be under legal obligation to act in particular manner and be physically and mentally fit for conviction in case he has not acted in accordance with the legal obligation
- 2. <u>Mens rea:</u>-The basic principle of criminal liability is embodied in the legal maxim 'actus non facitreum, nisi mens sit rea'. It means 'the act alone does not amount to guilt; the act must be accompanied by a guilty mind'. The intention and the act must both concur to constitute the crime. Mens rea is defined as the mental element necessary to constitute criminal liability. It is the attitude of mind which accompanies and directs the conduct which results in the 'actusreus'. The act is judged not from the mind of the wrong-doer, but the mind of the wrong-doer is judged from the act. 'Mens rea' is judged from the external conduct of the wrong-doer by applying objective standards.

Supreme Court in *Girja Nath* v. *State* said Intention, Negligence and recklessness are the important forms of *mens rea*.

- (i) <u>Intention:</u>-Intention is defined as 'the purpose or design with which an act is done'. Intention indicates the position of mind, condition of someone at particular time of commission of offence and also will of the accused to see effects of his unlawful conduct. For example: A poisons the food which B was supposed to eat with the intention of killing B. C eats that food instead of B and is killed. A is liable for killing C although A never intended it.
- (ii) <u>Negligence:</u> Negligence is the second form of *mens rea*. Negligence is not taking care, where there is a duty to take care. In criminal law, the negligent conduct amounts to *means rea*.
- (iii) <u>Recklessness:-</u>Recklessness occurs when the actor does not desire the consequence, but foresees the possibility and consciously takes the risk. It is a total disregard for the consequences of one's own actions. Recklessness is a form of *mens rea*.

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The word 'mens rea' as such is not used in the Indian Penal Code, 1860, but the idea underlying in it is seen in the entire Code.

There are exceptional cases where *mens rea* is not required in criminal law. Some of them are as follows:

- (a) Where a statute imposes liability, the presence of absence of a guilty mind is irrelevant. Many laws passed in the interest of public safety and social welfare imposes absolute liability. This is so in matters concerning public health, food, drugs, etc. There is absolute liability (mens rea is not essential) in the licensing of shops, hotels, restaurants and chemists establishments. The same is true of cases under the Motor Vehicles Act and the Arms Act, offences against the State like waging of war, sedition etc.
- **(b)** Where it is difficult to prove *mens rea* and penalties are petty fines. In such petty cases, speedy disposal of cases is necessary and the proving of *mens rea* is not easy. An accused may be fined even without any proof of *mens rea*.
- (c) In the interest of public safety, strict liability is imposed and whether a person causes public nuisance with a guilty mind or without guilty mind, he is punished.
- (d) If a person violates a law even without the knowledge of the existence of the law, it can still be said that he has committed an act which is prohibited by law. In such cases, the fact that he was not aware of the law and hence did not intend to violate it is no defense and he would be liable as if he was aware of the law. This follows from the maxim 'ignorance of the law is no excuse'.

Corporate Body and Mens Rea

According to section 11 of the IPC, the word 'person' includes any Company or Association, or body of persons, whether incorporated or not. Thus companies are covered under the provisions of the IPC. The criminal intent of the 'alter ego' of the company/ body corporate, i.e., the person or group of persons that guide the business of the company, is imputed to the company.

In <u>State of Maharastra v. M/s Syndicate Transport</u>, it was held that the question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend on the nature of offence disclosed by the allegations in the complaint or in the charge sheet, the relative position of the officer or agent vis-à-vis the corporate body and other relevant facts and circumstances which could show that the corporate body, as such, meant or intended to commit that act

3. <u>Actus Reus (act or omission):</u> The third essential element of crime is Actus Reus. A human being and an evil intent are not enough to constitute a crime for one cannot know the intentions of a man. Actus Reus means overt act or unlawful commission must be done in carrying out a plan with the guilty intention. An 'act' is a willed movement of body.

A man may be held fully liable even when he has taken no part in the actual commission of the crime. For example, if a number of people conspire to murder a person and only one of them actually shoots the person, every conspirator would be held liable for it. A person will also be held fully responsible if he has made use of an innocent agent to commit a crime.

NKJ-CLASSROOM PRACTICE



- Q. 1. What are the fundamental elements of a criminal act?
- Q. 2. State the cases in which mens reais not required in criminal law.

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THE STAGES OF CRIME

The commission of a crime consists of some significant stages. If a person commits a crime voluntarily, it involves *four important stages*.

1. Criminal Intention

Criminal intention is the first stage in the commission of offence. Intention means doing any act with one's will, desire, voluntariness, malafides and for some purpose. For example, if a man drives in a rash and reckless manner resulting in an accident causing death of a person, the reckless driver cannot plead innocence by stating that he never intended to cause the death of the person. It may be true in the strict sense of term. But a reckless driver should know that reckless driving is likely to result in harm and can even cause death of the persons on the road, So, by virtue of definition of the word 'voluntarily' in the Code, a reckless driver who causes death of a person can be presumed or deemed to have intended to cause the death of the person.

Law does not as a rule punish individuals for their evil thoughts or criminal intentions.

2. Preparation

Preparation means to arrange necessary measures for commission of intended criminal act. **Preparation itself is not punishable** as it is difficult to prove that necessary preparations were made for commission of the offence. But in certain **exceptional cases mere preparation is also punishable**.

Under the IPC, mere preparation to commit offences is punishable as they are considered to be grave offences. Some of them are as follows:

- (i) Preparation to wage war against the Government (section 122).
- (ii) Preparation for counterfeiting of coins or Government Stamps (sections 233 to 235, 255 and 257).
- (iii) Possessing counterfeit coins, false weights or measurements and forged documents (section 242, 243, 259, 266 and 474).
- (iv) Making preparation to commit dacoity (section 399).

3. Attempt

Attempt, which is the third stage in the commission of a crime, is punishable. Attempt has been called as a **preliminary crime**. Attempt means the direct movement towards commission of a crime after necessary preparations have been made. When a person wants to commit a crime, he firstly forms an intention, then makes some preparation and finally does something for achieving the object; **if he succeeds in his object he is guilty of completed offence otherwise only for making an attempt.**

It should be noted that whether an act amounts to an attempt to commit a particular offence is a question of fact depending on the nature of crime and steps necessary to take in order to commit it. The act constituting attempt must be proximate to the intended result.

Under the IPC, the sections on attempt can be divided into four **broad categories**:

- (i) Those sections in which the commission of an offence and the attempt to commit are dealt within the same section, the extent of the punishment being the same for both the offence as also the attempt. The examples of this category are those offences against the State such as waging or attempting to wage war against the Government of India, assaulting or attempting to assault the President or Governor with intent to compel or restrain the exercise of lawful power, sedition.
- (ii) Those offences in which the attempt to commit specific offences are dealt side by side with the offences themselves, but separately, and separate punishments have been provided for the attempt other than that provided for the offences which have been completed. The examples of this category are attempt to commit an offence punishable with death or imprisonment for life including robbery, murder etc.

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- (iii) Attempt to commit suicide specifically provided under section 309 IPC.
- (iv) The fourth category relates to the attempt to commit offences for which no specific punishment has been provided in the IPC. Such attempts are covered under Section 511. This section of the Code provides that whoever attempts to commit an offence punishable by IPC with imprisonment for life or imprisonment, or cause such an offence to be committed, and in such attempt does any act towards commission of the offence, shall, where no express provision is made by IPC for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.
- 4. <u>Commission of Crime or Accomplishment:</u> The last stage in the commission of crime is its accomplishment. If the accused succeeds in his attempt, the result is the commission of crime and he will be guilty of the offence. If his attempt is unsuccessful, he will be guilty for an attempt only. If the offence is complete, the offender will be tried and punished under the specific provisions of the IPC.

Presumption of Innocence and Burden of Proof

There is a presumption of innocence in favour of any person accused of committing any crime. It means that in the eyes of the law, **the accused person is innocent till it is proven otherwise by the prosecution**. If the person accused of committing a crime, while defending himself, is able to introduce any doubt in the case of the prosecution, he will not be held guilty. Had there been no presumption of innocence in favour of the accused, it would have been very easy for a person to harass someone by accusing him of committing a crime.

PUNISHMENT

Punishments:-The punishments to which offenders are liable under the provisions of IPC are –

- 1. Death:-A death sentence is the harshest of punishments provided in the IPC, which involves the judicial killing or taking the life of the accused as a form of punishment. The Supreme Court has ruled that death sentence ought to be imposed only in the 'rarest of rate cases'. The IPC provides for capital punishment for the following offences: (a) Murder (b) Dacoity with Murder. (c) Waging War against the Government of India. (d) Abetting mutiny actually committed. (e) Giving or fabricating false evidence upon which an innocent person suffers death (f) Abetment of a suicide by a minor or insane person; (g) Attempted murder by a life convict.
- Life Imprisonment:- Imprisonment for life meant rigorous imprisonment, that is, till the last breath of
 the convict.
- 3. Imprisonment:-Imprisonment which is of two descriptions namely
 - (i) Rigorous Imprisonment, that is hard labour;
 - (ii) Simple Imprisonment
- 4. <u>Forfeiture of property:</u> Forfeiture is the divestiture of specific property without compensation in consequence of some default or act forbidden by law. The Courts may order for forfeiture of property of the accused in certain occasions. The courts are empowered to forfeit property of the guilty under section 126 and section 127 of the IPC.
- 5. <u>Fine:-</u> Fine is forfeiture of money by way of penalty. It should be imposed individually and not collectively. When court sentences an accused for a punishment, which includes a fine amount, it can specify that in the event the convict does not pay the fine amount, he would have to suffer imprisonment for a further period as indicated by the court, which is generally referred to as default sentence.

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Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-



CHAPTER

12

INDIAN PENAL CODE, 1860 – II

Covering-

- Bare Act
- Introduction
- Indian Penal Code, 1860
- Jurisdiction of Indian Penal Code, 1860
- The Fundamental Elements of Crime
- The Stages of Crime
- Punishment
- Criminal conspiracy
- Dishonest Misappropriation of Property
- Dishonest Misappropriation of Property Possessed by deceased person at the time of his death
- Criminal Breach of Trust
- Cheating
- Cheating and dishonestly inducing delivery of property
- Dishonest or Fraudulent removal or concealment of property to prevent distribution among creditors
- Forgery
- Defamation
- Exceptions
- Punishment for defamation
- General Exception
- Self Test Questions

EXPECTED
MARKS COVERAGE
(1 to 5)

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- From Bare Act... -

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INDIAN PENAL CODE, 1860

CRIMINAL CONSPIRACY

Criminal conspiracy is covered under section 120A and 120-B of the IPC.

Definition of criminal conspiracy

[Section 120A]

When two or more persons agree to do, or cause to be done:-

- 1. an illegal act, or
- 2. an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation— It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

The ingredients of the offence of criminal conspiracy as laid down by the Supreme Court in *R. Venkat krishnan* v. *CBI*, are:

- 1. an agreement between two or more persons;
- 2. the agreement must relate to doing or causing to be done either
 - (i) an illegal act;
 - (ii) an act which is not illegal in itself but is done by illegal means.

According to *Halsbury's Laws of England*, the essence of the offence of conspiracy is the fact of combination by agreement. The agreement maybe express or implied, or in part express and in part implied.

In order to prove a criminal conspiracy which is punishable under section 120B there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. In NCT of Delhi v. Navjot Sandhu, (Parliament attack case) the accused had never contacted the deceased terrorist on place but had helped one of the conspirators to flee to a safer place after incident was not held guilty as conspirator.

PUNISHMENT OF CRIMINAL CONSPIRACY (SECTION 120B)

- 1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
- 2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

The punishment for conspiracy is the same as if the conspirator had abetted the offence. The punishment for criminal conspiracy is more severe if the agreement is one to commit a serious offence and less severe otherwise.

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Criminal Misappropriation of Property

Section 403 and 404 of the Indian Penal Code, 1860 deal with Criminal Misappropriation of Property.

NKJ-CLASSROOM PRACTICE



Q. 1. Briefly explain the term Criminal conspiracy.

DISHONEST MISAPPROPRIATION OF PROPERTY (SECTION 403)

Dishonestly is an essential ingredient of the offence and the Code provides that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that 'dishonestly'. Misappropriation means the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose.

There are two things necessary before an offence under section 403 can be established. Firstly, that the property must be misappropriated or converted to the use of the accused, and, secondly, that he must misappropriate or convert it dishonestly.

- (a) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.
- (b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.
- (c) A and B, being, joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.
- (d) A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security or a loan, intending at a future time to restore it to Z. A has committed an offence under this section.
- (e) A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.
- (f) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- (g) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.
- (h) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.
- (i) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z and appropriates it to his own use. A is guilty of an offence under this section.
- (j) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.



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DISHONEST MISAPPROPRIATION OF PROPERTY POSSESSED BY DECEASED PERSON AT THE TIME OF HIS DEATH

(SECTION 404)

Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's death, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's death was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Criminal Breach of Trust

Section 405 and 409 of the Indian Penal Code, 1860 deal with Criminal Misappropriation of Property.

CRIMINAL BREACH OF TRUST

(SECTION 405)

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1:- A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or not who deducts the employee's contribution from the wages payable to the employee for the credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

- (a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will and appropriates them to his own use. A has committed criminal breach of trust.
- (b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.
- (c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

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- (d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.
- (e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.
- (f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Criminal Breach of Trust – Essential Ingredients

The essential ingredients of the offence of criminal breach of trust are as under

- 1. The accused must be entrusted with the property or with dominion over it,
- 2. The person so entrusted must use that property, or;
- 3. The accused must dishonestly use or dispose of that property or willfully suffer any other person to do so in violation,
 - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or;
 - (ii) of any legal contract made touching the discharge of such trust.

Punishment for criminal breach of trust (SECTION 406)

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal breach of trust by carrier (SECTION 407)

Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by clerk or servant (SECTION 408)

Whoever, being a clerk or servant or employed as a clerk or servant and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant or agent (SECTION 409)

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.



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CHEATING

Sections 415 to 420 of Indian Penal Code, 1860 deal with the offence of cheating. In most of the offences relating to property the accused merely get possession of thing in question, but in case of cheating he obtains possession as well as the property in it.

Section 415 provides that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation:-A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- **(b)** A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamond articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
- (f) A Intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

CHEATING – MAIN INGREDIENTS

The main ingredients of cheating are as under:

- 1. Deception of any person.
- 2. (a) Fraudulently or dishonestly inducing that person



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- (i) deliver any property to any person; or
- (ii) to consent that any person shall retain any property; or
- **(b)** Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

Cheating by personation

As per section 416 a person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation:-The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

- (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
- (b)A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Punishment for cheating

Section 417 provides that whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating by personation

Section 419 states that whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHEATING AND DISHONESTLY INDUCING DELIVERY OF PROPERTY

As per section 420 whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Simple cheating is punishable under section 417 of the IPC. Section 420 comes into operation when there is delivery or destruction of any property or alteration or destruction of any valuable security resulting from the act of the person deceiving.

DISHONEST OR FRAUDULENT REMOVAL OR CONCEALMENT OF PROPERTY TO PREVENT DISTRIBUTION AMONG CREDITORS (SECTION 421)

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Guwahati High Court in Ramautar Chaukhanyv Hari Ram Todi & Anr, held that an offence under this section has following essential ingredients:



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- (i) That the accused removed, concealed or delivered the property or that he transferred, it caused it to be transferred to someone;
- (ii) That such a transfer was without adequate consideration;
- (iii) That the accused thereby intended to prevent or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person;
- (iv) That he acted dishonestly and fraudulently.

This section specifically refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It applies to movable as well as immovable properties. In view of this section, the property of a debtor cannot be distributed according to law except after the provisions of the relevant enactments have been complied with.

Dishonestly or fraudulently preventing debt being available for creditors (SECTION 422)

Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

This section, like the preceding section 421, is intended to prevent the defrauding of creditors by masking property.

FORGERY

Forgery is defined under section 463 of the Indian Penal Code, 1860 and the punishment for it is prescribed under section 465.

Forgery (Section 463)

Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Punishment for forgery (Section 465)

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The making of a false document or false electronic record is defined under section 464 of the Indian Penal Code, 1860.



NKJ-CLASSROOM PRACTICE

Q. 1. Write a short note on Forgery

DEFAMATION

Section 499 provides that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.



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Explanation 1:- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2:- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3:- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

<u>Explanation 4:-</u> No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

- (a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.
- (b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.
- (c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

NKJ-CLASSROOM PRACTICE



Q. 1. Write a short note on Defamation.

EXCEPTIONS

First Exception:-Imputation of truth which public good requires to be made or published.—It is not

defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

<u>Second Exception:</u>-Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

<u>Third Exception:</u>-Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

<u>Fourth Exception:</u>-Publication of reports of proceedings of courts.—It is not defamation to publish substantially true report of the proceedings of a Court of justice, or of the result of any such proceedings.

Explanation: A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

<u>Fifth Exception:</u>-Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.



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Illustrations

- (a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.
- **(b)** But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which express of Z's character, is an opinion not founded on Z's conduct as a witness.

<u>Sixth Exception:</u>-Merits of public performance—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation: A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

<u>Seventh Exception:</u>-Censure passed in good faith by person having lawful authority over another—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier- are within this exception.

<u>Eighth Exception:</u>—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father- A is within this exception.

<u>Ninth Exception:</u>-Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

- (a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.
- (b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

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<u>Tenth Exception:</u>-Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

PUNISHMENT FOR DEFAMATION

According to section 500 whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

According to Lord Macaulay, who had a major role in drafting of the Indian Penal Code, the essence of offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavorable sentiments of his fellow creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.

Kinds of Defamation

The wrong of defamation is of two kinds- libel and slander. In libel, the defamatory statement is made in some permanent and visible form, such as writing, printing or pictures. In slander it is made in spoken words or in some other transitory form, whether visible or audible, such as gestures or inarticulate but significant sounds. The ambit of 'publish' is very wide. The publication of defamatory matter means that it is communicated to some person other than the person about whom it is addressed.

GENERAL EXCEPTIONS

The Indian Penal Code, 1860 also provides for general exceptions for a **person accused of committing** any offence under the Code to plead in his defense. General defences or exceptions are contained in sections 76 to 106 of the IPC. The exceptions strictly speaking came within the following six categories:-

- (a) Judicial acts
- (b) Mistake of fact
- (c) Accident
- (d) Trifling Act
- (e) Consent
- (f) Absence of Criminal Intention.
- 1. <u>Mistake of Fact</u>- bound by law:- According to section 76, if any one commits any act which he is bound to do or mistakenly believes in good faith that he is bound by law to do it, he is not guilty. The mistake or ignorance must be of fact, but not of law. If the mistaken facts were true, the act would not be an offence. Mistake of fact, is a general defence based on the Common Law maxim ignorantiafacitexcusat; igoranita juris non excusat- (Ignorance of fact excuses; Ignorance of law does not excuse). In mistake of fact the accused does not possess mens rea or guilty mind.
- 2. Act of Judge when acting judicially (section 77):-If any judge in his authority in good faith believing authorized by law commits any act, no offence is attracted.
- 3. Act done pursuant to the judgment or order of Court (section 78):- When any act is committed on judgment or order of the Court of Justice which is in force, it is no offence even if the judgment or order of the Court is without any jurisdiction, though the person who executes the judgment and order must believe that the Court has the jurisdiction.

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- 4. <u>Mistake of Fact-justified by law:</u>-According to section 79 of the IPC, if any one commits any act which is justified by law or by reason of mistake of fact and not by reason of mistake of law believes himself to be justified by Law.
- 5. <u>Accident in doing a lawful act:</u>-According to section 80, if any one commits any offence by accident or misfortune without malafide or without knowledge in performance of his legal duty in legal manner with proper care and caution is no offence.
- 6. Act likely to cause harm, but done without criminal intent, and to prevent other harm (section 81):Any act done by anyone without any criminal intent for saving or preventing harm to third person or
 property in good faith is no offence. According to the 'explanation' to this section, it is a question of
 fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent
 as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.
- 7. Act of a child under seven years of age (section 82):-If any child who is below seven years of age commits any offence, he is not guilty because it is the presumption of law that that a child below 7 years of age is incapable to having a criminal intention (mens rea) necessary to commit a crime.
- 8. Act of a child above seven and under twelve of immature understanding (section 83):-If any minor child is in between seven and twelve years of age and not attained the maturity of what is wrong and contrary to law at the time of commission of offence in not liable to be convicted and punished.
- 9. Act of a person of unsound mind (section 84):-Nothing done by any person of unsound mind is an offence if at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.
- 10. Act of a person incapable of judgment by reason of intoxication caused against his will (section 85):-Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.
- 11. <u>Consent (section 90):-</u>The consent is not valid if it is obtained from a person who is under fear of injury, or under a misconception of fact and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception.
- 12. <u>Act to which a person is compelled by threats (section 94):-</u>Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence. For this defense to be valid the person acting under threat should not have himself put under such a situation.
- 13. Act causing slight harm (section 95):-Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

NKJ-CLASSROOM PRACTICE



Q. 1. Enumerate the general exceptions for a person accused of committing any offence under the Indian Penal Code to plead his defense.

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Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-

CHAPTER

(13)

CRIMINAL PROCEDURE CODE, 1973

Covering-

- Bare Act
- Offence
- Classes of Criminal Courts
- Power of The Court to Pass Sentences
- Classification of Offence
- Complaint
- Inquiry
- Investigation
- Tria
- Difference Between 'Inquiry' And 'Investigation'
- Arrest of Persons Without Warrant
- Arrest on Refusal to Give Name and Residence
- Arrest by a Private Person
- Arrest by Magistrate
- Information to the police And Their Powers to Investigate
- Summary Trials
- Sentence of Imprisonment in Default of Fine
- Search Warrant
- Self Test Questions

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EXPECTED
MARKS COVERAGE
(1 to 5)

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- From Bare Act...-

रज़िस्ट्री सं० डी० एल०-33004/99

REGD, NO. D. L.-33004/99



THE CODE OF CRIMINAL PROCEDURE, 1973 ACT No. 2 OF 1974

[25th January, 1974.]

An Act to consolidate and amend the law relating to Criminal Procedure.

BE it enacted by Parliament in the twenty-fourth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

- Short title, extent and commencement.—(1) This Act may be called the Code of Criminal Procedure, 1973.
 - (2) It extends to the whole of India except the State of Jammu and Kashmir:

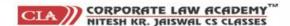
Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply—

- (a) to the State of Nagaland,
- (b) to the tribal areas,

but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.

Explanation.—In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

- (3) It shall come into force on the 1st day of April, 1974.
- 2. Definitions.—In this Code, unless the context otherwise requires,—
- (a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;
 - (b) "charge" includes any head of charge when the charge contains more heads than one;
- (c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;
- 3. Construction of references.—(1) In this Code,—
- (a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires,—
 - (i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;
 - (ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;
- (b) any reference to a Magistrate of the second class shall, in relation to an area outside a metropolitan area, be construed as a reference to a Judicial Magistrate of the second class, and, in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;
 - (c) any reference to a Magistrate of the first class shall,-
 - (i) in relation to a metropolitan area, be construed as a reference to a Metropolitan Magistrate exercising jurisdiction in that area;
 - (ii) in relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;



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CRIMINAL PROCEDURE CODE, 1973

Code of criminal procedure, 1973 (Cr.P.C) Provides mechanism for the enforcement of criminal law. The Code of Criminal Procedure prescribes the procedure for the trial of offences which the Indian Penal Code, 1860 (IPC) defines.

The Code of Criminal Procedure creates the necessary machinery for apprehending the criminals, investigating the criminal cases, their trials before the criminal courts and imposition of proper punishment on the guilty person.

OFFENCE

Section 2(n) of the Cr.P.C. defines the word "offence" to mean any act or omission made punishable by any law for the time being in force. However, the term is more elaborately defined in Section 40 of the I.P.C. which states that "offence" denotes a thing made punishable by the Code.

Mens rea

Mens rea means a guilty mind. The fundamental principle of penal liability is embodied in the maxim actus non facit ream nisi mens sit rea, i.e, unless an act is done with a guilty intention, it will not be criminally punishable. The general rule to be stated is "there must be a mind at fault before there can be a crime". Thus mens rea in an essential ingredient in every criminal offence.

CLASSES OF CRIMINAL COURTS

Following are the different classes of criminal courts:-

- (a) High Courts;
- (b) Courts of Session;
- (c) Judicial Magistrates of the first class, and, in any metropolitan area; Metropolitan Magistrates;
- (d) Judicial Magistrates of the second class; and
- Executive Magistrates;

Besides this, the Courts may also be constituted under any other law. The Supreme Court is also vested with some criminal powers. Article 134 of Constitution of India confers appellate jurisdiction on the Supreme Court in regard to criminal matters from a High Court in certain cases.

POWER OF THE COURT TO PASS SENTENCES

SENTENCES WHICH HIGH COURTS AND SESSIONS JUDGES MAY PASS

According to Section 28, a High Court may pass any sentence authorised by law. A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law, but any sentence of death passed by any such judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

> SENTENCES WHICH MAGISTRATES MAY PASS

Section 29 lays down the powers of individual categories of Magistrates to pass the sentence as under:-

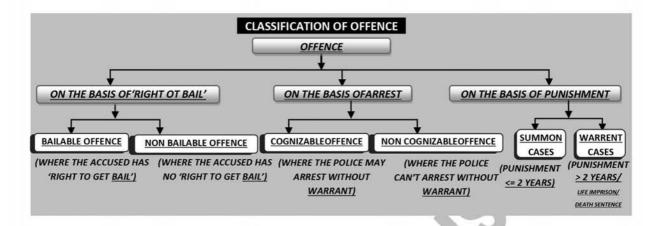
(a) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.



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- (b) A Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years or of a fine not exceeding five thousand rupees, or of both.
- (c) A Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.
- (d) A Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, and the powers of the Court of a Magistrate of the First class.

NKJ-CLASSROOM PRACTICE



Q. 1. What are the various classes of Criminal Courts? Discuss their powers.

PLEADER AND PUBLIC PROSECUTOR

Pleader is one who is authorised to be present in a court and to practice as a lawyer or take part in court proceedings. It is not essential to be a lawyer to take part in court proceedings; anyone who is authorised can take part in them.

A public prosecutor is an officer of the Court. There is one such person with every High Court. Their work is to conduct prosecutions, appeals or other proceedings for the Central or State government whichever has appointed them.

CLASSIFICATION OF OFFENCE

For the purpose of the Code all offences have been classified into different categories. Firstly, all offences are divided into two categories - cognizable offences and non-cognizable offences; secondly, offences are classified into bailable and non-bailable offences; and thirdly, the Code classifies all criminal cases into summons cases and warrant cases.

1. BAILABLE OFFENCE AND NON-BAILABLE OFFENCE

'Bail' means the release of the accused from the custody of the officers of law and entrusting him to the private custody of persons who are sureties to produce the accused to answer the charge at the stipulated time or date.

An "anticipatory bail" is granted by the High Court or a Court of Session, to a person who apprehends arrest for having committed a non-bailable offence, but has not yet been arrested. An opportunity of hearing must be given to the opposite party before granting anticipatory bail. (Section 438).

A "bailable offence" means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being in force.

"Non-bailable" offence means any other offence.

NKJ-CLASSROOM PRACTICE



Q. 1. Distinguish between Bailable and Non-bailable offences.

2. COGNIZABLE OFFENCE AND NON-COGNIZABLE OFFENCE

SECTION 2 (c) & SECTION 2 (i)

"Cognizable offence" means an offence in which, a police officer may, arrest any person without warrant. Generally, cognizable offence are more serious in nature and heavy punishment are prescribed for these kind of offence.



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"Non-cognizable offence" means an offence in which, a police officer has no authority to arrest without warrant. Thus, a non-cognizable offence needs special authority to arrest by the police officer.

In order to be a cognizable case under Section 2(c) of the Code, it would be enough if one or more (not ordinarily all) of the offences are cognizable.

DISTINCTION BETWEEN COGNIZABLE & NON-COGNIZABLE **OFFENCE**

S. No.	COGNIZABLE OFFENCE	NON-COGNIZABLE OFFENCE
1.	Cognizable offences are serious offences.	These are less serious offences.
2.	In case of a cognizable offence, a police officer may arrest a person without warrant.	
3.		A police officer has neither the duty or nor the power to investigate into such offence without the authority given by a Magistrate.

NKJ-CLASSROOM PRACTICE



Q. 1. Distinguish between Cognizable and Non-cognizable offences.

3. SUMMONS AND WARRANT CASES

SECTION 2 (w) & SECTION 2 (x)

"Summons case" means a case relating to an offence and not being a warrant case.

A "Warrant case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

In other words, those cases which are punishable with imprisonment for two years or less are summons cases, the rest are all warrant cases.

DISTINCTION BETWEEN WARRANT CASE AND SUMMON CASE

S. No.	WARRANT CASE	SUMMON CASE
1.	A warrant case is when the offence is punishable with death sentence, life imprisonment or imprisonment exceeding two years	All cases which are not so punishable are summon cases.
2.	The trial procedure is quite elaborate.	The trial procedure is not so elaborate.
3.	A charge is to be framed against the accused.	No charge need be framed; only the particulars of offence have to be conveyed to the accused.
4.	A Magistrate can discharge the accused if the complainant does not appear.	An accused may be acquitted if the complainant does not appear or on the death of the complainant.
5.	There is no provision for withdrawal of complaint by the complainant.	The complainant can withdraw the complaint with the permission of the Magistrate.
6.	If the accused is convicted, the court is required to hear him on the question of sentence.	Such a provision has not been made in the trial of a summon case.

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COMPLAINT

SECTION 2 (d)

"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but it does not include a police report.

The requisites of a complaint are:-

- (a) an oral or a written allegation;
- (b) some person known or unknown has committed an offence;
- (c) it must be made to a magistrate; and
- (d) it must be made with the object that he should take action.

However, a report made by the police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer making the report as a complainant. Police report means a report forwarded by a police officer to a Magistrate.

NKJ-CLASSROOM PRACTICE



Q. 1. Distinguish between F.I.R. and Complaint.

INQUIRY

SECTION 2 (g)

It means every inquiry other than a trial, conducted under this Code by a Magistrate or Court.

- the inquiry is different from a trial in criminal matters;
- it is a judicial proceedings.
- inquiry is wider than trial.
- it stops when trial begins.

INVESTIGATION

SECTION 2 (h)

It includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

TRIAL

Trial means a judicial process by which question of guilt or innocence of the person accused of an offence is determined.

'Investigation', 'Inquiry' and 'Trial'

The three terms — 'investigation', 'inquiry' and 'trial' denote three different stages of a criminal case.

The **first stage** is reached when a police officer either on his own or under orders of a Magistrate investigates into a case (Section 202). If he finds that no offence has been committed, he submits his report to the Magistrate who drops the proceedings.

But if he is of different opinion, he sends that case to a Magistrate and then begins the **second stage**—a trial or an inquiry. The Magistrate may deal with the case himself and either convict the accused or discharge or acquit him. In serious offences the trial is before the Session's Court, which may either discharge or convict or acquit the accused.



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NKJ-CLASSROOM PRACTICE



Q. 1. Distinguish between Inquiry, Investigation and Trial.

DIFFERENCE BETWEEN 'INOUIRY' AND 'INVESTIGATION'

BASIS	INQUIRY	INVESTIGATION
Definition	other than a trial, conducted under the code of Criminal	'Investigation' includes all the proceedings under the Code of Criminal Procedure for the collection of evidence conducted by a police officer or by any person other than a Magistrate who is authorized by a Magistrate in this behalf.
Nature	'Inquiry' is made by a Magistrate or Court.	'Investigation' is made by a police officer or any person (other than a Magistrate) authorized by a Magistrate.
Nature of proceeding	'Inquiry' is a judicial proceeding.	'Investigation' is not a judicial proceeding.
Object	determine the truth or otherwise	The object of 'Investigation' is to collect all shorts of evidence relating to the commission of offence with a view to ascertain the facts and circumstances of the case.
Commencement		'Investigation' commences when the police definitely opine that there are grounds of investigation.

ARREST OF PERSONS WITHOUT WARRANT

SECTION 41

Following are the cases in which a police officer may arrest a person without a warrant:-

- (a) who has been concerned in any cognizable offence.
- (b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking; or
- who has been proclaimed as an offender either under this Code or by order of the State Government; or
- (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
- who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- who has been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is liable to be apprehended or detained in custody in India; or
- (h) who being a released convict, commits a breach of any rule, relating to notification of residence or change of or absence from residence; or
- for whose arrest any requistion, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other causes for which the arrest is to be made it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issues the requisition.

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ARREST ON REFUSAL TO GIVE NAME AND RESIDENCE [SECTION 42]

If any person who is accused of committing a **non-cognizable offence** does not give his name, residence or gives a name and residence which the police officer feels to be false, he may be taken into custody. However, such person cannot be detained beyond 24 hours if his true name and address cannot be ascertained or fails to execute a bond or furnish sufficient sureties. In that event he shall be forwarded to the nearest Magistrate having jurisdiction.

ARREST BY A PRIVATE PERSON

[SECTION 43]

A private person may arrest or cause to be arrested any person:-

- (a) who in his presence commits a non-bailable and cognizable offence or
- (b) who is a proclaimed offender.

ARREST BY MAGISTRATE

The Magistrate has been given power to arrest a person who has committed an offence in his presence and also commit him to custody.

However, Section 45 protects members of Armed Forces from arrest where they do something in discharge of their official duties. They could be arrested only after obtaining the consent of the Central Government.

PROCEDURE

Persons arrested are to be taken before the Magistrate or officer-in-charge of a police station without unnecessary delay. When a person is arrested without a warrant, he can be kept into custody for period **not exceeding 24 hours**, and before the expiry of that period he is to be produced before the **nearest Magistrate**, who can order his detention for a term not exceeding **15 days**, or he can be taken to a **Magistrate**, **under whose jurisdiction** he is to be tried, and such Magistrate can remand him to custody for a term which may exceed 15 days but **not more than 60 days**.

NKJ-CLASSROOM PRACTICE



Q. 1. How can arrest be affected bythe police? When can police arrest without warrant? Can a private person cause arrest without warrant?

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

1. INFORMATION IN COGNIZABLE CASES

[SECTION 154]

Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him.

Every such information shall be signed by the person giving it and the substance thereof shall be entered in a book kept by such officer in such form as may be prescribed by the State Government in this behalf. The above information given to a police officer and reduced to writing is known as **First Information Report (FIR)**.

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In case of a cognizable offence the police officer may conduct investigations without the order of a Magistrate.

Any **person aggrieved by a refusal** on the part of an officer incharge of a police station to record the information may send the substance of such information in writing to the **Superintendent of Police** concerned who if satisfied that such information discloses the commission of a cognizable offence shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

NKJ-CLASSROOM PRACTICE



Q. 1. Distinguish between F.I.R. and Complaint.

2. INFORMATION IN NON-COGNIZABLE CASES

[SECTION 155]

When information is given to an officer in-charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf and refer the informant to the Magistrate.

The police officer is not authorised to investigate a non-cognizable case without the order of Magistrate.

Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

SUMMARY TRIALS

[SECTION 260]

Summary trial means the "speedy disposal" of cases. Summary cases applies to such offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

Summary trial can be only conducted by:-

- (a) any Chief Judicial Magistrate;
- (b) any Metropolitan Magistrate;
- (c) any Magistrate of the First class who is specially empowered in this behalf by the High Court.

Section 262 states that no sentence of imprisonment for a term exceeding 3 months shall be passed in any conviction in summary trials.

Summary trials can be conducted only in respect of those offences in which the value of property does not exceed $\stackrel{?}{\sim} 200$.

SENTENCE OF IMPRISONMENT IN DEFAULT OF FINE

[SECTION 30]

Where a fine is imposed on an accused and it is not paid, the law provides that he can be imprisoned for a term in addition to a substantive imprisonment awarded to him, if any.

Section 30 provides that, where imprisonment has been awarded as part of the substantive sentence, it should not exceed $1/4^{th}$ of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence.



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SEARCH WARRANT

SECTION 93

A search warrant can be issued in the following cases:

- (i) where the Court has reason to believe that a person to whom a summon or order has been issued to produce the document or thing as required by such summon or requisition will not produce it; or
- (ii) where such document or thing is not known to the Court to be in the possession of any person; or
- (iii) where the Court considers that the purposes of any inquiry trial or other proceeding under this Code will be served by a general search or inspection or restricted in its scope as to any place or part thereof.

However, such warrant shall not be issued for searching a document, parcel or other thing in the custody of the postal or telegraph authority, by a Magistrate nor would such warrant be issued so as to affect sections 123 and 124 of Indian Evidence Act, 1872 or the Bankers' Books Evidence Act, 1891.

Section 97 further provides that if any District Magistrate, Sub Divisional Magistrate or Magistrate of the first class has reason to believe that any person is confirmed under such circumstances that the confinement amounts to an offence, he may issue a search - warrant for the person so confined. The person if found shall be immediately produced before the Magistrate for making such orders as in the circumstances of the case he thinks just and proper.



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Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-

CHAPTER CONSTITUTION OF INDIA Covering-Preamble Constitution-structure **Fundamental Rights** Definition of State Amendibility of Fundamental Rights Right To Equality

- Rights to Freedom
- Protection in Respect of Conviction for Offences
- Protection of Life and Personal Liberty
- Protection Against Arbitrary Arrest And Detention
- Cultural And educational Rights
- Right to Constitutional Remedies
- Writs
- Directive Principles of State Policy
- **Fundamental Duties**
- Ordinance-Making Power
- Legislative Powers of The Union And States
- Freedom of Trade, Commerce And Intercourse
- Self Test Questions

EXPECTED MARKS COVERAGE (5 to 15)

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	CONSTITUTION-HISTORY/BACKGROUND
	TO FRAME CONSTCONSTITUTION ASSEMBLYCONSTITUTED-(1946)
CONSTITUT	TION ASSEMBLY APPOINTED NO. OF COMMITTES FOR SUGGESTING RECOMENDATIONS
CC	DINSTITUTION ASSEMBLY ADOPTED THE RECOMMENDATIONS(26 TH NOV,1949)
	CONSTITUTION OF INDIA COMES INTO EFFECT26 TH JANUARY,1950

2. SOCIALIST= THE COUNTRY RECOCGNISES THE SOCIAL ASPECTS. FOR EG;- LOAN TO A DOCTOR FOR OPENING HOSPITAL AT LOWER RATE OF INTEREST. 3. SECULAR= EQUALITY OF ALL RELIGION BEFORE LAW 4. DEMOCRATIC= RULE OF MAJORITY 5. REPUBLIC = THAT THE HEAD OF THE STATE IS AN ELECTED PERSON FOR EG;-PRESIDENT OF INDIA IS ELECTED BY ELECTROL COLLEGE.

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CONSTITUTION OF INDIA

The Constitution of India came into force on **January 26**, **1950**. It is a comprehensive document containing 395 Articles (divided into 22 Parts) and 12 Schedules.

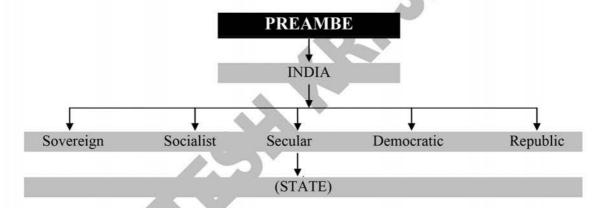
Apart from dealing with the structure of Government, the Constitution makes detailed provisions for the rights of citizens. It is considered all supreme and has **overriding effect** over all the laws. All the laws have their **origin** in the Constitution, so it is known as **mother of all laws**.

All public authorities – **legislative**, **administrative** and **judicial** derive their powers directly or indirectly from it and the Constitution derives its authority from the people.

PREAMBLE

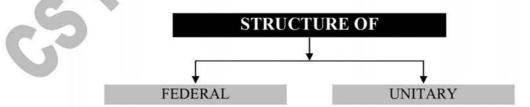
The preamble to the Constitution sets out the aims and aspirations of the people of India. It is a part of the Constitution. The preamble declares India to be a <u>Sovereign, Socialist, Secular, Democratic Republic</u> and secures to all its citizens Justice, Liberty, Equality and Fraternity.

It is declared that the Constitution has been given by the people to themselves, thereby affirming the republican character of the polity and the sovereignty of the people.



CONSTITUTION-STRUCTURE

Constitution of India is basically federal but with certain unitary features.



A. The essential features of a Federal System are—

- (i) Dual Government,
- (ii) Distribution of powers,
- (iii) Supremacy of the Constitution,
- (iv) Independence of Judiciary,
- (v) Written Constitution,
- (vi) Rigid procedure for the amendment of the Constitution.

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B. The essential features of a unitary System are—

(i) State legislatures have the exclusive powers to make laws with respect to the subjects included in the State List and Parliament has no power to encroach upon them.

However, our Constitution makes a few exceptions to this general rule by authorising Parliament to make law even on the subjects enumerated in the State List.

Following are the exceptions which the Constitution so recognises:-

- (a) In the National Interest
- (b) During a proclamation of emergency
- (c) Breakdown of Constitutional Machinery in a State
- (d) On the request of two or more States
- (e) Legislation for enforcing international agreements
- (ii) In case of inconsistency between laws passed by both (union as well as state) on a particular matter under Concurrent list, the law passed by union will prevail over the state law.
- (iii) In India there exist single citizenship concept unlike dual citizenship concept of USA.
- (iv) Residuary legislative power (i.e. on any new subject, only parliament can make a law) is vested in the Union.

So it can be said that the Constitution of India is **neither purely federal nor purely unitary**. It is a **combination of both**.

NKJ-CLASSROOM PRACTICE



Q. 1. The Constitution of India is—federal in character but with unitary features!. Comment.

FUNDAMENTAL RIGHTS

The man by **birth** had certain rights which are **universal and inalienable**, and he could not be deprived of them. These rights are known as Fundamental Rights.

The concept behind these rights is that **all men are created equal** and that they are endowed by their creator with certain inalienable rights: that among these, are life, liberty and the pursuit of happiness.

Indian Constitution guarantees six categories of fundamental rights. These are:-

- 1. Right to Equality—Articles 14 to 18;
- 2. Right to Freedom—Articles 19 to 22;
- 3. Right against Exploitation—Articles 23 and 24;
- 4. Right to Freedom of Religion—Articles 25 to 28
- 5. Cultural and Educational Rights—Articles 29 and 30;
- 6. Right to Constitutional Remedies—Articles 32.

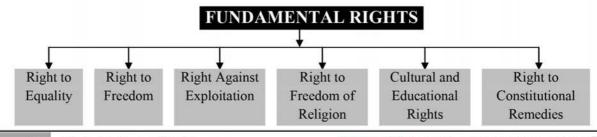
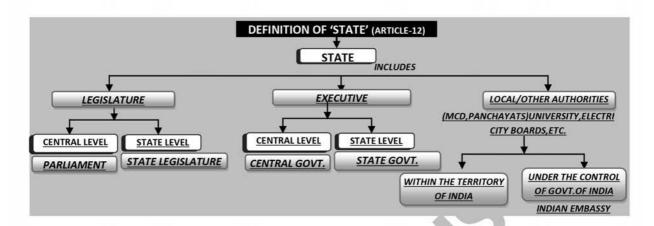


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From the point of view of persons to whom the rights are available, the fundamental rights may be classified as follows:-

- (a) Articles 15, 16, 19 and 30 are guaranteed only to citizens.
- **(b)** Articles 14, 20, 21, 22, 23, 25, 27 and 28 are available to **any person** on the soil of India—citizen or foreigner.

DEFINITION OF STATE

ARTICLE-12

With a few exceptions, all the fundamental rights are available against the State.

Under Article 12, unless the context otherwise requires, "the State" includes—

- (i) the Government and Parliament of India;
- (ii) the Government and the Legislature of each of the States; and
- (iii) all local or other authorities:-
 - (a) within the territory of India; or
 - (b) under the control of the Government of India.

The expression 'local authorities' refers to authorities like Municipalities, District Boards, Panchayats, Port Trusts, Mining Settlement Boards, etc.

'Other authorities' will include all authorities created by the Constitution or statute, Electricity Board, university, etc.

The words "under the control of the Government of India" bring, into the definition of State, not only every authority within the territory of India, but also those functioning outside, provided such authorities are under the control of the Government of India. for e.g. Indian Embassy's situated abroad.

CASE LAW



In <u>R.D. Shetty v. International Airports Authority</u>& in <u>Ajay Hasia v. Khalid Mujib</u> Supreme Court has pointed out that corporations acting as instrumentality or agency of government <u>would become 'State'</u> under Article 12 if:-

- (i) the entire share capital of the Corporation is held by the Government,
- (ii) the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation it would afford some indication of the corporation being impregnated with government character.
- (iii) the corporation enjoys a monopoly status which is conferred or protected by the State.
- (iv) the state exercises deep and pervasive control in corporations.
- (v) the functions of the corporation are of **public importance** and closely related to government functions,
- (vi) If a department of government is transferred to a corporation,

CASE LAW



In <u>Zee telefilms Ltd. v. Union of India</u>, the Supreme Court held that the board of Control for cricket in India (BCCI) was not State for purposes of Article 12 because it was not shown to be financially, functionally or administratively dominated by or under the control of the Government and control exercised by the Government was not pervasive but merely regulatory in nature.

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In <u>A.R. Antualay v. R.S. Nayak</u>, it was held that a **Court** can be considered as state under Article-12 *only*, if it exercises **non-judicial** functions.

NKJ-CLASSROOM PRACTICE



Q. 1. Discuss the test laid down by the Supreme Court of India to determine the entity of "State", whether it is 'instrumentality or agency of State'. [Dec. 2018, 5 Marks]

AMENDIBILITY OF FUNDAMENTAL RIGHTS

Article 13 provides that any Law (pre/post constitution) will be invalid if the law is against the Fundamental rights. It provides that, State shall not make any law which takes away, amend or abridges the Fundamental rights.

The issue came up before the Supreme Court as to whether a **Constitutional Amendment** by which a fundamental right is taken away or abridged is also a law within the meaning of Article 13. The Court in the famous <u>Golaknath case</u> took the view that it includes such an amendment and, therefore, even a Constitutional amendment would be **void** to the extent it takes away or abridges any of the fundamental rights.

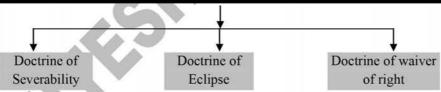
However a new clause has been added to Article 13(i.e., clause -4) which invalidated the aforesaid decision and provided that—

"Nothing in this Article shall apply to any amendment of this Constitution".

Finally in <u>Keshavanand Bharti v. State of Kerala</u> Supreme Court had held that the fundamental rights can be affected by Constitutional Amendment **provided** basic structure of Constitution is not amended.

In a number of cases and the Courts have evolved following **doctrines** for interpreting the provisions of Article 13:-

DOCTRINES FOR INTERPRETING THE PROVISIONS OF ARTICLES 13



(A) DOCTRINE OF SEVERABILITY

Doctrine provides that all laws in force in India before the commencement of constitution shall be void in so far they are inconsistent with the provisions of the constitution. However it further provides that only that part of the law will be declared invalid which is inconsistent with the FRs and the rest of the law will be valid. Courts had held that invalid part of the law shall be severed and declared invalid if really it is severable.

(B) DOCTRINE OF ECLIPSE

Though an existing law inconsistent with a fundamental right becomes in-operative from the date of the commencement of the Constitution, yet it is not dead altogether. A law made before the commencement of the Constitution remains eclipsed or dormant to the extent it comes under the shadow of the fundamental rights, i.e. is inconsistent with it, but the eclipsed or dormant parts become active and effective again if the prohibition brought about by the fundamental rights is removed by the amendment of the Constitution.

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(C) DOCTRINE OF WAIVER OF RIGHTS

The doctrine of waiver of rights is based on the premise that a person is his best judge and that he has the liberty to waive the enjoyment of such rights as are conferred on him by the State. However, the person must have the knowledge of his rights and that the waiver should be voluntary.

RIGHT TO EQUALITY

ARTICLE 14-18

> ARTICLE 14:EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAWS

Article 14 of the Constitution says that "the **State** shall **not deny** to any person <u>equality before the</u> <u>law</u> or the <u>equal protection of the laws</u> within the territory of India".

Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws.

The expression 'equality before the law' is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. The second expression "the equal protection of the laws" directs that equal protection shall be secured to all persons within the territorial jurisdiction of the Union in the enjoyment of their rights and privileges.

Article 14 applies to **all persons** and is not limited to citizens. A **corporation**, which is a juristic person, is also entitled to the benefit of this Article.

LEGISLATIVE CLASSIFICATION

"Equals are to be governed by the same laws. But as regards unequals, the same laws are not complemented."

Legislative classification or distinction is made carefully between persons who are and who are not similarly situated. Article 14 does not forbid classification or differentiation which rests upon reasonable grounds of distinction.

CASE LAW



The rules with respect to permissible classification as evolved in various decisions have been summarised by the Supreme Court in *Ram Kishan Dalmiya v. Justice Tendulkar*, as follows:-

- (i) Article 14 forbids class legislation, but does not forbid classification.
- (ii) Permissible classification must satisfy two conditions, namely:-
 - (a) it must be founded on an intelligible differentia which distinguishes persons.
 - **(b)** the differentia must have a relation to the object sought to be achieved by the statute in question.
- (iii) The classification may be founded on different basis, namely geographical, or according to objects or occupations or the like.
- (iv) Even a single individual may be treated a class by himself on account of some special circumstances or reasons applicable to him and not applicable to others; a law may be constitutional even though it relates to a single individual who is in a class by himself.
- (v) There is always a presumption 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 non-compliance of the constitutional principles.

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> ARTICLE 15:PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION ETC.

Article 15(1)	(I) Religion
prohibits the State	(II) Race
from discriminating	(III) Caste
against any citizen	(IV) Sex
on grounds only of:	(V) place of birth or
	(VI) any of them

Article 15(2) lays down that **no** citizen shall be subjected to any disability, restriction or condition with regard to:-

- (i) access to shops, public restaurants, hotels and places of public entertainment; or
- (ii) the use of wells, tanks, bathing ghats, roads and places of public resort, maintained wholly or partially out of State funds or dedicated to the use of the general public.

Article 15(3) and 15(4) create certain exceptions to the right:-

- Under Article 15(3) the State can make special provision for women and children.
- Article 15(4) permits the State to make special provision for the advancement of—(i) Socially
 and educationally backward classes of citizens;(ii) Scheduled casts; and (iii) Scheduled tribes

> ARTICLE 16:EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT

Article 16 guarantees to all **citizens** equality of opportunity in matters relating to employment or appointment of **public office** under the State.

However, there are certain exceptions provided in Article. These are as under:-

- Parliament can make a law requiring residential qualifications within that State or Union Territory prior to such employment or appointment .for e.g. - domicile requirements.
- A provision can be made for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State.
- A law shall not be invalid if it provides that the incumbent of an office in connection with the
 affair of any religious or denominational institution or any member of the governing body thereof
 shall be a person professing a particular religion or belonging to a particular denomination.

> ARTICLE 17:ABOLITION OF UNTOUCHABILITY

Article 17 says that "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

> ARTICLE 18:ABOLITION OF TITLES

No title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign State.

NKJ-CLASSROOM PRACTICE



Q. 1. "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Comment

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Article 19(1), of the	(a) freedom of speech and expression;
	(b) freedom to assemble peaceably and without arms;
Constitution,	(c) freedom to form associations or unions
guarantees to the	(d) freedom to move freely, throughout the territory of India;
citizens of India six	(e) freedom to reside and settle in any part of the territory of India;
freedoms, namely:-	(f) freedom to practise any profession, or to carry on any occupation, trade or business.

None of these freedoms is absolute but subject to **reasonable restrictions** specified under clauses (2) to (6) of the Article 19. The Constitution under Articles 19(2) to 19(6) permits the <u>imposition of **restrictions** on these freedoms subject to the following **conditions**:-</u>

- The restriction can be imposed by law and not by a purely executive order issued under a statute;
- The restriction must be reasonable;
- The restriction must be imposed for achieving one or more of the objects specified in the respective clauses of Article 19.

> RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

The freedom of speech and expression under Article 19(1)(a) means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode.

- This freedom includes the freedom of press and Imposition of pre-censorship on publication is violative of freedom of speech and expression. (Maneka Gandhi v. Union of India)
- The right to know, 'receive and impart information' has been recognized within the right to freedom of speech and expression.
- The Court had held that the freedom of speech and expression under Article 19(1)(a) includes the right to remain silent. (Bijoe Emmanuel v. State of Kerala)

	Sovereignty and integrity of India.	
	Security of the State.	
Permissible	Friendly relations with foreign States.	
Public Order Decency or n Contempt of	Public Order.	
	Decency or morality or	
	Contempt of court.	
	Defamation or	
	Incitement to an offence.	

The Supreme Court, expressed the view that a **Corporation** is **not** a **citizen** within the meaning of Article 19 and, therefore, cannot invoke this Article, but if the State action impaired the rights of the shareholders as well as of the company, the Court will not deny itself jurisdiction to grant relief.

CASE LAW



Supreme Court in <u>Cricket Association of Bengal v. Ministry of Information & Broadcasting</u> has held that the right to communicate through any media – print, electronic and audio visual is included under Article 19(1)(a) of the Constitution.

Supreme Court in <u>Union of India v. Naveen Jindal</u> has held that right to fly the National Flag freely with respect and dignity is a fundamental right of a citizen within the meaning of Article 19(1)(a) of the Constitution being an expression and manifestation of his allegiance and feelings and sentiments of pride for the nation.

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> RIGHT TO FREEDOM OF ASSEMBLY

The next right is the right of citizens to assemble peacefully and without arms [Art. 19(1)(b)].

This right is also, however, subject to reasonable restrictions which the State	• the sovereignty and integrity of India,
may impose in the interests of:-	• public order.

> RIGHT TO FORM AN ASSOCIATION

Right to form associations for unions is guaranteed so that people are free to have the members entertaining similar views [Art. 19(1)(c)].

This right is also, however, subject to		the sovereignty and integrity of India, or
reasonable restrictions which the State	•	public order, or
may impose in the interests of:-	•	morality

Right to form associations also "implies a right not to form an association, this right necessarily implies a right not to be a member of an association. (Sitharamachary v. Sr. Dy. Inspector of Schools)

> RIGHT TO FREEDOM OF MOVEMENT

Right to move freely throughout the territory of India is another right guaranteed under Article 19(1)(d).

It	is	also	subject	to	the	•	in the interests of the general public,
255		ble res	strictions v	whicl	h <u>the</u>	•	for the protection of the interests of any scheduled tribe.

> RIGHT TO FREEDOM OF RESIDENCE

Article 19(1)(e) guarantees to a citizens the right to reside and settle in any part of the territory of India.

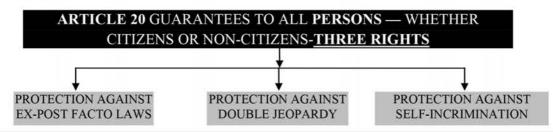
This freedom is also	in the interests of general public, or							
subject to reasonable restrictions:-	 for the protection of the interests of any Scheduled Tribe under Article 19(5). 							

> RIGHT TO FREEDOM TO TRADE AND OCCUPATIONS

Article 19(1)(g) of the Constitution guarantees that all citizens have the right to practice any profession or to carry on any occupation or trade or business. This freedom is also subject to reasonable restrictions:-

- in the interests of the general public;
- for prescribing professional or technical qualifications necessary for carrying on any profession, trade or business;
- which enables the State to carry on any trade or business which may leads to the exclusion of private citizens, wholly or partially (creation of State monopoly)

PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES ARTICLE 20



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(1) PROTECTION AGAINST EX-POST FACTO LAWS

Ex-post facto laws are laws which punished what had been lawful when done. If a particular act was not an offence according to the law of the land at the time when the person did that act, then he cannot be convicted under a law which with retrospective declares that act as an offence.

This protection is **not available with respect to procedural law**. Thus, no one has a vested right in procedure.

(2) PROTECTION AGAINST DOUBLE JEOPARDY

Double jeopardy means punishment for more than once for the same offence. No person can be prosecuted and punished for the same offence more than once. It is, however, to be noted that the conjunction "and" is used between the words prosecuted and punished, and therefore, if a person has been let off after prosecution without being punished, he can be prosecuted again

(3) PROTECTION AGAINST SELF-INCRIMINATION

A person accused of any offence cannot be compelled to be a witness against himself. In other words, an accused cannot be compelled to state anything which goes against him.

PROTECTION OF LIFE AND PERSONAL LIBERTY

ARTICLE 21

Article 21 confers on every person the fundamental right to life and personal liberty. It says that:-

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

The **right to life includes those things which make life meaningful**. For example, the right of a couple to adopt a son is a constitutional right guaranteed under Article 21 of the Constitution (*Philips Alfred Malvin v. Y.J. Gonsalvis*)

The expression 'liberty' has been given a very wide meaning. The restricted interpretation of the expression 'personal liberty' preferred by the majority judgement in <u>A.K. Gopalan's</u> case namely, that the expression 'personal liberty' means only liberty relating to or concerning the person or body of the individual, has not been accepted by the Supreme Court in subsequent cases.

That the expression 'personal liberty' is not limited to bodily restraint or to confinement to prison, only is well illustrated in *Kharak Singh v. State of U.P.* In that case the question raised was of the validity of the police regulations authorising the police to conduct what are called as domiciliary visits against bad characters and to have surveillance over them. The court held that such visits were an invasion, on the part of the police, of the sanctity of a man's home and an intrusion into his personal security and his right to sleep, and therefore violative of the personal liberty of the individual, unless authorised by a valid law.

The expression 'personal liberty' is an **inclusive concept** and it includes various rights like, right to information, right to bail, right to get free legal aid, right to have clean environment etc.

<u>Procedure established by law:</u> The expression 'procedure established by law' means procedure laid down by statute or procedure prescribed by the law of the State.

PROTECTION AGAINST ARBITRARY ARREST AND DETENTION

Article 22 provides the following safeguards against arbitrary arrest and detention:-

(I) A person who is arrested cannot be detained in custody unless he has been **informed**, as soon as may be, of the **grounds** for such arrest.



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- (ii) Such person shall have the right to consult and to be defended by a legal practitioner of his choice.
- (iii) A person who is arrested and detained must be produced before the nearest **magistrate** within a period of **twenty-four hours** of such arrest, excluding the time of journey. And such a person shall not be detained in custody beyond twenty-four hours without the authority of magistrate.

However, Article 22 does not apply to following persons:-

- · alien enemies,
- person arrested or detained under preventive detention law.

PREVENTIVE DETENTION

Preventive detention means **detention** of a person **without trial**. The object of preventive detention is not to punish a person for having done something but to prevent him from doing it.

Safeguards against Preventive Detention

Article 22 contains following safeguards against preventive detention:-

- (i) such a person cannot be detained for a longer period than three months unless an Advisory Board constituted of persons who are or have been or are qualified to be High Court judges has reported, before the expiration of the said period of three months that there is, in its opinion sufficient cause for such detention.
- (ii) The authority ordering the detention of a person under the preventive detention law shall communicate to him, as soon as may be, the **grounds** on which the order for his detention has been made, and afford him the earliest opportunity of making the representation against the order.

It may, however, be noted that while the grounds for making the order are to be supplied, the authority making such order is **not bound to disclose** those facts which it considers to be against the **public interest**.

RIGHT AGAINST EXPLOITATION

ARTICLES 23 AND 24

> PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR

Article 23 imposes a complete ban on traffic in human beings, federal and other similar forms of forced labour. The contravention of these provisions is declared punishable by law.

'Traffic' in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose them off. 'Begar' means involuntary work without payment.

> PROHIBITION OF EMPLOYMENT OF CHILDREN

Article 24 prohibits the employment of children below the age of fourteen in any factory or mine.

RIGHT TO FREEDOM OF RELIGION

ARTICLE 25

Article 25 gives to every person the:-

- (i) freedom of conscience, and
- (ii) the right freely to profess, practice and propagate religion.

But this freedom is subject to restrictions imposed by the State on the grounds of-public order, morality and health.



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> FREEDOM TO MANAGE RELIGIOUS AFFAIRS

It grants to every religious denomination or any sect thereof the right:—

- (i) to establish and maintain institutions of religious and charitable purposes;
- (ii) to manage its own affairs in matters of religion;
- (iii) to own and acquire movable and immovable property; and
- (iv) to administer such property in accordance with law.

All these rights are subject to public order, morality

FREEDOM AS TO PAYMENT OF TAX FOR THE PROMOTION OF ANY PARTICULAR RELIGION

According to Article 27, no person can be compelled to pay any taxes, the proceeds of which are specially appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

> FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION OR RELIGIOUS WORSHIP IN EDUCATIONAL INSTITUTIONS

Article 28 states that no religious instruction can be provided in any educational institution wholly maintained out of State funds. However, this prohibition does not extend to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

CULTURAL AND EDUCATIONAL RIGHTS

ARTICLES 29 AND 30

Article 29 guarantees two rights:-

- (i) Any section of the citizens residing in the territory of Indian or any part thereof having a distinct language, script or culture of its own has the right of conserve the same.
- (ii) No citizen can be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language, or any of them.

An **exception** is made to this right to the effect that if a special provision is made for the admission of persons belonging to educationally or/and socially **backward classes** or scheduled castes or scheduled tribes it shall be valid.

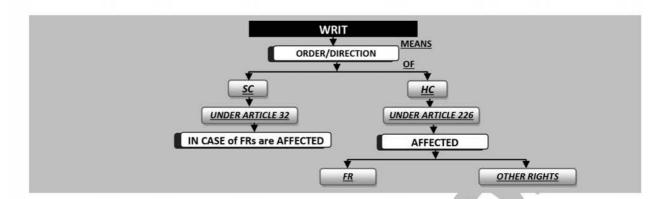
RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS

- (i) The State cannot, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.
- (ii) All minorities, whether based on religion or on language, shall have the **right to establish** and administer educational institutions of their choice.

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In <u>T.M.A. Pai Foundation v. State of Karnataka</u>, while interpreting Article 30, the Supreme Court held that minority includes both linguistic and religious minorities and or determination of minority status, the unit would be the State and not whole of India. Further, the right of minority to establish and administer educational institutions (including professional education) was not absolute and regulatory measures could be imposed for ensuring educational standards and maintaining excellence thereof. Right of minorities included right to determine the procedure and method of admission and selection of students, which should be fair and transparent and based merit.

RIGHT TO CONSTITUTIONAL REMEDIES

ARTICLE 32

Article 32 guarantees the enforcement of Fundamental Rights.

Article 32 makes it a **fundamental right** that a person whose fundamental right is violated has the right to move the **Supreme Court** by appropriate proceedings for the enforcement of this fundamental right.

A person need not first exhaust the other remedies and then go to the Supreme Court. On the other hand, he can directly raise the matter before highest Court of the land and the Supreme Court is empowered to issue directions or orders or writ.

The right guaranteed by Article 32 cannot be suspended except as provided in the Constitution. Constitution does not contemplate such suspension except by way of President's order under Article 359 when a proclamation of Emergency is in force.

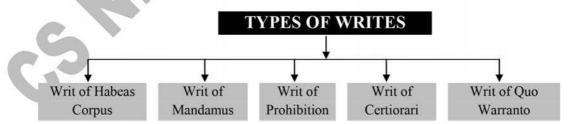
WRITS

Anyone whose rights are affected is empowered to seek writs from **Supreme Court** under **Article 32** and from **High Court** under **Article 226**. However under Article 32 Supreme Court can issue Writs only in the case of violations of Fundamental Rights.

Remedies under writ is provided only if:-

- (i) there is no remedy available under the ordinary law, or
- (ii) the remedy available is inadequate.

TYPES OF WRITES



1. WRIT OF HABEAS CORPUS

The words 'Habeas Corpus' literally mean "to have the body".

The writ of habeas Corpus is in the nature of an order calling upon the person who has detained another, to produce the latter before the court in order to let the court know the ground of his detention and to set him free if there is no legal justifications. The writ of Habeas corpus is a remedy available to a person who is confined without legal justification.

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2. WRIT OF MANDAMUS

The word 'Mandamus' literally means- command. The writ of mandamus is, a command issued to direct any person, corporation, inferior court, or Government requiring him or it do a particular thing specified therein which pertains to his or its office and is further in the nature of a public duty.

Mandamus can be issued against any public authority. The writ is used for securing judicial enforcement of public duties.

3. WRIT OF PROHIBITION

A writ of prohibition is issued to an Inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it. When a tribunal acts without or in excess of jurisdiction, or in violation of rules or law, a writ of prohibition can be asked for. It is generally issued before the trial of the case.

It is available only against judicial or quasi judicial authorities and is not available against a public officer who is not vested with judicial functions.

4. WRIT OF CERTIORARI

It is a writ issued by the Supreme Court and High Court to an inferior court forbidding the later to continue proceedings in excess of its jurisdiction.

All Courts can issue the writ of certiorari throughout their territorial jurisdiction when the <u>subordinate</u> judicial authority acts:-

- (i) without or in excess of jurisdiction or in
- (ii) contravention of the rules of natural justice or
- (iii) commits an error apparent on the face of the record.

Although the object of both the writs of prohibition and of certiorari is the same, **prohibition** is available at an **earlier stage** whereas **certiorari** is available at a **later stage** i.e. Certiorari is issued after authority has exercised its powers.

5. WRIT OF QUO WARRANTO

Under this the holder of the office has to show to the court under what authority he holds the office. <u>It</u> is issued when:-

- (i) the office is of public and of a substantive nature, or is
- (ii) created by statute or by the Constitution itself, and
- (iii) The respondent has asserted his claim to the office.

It can be issued even though he has not assumed the charge of the office.

DIRECTIVE PRINCIPLES OF STATE POLICY

ARTICLES 36 TO 51

The Articles included in Part IV of the Constitution (Articles 36 to 51) contain certain **Directives** which are the **guidelines** for the **Government** to **lead** the country.

Some of the important Directive Principles are enumerated below:-

- (a) State to secure a social order for the promotion of welfare of the people:
- (b) The State must strive to promote the welfare of the people.
- (c) Certain principles of policy to be followed by the State. The State, particularly, must <u>direct its policy towards securing:</u>
 - that the ownership and control of the material resources of the community are so distributed as best to subserve the common goods;



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- that the operation of the economic systems does not result in the concentration of wealth and means of production to the common detriment;
- > equal pay for equal work for both men and women;
- > that childhood, and youth are protected against exploitation.
- (d) The State must take steps to organise the Village Panchayats.
- (e) State must make effective provision for securing the **right to work, to education** and to public assistance in case of unemployment, old age, etc.
- (f) The State must endeavour to provide a uniform civil code for all Indian citizens.
- (g) Provision for free and compulsory education for all children up to the age of fourteen years.
- (h) The State must promote the educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.
- (i) The State shall endeavour to protect and improve the **environment** and to safeguard the forests and wild life of the country.
- (j) The State must separate executive from judiciary in the public services of the State.
- (k) In international matters the State must endeavour to promote peace and security, maintain just and honourable relations in respect of international law between nations.

CONFLICT BETWEEN FUNDAMENTAL RIGHT AND A DIRECTIVE PRINCIPLE

What will be the legal position if a law enacted to enforce a Directive Principle violates a Fundamental Right?

Initially, the Courts, adopted a strict view in this respect and ruled that a Directive Principle could not override a Fundamental Right, and in case of conflict between the two, a Fundamental Right would prevail over the Directive Principle.

CASE LAW



When the matter came before the Supreme Court in <u>State of Madras v. Champakram Dorairajan</u>, where the validity of a Government order alleged to be made to give effect to a Directive Principle was challenged as being violative of a Fundamental Right, the Supreme Court made the observation that:-

"The Directive Principles of State Policy have to conform to and run as subsidiary to the chapter of Fundamental Rights".

However, insertion of Article 31-C led to a different legal situation as it provides that if any law is passed to give effect to any Directive Principles, it cannot be challenged even if it violates Fundamental Rights under Article 14 or 19.

<u>DIFFERENCE & RELATION BETWEEN DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS</u>

DIRECTIVE PRINCIPLES	FUNDAMENTAL RIGHTS
Directive Principles in part IV contain positive commands to the State to promote what may be called a social and welfare State.	
Directive principles are not enforceable by the courts	Fundamental Rights are enforceable by the courts
In case of any conflict between fundamental rights and Directive Principles, the Directive Principles will not prevail.	

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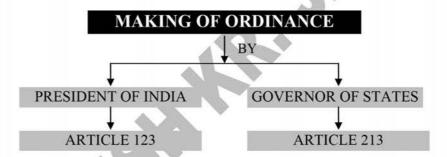
FUNDAMENTAL DUTIES

ARTICLE 51A

Article 51A	(a) to abide by the constitution and respect its ideals and institutions, the Nation flag & anthem
imposes certain	(b) to uphold and protect the sovereignty, unity and integrity of India;
fundamental	(c) to defend the country and render national service when called upon to do so;
duties on every citizen of India. Following are	(d) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or section diversities; to renounce practices derogatory to the dignity of women;
some of the	(e) to value and preserve the rich heritage of our composite culture;
fundamental duties:-	(f) to protect and improve the natural environment including forests, lakes, rive and wild life, and to have compassion for living creatures;
	(g) to safeguard public property.

Since the duties are imposed upon the citizens and not upon the States, legislation is necessary for their implementation.

ORDINANCE-MAKING POWER



➤ ORDINANCE-MAKING POWER OF PRESIDENT ARTICLE 123

The most important legislative power conferred on the President is to promulgate Ordinances. Article 123 of the Constitution provides that the President shall have the power to legislate by Ordinances at any time when it is not possible to have a parliamentary enactment on the subject, immediately.

On the other hand, according to Article 13(3)(a) "Law" includes an "Ordinance". But an Ordinance shall be of temporary duration.

This independent power of the president to legislate by Ordinance has the following peculiarities/conditions:-

- (a) it may relate to any subject in respect of which parliament has the right to legislate and is subject to the same constitutional limitations as legislation by Parliament.
- (b) He must be satisfied that circumstances exist which render it necessary to take immediate action.
- (c) President can do it only if Parliament is not functioning.
- (d) this power is to be exercised by the President on the advice of his Council of Ministers.
- (e) the Ordinance must be laid before Parliament when it re-assembles, and shall automatically cease to have effect at the expiration of 6 weeks from the date of re-assembly or before resolutions have been passed disapproving the Ordinance.

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ORDINANCE-MAKING POWEROF GOVERNOR

ARTICLE 213

The Governor's power to make Ordinances as given under Article 213 is similar to the Ordinance making power of the President and have the force of an Act of the State Legislature.

This independent power of Governor to legislate by Ordinance has the following peculiarities/conditions:-

- (a) He can make Ordinance only when the state Legislature or either of the two Houses is not in session.
- (b) He must be satisfied that circumstances exist which render it necessary to take immediate action.
- (c) While exercising this power Governor must act with the aid and advise of the Council of Ministers.
- (d) The Ordinance must be laid before the state legislature (when it re-assembles) and shall automatically cease to have effect at the expiration of six weeks from the date of the re-assembly unless disapproved earlier by that legislature

LEGISLATIVE POWERS OF THE UNION AND THE STATES

Constitution provides for two Sets of Government – Central and State. There is distribution of powers between Central and State Governments.

Article 246 provides for	List I - Union List.	
the following lists:-	List II- State List and	
	List III- Concurrent List.	

Each list contains a number of entries in which the subjects of legislation have been separately and distinctly mentioned. The **number of entries** in the respective lists is **97**, **66** and **47**.

With respect to the subject enumerated in the Union i.e., **List I**, the Union **Parliament** has the exclusive power to make laws.

With respect to the subjects enumerated in the State List, i.e., List II, the legislature of a State has exclusive power to make laws. Therefore Parliament cannot make any law on any of these subjects, whether the State makes or does not make any law.

With respect to the subjects enumerated in the Concurrent List, i.e., **List III**, Parliament and the State Legislatures **both** have powers to make laws. Thus, both of them can make a law even with respect to the same subject and both the laws shall be valid in so far as they are not repugnant to each other. However, in case of conflict between such laws then the law made by Parliament shall prevail over the law made by the State Legislature.

State legislatures have the exclusive powers to make laws with respect to the subjects included in the State List and Parliament has no power to encroach upon them. However, our Constitution makes a few exceptions to this general rule by authorising Parliament to make law even on the subjects enumerated in the State List.

Following are the exceptions which the Constitution so recognises:-

- (a) In the National Interest
- (b) During a proclamation of emergency
- (c) Breakdown of Constitutional Machinery in a State
- (d) On the request of two or more States
- (e) Legislation for enforcing international agreements

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NKJ-CLASSROOM PRACTICE



Q. 1. Write short notes on Separation of Powers.

PLENARY POWERS

When a legislative power is given with respect to any subject, the legislatures have the power to make laws on such subject and also any matter incidental to such subject. This is called giving plenary of powers. For Example, when a power is given on tax matter, the legislatures have the power to make law for imposition of tax, refund of tax, and also not to impose and collect tax.

PITH AND SUBSTANCE RULE

The term 'Pith and substance' is used in law to ascertain the essential part of the law which the legislature mean the most important in framing the law. While making any law on any matter contained in union, state or concurrent list, the legislature may slightly encroach other list. If challenged, the court by applying the Pith and substance rule may determine the validity of law.

COLOURABLE LEGISLATION

Sometimes a legislature may pass a law in such a way that it gives it a colour of constitutionality while, in reality, that law aims at achieving something which the legislature could not do. Such legislation is called colourable piece of legislation and is invalid.

In <u>Kameshwar Singh v. State of Bihar</u>, the Bihar Land Reforms Act, 1950 provided that the unpaid rents of the tenants shall be collected by the state and one half of them shall be paid back by the State to the landlord as compensation for acquisition. According to the provision in the State List under which the above law was passed, no property should be acquired without payment of compensation.

The Supreme Court found that aforesaid Act passed by the State legislature was a colourable legislation, because "the taking of the whole and returning a half does not amount to compensation.

DELEGATED LEGISLATION

Delegated legislation means legislation by authorities other than the legislature, where the former acting on the express delegated authority and power from the latter (legislature).

Parliament and state legislature have the exclusive legislative powers which can be exercised by them.

The increasing complexity of modern administration have made it necessary for the legislatures to delegate its powers.

The three relevant justifications for delegated legislation are:-

- (a) the limits of the time of the legislature;
- (b) the limits of the amplitude of the legislature,
- (c) the need of some weapon for coping with situations created by emergency.

FREEDOM OF TRADE, COMMERCE AND INTERCOURSE ARTICLES 301 TO 305

This heading has been given to Part XIII of the Constitution. This part consists of 5 articles — Articles 301 to 305.



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Article 301 in real sense, creates an overall comprehensive limitation on all legislative powers of the Union and the State which affect the freedom of trade, commerce and intercourse.

The freedom guaranteed by Article 301 is not made absolute and is to be read subject to the following exceptions as provided in Articles 302-305

> PARLIAMENT TO IMPOSE RESTRICTION IN THE PUBLIC INTEREST

According to Article 302 Parliament may, by law, impose such restrictions on the freedom of trade, commerce and intercourse as may be required in the public interest.

> PARLIAMENT TO MAKE PREFERENCE OR DISCRIMINATION

Parliament cannot by making any law give preference to one State over the other or make discrimination between the States except when it is declared by that law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India [Article 303 (1) and (2)].

> POWER OF THE STATE LEGISLATURE TO IMPOSE TAX

The Legislature of a State may by law impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject to such taxes.

However, no bill or amendment for making a law falling in this provision can be introduced or moved in the Legislature of a State without the previous sanction of the President. [Article 304]

SAVING OF LAWS PROVIDING FOR STATE MONOPOLY

The laws which create **State monopoly** in any trade, etc. are saved from attack under Article 301, i.e., they are valid irrespective of the fact that they directly impede or restrict the freedom of trade and commerce.

NKJ-CLASSROOM PRACTICE



Q. 1. Does a law made by a State to create monopoly rights in favour of a person to carry on any business affect the freedom of trade?

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ADVANCE

YOUR

KNOWLEDGE



Bill

A Bill is a draft statute which becomes law after it is passed by both the Houses of Parliament and assented to by the President. All legislative proposals are brought before Parliament in the forms of Bills.

Types of Bills and their Specific Features

(i) Bills may be broadly classified into Government Bills and Private Members' Bills depending upon their initiation in the House by a Minister or a Private Member. (ii)

Content wise, Bills are further classified into: (a) Original Bills which embody new proposals, ideas or policies, (b) Amending Bills which seek to modify, amend or revise existing Acts, (c) Consolidating Bills which seek to consolidate existing law/enactments on a particular subject, (d) Expiring Laws (Continuance) Bills which seek to continue Acts which, otherwise, would expire on a specified date, (e) Repealing and amending Bill to cleanse the Statute Book, (f) Validating Acts to give validity to certain actions, (g) Bills to replace Ordinances, (h) Money and Financial Bills, and (i) Constitution Amendment Bills.

However, procedurally, the Bills are classified as

(a) Ordinary Bills (b) Money Bills and Financial Bills (c) Ordinance Replacing Bills and (d) Constitution Amendment Bills

Money Bills are those Bills which contain only provisions dealing with all or any of the matters specified in subclauses (a) to (f) of clause (1) of article 110 of the Constitution. Financial Bills can be further classified as Financial Bills Categories A and B. Category A Bills contain provisions dealing with any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 and other matters and Category B Bills involve expenditure from the Consolidated Fund of India. Except Money Bills and Financial Bills, Category A, which can be introduced only in the Lok Sabha

NKJ-CLASSROOM PRACTICE



Q. 1. The Constitution of India is—federal in character but with unitary features!.

Comment.



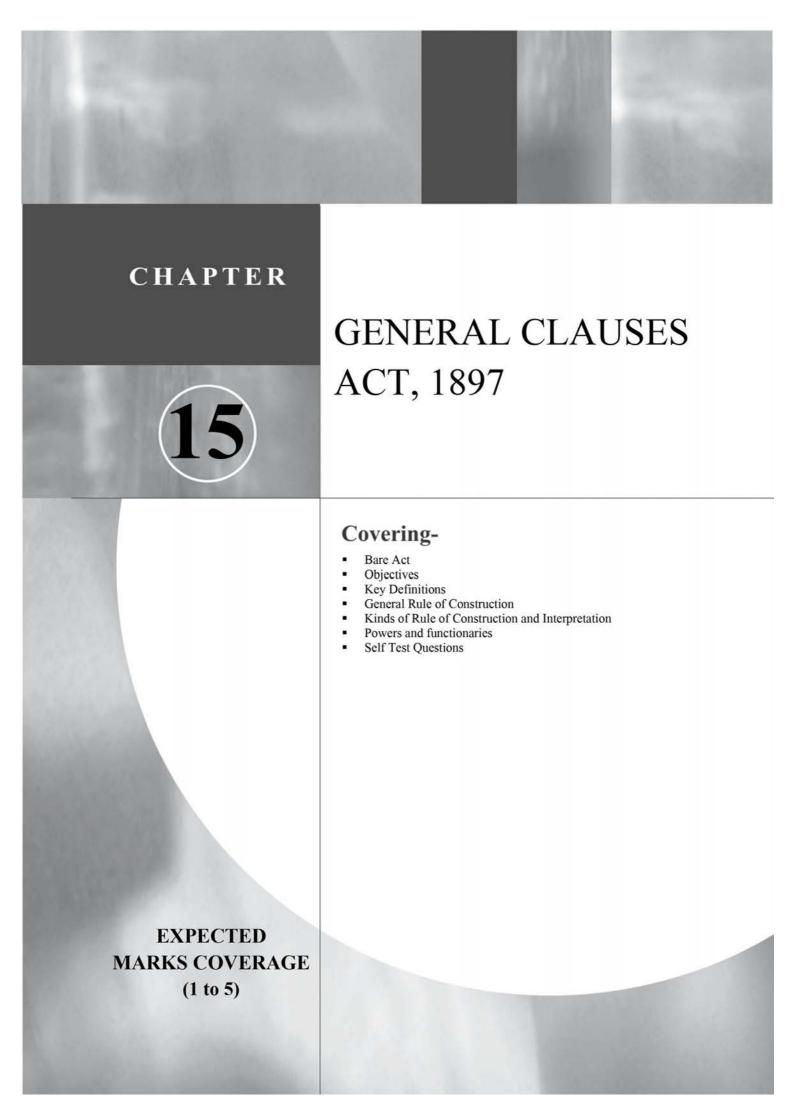
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Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-



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रज़िस्ट्री सं० डी० एल०-33004/99

REGD, NO. D. L.-33004/99



THE GENERAL CLAUSES ACT, 1897

(10 OF 1897)1

An Act to consolidate and extend the General Clauses Act, 1868 and 1887.

[11th March, 1897]

WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868 (1 of 1868) and 1887 (1 of 1887), it is hereby enacted as follows:—

PRELIMINARY

- 1. Short title.—(1) This Act may be called the General Clauses Act, 1897; ²[* * *]
 ²[***]
- 2. Repeal—[Repealed by the Repealing and Amending Act, 1903 (I of 1903), Sec. 4 and Schedule III].

GENERAL DEFINITIONS

- ³[3. Definitions.—In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—
- (1) "abet", with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860);
- (2) "act", used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;
- (3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;
- (4) "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;
- (5) "British India" shall mean, as respects the period before the commencement of Part III of Government of India Act, 1935, all territories and places within His Majesty's
- For Statement of Objection and Reasons, see Gazette of India, 1897, Pt. V, p. 38; for Report of the Select Committee, see Gazette of India, Pt. V, p.77, and for Proceedings in Council see Gazette of India, Pt.VI, pp. 35, 40, 56 and 76.

This Act has been declared to be in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872) sec. 3; in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), sec. 2; in Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), sec. 3 and Sch; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), sec. 3 and Sch.

The Act has been partially extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (59 of 1949).

The Act has been extended to-

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GENERAL CLAUSE ACT, 1897

OBJECTIVES

The General Clauses Act, 1897 has been enacted with the aim and objective to provide a **one single statute as a composite structure in defining different provisions as regards to the interpretation of words and legal principles** which would better placed to be defined for the general application for various rules and regulations.

The General Clauses Act, 1897 contains 'definitions' of some words and also some general principles of interpretation.

KEY DEFINITIONS

Section 3 of the General Clause Act provides that in this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is **anything repugnant in the subject or context,—**

• "Chief Controlling Revenue Authority" or "Chief Revenue Authority"

"Chief Controlling Revenue Authority" or "Chief Revenue Authority" shall mean

- (a) In a State where there is a Board of Revenue, that Board;
- (b) In a State where there is a Revenue Commissioner, that Commissioner;
- (c) In Punjab, the Financial Commissioner; and
- (d) elsewhere, such authority as, in relation to matters enumerated in List I in the Seventh Schedule to the Constitution, the Central Government, and in relation to other matters, the state Government, may by notification in the Official Gazette, appoint;

NKJ-CLASSROOM PRACTICE



Q. 1. Write Short Note on Chief Controlling Revenue Authority.

"Commissioner"

"Commissioner" shall mean the chief officer-in-charge of the revenue administration of a division;

"Constitution"

"Constitution" shall mean the Constitution of India;

"document"

"document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter;

• "Father"

"Father", in the case of any one whose personal law permits adoption, shall include an adoptive father;

• "Financial year"

"Financial year" shall mean the year commencing on the first day of April;

"good faith"

A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

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"Government"

"Government" or "the Government" shall include both the Central Government and any State Government:

"Immovable property"

"Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

• "Imprisonment"

"Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

• "India"

"India" shall mean-

- (a) as respects any period before the establishment of the Dominion of India, British India together with all territories of Indian Rulers then under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, and the tribal areas;
- (b) as respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that Dominion; and
- (c) as respects any period after the commencement of the Constitution, all territories for the time being comprised in the territory of India;

"Indian State"

"Indian State" shall mean any territory which the Central Government recognized as such a State before the commencement of the Constitution, whether described as a State, an Estate, a Jagir or otherwise;

"local authority"

"local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the government with the control or management of a municipal or local fund;

"Month"

"Month" shall mean a month reckoned according to the British calendar;

"Movable property"

"Movable property" shall mean property of every description, except immovable property;

• "Offence"

"Offence" shall mean any act or omission made punishable by any law for the time being in force;

"Official Gazette"

"Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State;

"Person"

"Person" shall include any company or association or body of individuals, whether incorporated or not;

"Political Agent"

"Political Agent" shall mean,-

- (a) in relation to any territory outside India, the Principal Officer, by whatever name called, representing the Central Government in such territory; and
- **(b)** in relation to any territory within India to which the Act or regulation containing the expression does not extend, any officer appointed by the Central Government to exercise all or any of the powers of a Political Agent under that Act or regulation;

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NKJ-CLASSROOM PRACTICE



Q. 1. Write Short Note on Political Agent.

"Rule"

"Rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;

"Section"

"Section" shall mean a section of the Act or Regulation in which the word occurs;

• <u>"Son"</u>

"Son", in the case of any one whose personal law permits adoption, shall include an adopted son;

"Year"

"Year" shall mean a year reckoned according to the British calendar.

GENERAL RULE OF CONSTRUCTION

Rule of Construction is a rule used for interpreting legal instruments, especially contracts and statutes.

Judges usually makes a construction of an unclear term in a document at issue in a case that involves a dispute as to its legal significance. The judge examines the circumstances surrounding the provision, laws, other writings, and verbal agreements dealing with the same subject matter, and the probable purpose of the unclear phrase in order to conclude the proper meaning of such words. Once the judge has done so, the court will enforce the words as construed. However, for language that is plain and clear, there cannot be a construction.

A rule of construction is a principle that either governs the effect of the ascertained intention of a document or agreement containing an ambiguous term or establishes what a court should do if the intention is neither express nor implied.

Example

Contra proferentem and Ejusdem Generic are two examples of rules of construction.

According to *Contra Proferentem Rule*, if a clause in a contract appears to be ambiguous, it should be interpreted against the interests of the person who insisted that the clause be included. Likewise *Ejusdem Generis Rule* states that where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed.

Judicial Stand on Rule of Construction

In the rule of construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.

NKJ-CLASSROOM PRACTICE



Q. 1. "Rule of Construction is a rule used for interpreting legal instruments, especially contracts and statutes". Comment.

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KINDS OF RULE OF CONSTRUCTION AND INTERPRETATION

1. The Literal Rule of Interpretation:

2. Purposive Rule of Interpretation

The doctrine originates in Haydon's case it was resolved that for the sure and true interpretation of all statutes in general, four things are to be discerned and considered:

- (1) what was the common law before the making of the Act;
- (2) what was the mischief and defect for which the common law did not provide; what remedy Parliament has resolved and appointed to cure the disease of the commonwealth; and
- (3) the true reason of the remedy, end then the office of all the judges is always to make such construction as shall
 - (a) suppress the mischief and advance the remedy; and
 - (b) suppress subtle inventions and evasions for the continuance of the mischief pro private commode (for private benefit); and
 - (c) Add force and life to the cure and remedy according to the true intent of the makers of the Act *pro publico* (for the public good)."

NKJ-CLASSROOM PRACTICE



Q. 1. Discuss Purposive rule of interpretation.

3. Harmonious Construction

4. Rule of Beneficial Construction:

Beneficent construction involves giving the widest meaning possible to the statutes. When there are two or more possible ways of interpreting a section or a word, the meaning which gives relief and protects the

benefits which are purported to be given by the legislation, should be chosen. A beneficial statute has to be construed in its correct perspective so as to fructify the legislative intent. Although beneficial legislation does receive liberal interpretation, the courts try to remain within the scheme and not extend the benefit to those not covered by the scheme.

The liberal construction can only flow from the language of the act and there cannot be placing of unnatural interpretation on the words contained in the enactment.

Beneficial Construction of statutes have enormously played an important role in the development and beneficial interpretation of socio – economic legislations and have always encouraged the Indian legislators to make more laws in favor of the backward class of people in India.

5. Strict Construction of Penal Statutes

The general rule for the construction of a penal statute is that it would be strictly interpreted, that is, if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes a penalty. A penal statute has to be construed narrowly in favor of the person proceeded against. This rule implies a preference for the liberty of the subject, in case of ambiguity in the language of the provision.

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NKJ-CLASSROOM PRACTICE



Q. 1. Briefly Enumerate the statutory provision of Rule of Construction under General Clauses Act, 1897.

POWERS AND FUNCTIONARIES

The Power and Functionaries are provided under section 14 to section 19 of the General Clause Act, 1897.

Powers conferred to be exercisable from time to time

(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.

[Section 14]

Power to appoint to include power to appoint ex officio

Where, by any Central Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office. [Section 15]

Power to appoint to include power to suspend or dismiss

Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. [Section 16].

Substitution of functionaries

(1) In any Central Act or Regulation, made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the function of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

[Section 17]

Successors

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

[Section 18]

Officials chiefs and sub-ordinates

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.
[Section 19]

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Power as to Orders, Rules etc., made under Enactments

Section 21 of the General Clause Act deals with power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.

It says where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye laws so issued.

NKJ-CLASSROOM PRACTICE



Q. 1. Discuss the provision of General Clause Act related to substitution of functionaries.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

- 1. Write Short Note on:-
 - (a) Chief Controlling Revenue Authority
 - (b) Political Agent
- 2. Briefly Enumerate the statutory provision of Rule of Construction under General Clauses Act, 1897
- 3. Discuss Purposive rule of interpretation
- **4.** "Rule of Construction is a rule used for interpreting legal instruments, especially contracts and statutes" Comment
- 5. Discuss the provision of General Clause Act related to substitution of functionaries.



Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-

CHAPTER ADMINISTRATIVE LAW **16** Covering-Introduction Need for Administrative Law Sources of Administrative Law Administrative Discretion Judicial Control over Administrative Actions Principles of Natural Justice Exceptions to Natural Justice Liability Quasi-Contractual Liability Suit Against state in torts Damages Liability of the public servant Liability of public corporation Self Test Questions **EXPECTED MARKS COVERAGE** (1 to 5)

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ADMINISTRATIVE LAW

INTRODUCTION

Administrative law is that branch of law that deals with powers, functions and responsibilities of various organs of the state.

Administrative law is the law relating to administration. It determines the organisation, power and duties of the administrative authorities.

Administrative law is the by-product of ever increasing functions of the Governments.

Need for Administrative Law

The modern state typically has three organs- legislative, executive and judiciary. Traditionally, the legislature was tasked with the making of laws, the executive with the implementation of the laws and judiciary with the administration of justice and settlement of disputes. However, this traditional demarcation of role has been found wanting in meeting the challenges of present era. The legislature is unable to come up with the required quality and quantity of legislations because of limitations of time, the technical nature of legislation and the rigidity of their enactments. The traditional administration of justice through judiciary is technical, expensive and dilatory. The states have empowered their executive (administrative) branch to fill in the gaps of legislature and judiciary. This has led to an all pervasive presence of administration in the life of a modern citizen.

The ambit of administration is wide and embraces following elements within its ambit:-

- 1. It makes policies,
- 2. It executes, administers and adjudicates the law
- 3. It exercises legislative powers and issues rules, bye- laws and orders of a general nature.

The ever-increasing administrative functions have created a vast new complex of relations between the administration and the citizen. The modern administration is present everywhere in the daily life of an individual and it has assumed a tremendous capacity to affect their rights and liberties.

Sources of Administrative Law

There are four principal sources of administrative law in India:-

- 1. Constitution of India: It is the primary source of administrative law. Article 73 of the Constitution provides that the executive power of the Union shall extend to matters with respect to which the Parliament has power to make laws. Similar powers are provided to States under Article 62. The Constitution also envisages tribunals, public sector and government liability which are important aspects of administrative law.
- 2. Acts/ Statutes: Acts passed by the central and state governments for the maintenance of peace and order, tax collection, economic and social growth empower the administrative organs to carry on various tasks necessary for it. These Acts list the responsibilities of the administration, limit their power in certain respects and provide for grievance redressal mechanism for the people affected by the administrative action.
- 3. Ordinances, Administrative directions, notifications and Circulars: Ordinances are issued when there are unforeseen developments and the legislature is not in session and therefore cannot make laws. The ordinances allow the administration to take necessary steps to deal with such developments. Administrative directions, notifications and circulars are issued by the executive in the exercise of power granted under various Acts.

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4. <u>Judicial decisions:</u> Judiciary is the final arbiter in case of any dispute between various wings of government or between the citizen and the administration. In India, we have the supremacy of Constitution and the Supreme Court is vested with the authority to interpret it. The courts through their various decisions on the exercise of power by the administration, the liability of the government in case of breach of contract or tortuous acts of Governments servants lay down administrative law which guide their future conduct.

NKJ-CLASSROOM PRACTICE



Q. 1. What are the four principal sources of administrative law in India?

Administrative Discretion

It means the freedom of an administrative authority to choose from amongst various alternatives but with reference to rules of reason and justice and not according to personal whims. The exercise of discretion should not be arbitrary, vague and fanciful, but legal and regular.

Administration has become a highly complicated job needing a good deal of flexibility apart from technical knowledge, expertise and know-how. Freedom to choose from various alternatives allows the administration to fashion its best response to various situations.

Judicial Control over Administrative Actions

Any country which claims to have a rule of law cannot have a government authority which has no checks on its power. Administrative organs have wide powers and their exercise of discretion can be vitiated by a

number of factors. Therefore, the government must also provide for proper redressed mechanism. For India, it is of special significance because of the proclaimed objectives of Indian polity to build a socialistic pattern of society that has led to huge proliferation of administrative agencies and processes.

In India the modes of judicial control of administrative action can be conveniently **grouped into three** heads:

1. CONSTITUTIONAL

The Constitution of India is supreme and all the organs of state derive their existence from it. Indian Constitution expressly provides for judicial review. Consequently, an Act passed by the legislature is required to be in conformity with the requirements of the Constitution and it is for the judiciary to decide whether or not that Act is in conformity with the Constitutional requirements. If it is found in violation of the Constitutional provisions the Court has to declare it unconstitutional and therefore, void.

Judicial Review

The biggest check over administrative action is the power of judicial review. Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agency within that jurisdiction.

The power of judicial review controls not only the legislative but also the executive or administrative act.

In <u>Mansukhlal Vithaldas Chauhan v State of Gujarat</u>, the Supreme Court held that while exercising the power of judicial review the court is to confine itself to the question of legality. Its concern should be:

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- whether a decision making authority exceeding its power?
- committed an error of law?
- committed a breach of rules of natural justice?
- 4. reached a decision which no reasonable tribunal would have reached, or
- 5. abused its power?

Judicial review is exercised at two stages:

- (i) at the stage of delegation of discretion, and
- (ii) at the stage of exercise of administrative discretion.

1. Judicial review at the stage of delegation of discretion

Any law can be challenged on the ground that it is violative of the Constitution and therefore laws conferring administrative discretion can thus also be challenged under the Constitution. In the case of delegated legislation the Constitutional courts have often been satisfied with vague or broad statements of policy, but usually it has not been so in the cases where administrative discretion has been conferred in matters relating to fundamental rights.

The court exercise control over delegation of discretionary powers to the administration by adjudicating upon the constitutionality of the law under which such powers are delegated with reference to the fundamental rights enunciated in Part III of the Indian Constitution. Therefore, if the law confers vague and wide discretionary power on any administrative authority, it may be declared *ultra vires* Article 14, Article 19 and other provisions of the Constitution.

Administrative Discretion and Article 14

Article14 of the Constitution of India provides for equality before law. It prevents arbitrary discretion being vested in the executive. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. Right to equality affords protection not only against discretionary laws passed by legislature but also prevents arbitrary discretion being vested in the executive.

Administrative Discretion and Article 19

Article 19 guarantees certain freedoms to the citizens of India, but they are not absolute. Reasonable restrictions can be imposed on these freedoms under the authority of law. The reasonableness of the restrictions is open to judicial review. These freedoms can also be afflicted by administrative discretion.

In a large number of cases, the question as to how much discretion can be conferred on the executive to control and regulate trade and business has been raised. The general principle laid down is that the power conferred on the executive should not be arbitrary, and that it should not be left entirely to the discretion of any authority to do anything it likes without any check or control by any higher authority.

2. Judicial review at the stage of exercise of discretion

No law can clothe administrative action with a complete finality even if the law says so, for the courts always examine the ambit and even the mode of its exercise to check its conformity with fundamental rights. The courts in India have developed various formulations to control the exercise of administrative discretion, which can be grouped under two broad heads, as under:

- (i) Authority has not exercised its discretion properly- 'abuse of discretion'.
- (ii) Authority is deemed not to have exercised its discretion at all- 'non-application of mind.

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(a) Abuse of discretion

- (i) <u>Mala fides:</u> If the discretionary power is exercised by the authority with bad faith or dishonest intention, the action is quashed by the court.
- (ii) <u>Irrelevant considerations:</u> If a statute confers power for one purpose, its use for a different purpose is not regarded as a valid exercise of power and is likely to be quashed by the courts.
- (iii) <u>Leaving out relevant considerations:</u> The administrative authority exercising the discretionary power is required to take into account all the relevant facts. If it leaves out relevant consideration, its action will be invalid.
- (iv) <u>Arbitrary orders:</u> The order made should be based on facts and cogent reasoning and not on the whims and fancies of the adjudicatory authority.
- (v) <u>Improper purpose:</u> The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose it will amount to abuse of power.
- (vi) <u>Colourable exercise of power:</u> Where the discretionary power is exercised by the authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for some other purpose, it is taken as colourable exercise of the discretionary power and it is declared invalid.
- (vii) Non-compliance with procedural requirements and principles of natural justice: If the procedural requirement laid down in the statute is mandatory and it is not complied, the exercise of power will be bad.
- (viii) <u>Exceeding jurisdiction</u>: The authority is required to exercise the power within the limits or the statute. Consequently, if the authority exceeds this limit, its action will be held to be *ultra vires* and, therefore, void.

(b) Non-application of mind

- (i) Acting under dictation: Where the authority exercises its discretionary power under the instructions or dictation from superior authority it is taken as non-exercise of power by the authority and its decision or action is bad. In such condition the authority purports to act on its own but in substance the power is not exercised by it but by the other authority. The authority entrusted with the powers does not take action on its own judgment and does not apply its mind.
- (ii) <u>Self restriction:</u> The authority entrusted with the discretionary power is required to exercise it after considering the individual cases and the authority should not imposes fetters on its discretion by adopting fixed rule of policy to be applied rigidly to all cases coming before it.
- (iii) Acting mechanically and without due care: Non-application of mind to an issue that requires an exercise of discretion on the part of the authority will render the decision bad in law.

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- Q. 1. Write a short note on:
 - (i) Judicial relief at the stage of delegation of discretion
 - (ii) Judicial relief at the stage of exercise of administrative discretion.

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2 STATUTORY

The method of statutory review can be divided into two parts:

- (i) <u>Statutory appeals:</u> There are some Acts, which provide for an appeal from statutory tribunal to the High Court on point of law. e.g. Section 30 Workmen's Compensation Act, 1923.
- (ii) <u>Reference to the High Court or statement of case:</u> There are several statutes, which provide for a reference or statement of case by an administrative tribunal to the High Court.

3. ORDINARY OR EQUITABLE

Apart from the remedies as discuss above there are certain ordinary remedies, which are available to person against the administration. These remedies are also called equitable remedies and include:

1. Injunction

An injunction is a preventive remedy. It is a judicial process by which one who has invaded or is threatening to invade the rights of another is restrained from continuing or commencing such wrongful act. In India, the law with regard to injunctions has been laid down in the Specific Relief Act, 1963.

- (a) <u>Prohibitory Injunction:</u> Prohibitory injunction forbids the defendant to do a wrongful act, which would infringe the right of the plaintiff. A prohibitory injunction may be interlocutory or temporary injunction or perpetual injunction.
 - (i) <u>Interlocutory or temporary injunctions</u>: Temporary injunctions are such as to continue until a specified time or until the further order of the court. (Section 37 for the Specific Relief Act). It is granted as an interim measure to preserve *status quo* until the case is heard and decided.
 - (ii) <u>Perpetual injunction</u>: A perpetual injunction is granted at the conclusion of the proceedings and is definitive of the rights of the parties.
- (b) Mandatory injunction: When to prevent the breach of an obligation it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts.

2. Declaratory Action

In some cases where wrong has been done to a person by an administrative act, declaratory judgments may be the appropriate remedy. Declaration may be taken as a judicial order issued by the court declaring rights of the parties without giving any further relief. Thus a declaratory decree declares the rights of the parties.

3. Action for damages

If any injury is caused to an individual by wrongful or negligent acts of the Government servant, the aggrieved person can file suit for the recovery of damages from the Government concerned.

NKJ-CLASSROOM PRACTICE



Q. 1. Briefly enumerate the various modes of judicial control of administrative action in India.

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PRINCIPLES OF NATURAL JUSTICE

One of the most important principles in the administration of justice is that justice must not only be done but also seen to be done. This is necessary to inspire confidence in the people in the judicial system. Natural justice is a concept of Common Law and represents procedural principles developed by judges. Principles of natural justice are not precise rules of unchanging content; their scope varies according to the context. In India, the principles of natural justice are derived from Article 14 and 21 of the Constitution.

The concept of natural justice has undergone a tremendous change over a period of time. In the past, it was thought that it included just two rules: rule against bias and rule of fair hearing. In the course of time many sub-rules were added.

1. Rule against bias (nemojudex in causa sua): According to this rule no person should be made a judge in his own cause. The rule against bias has two main aspects- one, that the judge must not have any direct personal stake in the matter at hand and two, there must not be any real likelihood of bias.

Bias can be of the following three types:

- (a) <u>Pecuniary bias:</u> The judicial approach is unanimous on the point that any financial interest of the adjudicatory authority in the matter, howsoever small, would vitiate the adjudication.
- (b) <u>Personal bias:</u> There are number of situations which may create a personal bias in the Judge's mind against one party in dispute before him. He may be friend of the party, or related to him through family, professional or business ties. The judge might also be hostile to one of the parties to a case.
- (c) <u>Subject matter bias:</u> A judge may have a bias in the subject matter, which means that he himself is a party, or has some direct connection with the litigation. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in dispute.
- 2. Rule of fair hearing (audi alteram partem): The second principle of natural justice is audi alteram partem (hear the other side) i.e. no one should be condemned unheard. It requires that both sides should be heard before passing the order. This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given opportunity to submit his explanation thereto. Following are the ingredients of the rule of fair hearing:
 - (a) <u>Right to notice:</u> Hearing starts with the notice by the authority concerned to the affected person. Consequently, notice may be taken as the starting point of hearing. Unless a person knows the case against him, he cannot defend himself. The notice must give sufficient time to the person concerned to prepare his case. The notice must be adequate and reasonable. The notice is required to be clear and unambiguous.
 - (b) <u>Right to present case and evidence:</u> The party against whom proceedings have been initiated must be given full opportunity to present his or her case and the evidence in support of it.
 - (c) Right to rebut adverse evidence: For the hearing to be fair the adjudicating authority is not only required to disclose to the person concerned the evidence or material to be taken against him but also to provide an opportunity to rebut the evidence or material.
 - (i) <u>Cross-examination:</u> Examination of a witness by the adverse party is called cross examination. The main aim of cross-examination is the detection of falsehood in the testimony of the witness.
 - (ii) <u>Legal Representation:</u> where the case involves a question of law or matter which is complicated and technical or where the person is illiterate or expert evidence is on record, the denial of legal representation will amount to violation of natural justice.

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- (d) <u>Disclosure of evidence:</u> A party must be given full opportunity to explain every material that is sought to be relied upon against him.
- (e) <u>Speaking orders:</u> Reasoned decision may be taken to mean a decision which contains reason in its support. When the adjudicatory bodies give reasons in support of their decisions, the decisions are treated as reasoned decision. It is also called speaking order. In such condition the order speaks for itself or it tells its own story. Reason based judgments and orders allow the party affected by it to go into the merits of the decision and if not satisfied, exercise his right to appeal against the judgment/ order.

EXCEPTIONS TO NATURAL JUSTICE

Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, that requirement may be excluded under certain exceptional circumstances.

- (a) <u>Statutory Exclusion:</u> The principle of natural justice may be excluded by the statutory provision. However, the principles of natural justice are not incapable of exclusion. The statute may exclude them. When the statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate. But one thing may be noted that in India, Parliament is not supreme and therefore statutory exclusion is not final.
- **(b) Emergency:** In exceptional cases of urgency or emergency where prompt and preventive action is required the principles of natural justice need not be observed.
- (c) <u>Interim disciplinary action:</u> The rules of natural justice are not attracted in the case of interim disciplinary action. For example, the order of suspension of an employee pending an inquiry against him is not final but interim order and the application of the rules of natural justice is not attracted in the case of such order.
- (d) <u>Academic evaluation:</u> Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded.
- (e) <u>Impracticability:</u> Where the authority deals with a large number of person it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice.

EFFECT OF FAILURE OF NATURAL JUSTICE

When an authority required observing natural justice in making an order fails to do so, should the order made by it be regarded as void or voidable?

Generally speaking, a voidable order means that the order was legally valid at its inception, and it remains valid until it is set aside or quashed by the courts, that is, it has legal effect up to the time it is quashed. On the other hand, a void order is no order at all from its inception; it is a nullity and void *ab initio*. In most cases a person affected by such an order cannot be sure whether the order is really valid or not until the court decided the matter. Therefore, the affected person cannot just ignore the order treating it as a nullity. He has to go to a Court for an authoritative determination as to the nature of the order is void.

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LIABILITY

The liability of the government can either be contractual or tortious.

Liability of State or Government in Contract

The Constitution of India allows the central and the state governments to enter into contracts. According to its provisions a contract with the Government of the Union or state will be valid and binding only if the **following conditions are followed:**

- (a) The contract with the Government must be made in the name of the President or the Governor, as the case may be.
- **(b)** The contract must be executed on behalf of the President or the Governor of the State as the case may be. The word executed indicates that a contract with the Government will be valid only when it is in writing.
- (c) A person duly authorized by the President or the Governor of the State, as the case may be, must execute the contract.

Article 299 (2) of the Constitution makes it clear that neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of the Constitution or for the purposes of any enactment relating to the Government of India. Subject to the provisions of Article 299 (1), the other provisions of the general law of contract apply even to the Government contract.

Effect of a valid contract with Government

As soon as a contract is executed with the Government in accordance with Article 299, the whole law of contract as contained in the Indian Contract Act, 1872 comes into operation. In India the remedy for the breach of a contract with Government is simply a suit for damages.

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Q. 1. The liability of the government can either be contractual or tortious. Discuss...

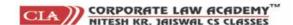
OUASI-CONTRACTUAL LIABILITY

According to section 70 of the Indian Contracts Act, 1872, where a person lawfully does anything for another person or delivers anything to him such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered. If the requirements of section 70 of the Indian Contract Act are fulfilled, even the Government will be liable to pay compensation for the work actually done or services rendered by the State.

SUIT AGAINST STATE IN TORTS

A tort is a civil wrong arising out of breach of a civil duty or breach of non-contractual obligation and the only remedy for which is damages. The essential requirement for the tort is beach of duty towards people in general.

When the responsibility of the act of one person falls on another person, it is called vicarious liability. sometimes the state is held vicariously liable for the torts committed by its servants in the exercise of their duty. The State would of course not be liable if the acts done were necessary for protection life or property. Acts such as judicial or *quasi judicial* decisions done in good faith would not invite any liability.



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In India Article 300 of the Constitution declares that the Government of India or of a State may be sued for the tortious acts of its servants. rule is, however, subject to any such law made by the Parliament or the State Legislature.

In <u>Kasturi Lal v. State of U. P</u>, the Government was not held liable for the tort committed by its servant because the tort was said to have been committed by him in the course of the discharge of statutory duties.

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Q. 1. The liability of the State is vicarious for the wrongful acts of its servants. Comment.

DAMAGES

It may happen that a public servant may be negligent in exercise of his duty. It may, however, be difficult to recover compensation from him. From the point of view of the aggrieved person, compensation is more important than punishment. Therefore, like all other employers the State must be made vicariously liable for the wrongful acts of its servants

LIABILITY OF THE PUBLIC SERVANT

Liability of the State must be distinguished from the liability of individual officers of the State. So far as the liability of individual officers is concerned, if they have acted outside the scope of their powers or have acted illegally, they are liable to same extent as any other private citizen would be.

LIABILITY OF PUBLIC CORPORATION

The term 'Statutory Corporation' (or Public Corporation) refers to such organisations which are incorporated under the special Acts of the Parliament/State Legislative Assemblies. Its management pattern, its powers and functions, the area of activity, rules and regulations for its employees and its relationship with government departments, etc. are specified in the concerned Act.

The public corporation (statutory corporation) is a body having an entity separate and independent from the Government. It is not a department or organ of the Government. Consequently, its employees are not regarded as Government servants and therefore they are not entitled to the protection of Article 311 of the Constitution.

On principles of vicarious liability, corporation is liable to pay damages for wrong done by their officers or servants.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

- 1. What are the four principal sources of administrative law in India?
- 2. Briefly enumerate the various modes of judicial control of administrative action in India.
- 3. Write a short note on:
 - (a) Judicial relief at the stage of delegation of discretion
 - **(b)** Judicial relief at the stage of exercise of administrative discretion.
- **4.** The liability of the government can either be contractual or tortious. Discuss.
- 5. The liability of the State is vicarious for the wrongful acts of its servants. Comment.



Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-



17)

SPECIAL COURTS, TRIBUNALS UNDER COMPANIES ACT & OTHER LEGISLATION

Covering-

- Bare Act
- Introduction
- Background of establishment of NCLT & NCLAT
- Constitution of national company law tribunal.
- Some of the powers exercise by NCLT Companies Act, 2013
- Constitution of appellate tribunal.
- Benches of tribunal
- Orders of tribunal
- Appeal from orders of tribunal
- Expeditious disposal by tribunal and appellate tribunal
- Appeal to Supreme Court
- Procedure before tribunal and appellate tribunal
- Power to punish for contempt
- Delegation of powers
- Right to legal representation
- Limitation
- Institution of proceedings, Petition, Appeals etc. before NCLT
- Particular to be set out in the address for service
- Presentation of petition or appeal
- Legal of CAEAT
- Interlocutory Applications
- Rights of a Party to appear before the tribunal
- Special Courts
- Offences triable by special courts (Section 436)
- Application of Code to Proceedings before special court
- Self Test Questions

EXPECTED
MARKS COVERAGE
(1 to 5)

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-From Bare Act... REGD. NO. D. L.-33004/99 REGD. NO. D. L.-33004/99 The Gazette of India

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SPECIAL COURTS, TRIBUNALS UNDER **COMPANIES ACT & OTHER LEGISLATIONS**

INTRODUCTION

The term 'Tribunal' is derived from the word 'Tribunes', which means 'Magistrates of the Classical Roman Republic'. A Tribunal, generally, is any person or institution having an authority to judge, adjudicate on, or to determine claims or disputes - whether or not it is called a tribunal in it stitle.

'Tribunal' is an administrative body established for the purpose of discharging quasi-judicial duties. An Administrative Tribunal is neither a Court nor an executive body. It stands somewhere midway between Court and an administrative body.

The difference between a Court and a Tribunal is the manner of deciding a dispute. However, the Supreme Court in *Virindar Kumar Satyawadiv. The State of Punjab* observed that:

'What distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasijudicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.'

Tribunals basically deal with the cases under special laws and therefore they provide special adjudication, outside Courts.

To overcome the situation that arose due to the pendency of cases in various Courts, domestic tribunals and other Tribunals have been established under different Statutes, hereinafter referred to as the Tribunals.

A 'tribunal' in the legal perspective is different from a domestic tribunal. The 'domestic tribunal' refers to the administrative agencies designed to regulate the professional conduct and to enforce disciple among the members by exercising investigatory and adjudicatory powers. Whereas, Tribunals are the quasi-judicial bodies established to adjudicate disputes related to specified matters which exercise the jurisdiction according to the Statute establishing them.

"Where a statutory authority is empowered to take a decision which affects the rights of persons and such an authority under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act." (Rex v. Electricity Commissioners).

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Q. 1. What is the difference between a Court and a Tribunal?

BACKGROUND OF ESTABLISHMENT OF NCLT & NCLAT

On the recommendations of the Justice Eradi Committee on Law Relating to Insolvency and Winding up of Companies, a specialized institution for corporate justice i.e. Tribunal was to be set up. The Committee examined not only the Companies Act, 1956 but also the other relevant laws having a bearing on the subject such as Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the recommendations of the united Nations and International Monetary Fund Report - "Orderly and Effective Insolvency Procedures- Key Issues".

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In L. Chandrakumar v. Union of India A ruling was made by the seven-judge bench of the Supreme Court that the Supreme Court under Article 32 and High Court under Article 226 form the basic structure of the Constitution of India. The jurisdiction of the High Court cannot be exiled, and on the other hand, the Tribunals may function as the supplemental part of the judiciary system.

The Tribunals may continue to act like courts of first instance in respect of the areas of law for which they have been constituted.

By the enactment of the Companies (Second Amendment) Act, 2002 to further amend the Companies Act, 1956, the controversial phase for the validity of the 'National Company Law Tribunal' (herein after referred as 'Tribunal') and 'National Company Law Appellate Tribunal' (herein after referred as 'Appellate Tribunal') was set in motion before the Court of Law and it seemed to be a never-ending fight. But such controversy was set to rest with the decision of Supreme Court in the case - Union of India v. R. Gandhi, President, wherein the constitutional validity of the Tribunal and Appellate Tribunal was upheld as per the Supreme Court ruling on 14th May, 2015 and it has provided a path to the Central Government to notify the Tribunal and Appellate Tribunal in India under the provisions of the Companies, 2013.

After a long journey of fourteen years the controversial phase has come to an end with the constitution of the Tribunal and the Appellate Tribunal as notified by the Central Government w.e.f. 1st June, 2016. The new judicial forum, apart from exercising the powers of the erstwhile CLB, will also carry out the work, carried out by High Courts with regard to company matters and Board of Industrial and Financial Reconstruction (BIFR) and for the other Authorities as well.

The Appellate Tribunal is required to hear appeals against the orders of the NCLT.

CONSTITUTION OF NATIONAL COMPANY LAW TRIBUNAL

As per section 408 of the Companies Act, 2013 the Central Government shall, by notification, constitute, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

SOME OF THE POWERS EXERCISE BY NCLT COMPANIES ACT, 2013

Powers of NCLT	Section under Companies Act,2013
To allow certain companies or body corporate to have a different financial year.	2(41)
Conversion of a public company into a private company requires the approval of NCLT.	Proviso of 14(1)
Not less than ten percent of the issued shares of a class, who did not consent to a variation, may apply to the Tribunal for cancelling the variation.	48(2)
The transferee of shares in a private company may appeal to the NCLT within one month from the receipt of notice of refusal or within sixty days from the date on which the instrument of transfer or intimation of transmission was delivered to the company.	58(3)
The transferee in a public company within sixty days of refusal to register transfer or transmission, or within ninety days of delivery of instrument of transfer or of intimation of transmission may apply to the NCLT for relief.	58(4)

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To order rectification of register of members on transfer or transmission of shares.	59(2)
To approve Consolidation and division of share capital resulting in change in voting	Proviso under
percentage of shareholders.	61(1)(b)
Confirmation by NCLT for reduction of capital in a company limited by shares or	
guarantee and having share capital.	66(1)
NCLT to order redemption of debentures forthwith by payment of principal and	71(10)
interest due thereon.	71(10)
To direct the company to make repayment of the matured deposits or for any loss or	72(4)
damage incurred by him as a result of non-payment.	73(4)
On the application of a member, the Tribunal may call or direct the calling of an	07(1)
annual general meeting if default is made in holding the Annual General Meeting.	97(1)
With the approval of NCLT, company may prepare revised financial statement for any	131(1)
of the three preceding financial years.	131(1)
Where NCLT is satisfied that the Auditor has acted in a fraudulent manner, it mat	140(5)
order that the Auditor may be changed	140(3)
To order investigation of the affairs of the company.	210(2)
To order investigation of ownership of Company.	216 (2)
NCLT may pass suitable orders for the protection of the employees in respect of	219(1)
investigation under section 210,212,213 or 219.	218(1)
To entertain petition for winding up of a Company or Body Corporate in pursuance	224(2)
of Inspector's report.	224(2)
To hear petition for winding up of a Company presented by Central Govt.	224(2)
With reference to compromise or arrangements between the company and its	
creditors and members, Tribunal may order a meeting of creditors or class of	230(1)
creditors or members of the company.	
To sanction compromise or arrangement agreed to at the meeting of creditors/	230 (6)
members ordered by the Tribunal.	230 (0)
To enforce compromise and arrangement as sanctioned under Section 230.	231(1)
To sanction the scheme of merger and amalgamation.	232(1)
To call meeting of creditors or members for facilitating merger and amalgamation of	222 (2)
companies.	232 (2)
Complaints of oppression and mismanagement will be heard by the Tribunal.	241(1)
Tribunal may pass orders for regulation of conduct of affairs of the company in	242(2)(a)
future.	242(2)(a)
Removal of the managing director, manager or any of the directors of the company.	242(2)(h)
To wind up a company the name of which has been struck off by registrar from	248 (8)
Register of Companies.	240 (0)
Tribunal may order restoration of the name of a company to the Register of	
companies in case of an appeal made to the tribunal within three years of the order of	252(1)
the Registrar.	
To pass order of winding up of the company.	270 (1)
To wind up companies under various circumstances.	271 (1)
NCLT, after considering the report of the company liquidator, shall pass order	302
dissolving the company.	302
To hear winding up petition where company is being wound up voluntarily.	306 (3) (b)

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Where in a voluntary winding-up the company liquidator reports that a fraud has	215
been committed, NCLT may pass such order and give such directions as are	317
necessary.	
When the affairs of the company have been completely wound up, NCLT can pass	318(5)
order for dissolution of the company in a voluntary winding up.	
To vary, confirm or set aside arrangement between the company and its creditors.	321 (2)
To determine questions in winding up or exercise powers as to staying of	322 (1)
proceedings etc.	
NCLT determines the questions arising out of winding up of the company where an	
application has been made for determining any question arising in the course of	322(3)
winding up of the Company, or exercise the staying of proceedings or any other	022(0)
matter with respect to the enforcing of the calls.	
To give an option to company to declare the transaction relating to transfer of	
property, delivery of goods etc as fraudulent preference and to restore the position as	328 (1),(2)
if the company had not given such preference.	
To determine liabilities and rights of certain fraudulently preferred persons who acted	331 (3)
as surety or guarantor or creditor to the company.	331 (3)
To grant leave to disclaim the onerous property in case of a company likely to be	333
wound up.	333
To pass orders against avoidance of transfers including actionable claims or	
alteration in the status of members of company etc, after commencement of winding	334 (2)
up.	33.34
To grant permission to enforce any attachment, distress or execution after the	335(1)
commencement of winding up.	333(1)
To direct liability for fraudulent conduct of business to any person on application of	220(1)
Company Liquidator.	339(1)
To assess damages against delinquent directors, manager, liquidator or officer of the	340
Company for misapplication, retainer, misfeasance or breach of trust.	340
Liability of partners or directors of the company under Section 339, Companies Act,	
2013 relating to fraudulent conduct of business or under section 340, Companies Act,	341
2013 relating to misfeasance or breach of trust can be extended by the NCLT.	
The delinquent officers and members of the Company who are found to be guilty of	242
any offence in relation to the company are liable to be prosecuted by the NCLT.	342
To sanction powers to be exercised by liquidator for payment to creditors in full etc.	343 (1)
To direct the manner for disposal of books and papers of company after the complete	247 (1)()
winding up of the company or of the company likely to be dissolved.	347 (1)(a)
To permit company liquidator to open account in a bank other than scheduled bank	Proviso of 350
for the deposit of the monie received.	(1)
To disallow the payment of remuneration in part or in full to the liquidator in case	
money is required to be deposited in Company Liquidation Account and	352 (8) (c)
Undistributed asstes Account is not deposited by the liquidator.	
To pass order to make the default good by filing the returns etc. to the company	252
liquidator on request of any creditor or contributory or the Registrar.	353
To ascertain the wishes of creditors or contributors by calling their meetings in all	251
matters relating to winding up of the company.	354

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CONSTITUTION OF APPELLATE TRIBUNAL

The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal or of the National Financial Authority.

BENCHES OF TRIBUNAL

- 1. There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.
- 2. The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.
- 3. The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:
- 4. The Central Government shall, by notification, establish such number of benches of the Tribunal, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2016.
- 5. If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal

ORDERS OF TRIBUNAL

- 1. The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.
- The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:
 - Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act
- The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

APPEAL FROM ORDERS OF TRIBUNAL

- (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.
- (2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:
 - Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of fortyfive days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

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- (4) On the receipt of an appeal, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

EXPEDITIOUS DISPOSAL BY TRIBUNAL AND APPELLATE **TRIBUNAL**

- 1. Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.
- Where any application or petition or appeal is not disposed of within the period specified in sub section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.

APPEAL TO SUPREME COURT

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

PROCEDURE BEFORE TRIBUNAL AND APPELLATE TRIBUNAL

- 1. The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act or of the Insolvency and Bankruptcy Code, 2016 and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.
- 2. The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act ["or under the Insolvency and Bankruptcy Code, 2016, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - **(b)** requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

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- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed.
- 3. Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,-
 - (a) in the case of an order against a company, the registered office of the company is situate; or
 - (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.
- 4. All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

NKJ-CLASSROOM PRACTICE



Q. 1. Discuss briefly the procedure of appeal before the National Company Law Tribunal.

POWER TO PUNISH FOR CONTEMPT

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that-

- (a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and
- (b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

DELEGATION OF POWERS

The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such conditions, if any, as may be specified in the order, any of its officers or employees or any other person authorised by it to inquire into any matter connected with any proceeding or, as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

RIGHT TO LEGAL REPRESENTATION

A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

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LIMITATION

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

INSTITUTION OF PROCEEDINGS, PETITION, APPEALS ETC. BEFORE NCLT

Part III of the National Company Law Tribunal Rules, 2016 dealing with the Institution of proceedings, petition, appeals etc. before NCLT.

Procedure of Appeal

- (1) Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition
- (2) The cause title shall state "Before the National Company Law Tribunal" and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.
- (3) Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.
- (4) Where Saka or other dates are used, corresponding dates of Gregorian Calendar shall also be given.
- (5) Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.
- (6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.
- (9) Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

PARTICULARS TO BE SET OUT IN THE ADDRESS FOR SERVICE

The address for service of summons shall be filed with every appeal or petition or application or caveat onbehalf of a party and shall as far as possible contain the following items namely:-

- (a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;
- (b) the name of the town or village;
- (c) the post office, postal district and PIN Code, and
- (d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e-mail address, if any.

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PRESENTATION OF PETITION OR APPEAL

- 1. Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case maybe, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
- 2. Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.
- 3. All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
- 4. Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.
- 5. In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.

Number of copies to be filed

The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

LODGING OF CAVEAT

- 1. Any person may lodge a caveat in triplicate in any appeal or petition or application that may be instituted before this Tribunal by paying the prescribed fee after forwarding a copy by registered post or serving the same on the expected petitioner or appellant and the caveat shall be in the form prescribed and contain such details and particulars or orders or directions, details of authority against whose orders or directions the appeal or petition or application is being instituted by the expected appellant or petitioner or applicant which full address for service on other side, so that the appeal or petition or application could be served before the appeal or petition or interim application is taken up: Provided, that the Tribunal may pass interim orders in case of urgency.
- 2. The caveat shall remain valid for a period of ninety days from the date of its filing.

Endorsement and Verification

- 1. At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.
- 2. Every petition or appeal shall be signed and verified by the party concerned in the manner provided the NCLT Rules.

INTERLOCUTORY APPLICATIONS

Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

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RIGHTS OF A PARTY TO APPEAR BEFORE THE TRIBUNAL

- 1. Every party may appear before a Tribunal in person or through an authorised representative, duly authorised in writing in this behalf.
- 2. The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT. 12 representing the respective parties to the proceedings.
- 3. The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate to represent in the proceedings before the Tribunal.
- 4. The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.
- 5. During any proceedings before the Tribunal, it may for the purpose of its knowledge, call upon the Registrar of Companies to submit information on the affairs of the company on the basis of information available in the MCA21 portal. Reasons for such directions shall be recorded in writing.

ESTABLISHMENT OF SPECIAL COURTS **SECTION 435**

- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (2) A Special Court shall consist of—
 - (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and
 - (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working".

POWER OF SPECIAL COURT

SECTION 436

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—
 - (a) all offences specified under section 435" under this Act shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;
 - (b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;
 - (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and





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- (d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.
- (2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years: Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:

It is important to note that all the offences pertaining to Companies Act, 2013 are non-cognizable, except referred to Serious Fraud Investigation Office (SFIO).

COMPOUNDING OF OFFENCES

SECTION 441

Offences may be compounded by Regional Director, National Company Law Tribunal and Special Courts. Any Offence punishable (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine"and where the maximum amount of fine which may be imposed for such offence exceeds five lakh rupees, may, be compounded by the National Company Law Tribunal.

The offences which are punishable with Fine or Imprisonment; Fine or Imprisonment or with both may be compoundable with the permission of Special Court.

Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

APPLICATION OF CODE TO PROCEEDINGS BEFORE SPECIAL COURT

Section 438 states that save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be, and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

NKJ-CLASSROOM PRACTICE



Q. 1. What is Special Courts? What are the offenses triable by Special Courts?

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

- **1.** What is the difference between a Court and a Tribunal?
- **2.** Discuss the power of NCLT under Companies Act, 2013 regarding Winding Up of the Company.
- 3. What are the provisions relating to appeal from the orders of National Company Law Tribunal to National Company Law Appellate Tribunal?
- **4.** Discuss briefly the procedure of appeal before the National Company Law Tribunal.
- 5. What is Special Courts? What are the offenses triable by Special Courts?



Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-



18

INFORMATION TECHNOLOGY ACT, 2000

Covering-

- Bare Act
- Introduction
- Objective
- Documents or transactions to which the Act shall apply
- Definitions
- Digital Signature and Electronic Signature
- Electronic Governance (Legal Recognition of Electronic Records)
- Retention of information
- Audit of documents maintained in electronic form
- Subordinate Legislation
- Attribution and dispatch of electronic records
- Secure Electronic Records
- Certifying Authorities
- Electronic Signature certificates
- Penalties and adjudications
- Compensation for failure to protect data
- Appellate Tribunal
- Offences
- Liability of Network Service Providers
- . -
- Self Test Questions

EXPECTED
MARKS COVERAGE
(1 to 5)

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- From Bare Act...

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INFORMATION TECHNOLOGY ACT, 2000

INTRODUCTION

"Information technology", in a broad sense, connotes that technology which is connected with information.

The use of such technology for the storage, retrieval and dissemination of information has given rise to several legal, social and ethical problems.

OBJECTIVE

Information Technology Act, 2000 is the primary law in India dealing with electronic commerce and Cyber Crime. It is based on the United Nations Model Law on Electronic Commerce (UNCITRAL Model) recommended by the General Assembly of United Nations by a resolution dated 30th January 1997.

Information Technology Act, 2000 provides legal recognition to any transaction which is done electronically or use of internet.

The Information Technology Act, 2000, was enacted to make, in the main, three kinds of provisions, as

under:

- (a) It provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, usually referred to, as "electronic Commerce".
- **(b)** It facilitates the electronic filing of documents with the Government agencies, (and also with the publication of rules etc., in the electronic form).
- (c) It amends the, Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934, so as to bring in electronic documentation within the purview of the respective enactments.

NKJ-CLASSROOM PRACTICE



Q. 1. Summaries the main provisions contained in the Information Technology Act, 2000.

DOCUMENTS OR TRANSACTIONS TO WHICH THE ACT SHALL NOT APPLY

- 1. A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881.
- 2. A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882.
- 3. A trust as defined in section 3 of the Indian Trust Act, 1882.
- **4.** A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.
- 5. Any contract for the sale or conveyance of immovable property or any interest in such property.

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DEFINITIONS

"Information"

"Information" includes data, message, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche. [Section 2(1)(v)]

"Originator"

"Originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person, but does not include an intermediary. [Section 2(1)(za)]

"Intermediary"

"Intermediary" with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, webhosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes; [Section 2(1)(w)]

"Addressee"

"Addressee" means a person who is intended by the originator to receive the electronic record, but does not include any intermediary. [Section 2(1)(b)]

"Communication device"

"Communication device" means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image; [Section 2(1) (ha)]

"Computer"

"Computer" means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions, by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network. [Section 2(1)(i)

"Computer network"

"Computer network" means the interconnection of one or more computers through -

- (i) the use of satellite, microwave, terrestrial line or other communication media; and
- (ii) terminals or a complex consisting of two or more interconnected computers, whether or not the interconnection is continuously maintained. [Section 2(1)(j)]

"Computer resource"

"Computer resource" means computer, computer system, computer network, data, computer database or software. [Section 2(1)(k)]

· "Electronic form"

"Electronic form" with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device. [Section 2(1)(r)]

"Digital signature"

"Digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3. [Section 2(1)(p)]

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"Electronic signature"

"Electronic signature" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature. [Section 2(1)(ta)]

"Electronic Signature Certificate"

"Electronic Signature Certificate" means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate.[Section 2(1)(tb)]

"Electronic record"

"Electronic record" means data, recorded or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated micro fiche. [Section 2(1)(t)]

· "Asymmetric crypto system"

"Asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature [Section 2(1)(f)]

"Key pair"

"Key pair" in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key. [Section 2(1)(x)]

"Private Key"

"Private Key" means the key of a key pair, used to create a digital signature. [Section 2(1)(zc)]

"Public key"

"Public key" means the key of a key pair, used to verify a digital signature and listed in the Digital Signature Certificate. [Section 2(1)(zd)]

"Secure system"

"Secure system" means computer hardware, software, and procedure that-

- (a) are reasonably secure from unauthorised access and misuse;
- **(b)** provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures;

"Cyber security"

"Cyber security" means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosure, disruption, modification or destruction. [Section 2(1)(nb)]

"Appellate Tribunal"

"Appellate Tribunal" means the Appellate Tribunal referred to in sub-section (1) of section 48. [Section 2(1) (da)]

NKJ-CLASSROOM PRACTICE



Q. 1. State very briefly the gist of the concepts of "computer network", "electronic form" and "key pair", under the Information Technology Act, 2000.

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DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE

Digital signature (i.e. authentication of an electronic record by a subscriber, by electronic means) is recognised as a valid method of authentication. The authentication is to be effected by the use of "asymmetric crypto system and hash function", which envelop and transform electronic record into another electronic record. [Sections 3(1), 3(2)]

Verification of the electronic record is done by the use of a public key of the subscriber. [Section 3(3)] The private key and the public key are unique to the subscriber and constitute a functioning "key pair".

Section 3A deals with electronic signature. Section 3A(1) provides that notwithstanding anything contained in section 3(1), but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which:-

- (a) is considered reliable; and
- (b) may be specified in the Second Schedule.

Section 5 deals with legal recognition of electronic signatures. It states that where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of electronic signature affixed in such manner as may be prescribed by the Central Government.

ELECTRONIC GOVERNANCE (LEGAL RECOGNITION OF ELECTRONIC RECORDS)

The Act grants legal recognition to electronic records by laying down that where (by any law) "information" or any other matter is to be in:

- (a) writing or
- **(b)** typewritten form or
- (c) printed form,

then, such requirement is satisfied, if such information or matter is:

- (i) rendered or made available in an electronic form; and
- (ii) accessible, so as to be usable for a subsequent reference. (Section 4)

Thus, Section 4 of the Information Technology Act, practically equates electronic record with a manual or typed or printed record.

Public records

Section 6grants recognition to electronic records and electronic record signatures, <u>in cases where any law</u> provides for

- (a) the filing of any form, application or any other document with a Governmental office or agency or
- (b) the grant of any licence, permit etc. or
- (c) the receipt or payment of money in a particular manner. (Section 6)

NKJ-CLASSROOM PRACTICE



Q. 1. What is the significance of electronic records under the Information Technology Act, 2000?

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RETENTION OF INFORMATION

Section 7 seeks to permit the retention of information in electronic form, where any law provides that certain documents, records or information shall be retained for any specific period. Certain conditions as to accessibility, format etc. are also laid down.

AUDIT OF DOCUMENTS MAINTAINED IN ELECTRONIC FORM

Where in any law for the time being in force, there is a provision for audit of documents, records or information, that provision shall also be applicable for audit of documents, records or information processed and maintained in the electronic form.(Section 7A)

SUBORDINATE LEGISLATION

Subordinate legislation is also authorised, by the Act, to be published in the Official Gazette or the electronic Gazette, and the date of its first publication in either of the two Gazette shall be deemed to be the date of publication. (Section 8)

ATTRIBUTION AND DISPATCH OF ELECTRONIC RECORDS

Since, in an electronic record, the maker remains behind the curtain, it was considered desirable to make a provision for "attribution" of the record. An electronic record is attributed to the "originator". [Defined in Section 2(1)(za)]

Broadly, the "originator" is the person at whose instance it was sent in the following cases:-

- (a) if it was sent by the originator himself; or
- **(b)** if it was sent by a person authorised to act on behalf of the originator in respect of that electronic record; or
- (c) if it was sent by an information system programmed by or on behalf of the originator to operate automatically. (Section 11)

Regarding acknowledgement of receipt of electronic records, the Act provides that where there is no agreement that the acknowledgment be given in a particular form etc. then the <u>acknowledgement may be given by:</u>

- (a) any communication by the addressee (automated or otherwise) or
- (b) any conduct of the addressee which is sufficient to indicate to the originator that the electronic record has been received. [Section 12(1)]

TIME AND PLACE OF DISPATCH ETC.

Subject to agreement between the parties, the dispatch of an electronic record occurs, when it enters a "computer resource" outside the control of the originator. [Section 13 (1)]

Time of receipt

Subject to agreement, if the addressee has designated a computer resource for receipt, then receipt occurs when the electronic record enters the designated resource. However, if the record is sent to a computer resource of the addressee which is not the designated resource, then receipt occurs at the time when the electronic record is retrieved by the addressee. [Section 13(2)(a)]



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ELECTRONIC SIGNATURE CERTIFICATES

As per section 35 of the Act, Certifying authority to issue electronic signature Certificate. Followings are the procedure of **obtaining electronic signature Certificate:-**

- (1) Any person may make an application in prescribed form to the Certifying Authority for the issue of electronic signature Certificate in such form as may be prescribed by the Central Government.
- (2) Every such application shall be accompanied by prescribed fees
- (3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.
- (4) On receipt of an application, the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, grant the electronic signature Certificate or for reasons to be recorded in writing, reject the application. It may be noted that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

PENALTIES AND ADJUDICATIONS

Section 43 provides that if any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network:-

- (a) accesses or secures access to such computer, computer system or computer network or computer resource;
- (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;
- (c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;
- (d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;
- (e) disrupts or causes disruption of any computer, computer system or computer network;
- destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;
- (j) steal, conceal, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage he shall be liable to pay damages by way of compensation to the person so affected.

For the purposes of Section 43:-

- (i) "Computer contaminant" means any set of computer instructions that are designed:-
 - (a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or
 - (b) by any means to usurp the normal operation of the computer, computer system, or computer network;
- (ii) "Computer virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;



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COMPENSATION FOR FAILURE TO PROTECT DATA

Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected. (Section 43A)

APPELLATE TRIBUNAL

The **Telecom Disputes Settlement and Appellate Tribunal** established under section 14 of the Telecom Regulatory Authority of India Act, 1997, shall, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.

The Central Government shall specify, by notification the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

Any person aggrieved by an order of the Controller of Certifying Authorities or of the adjudicator can appeal to the Appellate Tribunal, within 45 days. (Section 57)

Any person aggrieved by "any decision or order" of the Appellate Tribunal may appeal to the High Court, within 60 days. Jurisdiction of Civil Courts is barred, in respect of any matter which an adjudicating officer or the Appellate Tribunal has power to determine.

NKJ-CLASSROOM PRACTICE



Q. 1. State, in brief, about the Appellate Tribunal, under the Information Technology Act, 2000.

OFFENCES

Chapter XI of the Act, (Sections 65-78) deals with offences relating to computers etc. and connected matters.

Tampering with computer source documents

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy, or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.(Section 65)

Computer related offences

If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both. (Section 66)

The offences listed in the Act are the following:-

- (1) Dishonestly receiving stolen computer resource or communication device
- (2) Identity theft
- (3) Cheating by personation by using computer resource



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- (4) Violation of privacy
- (5) Cyber terrorism
- (6) Publishing or transmitting of material containing sexually explicit act, etc., in electronic form
- (7) Publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic Form
- (8) Misrepresentation
- (9) Breach of confidentiality and privacy
- (10) Disclosure of information in breach of lawful contract
- (11) Publishing electronic signature Certificate false in certain particulars
- (12) Publication for fraudulent purpose.

Extraterritorial operation

Extra-territorial operation of the Act is provided for, by enacting that the provisions of the Act apply to any offence or contravention committed outside India by any person, irrespective of his nationality, if the act or conduct in question involves a computer, computer system or computer network located in India. (Section 75)

LIABILITY OF NETWORK SERVICE PROVIDERS SECTION 79

The Internet system depends, for its working, on network service providers- i.e. intermediaries.

In his capacity as an intermediary, a network service provider may have to handle matter which may contravene the Act. To avoid such a consequence, the Act declares that no network service provider shall be liable "under this Act, rule or regulation made thereunder", for any third party information or data made available by him, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

NKJ-CLASSROOM PRACTICE



Q. 1. What are the offences provided in the Information Technology Act, 2000, for various kinds of misuse of computer?



SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

- 1. Summaries the main provisions contained in the Information Technology Act, 2000.
- 2. What is the significance of electronic records under the Information Technology Act, 2000?
- 3. State very briefly the gist of the concepts of "computer network", "electronic form" and "key pair", under the Information Technology Act, 2000.
- **4.** What are the offences provided in the Information Technology Act, 2000, for various kinds of misuse of computer?
- 5. State, in brief, about the Appellate Tribunal, under the Information Technology Act, 2000.



Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 1:-



Q. 3. Answer to Question No. 3:-



Q. 4. Answer to Question No. 4:-



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